

**Corporate and Public Services
Overview and Scrutiny Committee**

**Agenda Item
No. 10**

6 April 2017

Changes to Staff Terms and Conditions

Ward(s) All

Portfolios: Cllr A Nawaz – Personnel and Business Support

Executive Summary:

This report provides an overview on the implementation of the employee Terms and Conditions Review commenced by a decision of the Personnel Committee on 28th June 2016.

It also provides a lessons learnt section (Appendix 1 Section 4) which is intended to contribute towards learning for future large scale projects.

Summary of changes to Terms and Conditions Implemented

Following consideration of a report dated 13th June and amended by a further report dated 28th June 2016, Personnel Committee agreed to implement the following changes to staff terms and conditions:-

- Removal of the essential car user allowance (lump sum and associated mileage rates);
- Reducing casual car user mileage rates to the maximum tax free HM Revenue & Customs approved rate (45 pence per mile for the first 10,000 miles and 25 pence per mile thereafter);
- Reducing basic pay for all employees by 1% on 1st April 2017 (or September 2017 at the point of the pay award for employees with a pay award based on an academic year)
- Amendments to the flexi scheme to remove core time and increase the number of flexi days per period from 2 to 3;
- Harmonisation of standby and call out payments across the council

Reason for scrutiny:

To provide an overview and update on the process and implementation of the changes to staff terms and conditions.

Recommendations:

1. Note the report
2. Consider and note the lessons learned as set out at Appendix 1, Section 4.

Background papers:

A full formal consultation exercise was undertaken between 6th February and 18th March 2016, details of this were contained in the original report presented to Personnel Committee on 13th June 2016, and are summarised in **appendix 1, paragraph 1 marked “Chronology”**.

Resource and legal considerations:

Council on 25 February 2016 agreed the budget for 2016/17, with a £25m package of savings including £1m for the review of employee terms and conditions. A further £2m was identified for terms and conditions in 2017/18.

The original proposal achieved the required level of savings over 2 years.

The alternate proposal, agreed at Personnel Committee on 28th June 2016 to be implemented from 1 April 2017, will deliver a budget reduction of £2m in 2017/18. The shortfall of £1m in 2016/17 was funded from general reserves in 2016/17, and corrected as part of the budget process for 2017/18.

The project has concluded on time and therefore the original risk of the implementation being delayed beyond 1st April 2017, either in part or in full, has not impacted on the delivery of the £2m budget reduction.

The consultation exercise with trade unions was consistent with the requirements of s.188 of the Trade Union Labour Relations (Consolidation) Act 1992. The process, so far as dismissal and re-engagement is concerned, has been in accordance with legislation, contractual requirements and good employment practice and thereby has mitigated any potential employment tribunal claims. The fact that 99.4% of employees have agreed to accept the contractual variations would be one of the relevant factors in defending any claims to the employment tribunal alleging unfair dismissal.

The total period of time taken to develop, consult and implement these changes to staff terms and conditions was between July 2015 and March 2017.

Whilst the initial elements of the work associated with this was absorbed from within existing resources, an additional project manager was procured and a part time admin resource booked for a period of 12 months in order to provide the necessary

capacity to keep the project on track and enable business as usual particularly in Human Resources to continue.

Citizen impact:

None

Environmental impact:

None

Performance management:

The process of changing terms and conditions can lead to unintended impact on staff such as uncertainty and potential low morale. However, due to the high level of acceptance (99.4%) to the changes to staff terms and conditions, other than the exceptions below, there is no known impact on performance at this stage. This will need to be monitored over the next 12 months to see what if any performance impacts are identified and to then undertake steps to deal with any arising issues.

Initially 20 employees did not accept the staff terms and conditions on a voluntarily basis and therefore dismissal and reengagement notices were issued. Please note the following:

1. Following the issue of notice, four employees have subsequently accepted the staff terms and conditions.
2. One employee is leaving the Council on a voluntary basis on 31st March 2017.
3. Another 8 (a specialist group of employees) have exercised their right of appeal. The appeal is to be heard at the end of March 2017. An oral update will be given at the Scrutiny meeting of the outcome of the appeal process. Line management are actively engaging with the individual employees and their union representatives in order to ensure that the impact on service delivery is minimised.
4. The Council have not heard from the remaining 7 employees. Their time to appeal expired some time ago. These employees will be permitted to turn up to work, on their first working day, on or after 1st April 2017 onwards, and through such attendance be deemed to have taken absolute acceptance of the new terms and conditions by conduct. If the Council does not hear from them on their first working day, on or after 1st April 2017 onwards it will be presumed that they have left the Council's employment as of 1st April 2017.

Equality Implications:

A full Equality Impact Assessment was undertaken and shared with Equality colleagues and members of the Trades Unions as part of the formal consultation process. There were no adverse findings as a result of this process

Consultation:


Both Finance and Legal Services were consulted during the preparation of this report.

Legal Services have confirmed that the Council is entitled to implement staff terms and conditions by using the process of dismissal and reengagement and provided that employee consultation and other formalities as set out in the employment contract and legislation are complied with then the process is deemed to be fair and legally compliant.

Finance have confirmed that the changes to terms and conditions will deliver budget reductions of £2m.

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Appendix 1

Employee Terms and Conditions Review Overview and Lessons Learned

1 Chronology

At the Personnel Committee meeting of 28th June 2016 elected members agreed to implement the terms and conditions review (Agenda item 7). This was following the procedure outlined below, and given in detail in the committee report:

- 1) A series of informal consultation events from Summer 2015 presented by the Chief Executive and members of the Senior Management Team
- 2) Although ultimately unsuccessful, meetings with trades unions took place to try and reach a collective agreement on the proposals from summer 2015 until the end of the formal consultation period on March 2016.

Meetings were ongoing with the unions thereafter through the Employee Relations Forum (ERF).

- 3) A period of formal consultation with employees took place between 6th February and 18th March 2016, including a questionnaire sent to 3744 employees, with 934 (25%) returned by the deadline date.
- 4) Changes to the proposals (specifically the implementation date) following the change in political leadership of the council in June 2016.
- 5) Personnel Committee at its meeting 28 June 2016 approved to implement the changes to staff terms and conditions.
- 6) A letter to all employees offering them an option to voluntarily accept the changed terms (incorporating the revised offer) was sent out in phases by Directorate through August and October 2016
- 7) For those that did not initially voluntarily agree within the agreed timescale, formal dismissal meetings with the employees' line managers were held.
- 8) Those employees who did not voluntarily agree to the changes in staff terms and conditions were issued with dismissal letters and given three months notice of the implementation of the change (1st January 2017 to 31st March 2017). They were also issued with a re-engagement offer on the new terms.

2. Outcomes

- 2.1 The projected savings resulting from full implementation of the proposals is £2m with 1st April 2017 as the implementation date.
- 2.2 The project has resulted in a 99.4% voluntary acceptance of the change by employees, with only 20 employees being dismissed and offered re-engagement across the workforce. Out of those 20, only 8 have thus far submitted appeals.
- 2.3 The table below shows a summary of the responses.

	Number of new offers issued	Number voluntarily accepted	Number of dismissals undertaken as a result of non-voluntary acceptance	Number of submitted appeals
Total	3426	3406	20	8
Adult Social Care	530	528	2	0
Change and Governance	1394	1391	3	0
Economy and Environment	891	884	7	0
Children's	611	603	8	8

Since then of the 20, 4 have now accepted the changes to terms and conditions and 1 is going on a voluntary redundancy basis.

3. Implementation issues

- 3.1 The implementation of the new terms and conditions has included all council employees, on a range of different employment terms, including JNC for Chief Officers, NHS Agenda for Change, Teachers (not employed in schools) Soulbury and youth workers.

Staff directly employed in schools are not affected by this change.

- 3.2 The new contract was sent out to 3,426 employees. By the deadline date of 16th December 2016, 3,406 employees had returned a voluntary acceptance of the change (99.4%), with 20 employees being dismissed and re-engaged on the new terms. Of these there have been 8 appeals (all from employees in the same occupational group) and are due to be heard by an Appeals sub-committee in March 2017, before the expiry of the notice period on 31st March 2017.

- 3.3 Legal advice was taken to Personnel Committee on the correct process for implementing the change. An extract from the report detailing the legal advice is given below:

“If employees do not agree to proposed contractual variations, it is open, generally, to an employer to consider dismissal with an offer of immediate re-engagement on the new terms. Inevitably, this presents a risk of unfair dismissal claims and the possibility of claims for failure to consult collectively.

If any employees decide not to agree to accept the new terms and conditions and are dismissed, a claim might be presented to the Employment Tribunal alleging unfair dismissal.

The council has adopted a procedure to effect the changes. Legal Services believe that the procedure is fair, and providing it is followed in a consistent and robust manner, such a claim could be successfully defended on the grounds that dismissal was fair by reason of ‘some other substantial reason.’ There is clearly a sound business rationale behind the proposed changes and it could not be fairly described as being in any way arbitrary. The consultation process is in compliance with section 188 Trade Union (Labour Relations) Act 1992.”

- 3.4 At the time of writing this report whilst the implications of the non agreement of the limited number of employees has yet to be seen, and will not be known until after the appeal process and the implementation of the new contract, the fact that only 20 employees were dismissed means that the impact is limited. Employees who have not voluntarily accepted will still have access to an Employment Tribunal for 3 months after 1st April 2017. Employees who have voluntarily accepted the proposals (who make up 99.4% of the workforce) will have no recourse to a tribunal following the move to the new contract. The case for the council is strengthened in a tribunal by the high numbers of employees who voluntarily signed, and indicates to any tribunal the reasonableness of the council’s actions in achieving its legitimate aim.

4. Lessons Learned


- 4.1 Although overall the number of voluntary acceptances (99.4%) is a very positive outcome, with only 20 employees not accepting the changes voluntarily and therefore requiring dismissal and re-engagement, there are still lessons which can be learned for future large scale projects.

- 1) Changes to the workforce as employees join, leave or change has an impact on the amount of data management required. Whilst it is not possible to “freeze” any changes to employees terms for a period to enable such a large amount of data to be captured, checked and

communicated back to employees in the new contract, carrying out the work over the summer period which is typically quieter in terms of recruitment and changes helped minimise, if not eliminate, the need for changes.

- 2) From the total number of contracts issued, (3426 final total, with 117 issued to employees who subsequently left / moved posts and 427 being issued twice due to other changes or employees mislaying original versions), only 2 minor data breaches were reported covering 4 employees. Whilst any data breach is regrettable, the processes in place for cross checking and limiting access to data helped minimise both the risk of any breach and the impact of such a breach on individuals.
- 3) The approach of a joint working project between HR, Legal Services, Finance, Communications and Print and Design ensured that resources were used effectively, and a broad spectrum of expertise was deployed to best effect.
- 4) Early and detailed engagement with the Trades Unions ensured that, although a collective agreement was not reached, union colleagues were fully briefed throughout the process and implementation was made with a minimum of industrial unrest and labour relations issues.
- 5) Although the formal aspects of the project were lengthy, July 2015 – March 2017, it did have the benefit of ensuring that there were lots of opportunities to communicate with employees at all stages of the process and with employees having plenty of time to hear about the proposed changes to terms and conditions, understand the message about the need to make the savings, and feed into and influence the process through a series of consultation events. It is viewed that these were major contributory factors to the high level of voluntary acceptances to the changes to staff terms and conditions.
- 6) A dedicated project lead ensured that a focus was maintained and key elements of implementation were driven forward to meet all the key deadlines.

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