

WILTSHIRE COUNCIL

AGENDA ITEM NO. 19

CABINET

DATE 24 November 2009

HARMONISATION OF TERMS AND CONDITIONS OF EMPLOYMENT

Purpose of Report

- 1.1 To brief Cabinet on the scope and outline plan for the harmonisation of terms and conditions of employment
- 1.2 To seek authorisation for negotiations towards a collective agreement

Background

- 2.1 Around 5,200* of the staff in Wiltshire Council (excluding school staff) currently come under the purview of the National Joint Council (NJC) for Local Government Services. This NJC's National Agreement on Pay and Conditions of Service of 1997, known as "the Green Book", prescribed some elements but others can be negotiated locally. Non teaching school staff are also covered by the green book but they are due in 2010 to transfer to the new School Support Staff Negotiating Body so will be out of the scope of Wiltshire Council's harmonisation of terms and conditions of employment.
(figures relate to jobs – some staff hold more than one job)*
- 2.2 The Council has a statutory duty to promote equal pay for work of equal value; to regularly undertake equal pay audits to check that equality is assured; and to remedy this where it is not. Failure to do this will render the Council vulnerable to equal pay claims.
- 2.3 Three of the previous District Councils (West Wilts, North Wilts and Kennet) did not implement "single status" reviews of pay and grading arrangements which were promoted nationally as a way of achieving equal pay within each local government employer. The national experience of Councils implementing single status arrangements was disturbance of the rank order of jobs and existing pay rates, typically with around 20% of staff experiencing some longer term detriment as a consequence. That three of the previous District Councils had not achieved equal pay within their organisations and faced the associated employee relations issues adds to the complication of ensuring equal pay across the new Council.
- 2.4 The following table shows the numbers of staff in each Directorate who, under TUPE regulations, currently remain on terms and conditions (ts and cs) of employment they transferred with from their previous employment with the District Councils. These differ from Wiltshire County Council terms and conditions, and between Districts.

	Directorate						
Ts & Cs	DOR	TEL	EDPH	DCS	CH/EX	DCE	Total
WWDC	72	41	77	6	2	0	198
NWDC	93	133	91	3	0	0	320
KDC	71	308	61	3	6	0	449
SDC	103	437	176	2	10	0	728
TUPED Sub-Total	339	919	405	14	18	0	1695
WCC	593	430	136	1144	54	1181	3538
Total	932	1349	541	1158	72	1181	5233

Figures exclude casual employees

2.5 Operating with five sets of terms and conditions for Green Book staff means that potentially the Council may breach Equal Pay legislation. Additionally, inequities, even where not unlawful, result in a general feeling of unfairness. There are already a growing number of concerns and queries being raised by staff about this. During the preparation for local government reorganisation in Wiltshire it was agreed with the unions as part of the Appointments Procedure that “grade and pay arrangements, and other terms and conditions which are equal pay compliant will apply to all staff with effect from 1 October 2009 and there will be a proper process of consultation and negotiation to this end”. This agreement was endorsed by all five Councils.

2.6 The harmonisation exercise will need to address the differences between the five sets of terms and conditions that now exist within Wiltshire Council. The main ones are:

- Pay
- Annual Leave
- Travel (including lease cars and lump sums for use of private vehicles), and some aspects of parking – to be informed by the Business Travel strand of the Workplace Transformation project.
- Payment for working outside of normal working hours, including call-out and standby
- Payment of professional fees
- Special Leave
- Financial support for training.

There will be some other contractual terms and also discretionary benefits which differ and require harmonisation.

2.7 The number of staff on TUPE terms and conditions has already reduced since April 2009 and will continue to gradually reduce over time to some degree independently of the harmonisation exercise as all new appointments (including internal transfers, promotions, redeployments) are made on Wiltshire Council terms and conditions (inherited from the County Council). However this process alone will not achieve harmonised terms and conditions within a timescale which will remove vulnerability to equal pay claims.

- 2.8 The governance arrangements for the Harmonisation project have been designed and are shown in Appendix 1. Broadly it is planned that the project will follow the following stages:
- i) Communicating project aims to workforce.
Modelling/costing of options on major contractual terms to be harmonised
Best minimum timescale estimated as Nov 2009 – January 2010 (3 months)
 - ii Negotiations with unions and drafting of Collective Agreement on major terms.
Modelling/costing of options on other contractual terms and discretionary benefits
Best minimum timescale estimated as February 2010 – May 2010 (4 months)
 - iii) When there is a provisional agreement and Unions proceed to ballot their members, communication with staff on the whole package of terms and conditions (not individual results)
Best minimum timescale estimated as June 2010 – August 2010 (3 months)
 - iv) When a collective agreement is achieved, communicate full specific details. Brief managers on individual impacts on their staff. Issue personal notifications to employees whose pay grade and/or other pay arrangements are changed, including rights of appeal on pay grade changes.
Best minimum timescale estimated as September 2010 – November 2010 (3 months)
 - v) Implement changes (not back pay) through payroll/HR lifecycle. Deal with appeals.
Best minimum timescale estimated as December 2010 – January 2011 (2 months)
 - vi) Calculate and pay back pay due, retrospectively to 1 October 2009. Deal with queries and challenges arising from implementation. Ensure new terms and conditions fully understood and embedded for maintenance. Rationalise any remaining discretionary benefits which fall outside the collective agreement.
Best minimum timescale estimated as February 2011 – April 2011 (3 months)

- 2.9 The volume of work required to implement new terms and conditions will depend on several factors. These include the number of staff affected, the number of conditions that are changed and the complexity of the conditions changing. The timescales for implementation may change depending on the proposal that is finally agreed.

3. **Main Considerations for the Council**

- 3.1 The Council is required to progress to a common set of terms and conditions as soon as practicable to ensure that it meets its obligations under equal pay legislation.
- 3.2 Due to the degree of disparity between the differing sets of terms and conditions, there is a real tension between affordability and good employee relations.
- 3.3 Finding the funding to bring a wide range of terms and conditions up to a new harmonised level is unlikely to be possible in a time of decreasing public expenditure. It is probable that there will be some “trading off” between the various terms and conditions with some being more favourable to staff and others detrimental. In any event the Council would wish to provide protection to employees who are placed at detriment by the harmonisation process which is similar to that agreed for the Wiltshire County Council Pay Reform process. However, protection arrangements will form part of the package to be negotiated with the unions and may be also subject to legal constraint.

- 3.4 The project timescales indicated above are estimated as minimum times and assume that a collective agreement between the Council and the recognised unions will be achieved. A collective agreement would become part of the contract of employment of all staff in scope, although fewer than half of the staff are currently union members. The unions have confirmed that they will require approval from their national head offices, and a yes vote in a member ballot before signing a collective agreement. There is a risk that it will not be possible to achieve a collective agreement if it would impact negatively on a significant number of union members. Only union members would be able to vote on the proposed package, although non union members would be also be provided with information on the proposals.
- 3.5 In the absence of a collective agreement, the other routes to implementing revised terms and conditions are through seeking informed agreement from each affected employee or where this is not given, terminating the existing contract and offering re-engagement on the revised terms. This would require careful adherence to due legal process, (including a 90 day period of consultation) and would be demanding on management time. Maintenance of good employee relations during this process would be challenging.
- 3.6 It is already clear that whatever harmonised set of terms and conditions is implemented there will inevitably be some initial increase in the pay bill. This is because staff who are found to be relatively underpaid compared to staff performing jobs of equal value will need to have their pay immediately increased with backdating potentially to 1 October 2009. However those staff whose pay is reduced by the exercise will have a period of pay protection before the reduction takes effect.
- 3.7 There will be a continuing need to recruit staff to replace those who leave. The package of pay and other terms and conditions on offer and the competitiveness of this in the labour market will be one of the determinants of the success of the Council in recruiting and retaining appropriately skilled staff.

Environmental Impact of the Proposal

4. None

Equalities Impact of the Proposal

5. The introduction of a common set of terms and conditions will ensure that staff are paid equally for work of equal value.

Risk Assessment

- 6.1 The longer the period of time that elapses before a common set of terms and conditions is implemented, the more exposed the Council is to potential equal pay claims.
- 6.2 The period of time needed to implement the contractual changes necessary to achieve equal pay will increase if the pursuit of a negotiated collective agreement fails. This is because of the requirements of employment law for unilateral implementation as indicated in paragraph 3.5 above. The two approaches (collective agreement, unilateral implementation) cannot be pursued concurrently.
- 6.3 A project plan for making contractual changes through unilateral implementation could be made with more certainty on timescales than the plan to pursue a collective agreement. However a decision to immediately take this approach rather than to seek a collective agreement would be contrary to the joint agreement within the One Council Appointments Procedure that harmonisation would be negotiated. The process of unilateral implementation would be likely to damage employee relations.

- 6.4 Dismissals from existing contracts (in the event of unilateral implementation) would open up the potential for staff to claim unfair dismissal at employment tribunal. The outcome of employment tribunal cases can never be totally predicted. Apart from the costs of defending such litigation, which are generally not recoverable, the Council would, if unsuccessful, be liable to pay compensation and attract adverse publicity.
- 6.5 The current government has recently agreed that a separate national School Support Staff Negotiating Body will be established in 2010 which will mean, as mentioned in paragraph 2.1 above, the c 6,000 non teaching staff in Wiltshire schools will be out of scope of the Harmonisation project. If there is a change of government in 2010 and the incoming government is concerned about the School Support Negotiating Body as a cost pressure, the decision to establish it could possibly be reversed or the establishment of the SSNB significantly delayed. This would bring the c 6,000 school staff into the scope of the harmonisation project, doubling it in size and adding the complexity of dealing with 250 locally managed schools.

Financial Implications

- 7.1 The 2009/2010 pay bill for staff who will be subject to harmonisation is about £125 million, including national insurance and pension. (The breakdown is roughly £85 million for staff on Wiltshire Council terms and £40 million for TUPED staff).
- 7.2 Modelled on basic pay only, the indicative potential financial impact on the pay bill ranges from a possible reduction in long term costs of about £3 million if the County Council's pay grades are applied to ex District Council staff, to very significant long term cost increases, for example, if the County Council's pay grades were uplifted by 2 increments and applied to all staff, the longer term costs of this would be around £7 million.
- 7.3 Two of the former District Councils who had not implemented single status set aside amounts in their reserves/provisions for that purpose:

West Wilts : £610K
Kennet : £469K
Total £1,079K

To date, investigations have not identified a sum for North Wilts.

This money will be used to fund the harmonisation project before there is a call on the Council's general funds.

Legal Implications

- 8.1 The Council is required to harmonise terms and conditions to ensure that it meets its obligations under equal pay legislation.
- 8.2 Legal advice will be sought as necessary to ensure that the outcome and process followed is legally sound.

Options Considered

- 9.1 Do nothing and take the view that the risk of equal pay claims will reduce acceptably over time as all new appointments are made on the terms and conditions of employment inherited from the County Council; and that the feelings of unfairness reported by staff can be lived with and managed.

- 9.2 Pursue a collective agreement through negotiation, acknowledging that this may not be achieved, and the timescale for achievement and implementation cannot be predicted with certainty.
- 9.3 Pursue unilateral implementation of contractual changes through due legal process, acknowledging the impact this may have on employee relations, potential litigation and the demands it will make on management time.

Conclusions

10 Proposals

- 10.1 That Cabinet authorises the Service Director for HR and Organisational Development to negotiate a collective agreement on harmonised terms and conditions which assures equal pay (option 9.2 above).
- 10.2 That Cabinet considers the modelled options set out in a part two paper to this committee and provides direction on the negotiating parameters for the project team. These parameters include the ratio of staff whose new rate of base pay would go up, go down or stay the same, the cost impacts of the proposal to the Council and the impact of the proposal on the Councils positioning within the labour market.

Reasons for Proposals

- 11.1 The Council will be vulnerable to equal pay claims unless it takes active steps to harmonise the terms and conditions of Green Book staff. The level of financial risk to this Council of successful equal pay claims cannot be accurately quantified at this stage but the financial repercussions on Councils who have faced successful equal pay claims have been severe.
- 11.2 Achieving harmonisation through a collective agreement would be consistent with the agreement made with unions as part of the One Council Appointments Procedure and the history of good joint working on issues such as this in the County Council and former District Councils. It would also be less time consuming for managers throughout the Council than unilateral implementation and would avoid the risk posed by unfair dismissal claims.

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Background Papers Opinion in the matter of Local Government
Reorganisation and Harmonisation – John Cavanagh QC

Appendices

1. Project Governance structure

