

AGENDA

Meeting: STAFFING POLICY COMMITTEE
Place: Kennet Room - County Hall, Trowbridge BA14 8JN
Date: Wednesday 9 July 2014
Time: 10.30 am

Please direct any enquiries on this Agenda to Roger Bishton, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 713035 or email roger.bishton@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225) 713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Pre-meeting training

There will be short presentations starting at 10.00am, immediately before the Meeting on the following topic:

- The use of volunteers
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Membership:

Cllr Allison Bucknell
Cllr Mike Hewitt
Cllr David Jenkins
Cllr Bob Jones MBE
Cllr Helen Osborn

Cllr David Pollitt
Cllr Jane Scott OBE
Cllr John Smale
Cllr Stuart Wheeler
Cllr Graham Wright

Substitutes:

Cllr Desna Allen
Cllr Nick Blakemore
Cllr Peter Evans
Cllr Bill Moss

Cllr Stephen Oldrieve
Cllr Mark Packard
Cllr Fleur de Rhé-Philippe
Cllr Anthony Trotman

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PART I

Items to be considered while the meeting is open to the public

1 **Apologies for absence**

2 **Minutes of Previous Meeting** *(Pages 1 - 4)*

To confirm the minutes of the meeting held on 7 May 2014. (Copy attached)

3 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

If you would like to make a statement at this meeting on any item on this agenda, please register to do so at least 10 minutes prior to the meeting. Up to 3 speakers are permitted to speak for up to 3 minutes each on any agenda item. Please contact the officer named on the front of the agenda for any further clarification.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution. Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of the agenda no later than 5pm on **Wednesday 2 July 2014**. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

6 **Discretions Policy for Wiltshire Council** (Pages 5 - 10)

A report by the Associate Director, People & Business is attached.

7 **Notice of Motion - Recognition of Trade Union Rights** (Pages 11 - 14)

At its Annual Meeting held on 13 May 2014, Council considered the following Notice of Motion received from Cllrs Jeff Osborn and Terry Chivers

“In the tendering of any future contracts for services provided by this Council, a clear condition should be made that the Council will only enter into a contract with organisations that make a clear and public commitment that they fully recognise trade union rights for their employees and that they will continue to do so”

Council referred the Motion to Staffing Policy Committee for consideration.

A copy of the report prepared by the Associate Director, Law & Governance for the Annual Council meeting is attached.

Cllrs Osborn and Chivers have been invited to this meeting.

8 **Urgent Items**

Any other items of business which, in the opinion of the Chairman, should be considered as a matter of urgency. Urgent items of a confidential nature may be considered under Part II of this agenda.

PART II

Items during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed

None

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STAFFING POLICY COMMITTEE

DRAFT MINUTES OF THE STAFFING POLICY COMMITTEE MEETING HELD ON 7 MAY 2014 AT KENNET ROOM - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Allison Bucknell (Chair), Cllr Mike Hewitt, Cllr David Jenkins, Cllr Bob Jones MBE, Cllr Gordon King, Cllr Bill Moss (Substitute), Cllr David Pollitt, Cllr John Smale (Vice Chairman) and Cllr Stuart Wheeler

24 Apologies for absence

An apology for absence was received from Cllr Jane Scott OBE who was substituted by Cllr Bill Moss.

25 Minutes of Previous Meeting

Resolved:

To confirm and sign as a correct record the minutes of the Committee meeting held on 5 March 2014.

26 Declarations of Interest

There were no declarations of interest.

27 Chairman's Announcements

The Chairman made the following announcements:-

- Public Sector People Management Association (PPMA) Rising Stars Adam Feather, Workforce Analyst, HR Information Team was a finalist in this year's national competition sponsored by PPMA and Manpower Group. Future HR leaders from local authorities across the country had recently come together for an intense two-day programme of personal coaching, media skills workshops and networking at Warwick University. All 14 high level participants presented their big ideas on this year's chosen topic – Workforce Agility – to a panel of PPMA board members.

The four highest scoring delegates including Adam had now been invited to present at the PPMA annual seminar in May in Leeds. Members of the Committee joined the Chairman in extending their very best wishes to Adam.

- PPMA Excellence in HR Awards - Excellence in change management
The HR/OD Wiltshire Council team was a finalist in another important national award, the category being *Excellence in change management*. The Committee extended its best wishes to the team.

28 **Public Participation**

There were no members of the public present or councillors' questions.

29 **Temporary Closure of Leisure Facilities**

Consideration was given to a report by the Associate Director, People & Business Services which presented a temporary policy on handling employee issues due to the closure of leisure facilities because of campus projects, redevelopment, rebuilds or maintenance work.

With the development of campus projects it would be necessary to close affected leisure facilities temporarily whilst these projects were underway. The length of time each facility would be closed would be different depending on the nature and scale of each project.

The policy detailed that the priority would be to continue to employ employees during the closure period by looking at a number of alternatives. Where this was not possible it was proposed in the policy to continue to pay these employees for a set period of time in order to retain their services.

It was pointed out that this policy would be used initially as a pilot in respect of staff employed at Corsham swimming pool after which it could be modified if necessary before being applied to staff affected by other projects.

Resolved:

To approve the policy on the Temporary Closure of Leisure Facilities.

30 **Delivering the Business Plan January to March 2014**

The Committee received a quarterly workforce report, excluding fire, police and schools staff, for the quarter ended 31 March 2014 concerning:-

Staffing Levels

Sickness Absence

New Health and Safety RIDDOR related injuries

New Disciplinary and Grievance Cases

Voluntary Staff Turnover
Employee Costs
Additional Financial Information
Employee Diversity

During discussion the following points were highlighted:-

- During the quarter Children & Families had recruited 18 social workers which was excellent given the general shortage of candidates.
- Sickness rates had decreased by 0.2 FTE days to 1.9 days per FTE. Overall for the 2013/14 financial year, the sickness rate was 8.3 FTE days; this was 1.6 FTE days below the benchmark local authority median and 0.4 days per FTE less than the previous financial year.
- The voluntary turnover rate had increased to 2.2% this quarter. The overall voluntary turnover rate for 2013/14 financial year was 8.5%, this being approximately 1.5% above the benchmark figure. It was considered that this trend was partly due to the increasing opportunities becoming available in the private sector and a perceived increase in job security there. Members requested that a schedule of vacant posts be sent to them.

Resolved:

- (1) To note the contents of the report.
- (2) To request that some additional training on workforce statistics be provided for members of the Committee immediately before the next scheduled meeting.

31 **Date of Next Meeting**

Resolved:

To note that the next meeting of the Committee was due to be held on Wednesday 9 July 2014 in the Kennet Room at County Hall, Trowbridge, starting at 10.30am.

32 **Urgent Items**

There were no items of urgent business.

(Duration of meeting: 10.30 - 11.10 am)

The Officer who has produced these minutes is Roger Bishton, of Democratic Services, direct line 01225 713035, e-mail roger.bishton@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

Discretions Policy for Wiltshire Council

Purpose of Report

1. To present an updated Discretions Policy for Wiltshire Council, following the changes to the Local Government Pension Scheme (LGPS) in April 2014.

Background

2. The introduction of new LGPS regulations effective from April 2014 requires Wiltshire Council to review its existing pension discretions policy and to publish a new policy with effect from April 2014.
3. The discretions policy states how the council will apply its discretionary powers in relation to specific provisions of the pension scheme.

Wiltshire Council Discretions

4. The LGPS regulations provide a set of nine discretions for employers to review and agree. Seven of these discretions are the same as stated in Wiltshire Council's existing discretions policy, with the addition of two new discretions. The discretions are as follows:

- Discretion 1 – awarding additional pension

This discretion enables the employer to grant an additional pension of up to £6,500 per year to an employee.

Wiltshire Council's current discretion policy states that this discretion will not be exercised. It is recommended that this is revised slightly to allow for this discretion to be exercised by Staffing Policy Committee in exceptional circumstances.

- Discretion 2 – whether to make either a regular or lump sum additional pension contribution (new)

The new LGPS regulations enable an employee to pay an Additional Voluntary Contribution (AVC) or Additional Pension Contribution (APC) to buy lost pension.

This is a new discretion that enables the employer to fund the cost of the AVC or APC either in part (split with the employee) or in full on behalf of the employee via a Shared Cost Additional Pension Contribution (SCAVC) or Shared Cost Additional Pension Contribution (SCAPC).

It is recommended that this discretion is only exercised by Staffing Policy Committee in exceptional circumstances after considering the costs that will apply.

- Discretion 3 – flexible retirement

This discretion enables the employer to grant permission for an employee who is 55 years or over to receive payment of the pension benefits that they have built up, and continue to work for the council on a flexible retirement basis.

Wiltshire Council's current discretions policy states that requests for flexible retirement will be considered by the associate director for people and business in conjunction with the appropriate associate director based upon the resource implications and pension strain costs. It is therefore recommended that this continues.

- Discretion 4 – waiving actuarial reduction on flexible retirement

In allowing employees to take flexible retirement from 55 years and access their pension benefits, the pension benefits that they receive are significantly reduced in the form of an actuarial reduction. This takes into account that the employee is taking their pension benefit at an earlier stage (before their normal retirement age) and for a longer period. This discretion enables the employer to waive the actuarial reduction in pension benefits so that the pension is paid without reduction, with the employer picking up this cost/shortfall to the pension fund.

Wiltshire Council's current discretions policy states that this discretion will not be exercised, and the actuarial reduction will not be waived so that there is no additional cost to the council. It is therefore recommended that this continues.

- Discretion 5 – waiving actuarial reduction on early retirement

The new LGPS regulations allow for all employees to take early voluntary retirement from 55 years and access their pension benefits. However, in so doing, their pension benefits are significantly reduced in the form of an actuarial reduction to allow for the pension being taken at an earlier stage (before their normal retirement age) and for a longer period. This discretion enables the employer to waive the reduction and pick up the cost/shortfall to the pension fund.

Wiltshire Council's current discretions policy states that this discretion will be exercised by Staffing Policy Committee in individual cases on compassionate grounds only. It is therefore recommended that this continues.

- Discretion 6 – to allow the rule of 85 for employees aged between 55 and 59 (new)

The new LGPS regulations result in a loss of the rule of 85 protection for some employees aged between 55 and 59, as there is no longer an automatic entitlement for employees in this age group for unreduced pension where their length of service plus age, total 85 or more.

This is a new discretion that enables employers to allow the rule of 85 for this group of employees and fund the cost/shortfall to the pension fund.

It is therefore recommended that this discretion will be exercised by Staffing Policy Committee in exceptional circumstances after considering the costs that will apply.

- Discretion 7 – extending 12 month period to transfer separate previous LGPS service

This discretion enables employers to extend the 12 month limit to transfer LGPS service.

Wiltshire Council's current discretions policy states that this discretion will not be exercised, and it is therefore recommended that this continues.

- Discretion 8 – determining rate of employee contributions

This discretion enables employers to determine how frequently employee contributions are assessed and paid to the pension fund.

Wiltshire Council's current discretions policy states that reassessment of all salary changes will take place as they occur during the year. It is therefore recommended that this is clarified to state that Wiltshire Council will re-assess all employee contribution bands on a monthly basis, taking into account all salary changes as they occur during the year.

- Discretion 9 – extending 12 month period to transfer non local government pension.

This discretion enables employers to extend the 12 month limit to transfer non local government pension to the LGPS.

Wiltshire Council's current discretions policy states that this discretion will not be exercised, and it is therefore recommended that this continues.

Environmental Impact of the Proposal

5. None.

Equalities Impact of the Proposal

6. None.

Financial Impact of the Proposal

7. If a discretion is exercised and agreed, costs may be incurred that have not been budgeted for. The financial implications of exercising a discretion will be considered on a case by case basis, and the discretion only agreed where it is in the council's best financial interests.

Risk Assessment

8. None.

Options Considered

9. None.

Recommendation

10. That staffing policy committee approve the recommendations to the discretions policy as stated above.

Barry Pirie
Associate Director, People and Business

Report Author: Laura Butcher, Human Resources Policy & Reward team

The following unpublished documents have been relied on in the preparation of this Report: None

**LGPS EMPLOYER'S
DISCRETIONS POLICY FOR WILTSHIRE COUNCIL
LGPS 2014 Scheme**

WILTSHIRE PENSION FUND

DISCRETION & REGULATION	POLICY ON INDIVIDUAL DISCRETIONS
<p>1). Reg 31: Whether to grant additional pension to a member (up to £6500pa)</p>	<p>The council will only exercise this discretion in exceptional circumstances by Staffing Policy Committee after full consideration of the costs that would apply.</p>
<p>2). Reg 16(2)e & Reg 16(4)d: Whether to it make either a regular or lump sum Additional Pension Contribution (APC) to a member's account (part or whole funding this) [Note: this discretion only relates to cases when the member is working as normal rather than absent from work with permission but no pensionable pay – in the latter scenario, employers must fund it if necessary.]</p>	<p>The council will only exercise this discretion in exceptional circumstances by Staffing Policy Committee after full consideration of the costs that would apply.</p>
<p>3). Reg 30(6) Whether all or some pension benefits can be paid if an member aged 55 or over reduces their hours/grade and continues to work ("flexible retirement")</p>	<p>Requests will be considered by the associate director for people and business in conjunction with the appropriate associate director and assessed on their merits taking account such factors as costs and service delivery.</p>
<p>4). Reg 30(8) Waiving actuarial reduction on flexible retirement.</p>	<p>The council will not exercise this discretion</p>
<p>5). Reg 30(8) Waiving actuarial reduction on early retirement (age 55+) – for both active, deferred members & suspended tier 3 ill health pensions</p>	<p>Requests will be considered by the associate director for people and business in conjunction with the appropriate associate director and assessed on their merits taking account such factors as costs and service delivery.</p>
<p>6). TP Regs 1(1)(c) of Schedule 2: Whether to allow the rule of 85 to be "switched on" for members who would normally meet the rule but who will not if they draw the benefits age 55-59</p>	<p>The council will only exercise this discretion in exceptional circumstances by Staffing Policy Committee after full consideration of that costs that would apply.</p>

<p>7). Regs 22(8 & 9) Whether to extend 12-month period to separate previous LG service.</p>	<p>The council will not exercise this discretion</p>
<p>8). Reg 9(3) Determine rate of employees' contributions.</p>	<p>Wiltshire Council will re-assess all employee contribution bands on a monthly basis, taking account of changes as they occur during the year</p>
<p>9). Reg 100(6) Whether to extend 12-month period to allow a transfer-in of non-LG pension rights.</p>	<p>The council will not exercise this discretion</p>

Abbreviations

“Reg 16(2)e” means Regulation 16(2)e of the Local Government Pension Scheme Regulations 2013 [which apply from 1 April 2014]

“TP Regs” means LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014].

Updated 14 March 2014

Wiltshire Council

Annual Council

13 May 2014

Notice of Motion – Recognition of Trade Union Rights

From Councillors Jeff Osborn and Terry Chivers

Purpose of report

1. The purpose of this report is to provide information regarding the motion to be raised by Cllrs Jeff Osborn and Terry Chivers at the next full council meeting on 13 May 2014 regarding trade union recognition being included in all future tenders.

Main Considerations

2. Under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE), trade union recognition agreements transfer where the transferred group of employees maintains an "identity distinct" from the remainder of the transferee's undertaking after the transfer (regulation 6(1), TUPE).
3. The term "identity distinct" has been defined as requiring the group of transferred employees to have the power to govern itself without the direct intervention of the transferee. If the group of staff, therefore, is reorganised and fully integrated into the transferee's business on transfer, union recognition will not transfer. The transferred employees can still retain their union membership even if the trade union is not recognised.
4. There is also a statutory process, entirely separate to TUPE, where the unions, if certain conditions are met, can require an employer to recognise them for collective consultation processes. In any event, employees have a statutory right to be represented by a colleague or union representative in certain processes such as disciplinary and grievance procedures.
5. The International Labour Conventions merely state that employees should have the freedom of association to join a trade union and the right not to suffer a detriment if they do so. All employees currently have these rights by virtue of the Trade Union and Labour Relations (Consolidation) Act 1992.

Employees still have the right to join a trade union whether a union is recognised by their employer or not.

6. Section 17 of the Local Government Act 1988 (LGA 1988) requires a local authority to avoid the inclusion of “non-commercial” considerations in its tender documents. This has been much amended since 1988 to allow, for instance, inclusion of criteria related to the Equalities Act. However, it still contains as a prohibited non-commercial consideration “the terms and conditions of employment by contractors of their workers or composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces” except to the extent that it is necessary to take this into account to allow an authority to meet its duty to ensure continuous improvement in the way it exercises its functions.
7. The Public Contract Regulations 2006 (PCR) are a transposition of an EU directive and as such sit higher in the interpretative hierarchy than the 1988 Act. Regulations 23 and 45 do provide limited mandatory grounds for excluding prospective tenderers from tenders. These grounds relate generally to insolvency, criminal wrong-doing or grave professional misconduct. Matters in relation to employee/union relations are not in this list. It is very unlikely that a Court would rule that the non-recognition of unions by a private employer would amount to grave professional misconduct such as to justify exclusion from a tender.
8. Further, (and mirroring to some extent the LGA 1988 section 17 provision referred to in paragraph 6 above) regulation 30 (2) requires that evaluation of tenders is done using criteria that are “linked to the subject matter of the contract”. Regulation 30 (2) does give a list of things that are linked to the subject matter of the contract, which includes such things as “technical merit”, “running costs”, “quality” etc. There is, however, nothing in the list that makes any reference to a tenderer’s organisation of its workforce.
9. Case law shows that evaluation criteria which are not specifically in this list (or are otherwise made good evaluation criteria by other parts of the regulations, such as environmental considerations), and which go beyond a proportionate reflection of the authority's legitimate requirements in connection with the contract, are likely to be prohibited by the regulations. Requirements which are applied to economic operators' business activities as a whole, as opposed to the service, goods or works to be supplied under the contract, run a high risk of being prohibited by the regulations.
10. In terms of any future considerations to outsource staff, it would be very difficult to enforce trade union recognition for the following reasons:

- Evaluation criteria for tenders are very specific and trade union recognition is not a valid evaluation criteria.
- There is also the likelihood that requiring trade union recognition may deter some tenderers from bidding, particularly small employers or those who do not currently have a unionised workforce.
- Furthermore, it may affect the cost of any bid as there would be some additional costs for any new providers in relation to requirements to provide facilities and other financial support as outlined in any recognition agreement.

Financial implications

11. As outlined above the requirement to recognise trade unions may increase the cost of the contract and may limit the number of contractors who are prepared to bid.

Legal Implications

12. Legal considerations are set out in the body of the report.
13. The introduction of a non-commercial consideration such as is proposed is likely to be held by a Court to be prohibited by the legislation rendering the tender process unlawful.

Conclusion

14. There are already statutory processes for considering union recognition during the TUPE process and with contracting parties.
15. There is already statutory protection for employees' freedom of association to join a union and for union representation for employees within certain employment processes.
16. However, in terms of any future contracts it would not be possible within the current statutory framework to use as evaluation criteria a public commitment to recognise Trade Unions for collective bargaining purposes.

Recommendation

17. Council is asked to consider its response to the proposed motion in the light of the legal advice contained in this report.

.Ian Gibbons
Associate Director Law & Governance

Report author: Frank Cain, Head of Legal Services