

EMPLOYMENT MATTERS COMMITTEE

29 NOVEMBER 2012

PAY REVIEW – NATIONAL AGREEMENT

Report from/Author: Tricia Palmer, Assistant Director, Organisational Services

Summary

This paper updates the committee on the progress in relation to the discussions with the trade unions on coming out of the national agreement.

1. Budget and Policy Framework

1.1 It is within this committee's delegations to note the progress on this matter.

2. Background

2.1 The Employment Matters Committee on 13 September 2012 agreed that officers should continue discussions with the trade unions to reach agreement on coming out of the national agreement for pay and terms and conditions. Discussions have been held with the trade unions during September and October and the Council offered a three year guarantee not to cut pay and/or terms and conditions in return for the trade unions signing a collective agreement to come out of the national agreement.

2.2 This proposal was put to the trade unions on 23 October with a formal request for them to agree by 15 November 2012. The Employment Matters Committee on 30 October 2012 noted this request and agreed that officers should commence formal consultations to come out of the national agreement whilst continuing to negotiate with the trade unions.

3. Progress on Negotiations

3.1 The trade unions have now balloted their members, but at the time of writing this report the outcomes of these ballots were not known. It is understood that the deadlines for each ballot was as follows:
UNITE – 19 November
UNISON – 20 November
GMB – 23 November

Clearly all these dates are outside of the Council's original deadline of 15 November. In an attempt to be helpful the Council moved the deadline to 20 November where we had hoped that we would have a clear picture of whether it was likely that the ballots were coming out in favour of an

agreement as outlined in paragraph 2.2. However the trade unions have not yet counted the ballot papers and therefore it is not clear whether they will sign a collective agreement. Officers will update Members at the meeting as to the outcome of the ballots from the three trade unions.

- 3.2 The importance of the date of 20 November 2012 is that this is the latest date possible to commence formal consultations with the trades unions to ensure that the statutory 90 days is achieved before Full Council meets on 21 February 2012. It is at this budget setting meeting that the Council will formally agree whether it will come out of the national agreement.
- 3.3 As no collective agreement has yet been reached (at the time of the agenda despatch) it has been necessary to issue the formal consultation letter to the trade unions on 20 November 2012. A copy of this letter is attached at Appendix 1.
- 3.4 The legal advice (see section 5) has confirmed that whilst there was a requirement to allow 90 days for the formal consultation with the trade unions individual consultation does not necessarily have to be 90 days. There is however a requirement for any individual consultations to be meaningful and therefore they must be undertaken within a reasonable timeframe before the final decision is taken. An individual consultation letter has not yet been issued to staff in the hope that the Council will still be able to reach agreement with the trade unions. Should this not occur then the Council will commence individual consultation.

4. Risk management

- 4.1 The risks of coming out of the national agreement are related to the morale and goodwill of employees, who may see this as an erosion of their pay and benefits. Clearly if the Council is able to reach agreement with the trade unions and provide a three year protection of no cuts this will mitigate some of the risks. Should the Council fail come out of the national agreement then a national pay award would have some financial consequences, as outlined below.

5. Financial and legal implications

- 5.1 The financial implications of remaining in the national agreement and the possibility of a 1% pay award could result in an added pressure of £900,000 in the next financial year.
- 5.2 If the above proposal is agreed, this would result in a change to the current contractual terms and conditions of employment for council employees. 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 or enter into a collective agreement with the recognised trade unions. The effect of a collective agreement is that the proposal would become binding on individual contracts of employment.
- 5.3 In the absence of a collective agreement, the council could reach agreement with individual employees to agree a variation to their current contracts of employment whereupon the proposal would be incorporated into the individual employee's contract of employment.

- 5.4 In the event that an agreement cannot be reached with the individual employee or a collective agreement cannot be reached with the Trade Unions, the council is statutorily obliged to commence formal consultation with the trade unions under section 188 of the Trade Union and Labour Relations Act 1992. This formal consultation period is for 90 days given that the number of employees affected are potentially over one hundred.
- 5.5 The council will also be required to commence meaningful consultation with employees in accordance with its procedures who are not in agreement to the variation to their contracts of employment. This period of consultation would be undertaken alongside the collective consultation with the trade unions although it is not required to be for 90 days.
- 5.6 At the end of the formal 90-day period and after having taken in to consideration any consultation responses, the council would have the ability to vary unilaterally the existing contracts of employment, 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 individual employee maintains an objection to the new terms imposed, a right of appeal would be available and details of the appeal process would be provided at that time. A senior manager would consider any appeals. There is a risk that legal challenges may be brought should agreement not be reached with employees either individually or collectively with the trade unions.
- 5.7 Successful legal challenges will be minimised by ensuring that full and meaningful consultation takes place and that Diversity/Equality Impact Assessments are carried out as per the council's obligations under The Equality Act 2010.
- 5.8 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 and in addition complies with its re-organisation procedures.

6. Recommendations

- 6.1 Members are asked to note the continuing negotiations with the trade unions.

Lead officer contact

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Background papers

Employment Matters Committee Papers 13 September 2012 and 20 October 2012.

Please contact: Tricia Palmer

Date: 20 November 2012

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Letter to all Trade Unions

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Dear Colleague

Consultation on Pay Negotiations

In accordance with Section 188 of the Trade Unions and Labour Relations (Consolidation) Act 1992, I am writing to set out the proposals in respect of the above. The reasons for the proposals are set out in the attached Consultation Document, which outlines the consultation process and timetable. Also enclosed are details of the numbers of staff that could be affected by this proposal, together with details of the conditions they are covered by.

As you know, the council wishes to reach agreement with you on this proposal. Clearly, consultation will continue on an on-going basis and I hope that we can work together to reach an agreement. Should that not prove possible, the council will ask individual employees if they wish to agree to a variation of their contract. Should that not be agreed the council will issue the employees with contractual notice of termination of contract and then issue a new contract incorporating the revised pay negotiation process.

The DIA screening form was sent to you on 26 October 2012.

In view of the number of employees affected, it is a 90-day consultation period, ending on 19 February 2013.

Yours sincerely,



Tricia Palmer

Assistant Director Organisational Services

Consultation Document for Trade Unions – Pay Negotiations

1. Background

The Council has been signed up to the national terms and conditions, including pay ever since its inception and many of you would know about 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 in some areas such as adult learning tutors. The Local Negotiation Framework Agreement (LNFA) for Medway Adult Community Learning does provide that any pay negotiations for cost of living awards are determined by any annual pay percentage increase linked to the JNC for Youth and Community Workers and therefore staff covered by the LNFA are included in this proposal.

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.

The agreement covers the annual pay award (cost of living), which is negotiated nationally. No offer has been made yet from the employer's side for an award in 2013, although the national employers organisation will be consulting with local authorities on the ability to pay in the coming months. 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.

It is worth noting that 31 of the 74 authorities in the South East are on local pay negotiations, including Kent, Dover, Ashford, Thanet, Swale, Shepway, Thanet, Maidstone, Sevenoaks, Dartford and Canterbury.

At this point, 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.

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 per annum additional spending.

2. Proposal

The proposal is to come out of the national agreement on pay negotiations. This proposal has been put to a ballot which is imminent. It may be that the council will not have to go through the process set out below depending on the result of the ballot. However, collective consultation is to start on 20 November 2012 hence the contents of this paper.

It is recognised that withdrawal from 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

- 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. In fact withdrawal from the national agreement will mean that there can be more focus on local negotiations;
- Coming out of the national agreement would require issuing new contracts to all employees affected or to those who do not accept the change in terms. This would have to be achieved by a termination of their current contract and an offer of the new terms. A collective agreement would, however, mean that such notice would not be necessary and is the preferred option. There will, in the event that notice is given, also be individual consultation. If a collective agreement is reached then individual contracts will be varied without termination.

These advantages and disadvantages will be carefully weighed up during the collective consultation period, but it is also worth noting that if a national pay award of say 1 per cent is agreed this equates to the financial value of around 40 jobs year on year. There would be concerns on the part of the council that this may affect the viability of jobs.

Support staff in community and voluntary controlled schools are included in this proposal as Medway is the employer. Foundation and Voluntary Aided schools are not included in this proposal as it is for each Governing Body as the employer to decide whether or not to consult on the proposal with support staff in their school. Teachers' pay is determined nationally.

3. Employees affected

There are approximately 5758 staff affected who are employed in the council and schools.

4. Consultation

There was early consultation with you on 6 September 2012 and early notification to staff on 6 September 2012. 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 consultation, 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.'

There have been a number of meetings with you since then and we have not, as yet, reached a collective agreement. In the meantime, Employment Matters Committee on 30 October 2012 agreed that officers commence formal consultation on 20 November 2012 to come out of the national agreement whilst continuing to negotiate with the trade unions with a view to reaching agreement.

It is recognised that, if the above proposal is agreed, 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 in the absence of trade union agreement through a collective agreement, the council will seek to reach agreement with individual employees. If collective or individual agreement cannot be reached, the council will have no option other than to vary the existing contract by issuing the employee with the contractual notice to terminate their current employment contract and then issue and offer the new contract of employment incorporating the new term, which would effectively result in withdrawal from the national pay negotiations and conditions of service from

31 March 2013 onwards. The council will consult with individuals as to the impact of this, if notice is to be given. If a collective agreement is reached then employment contracts will be varied without notice to terminate being given.

You will note from the timetable below that full Council on 21 February 2013 will consider all responses made during the consultation period and will make the final decision.

If the proposal is agreed by full Council and if we have not reached agreement with you, notice will be given to the affected employees who have not agreed to the proposed variation to contract in the meantime and who have not signed a letter confirming that they will enter into a new contract of employment.

5. Timetable

The proposed timetable is set out below.

<i>6 September 2012</i>	Early consultation meetings with Trade Unions (TUs)
<i>6 September 2012</i>	E mail from Neil Davies to all staff regarding the proposal
<i>13 September 2012</i>	Employment Matters Committee 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'
<i>20 September – 22 October 2012</i>	Further discussions with TUs regarding collective agreement
<i>26 October 2012</i>	Diversity Impact Screening Assessment shared with TUs and Equality Forums
<i>30 October 2012</i>	Employment Matters Committee decided to commence 90 day consultation if collective agreement cannot be agreed with trades unions.
20 November 2012	Commence formal 90-day consultation with TUs if collective agreement not agreed with trades unions.
29 November 2012	Employment Matters Committee to discuss progress
19 February 2013	90 day Consultation Period ends
21 February 2013	Council considers responses and decides on final decision.
22 February 2013	If no collective or individual agreement and the proposal was agreed at full Council, issue notice of termination of contract to affected employees and offer new contracts to those employees who have not accepted a variation to contract and signed a letter confirming that they will enter into a new contract of employment.

Next steps

The end of the consultation period is 19 February 2013. If the proposal is agreed by full Council on 21 February 2013, and if we have not reached agreement with you, contractual notice will be given to the affected employees who have not agreed to the proposed variation to contract and signed a letter confirming that they will enter into a new contract of employment. Contractual notice will vary from one month to three months depending upon individual contracts.

For staff whose pay award would normally be effective from 1 April (those covered by the Green Book):

If there is a national pay award, it will be paid from 1 April and then payment will cease once the new contract begins. For example, for staff entitled to a two-month notice period, they would receive the pay award on 1 April 2013 but it would be removed two months after they had been given notice and offered the new contract. So, if notice were given on 25 February 2013, the pay award would be paid on 1 April 2013 but removed from 25 April 2013.

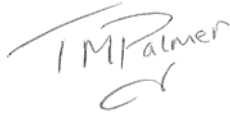
For staff whose pay award would normally be effective from 1 September (those covered by the Pink and Blue Books):

Notice would be given during late February/early March 2013 that any national pay award agreed for 1 September 2013 onwards will not be incorporated into the new contracts as they will be effective from the end of the notice period, which will be before 1 September 2013. The terms of any national agreement will not apply once the new contracts are in force, whether one existing at that time or any future national agreement. This is because the pay negotiations will be at a local level from the earliest possible date.

Staff will be asked towards the end of the consultation period to let us know whether, if the proposal is agreed at the Council meeting on 21 February 2013, they are willing to accept a variation to their individual contract, and will be asked to sign a letter to the effect that they agree such a change. If that is the case, there will be no need to issue notice to those staff and a variation to contract will be offered. If agreed, the implementation date will be the same as it would have been had they been given notice. This is to ensure that there is no detriment to those staff that may prefer to accept a variation to contract.

It is important to note that the collective consultation date starts on 20 November 2012. If there is a ballot in favour of withdrawal from the national agreement then it will not be necessary to go through this process. If the ballots are not in favour then the collective consultation will take place to end on 19 February 2013 and there will be individual consultation during this period.

Employees and Trade Unions are invited to comment on the proposal. Please send any e-mail comments that you may have on the proposals to: employee.consultation@medway.gov.uk. If you do not have access to e-mail, you can write to HR Advice at Gun Wharf. All comments will be included as an appendix to the report presented to Members.

A handwritten signature in black ink, appearing to read 'T Palmer' with a stylized flourish underneath.

Tricia Palmer
Assistant Director, Organisational Services