

**REPORT FOR: EMPLOYEES'
CONSULTATIVE FORUM**

Date: 28 January 2014

Subject: **INFORMATION REPORT –**
Response to Employees' Side Report on
'Negotiating an Amendment to the
Modernising Collective Agreement
Redundancy Payments Section...'

Responsible Officer: Jon Turner – Divisional Director Human
Resources, Development and Shared
Services

Exempt: NO

Enclosures: Appendix 1 - Draft Minutes of Special
Corporate Joint Committee 18.12.13

Appendix 2, 3, 4 & 5 – Relevant
correspondence between UNISON and the
Organisational Development Manager

Appendix 6 - Extract from Employment
Rights Act 1996

Section 1 – Summary

This report sets out the officer response to the employees' side report on 'Negotiating an Amendment to the Modernising Collective Agreement Redundancy Payments Section...' submitted to this meeting of the Forum.

FOR INFORMATION

Section 2 – Report

BACKGROUND

The collective agreement 'Modernising Terms and Conditions of Employment' (the Agreement) was agreed between Unison and GMB and the Council on 1 November 2012. The terms of that agreement include:

6. VARIATIONS TO THIS AGREEMENT

This Collective Agreement may be amended at any time, by agreement in writing between the Council and the recognised trade unions, at least one month prior to the effective date of any amendment.

and

7.3.2 Redundancy Payments

The Council's power to make redundancy payments over and above the statutory redundancy payments scheme derives from the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006.

Subject to those Regulations, the Council will apply the following payments:

For employees made redundant on or after 1 April 2014, Harrow Council will apply the statutory 30 week table to calculate redundancy payments using a multiplier of 2 x actual weekly pay.

For employees made redundant on or after 1 April 2015, Harrow Council will apply the statutory 30 week table to calculate redundancy payments using a multiplier of 1.5 x actual weekly pay.

Unison is seeking to exercise Section 6 of the Agreement in order to re-negotiate Section 7.3.2.

Unison's request has previously been considered and responded to in correspondence and at a special meeting of the Corporate Joint Committee (CJC) on 18th December 2014.

Their report, submitted this Forum, does not include the draft notes of that meeting, nor all the related correspondence, including the Officer's detailed response. They are therefore appended to this report for completeness as follows:

- Appendix 1 Draft Minutes of the Special Corporate Joint Committee held on 18 December 2013 circulated 20 December 2013.
- Appendix 2 Unison's letter to Organisational Development Manager dated 18 December 2013, seeking agreement to amend the collective agreement.
- Appendix 3 Organisational Development Manager's letter dated 23 December 2013, responding to Unison's letter dated 18 December and confirming the outcome of the Special CJC.
- Appendix 4 Unison's letter to Organisational Development Manager dated 2 January 2014, raising further points.
- Appendix 5 Organisational Development Manager's letter to Unison dated 3 January 2014, responding to Unison's further points.

OFFICER RESPONSE TO UNISON'S REPORT

The following response addresses separately, each of the main issues within Unison's report and, where appropriate, references extracts from relevant council documents (shown in *italics*).

1. Requests for Voluntary Redundancy

The Council's policy is to seek volunteers in order to avoid compulsory redundancy. This also meets the statutory requirement to consider ways to avoid compulsory redundancies.

Extract from the Council's Protocol for Managing Organisational Change (PMOC):

'Before commencing steps to identify individual redundancies, the staff group affected by the changes should be consulted and volunteers for redundancy invited. Pension benefits will be in line with the council's policy at that time.

Acceptance of volunteers is at the discretion of the council, which retains the right to determine whether to release an individual. Such a decision will be based on: -

The need retain an appropriate balance of skills and experience in the workforce to ensure that services are maintained and delivered effectively;

The financial implications of releasing an individual. Redundancy/early retirement will only be considered where there is an identifiable saving; and

The viability of suitable alternative employment.

Discussions on the use of voluntary redundancy/early retirements will take place with the trade unions as part of the consultation process.

Employees whose requests for early retirement or redundancy are not agreed will be given a written explanation of the reason for the refusal.'

In any invitation for volunteers for redundancy, each individual employee must decide whether they wish to volunteer. To assist their decision making, prior to volunteering potential volunteers may request an estimate of the redundancy compensation payments they would receive. The estimate will be provided based on the proposed last day of service and the compensation payments that will be payable at that date.

The changes to redundancy compensation payments in the Agreement would be reflected in the estimate provided to any potential volunteer based on their proposed last day of service i.e. their estimate will be based on the payments applicable on the date of their last day of service

Acceptance of volunteers is at the discretion of the council, and any decision will take into account the criteria set out in the PMOC (see above). In complex situations e.g. where potential redundancies affect more than one service area, or there are significant number of employees affected, or a large number of volunteers, the decision making process may take some time and volunteers may not get an immediate response to their request. However, the employee will always be aware of the redundancy compensation payment that would be applicable on their proposed last day of service i.e. the information on which they base their decision to volunteer will not be affected by the timing of the potential redundancy, unless the proposed last day of service subsequently changes.

There are a range of operational and service circumstances which could cause a change in the proposed last day of service, but if the change in date adversely affected the employee's redundancy compensation payment the employee would be informed and be able to reconsider their decision. In such circumstances there may be alternatives to avoid a change in their redundancy compensation payment e.g. waiving notice or accepting pay in lieu of notice or they may choose to withdraw their offer to volunteer.

2. Individual Examples

The Terms of Reference for the Employees Consultative Forum do not allow the consideration of individual employee issues (see below).

The two individual examples that were presented for consideration by Officers at the Special CJC and which Unison reference in its report are both within the Environment & Enterprise Directorate. At the Special CJC Unison also cited a review of a service area in Community, Health and Wellbeing as an example of

the Council protracting a redundancy process. However at the same meeting Unison also confirmed that management were progressing that review as quickly as they could.

In her letter dated 23 December 2013, the Organisational Development Manager correctly advised that Unison's concerns relating to individuals should be referred to the relevant Directorate Joint Committee (DJC) to consider. In her subsequent letter to Unison, dated 3 January 2014 the Organisational Development Manager further advised that if there were cases in other Directorates, then provided those have also been considered by the relevant DJC's, they could be considered by the Corporate Joint Committee as a council wide policy or application of policy issue.

At the time of writing, Unison has not presented anything further for consideration at a future CJC.

3. Attempts to Resolve the Issue

CJC

On 12 December 2013, Unison requested a Special DJC to consider the issues they raise in their report. The meeting was convened on 18 December 2013 and Officers from Unison were able to present their concerns and their request to re-negotiate Section 7.3.2 of the Agreement to the Organisational Development Manager.

The draft notes of that meeting record that Organisational Development Manager would consider the points that Unison had raised. The Organisational Development Manager's letter to Unison dated 23 December sets out the reasons why she did not consider the Council should agree to Unison's request.

ECF Employment Sub-Group

Unison has not presented the issues raised in their report for consideration by the Forum's Sub-Group.

Extract from the draft Terms of Reference for the Employment Sub Group:

Scope

The employment sub-group will consider and reach decisions for recommendation on:

- a. Items referred by either management or the trade unions following failure to agree at the Corporate Joint Committee (CJC)*
- b. Items referred by either management or the trade unions following failure to agree at a Departmental Joint Committee (DJC)*

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f. The general application of Council employment policies and procedures

The group shall not consider individual employee issues or those which fall under the scope of existing procedures, e.g. disciplinary appeals, individual grievances and individual grading appeals.

The ECF Sub-Group meeting scheduled for 16 December 2013 was cancelled as there had been no items received from the unions for consideration (Reported elsewhere on this Agenda).

The next meeting of the ECF Sub-Group will be in February 2014

4. Compliance with Section 139 of the Employment Rights Act 1996

A copy of Section 139 of the ERA 1996 (the Act), which deals with redundancy, is attached at Appendix 4

In their report Unison state they wish to bring to the attention of the Forum 'serious concerns' they have regarding the council's 'interpretation and application of section 139 of the Employment Rights Act' and 'directly refer to the former PRISM project'. However, Unison is not explicit about their concerns and why they believe the Council may not be compliant.

Officers consider the Council's policies, procedures and practices are fully compliant with this Act and all other relevant statutory requirements. Therefore, in the absence of any further information, it is not possible to provide a fuller response.

5. PRISM and Towards Excellence Programme

As stated in 4. above, Unison's report 'directly refers to the former PRISM project' and 'the 'unnatural pause' of the PRISM process'. The pause in PRISM and its renewal as the 'Towards Excellence Programme is widely considered to have improved engagement with staff affected and result in better outcomes for the programme.

The pause did delay the process for making appointments to posts in the new staff structure. However, resources were focussed and with the support of the trade unions the processes have been completed within a timescale so that, with the exception of a small number of employees, it is expected that the last day of service for all staff who volunteered for redundancy will be before the 1 April 2014. In these exceptional cases the employees' service will continue beyond 31 March 2014 for operational reasons, which are not related to the pause.

6. Consistency of Approach

Unison's report refers to some staff being in the situation of having 'less favourable terms and less favourable treatment' than others. The inevitable consequence of implementing the agreed change in redundancy compensations payments is that staff would be treated differently depending on whether their last day of service was before or after the implementation date.

This would have been known and understood by all parties at the time of the Agreement and it can be assumed that it was acceptable to all parties. So it cannot therefore now be considered reasonable grounds to reverse the Agreement.

7. Avoidance of Redundancies

Unison's report makes reference to individuals who have been the subject of 'bumped' redundancy and redeployment.

As stated in 1 above, there is a statutory requirement to consider ways to avoid compulsory redundancies. Pursuant to this, in addition to inviting volunteers for redundancy, the Council's policy (PMOC) identifies a range of other measure that should be considered, including 'bumped' redundancies and redeployment.

Extract from the Council's Protocol for Managing Organisational Change (PMOC):

MEASURES TO AVOID REDUNDANCIES

Where redundancies are possible, the relevant Senior Officer should discuss with the Director of HRD & Shared Services (or his/her nominee) whether there are other means of reducing requirements for employees, such as:

- *Phasing-in the reduction through natural wastage (i.e. not recruiting to vacancies as they arise);*
- *Reducing the use of agency staff;*
- *Not extending fixed term contracts after the stated contract end date;*
- *Discontinuing any secondments;*
- *Limiting recruitment;*
- *Reducing overtime;*
- *Considering alternative working arrangements e.g. part-time, job sharing;*
- *Seeking voluntary reduction in hours;*
- *Transferring staff to other jobs;*
- *Seeking volunteers for redundancy/early retirement;*
- *Considering 'bumped' redundancies; and*

- *Considering redeployment elsewhere in the council*

It is disappointing that Unison's report does not recognise the Council's successes in avoiding compulsory redundancies but instead goes on to imply that 'lower graded staff' are disadvantaged by the Council's application of this policy.

The table below identifies, by grade, the numbers of staff who have been made redundant and been redeployed since 1 April 2013 and illustrates that redeployments and redundancies are spread across the pay grades.

Grade	Redeployment	Voluntary Redundancy	Compulsory Redundancy
Barnet			4
G1			7
G2			
G3			1
G4	5	1	
G5			1
G6	2		1
G7	9	2	5
G8	1	1	
G9	6	2	2
G10	1	2	2
G11	1	1	1
MG1	5		2
MG2	9		
MG3			2
MG4	1	1	
D1	1	1	
Totals	41	11	28

Note Barnet Grades apply to Legal staff who transferred to Harrow from Barnet

8. Carillion Outsource

Unison's report includes an unsubstantiated statement that following the libraries outsourcing, Carillion, the libraries contractor, are 'protracting redundancy processes in order to gain a financial advantage' from the redundancy changes in the Agreement.

Under the Transfer of Undertaking Protection of Employment (TUPE) Regulations 2006, employees' terms and conditions of employment including relevant collective agreements are protected at the point of transfer. This means that the Agreement continued to apply to Council employees who transferred to Carillion as a result of the Libraries outsourcing. However, the July 2013 ECJ

decision in *Alemo-Herron and others v Parkwood Leisure Ltd*, means that Carillion will not be bound by changes the Council may make to that collective agreements after the transfer.

Therefore, even if the Council accepted Unison's unsubstantiated statement that Carillion are protracting redundancy processes and, as a consequence, the Council wanted to consider agreeing to re-negotiate the Agreement, any changes would not apply to employees who had transferred to Carillion.

CONCLUSION

Officers do not consider that Unison's report presents any information that has not previously been considered, nor does it present a more compelling case to agree to their request. Accordingly Officers consider the Council should not agree the Employees Side's request.

Section 3 – Further Information

The changes in the redundancy compensation scheme in the Agreement will bring the council's redundancy compensation into line with those payable in other London Boroughs. The table below demonstrates that Harrow currently pays amongst the highest levels of compensation in London. The payments are being reduced on a staged basis from 1 April 2014 and finally from 1 April 2015. At that time, the Council will still be applying a reasonable level of redundancy payment to staff as the table below demonstrates.

The Council's intention was to give staff as much notice as possible about the future changes to redundancy payments. These changes were therefore not brought into effect on 1 January 2012 when most other changes took place.

London Councils - Redundancy Payments at June 2012

B&Dagenham	30 weeks pay up to £380 weekly max
Barnet	30 weeks actual pay
Bromley	30 weeks
Croydon	30 weeks actual pay. From 2011 based on 50% of difference between statutory cap and actual pay
Ealing	30 weeks actual pay
Enfield	30 weeks actual pay
H&Fulham	30 weeks actual pay
Havering	30 weeks actual pay
Islington	30 weeks based on statutory table but pay actual salary and not statutory limits
K&Chelsea	30 weeks actual pay
Lambeth	30 weeks actual pay

Richmond	30 weeks at actual pay. Plus compensation payment as per LGPS discretionary rules.
Southwark	30 weeks actual pay
Waltham Forest	30 weeks actual pay
Kingston	40 weeks actual pay but 20 weeks if 55 or over
Camden	42 weeks actual pay
Brent	45 weeks actual pay
Hounslow	45 weeks actual pay
Harrow scheme to apply from 1/4/15	Up to 45 weeks actual pay, i.e. 1.5 times up to the statutory maximum of 30 weeks pay. The Council will continue to apply actual pay in the calculation of redundancy payments rather than the statutory maximum of £450 per week. For those who earn below £450 per week, payment will be based on actual pay.
Sutton	45 weeks actual pay
Westminster	45 weeks actual pay
Redbridge	Actual pay limited to £50,000 where no immediate pension. Statutory maximum pay where there is immediate pension. Redundancy weeks limited to 45.
Haringey	50 weeks actual pay
Greenwich	51 weeks actual pay
Merton	45 weeks actual pay with protection for lower paid via min salary for calculation being scp 20
Tower Hamlets	66 weeks actual pay
Hillingdon	66 weeks actual pay
Harrow current	66 weeks actual pay
Lewisham	75 weeks actual pay
Wandsworth	90 weeks actual pay
Newham	104 weeks actual pay

Section 4 – Financial Implications

The future financial challenges are likely to result in further reductions in the Council's workforce and increased numbers of redundancies. The changes in the redundancy compensation scheme in the Agreement will reduce the Council's cost of redundancies and any reversal or delay in implementation will have an adverse impact on the MTFs.

Section 5 – Corporate Priorities

N/A

Name: Steve Tingle	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 13 January 2013		

Section 6 - Contact Details and Background Papers

Contact: Jon Turner, Divisional Director Human Resources & Development

Email: jon.turner@harrow.gov.uk

DD 0208 424 1225

Background Papers:

Cabinet Report 19 January 2012 - Modernising Terms and Conditions of Employment:

<http://modern.gov:8080/ieListDocuments.aspx?CId=249&MId=60644&Ver=4>