

EMPLOYMENT MATTERS COMMITTEE

13 SEPTEMBER 2012

PAY NEGOTIATIONS

Report from: Tricia Palmer, Assistant Director, Organisational Services

Summary

This paper covers the option of coming out of the national agreement for pay and terms and conditions, and the advantages and disadvantages of doing so. No national pay award has been offered for 2013 from the employers side but Members may wish to consider the local flexibility and control that withdrawing from the nationally negotiated conditions may provide.

1. Budget and Policy Framework

- 1.1 It is within this Committee's delegations to commence consultation on coming out of the national agreement, and refer the final decision on whether to do so to Full Council.

2. Background

- 2.1 The Council has been signed up to the national terms and conditions, including pay ever since its inception and many employees also previously transferred from Councils who recognised the national terms and conditions (known as the Green Book, Blue Book and Pink Book). The 'green book' terms and conditions apply to the majority of non-teaching staff, including those in schools, with some minor exceptions such as adult learning tutors. The 'blue book' terms and conditions apply to staff such as educational psychologists and school advisory staff. The 'pink book' conditions apply to youth and community workers. These terms and conditions are fundamental to individuals' contracts of employment and can only be varied by either agreement (individually or through a collective agreement with the trade unions) or through dismissing and re-engaging on new contracts.
- 2.2 The agreement covers the annual pay award (cost of living), which is negotiated nationally. No offer has been made yet from the employers side, although it was indicated in the government's 2011 autumn statement that it would "set public sector pay awards at an average of one per cent for each of the two years after the current pay freeze comes to an end. ". The national employers organisation will be consulting with local authorities on the ability to pay in the coming months. In addition to the annual pay award the 'green book' covers all other terms and conditions, some of which are mandatory, and others which are subject to local discretion but need to be negotiated. If

the council wishes to exercise discretion on the payment of an annual increase next year it will require coming out of the national agreement. 31 of the 74 authorities in the South East are on local pay negotiations, including Kent, Dover, Ashford, Thanet, Swale, Shepway, Thanet, Maidstone, Dartford and Canterbury.

- 2.3 It is unclear as to when the national pay award will be settled, and given this level of uncertainty the council wishes to commence consultations on coming out of the national agreement. The rationale for this is to improve local control and flexibility over the pay bill. Currently it is very difficult to plan for next year's budget, which continues to be under severe pressure. Each percentage point increase in staff pay equates to almost £900,000 additional spending.

3. Options and Advice

- 3.1 The option of coming out of the national agreement has a number of advantages and disadvantages:

Advantages

- The council gains flexibility to determine the pay award locally and link this to other benefits or conditions it may wish to change;
- The pay and conditions of employees could be more responsive to local issues;
- There may be some financial benefit depending on the national pay award that is eventually agreed – but a low annual pay award compared to other public sector bodies needs to be carefully monitored to ensure the Council does not fall outside of market rates;
- We would not be tied to the national timetable – particularly on the annual pay award and this provides greater certainty on the council's overall budget planning for forthcoming financial years;
- The council has more control over the pay bill and can plan better locally for costs and to deal with pressures within normal budget planning processes; and
- Over time it would provide increased flexibility to pay differently for areas such as overtime and unsocial hours although these changes are not envisaged as part of this proposal.

Disadvantages

- Coming out of the national agreement could have significant employee relations implications with a strong likelihood of a failure to agree with the trade unions;
- Medway is seen as a good employer and we would wish for this to continue as much as possible given the council's financial position;
- Coming out of the national agreement would require issuing new contracts to all employees affected – this in turn would be a termination of their current contract (unless a collective agreement could be reached) and this could be subject to individual challenge; and
- If this is undertaken in time for April 2013 it would require 90 days consultation and up to 12 weeks notice, so the consultation would have to start immediately after this committee to achieve this. In addition the collective agreement on the freezing of increments expires at the end of March 2014 and we are considering a new pay and grade scheme to start on 1 April 2014. If we are unable to reach agreement on this new scheme it is likely that the council will have to offer employees new

contracts on new terms and this will result in a further requirement to dismiss and re-engage.

- 3.2 These advantages and disadvantages should be carefully weighed up, but it is also worth noting that if a national pay award of 1 per cent is agreed this equates to the financial value of around 40 jobs year on year.

4. Risk management

- 4.1 The risks of coming out of the national agreement are covered in the disadvantages above, many of which relate to the goodwill and performance of individuals. The risk of losing significant numbers of employees is relatively low at the moment, as the employment market is not good. However it is important to recognise that pay awards have already been frozen for the past three years and we are in the second year of a three year increment freeze. Any risks on the possible loss of key staff will be closely monitored and managed.

5. Consultation

- 5.1 The proposed consultation timetable is attached at Appendix 1 with the final decision on coming out of national pay and conditions having to be agreed by full council after the formal consultation has been completed around mid December. This timetable is extremely tight and does not allow for any slippage.

6. Financial and legal implications

- 6.1 The financial implications of remaining in the national agreement and the possibility of a 1 per cent pay award could result in an added pressure of £900,000 (not including schools staff) next financial year.
- 6.2 The Medium term Financial Plan for the Council is forecasting very significant financial deficits for the coming years excluding any presumption for pay increases and against this background any potential increase in pay would pose a risk to services and/or jobs.
- 6.3 It is likely that we will not be able to reach a collective agreement on coming out of the national agreement and therefore it will be necessary to dismiss and re-engage all employees affected by this proposal. Employees will be able to make individual and/or collective claims against the council in relation to any dismissals.
- 6.4 If the above proposal is agreed without a collective agreement with the Trade Unions, this would result in a change to the current contractual terms and conditions of employment for the staff affected. In order to implement these changes, it will be necessary for the council to reach agreement with individual employees by agreeing a variation to their current contracts of employment. In the event that an agreement cannot be reached with the individual employee, the council can then proceed to unilaterally vary the existing contract by issuing the employee with the contractual notice to terminate their current employment contract and then issue the new contract of employment incorporating the new terms and conditions of employment. If the variation is not agreed with the individual employee, a right of appeal

would be available and details of the appeal process would be provided at that time.

- 6.5 The council must ensure that the process for any changes to contracts of employment complies with the required statutory obligations to inform and consult employees both collectively and individually under Section 188 of The Trade Union and Labour Relations (Consolidation) Act 1992 in order to minimise successful employment tribunal claims.

7. Diversity Impact Assessment

- 7.1 A DIA screening form will be completed on this proposal and shared with the trade unions in the near future. If a full DIA is required this will be presented to the Council Meeting as part of the decision making process.

8. Recommendations

- 8.1 Members are asked to agree to consultation commencing with employees and trade unions on the proposal to come out of national agreement.

Lead officer contact

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Background papers

None

**Employment Matters Committee
13 September 2012**

Timetable

Dismissal and Re-engagement

Employment Matters Committee and JCC	13 September 2012
90 day consultation commences	14 September 2012
90 day consultation ends	12 December 2012
Consultation responses considered	13 December 2012- 17 December 2012
Special Full Council	w/c 17 December 2012
Notice (12 weeks prior to 1 April 2013)	3 January 2013
Appeals against dismissal	4 January 2013- 29 March 2013
Implementation Date	1 April 2013