

EMPLOYMENT MATTERS COMMITTEE

30 OCTOBER 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 updates the Committee on discussions with the trade unions. No national pay award has yet been offered for 2013 from the employers' side but the trade unions have now made a national pay claim for 'a substantial flat rate increase on all scale points'.

1. Budget and Policy Framework

1.1 It is within this Committee's delegations to act on the discussions with the trade unions and if appropriate commence consultation on coming out of the national agreement. There will be a need to refer the final decision on coming out of the national conditions to Full Council should it not be possible to reach a collective agreement with the trade unions.

2. Background

2.1 The Employment Matters Committee on 13 September 2012 considered the option of commencing consultations with staff and trade unions on coming out of the national agreement for pay and terms and conditions. The Committee did not agree to commencing formal consultations, but asked officers to 'engage further with the trade unions to consider the options regarding pay and report back to Employment Matters within the next two months.' This paper outlines the discussions with the trade unions so far and asks the Committee to agree a way forward.

2.2 It is unclear as to when the national pay award will be settled, however the trade unions issued their pay claim on 17 October 2012. This claim is asking for 'A substantial flat rate increase on all scale points as a step towards the longer term objective of restoring pay levels and achieving the living wage at the bottom of the NJC spinal column point'. The Employers have responded to this claim, stating "*We have made it clear since February that employers want to avoid a fourth year of pay freeze and will be working within the extremely challenging financial constraints facing local government to try and make that happen. Informal discussions with the unions have already taken place. We hope to take those forward in the same mutually positive spirit*

which this year delivered fair, affordable reform of local government pensions". It is our understanding that this means that any possible cost of living award that may be offered would need to be self-funding.

3. Discussions So Far

- 3.1 There have been continuing discussions with the trade unions since the Committee on 13 September 2012. A meeting was held with them and the Chief Executive and the AD, Organisational Services on 20 September 2012. At this meeting the trade unions made it clear that whilst they were prepared to discuss the issue of coming out of the national agreement, they were extremely concerned that this would mean cuts in pay and/or terms and conditions. The Chief Executive reassured them that this was not the intention and that the aim was to have local control and where appropriate manage any possible increases. The trade unions asked for a guarantee of this, and officers undertook to review this. Any proposal on the table would also apply to school based non-teaching staff and the schools have been informed of this.
- 3.2 The option of a one year guarantee was discussed at a further meeting with the trade unions on 1 October 2012, but this was not deemed by the trade unions to be a sufficient incentive to sign a collective agreement. The Council subsequently increased the offer to a three year guarantee not to cut pay and/or terms and conditions. This offer does not include protections for individual changes in contract, such as redeployment. In addition the on-going pay review will be subject to a separate consultation.
- 3.3 The proposal on the table is attached at Appendix 1. This guarantee is dependent on all the trade unions signing a collective agreement to withdraw from the national agreement. The Council believes this is a very generous offer given the current financial climate and would give employees the certainty they require. However at a meeting with the trade unions on 17 October they also asked for a 'sweetener' of a one-off payment of c£1.5 - £2k for each employee. The trade unions have been informed that a 'sweetener' is not on the table and a further meeting with them is planned for Monday 22 October. The outcome of this meeting will be reported verbally to this committee. In addition the trade unions have asked for more time to consult with their membership.
- 3.4 The trade unions had a meeting with their members on Friday 12 October 2012, where they put the employers offer of a three year guarantee. It is understood that about 60 people attended this meeting and they were clearly concerned about the implications of coming out of the national agreement, but were also not fully aware of what the national agreement covers. HR services have set up a helpline for employees to make comment and ask questions, but so far the calls have been very limited. It is therefore important to provide further information on the proposal and this is being done through line managers and the intranet.

4. Options and Advice

- 4.1 The Council would much prefer to enter into a collective agreement than go down the route of dismissing and re-engaging staff. The trade unions would need to ballot their membership before signing a collective agreement and so

far we have not reached an agreement on an appropriate offer. The options are, therefore:

- (i) Continue consultations with the trade unions to find a mutually acceptable offer which can be put to their membership. The advantage of this is that we may be able to achieve a collective agreement. However the disadvantage is that if we fail to reach agreement the Council will need to dismiss and offer new contracts and it is likely the three year deal is no longer on the table. In addition every month of delay could cost the Council c£90k, should a 1% pay award be agreed nationally.
- (ii) Immediately commence formal consultations with trade unions and employees and continue discussions with an aim to reaching agreement. The advantage of this is that should an agreement not be reached the financial implications of a national pay award are reduced. However this will lead to uncertainty with staff and a deterioration in the relationship with the trade unions making the negotiations more difficult.

5. Risk management

- 5.1 The risks of coming out of the national agreement relate to how individuals and trade unions perceive this in terms of future actions. There have been some discussions on the issue of trust and an anxiety that the Council will use this to worsen pay and conditions. This is clearly within the Councils control and therefore attempts to mitigate this have been made with the offer of a three year guarantee. The risk of a national pay award seems to have increased given the claim from the Trade Unions and the National Employers making it clear that they want to avoid a fourth year of a pay freeze.

6. Consultation

- 6.1 The consultations so far are outlined in section 3 above. Any formal consultations, should they need to go ahead will be in accordance with the organisational change policy.

7. Financial and legal implications

- 7.1 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. 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.
- 7.2 If we are unable to reach a collective agreement on coming out of the national agreement 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.
- 7.3 If no agreement is reached 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.

- 7.4 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.

8. Diversity Impact Assessment

- 8.1 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 Members as part of the decision making process.

9. Recommendation

- 9.1 Members are asked to note the discussions so far and agree that officers commence formal consultation to come out of the national agreement whilst continuing to negotiate with the trade unions with a view to reaching agreement.

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Background papers

Employment Matters Committee 13 September 2012

Appendix 1

DRAFT

COLLECTIVE AGREEMENT between MEDWAY COUNCIL (the employer) and RECOGNISED TRADE UNIONS – UNISON, UNITE and GMB (the unions)

Withdrawal from National Agreements

1. Introduction

- 1.1 The collective agreement covers the withdrawal from the national agreements set out in the Green Book, Pink Book and Blue Book for all staff employed outside schools and non teaching staff in Community and Voluntary Controlled schools. Pay awards for staff covered by the LNFA are linked to the Pink Book.
- 1.2 The provisions of this agreement will be incorporated into individual contracts of employment by a letter of variation.

2. Agreement

- 2.1 It is agreed that individual contracts of employment will be varied from 1 April 2013 to state that:

“The amount of annual pay award will be determined locally by Medway Council and payable from 1 April each year if applicable.”

- 2.2 Medway Council agrees not to cut pay or terms and conditions for a period of 3 years from 1 April 2013. Terms and conditions include:

Pay
Working time
Annual leave
Maternity leave and maternity pay
Sick pay
Notice periods
Overtime payments
Weekend working
Night work
Split shifts
Lettings
Standby duty
Public and extra statutory holidays
Car allowances

- 2.3 Local pay arrangements will be introduced from 1 April 2013.

2.4 The new pay and reward system currently being developed by Medway Council is a totally separate exercise from coming out of the national agreement, but will recognise the commitment not to go below the minimum specified in the national agreement for terms and conditions, excluding pay, for a period of 3 years from 1 April 2013. Pay arrangements in relation to this exercise will be subject to separate consultation with staff and trades unions.

This agreement does not impact on individual changes as a result of redeployment and the pay & grade exercise.

3. Variations

Variations to this collective agreement can only be made through joint agreement with the employer and the unions.

Signed on behalf of

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Employer

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Dated

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UNISON

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Dated

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GMB

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Dated

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UNITE

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Dated