

REPORT FOR: **CABINET**

Date of Meeting:	19 January 2012
Subject:	Modernising Terms and Conditions of Employment
Key Decision:	Yes
Responsible Officer:	Jon Turner, Divisional Director Human Resources, Development & Shared Services
Portfolio Holder:	Councillor Graham Henson, Portfolio Holder for Performance, Customer Services and Corporate Services
Exempt:	No
Decision subject to Call-in:	Yes
Enclosures:	Appendix 1 – Options consulted with staff Appendix 2 – Summary of position reached through negotiations

Section 1 – Summary and Recommendations

This report sets out the position reached to date on negotiating with the unions on Modernising Terms and Conditions of Employment and seeks agreement to consulting directly with the workforce.

Recommendations:

Cabinet is requested to note that:

It has not been possible to reach a collective agreement with the non-teaching unions on the modernising approach to terms and conditions of employment;

Cabinet are requested to agree that the Chief Executive, in consultation with

the Leader and Portfolio Holder be authorised to:

1. Develop a proposition which meets the needs of the Council on which to consult non-teaching staff;
2. Consult directly with non-teaching staff and if appropriate;
 - to modify that proposition in the light of consultation;
 - to undertake a ballot of non-teaching staff on the final proposition; and
 - to take action as necessary to implement new terms and conditions of employment for non-teaching staff.

Reason: To enable the modernisation of the terms and conditions of employment for Council non-teaching employees and deliver the savings required in the draft Medium Term Financial Strategy 2012/13

Section 2 – Report

A. Introductory paragraph

2.1 The Council has a requirement to make significant savings as a result of public spending cuts. The draft revenue budget for 2012/13 – 2014/15, considered by Cabinet on 15 December 2011, sets out the Council's financial position and that despite significant savings having been delivered to-date, further savings are still required.

2.2 Cabinet noted at its meetings in March and November 2011 that a project to Modernise Terms and Conditions of Employment was underway. The project objectives are to:

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|----------------------|---|
| Modernise: | to support the future needs of the Council |
| Simplify: | wherever possible, to make terms and conditions easier to understand and to reduce any processes |
| Reduce cost: | to seek to reduce the costs of terms and conditions of employment as part of its plan to make savings over the next 3 years |
| Give greater Choice: | to continue to have core terms and conditions but to provide each individual with an element of choice beyond that. |

2.3 The draft Medium Term Financial Strategy (MTFS) 2012/13 includes savings identified from the project to modernise terms and conditions of employment.

2.4 A range of modernising options have been considered in consultation with the trade unions, management and the workforce.

2.5 Consultation with staff and managers took place through the general staff survey in March 2011. A specific terms and conditions survey was carried out in August and September 2011 and ten staff briefings were also held during that period in the Council Chamber / Committee Rooms 1 and 2, as well as at the Depot. The options presented during the workforce consultation are set out at Appendix 1.

2.6 Informal discussions on potential modernising options were held with GMB and Unison¹ on a fortnightly basis from May to September 2011 and the perspectives of the trade unions from the informal discussions informed the development of the proposals as, of course, did the views of the Corporate Strategy Board.

2.7 A briefing for Headteachers and subsequently a more detailed briefing of Executive Heads (including Academies) took place on the proposals that would apply to schools.

2.8 The proposals that were developed support potential future ways of working, providing greater flexibility in service delivery to meet customer needs and contribute to the council's savings requirement, thereby potentially avoiding greater job losses. It has always been recognised that options / proposals that reduce pay bill costs will not be welcomed by the workforce or the trade unions. However, the approach has been to seek to mitigate that, as far as possible, through meeting the aspirations of employees (where they can be accommodated) for improvements in flexibility of working arrangements as well as in fair buy-out arrangements.

2.9 A substantial range of data and information has been shared with the trade unions on an ongoing basis in order to explore the impact of the options and proposals.

2.10 On 17 November 2011, Cabinet received an Information Report which set out the position at that time, including the views that had been expressed by the trade unions and the workforce.

2.11 Periodic updates have been provided to staff through the regular communications channels. The Chief Executive also updated staff at his staff forums in December 2011 and has been very open about the proposals being discussed and the requirement to reduce costs.

2.12 Formal negotiations with the trade unions commenced in November 2011 and it had been hoped that significant progress would have been made

¹ The Council has formal recognition agreements with two trade unions who represent non-teaching employees, GMB and Unison

to reach a collective agreement on the full set of proposals. However, that has not been possible and the negotiations concluded on 9 January 2012.

B. Options

1. Re-convene negotiations with the trade unions

At the point negotiations were concluded, there was no realistic prospect of agreement as one union has stated their senior regional advice is not to agree any proposal that would reduce terms and conditions of employment and the other has made some counter proposals which would neither modernise nor deliver the level of savings required.

2. Formal consultation with the workforce

In the absence of a collective agreement, the only mechanism available to implement changes to employees' terms and conditions is to formally consult the workforce on the proposed variations. Implementing changes will require employees to be given notice of the termination of their contracts and offered re-engagement on new terms and conditions of employment.

3. Withdraw all proposals

Withdrawing all proposals will require alternative savings to be identified with further impact on service delivery and potential job losses.

It is recommended we progress with Option 2.

C. Background

2.13 Most councils nationally are reviewing or have implemented variations to terms and conditions of employment with the prime objective to reduce costs and minimise, as far as possible, the impact of budget reductions on services. The most recent announcement of change has been Doncaster Council which has reported that it is proposing to apply a 4% reduction in basic pay for those above £15,000 per annum.

2.14 Harrow has the same imperative to make savings. However, a more balanced approach has been taken, modernising terms and conditions of employment so that they better support the future needs of the council, extend choice to individual employees in their employment package and simplify and reduce administration whilst at the same time reducing employment costs.

2.15 The draft revenue budget for 2012/13 – 2014/15, considered by Cabinet on 15 December 2011, sets out clearly the council's financial position and reducing the costs of employment is necessary in order to mitigate the impact of the savings requirements on service delivery and job losses.

2.16 The negotiations with GMB and Unison, which concluded on 9 January 2012, have not resulted in a collective agreement. The unions indicated they would be in agreement to those elements of the proposals that make improvements to terms and conditions, some of which increase costs and it had been hoped that significant progress could have been made on the

remaining elements, in particular those that would reduce costs. However, this was not achieved and it is considered that there is no realistic prospect of further agreement.

2.17 A particular issue that the trade unions raised is that variation to terms and conditions of employment which has an adverse impact on some and not all employees is not viewed by them as being fair - any such impact should affect all employees. The modernising proposals seek to address the differential impact by applying buy-out arrangements in 2012/13, ensuring employees are sensibly and equitably compensated for any adverse impact.

Modernising Proposals

2.18 The following are important factors in the modernising proposals:

- a. The proposals, particularly on enhancements for overtime and weekend working, are intended to modernise, not solely to reduce costs. By potentially moving to a system of plain time for overtime and weekend enhancements, we 'break' the culture and mindset of a fixed 9am to 5pm, Monday to Friday, model which will free up services to consider varying service provision outside those times without incurring additional costs from enhancements;
- b. Employees on Harrow (H) grades account for the majority of the council's workforce and pay bill so any exercise to reduce costs will impact predominantly on employees on these grades.;
- c. From the outset the Chief Executive and Corporate Strategy Board have stated that they would wish to lead by example on any exercise that would result in reduced costs. The modernising proposals include reducing basic pay for senior management;
- d. Introducing plain time for all overtime and weekend enhancements will affect about 1100 employees on H grades;
- e. Changes to the Essential Car User Allowance, or the criteria for eligibility, will affect about 500 employees at all levels;
- f. Increasing the salary level for the lowest paid to meet the London Living Wage will positively affect 400, H1, graded employees;
- g. 'Smoothing' the pay grade structure makes for a more equitable structure and provides a foundation for any future introduction of salary progression based on contribution (performance and competence or the 'what' and the 'how' objectives are delivered) and will affect employees at all levels.
- h. Revisions to the council's redundancy compensation scheme, currently the second most expensive scheme in London, will reduce the cost of future organisational change involving reductions in the workforce. This would affect all employees. .

- i. Rationalising standby payments will affect employees at all levels.

2.19 The position that was reached through the negotiations is shown in Appendix 2.

Percentage reduction in basic pay

2.20 As the trade unions had expressed a view that any impact should be felt equally, by the whole workforce, the negotiations included consideration of the savings that could be achieved by applying a fixed percentage reduction to basic pay.

2.21 A 3% basic pay reduction, if applied to those on a basic salary of above £17,000 per annum would deliver savings of approximately £2.6m (after taking account of the costs of increasing minimum salary levels to meet the London Living Wage). The trade unions asked for and were provided with information on the percentage pay reduction that would be needed to deliver £1m savings and recover the additional costs of raising the minimum salary level to ensure staff were paid at or above the London Living Wage and the costs from implementing the grading structure proposed change. This would require a 1.5% basic pay reduction.

2.22 Whilst applying a percentage reduction in basic pay would achieve the necessary savings, it would not achieve the other key objectives of the project i.e. the modernising of terms and conditions of employment.

Consulting the workforce on proposed variations

2.23 As it has not been possible to reach a collective agreement with the trade unions that will deliver the savings required in the draft Medium Term Financial Strategy (MTFS) 2012/13, the only mechanism now available is to give notice to terminate the contracts of non-teaching employees and offer re-engagement on new terms and conditions of employment.

2.24 The process for carrying this out requires the council to formally consult the workforce on the proposed variations.

2.25 It is important to note that as a collective agreement has not been reached with the unions, the council is no longer bound by any commitments given in the course of the negotiations. As a consequence the proposals presented for consultation with the workforce may be modified from those negotiated with the unions.

2.26 As set out above, an alternative option that will deliver the savings required in the draft Medium Term Financial Strategy (MTFS) 2012/13, is to apply a percentage reduction to basic pay. Although this approach may be perceived by some of the workforce as being more equitable, it would not achieve the modernising objectives.

2.27 In presenting proposals for consultation with the workforce the council can offer staff the choice of these options by conducting a ballot i.e. to either accept the proposals to modernise terms and conditions of employment or

accept a percentage basic pay reduction. Implementation of the outcome would be based on the majority vote.

2.28 There are some changes that the council would want to introduce regardless of the option chosen. As a consequence there would be elements common to both options.

2.29 Cabinet are recommended to agree that the Chief Executive, in consultation with the Leader and Portfolio Holder, be authorised to develop a proposition which meets the needs of the Council on which to consult non-teaching staff and that if appropriate a workforce ballot be conducted. This would be consistent with the council's objective to offer employees choice.

2.30 A postal ballot of the workforce could be undertaken managed by the council's Elections Services.

2.31 Cabinet are also recommended to agree that following consultation with the workforce, the Chief Executive takes action as necessary to implement new terms and conditions of employment for non-teaching staff.

2.32 Cabinet should be aware that the action that the Chief Executive may take could include giving notice to terminate the contracts of non-teaching employees and offer re-engagement on new terms and conditions of employment.

Timetable

2.33 In order to deliver the savings required in the draft Medium Term Financial Strategy (MTFS) 2012/13 implementation of the main variations to employment terms must be completed by September 2012.

2.34 An indicative timetable to achieve this is set out below. It should be noted that there is a statutory requirement for a minimum of 90 days between the start of consultation and the first dismissal letters to staff:

February 2012	consultation exercise on proposals for change
March 2012	review the outcomes of consultation and modify the proposals as appropriate in consultation with the Corporate Strategy Board, Leader and Portfolio Holder
April 2012	conduct a workforce ballot with a 4 week timescale for completion
May 2012	prepare individual letters giving notice of termination and offer of re-engagement and send to staff by end-May latest for implementation.

Scope

2.35 Implementation will vary the terms and conditions of employment for all Council employees, including non-teaching employees in schools.

Consultation will take place within the timetable shown above with Headteachers and Governing Bodies. It should be noted that the changes do not affect Academies.

Implications of the Recommendation

Impact on individual employees

2.36 The modernising approach will not only reduce costs, which clearly has the potential to impact on individual employees, but also seeks to future proof the council, simplifying pay and benefits and giving greater choice to employees. As highlighted above, this will have a differential impact on employees but this would be mitigated through buy-out arrangements in 2012/13.

2.37 The option to reduce basic pay is the most equitable as it will apply to nearly all staff. However, it will not modernise any of the Council's terms and conditions of employment.

2.38 Any reductions to contractual pay will also have an impact on the pension of those employees in the Local Government Pension scheme.

Equalities impact

The modernising proposals have a differential impact and an Equalities Impact Assessment has been carried out which identified a range of equalities considerations and potential impacts as highlighted below:

A percentage reduction in basic pay would impact on each employee to the same proportion.

Age

The council has an aging workforce with most between the ages of 45 and 54 at all levels of the workforce. The proposal to reduce basic pay for senior management is more likely to impact on workers in this age range.

The proposal to raise the minimum salary to meet the London Living Wage is more likely to affect younger workers.

The age profile for the workforce demonstrates that there are a higher number of employees in the 45-54 year age range in all pay bands than any other age range.

Sex

Almost 76% of the council's workforce are women. However a smaller proportion are contracted to work overtime or carry out ad hoc overtime (63%). The proposal to introduce plain time for overtime and weekend working has therefore proportionately a slightly higher impact on men than women in comparison with the workforce profile.

A much smaller proportion of women (54%) are employed in the lowest pay band (H1 to H3). The measure to raise the minimum salary level to meet the London Living Wage will therefore have a great positive impact on men.

Ethnicity

Almost 35% of the workforce are Black, Asian and Minority Ethnic (BAME) and 65% are White.

The greatest proportion of BAME staff are employed in payband 2 (H4 to H8) as are the majority of White staff. The proportion of BAME staff to White staff at each pay band is very similar excepting at payband 6 (Directors and above) where there are no BAME staff employed.

The proposals for overtime and weekend enhancements and Essential Car User Allowance will therefore have an equivalent impact on BAME and White staff. However, the impact from the basic pay reduction for senior management will solely impact on White staff.

Disability

The workforce profile shows that 3.65% of the workforce are disabled and that with the exception of payband 6 (Director level and above) they are broadly represented at each level of the workforce in direct proportion to non-disabled employees. There is therefore an equivalent impact on disabled workers, excepting at payband 6 where the proposal to reduce the basic pay for senior managers will solely impact on non-disabled employees.

Monitoring will take place following implementation of changes in order to ensure that no one group (and therefore the council's performance on equalities in employment) is negatively affected.

Legal comments

If the council wishes to change terms and conditions and does not have the contractual right to do so, or the actual or deemed consent of the employees or trade union, then it can either unilaterally impose the change or dismiss and reengage on the new terms.

Both approaches are not risk free. Unilaterally varying the contract is high risk. It would be a breach of contract. If the change has no immediate practical impact then employees who work on without complaint may not be deemed to have accepted the change. Employees could keep working and formally object to the change thereby reserving their contractual rights and could, for example, bring a claim for breach of contract or unlawful deduction of wages.

The fact that the employees have an ongoing claim for breach of contract means that the council may be forced to reverse any unilateral change and so not achieve the desired result.

The council also runs the risk of employees resigning and claiming constructive unfair dismissal.

Dismissal coupled with reengagement on new terms is lower risk and provides greater certainty. If proper notice is given, it does not entail a breach of contract.

The normal rules about unfair dismissal still apply. The council will need to establish a fair reason for dismissal and follow a fair process. In this case the fair reason would be "some other substantial reason" arising from a sound good business reason. The tribunals are familiar with this argument. However there needs to be a clear business case explaining the need for the change to staff.

The council needs to comply with the consultation requirements of the Trade Union and Labour Relations Act 1992 (TULRA). Any notices of dismissal cannot be issued until 90 days after the start of the consultation. To date, formal consultation with staff has not been commenced.

Fair consultation involves providing staff with adequate information upon which to respond, adequate time in which to respond and a conscientious consideration of the response to consultation. Failure to comply with the TULRA timescales could result in a protective award of up to 90 days' actual pay per employee.

Dismissal and reengagement runs the risk that some staff will not accept reemployment on new terms. In addition, whatever approach is adopted the council could face strike action. In either event, the council will need to have contingency measures in place to ensure the continuity of essential services.

Financial Implications

At the commencement of the project no specific savings requirement had been set. However, in developing the draft Medium Term Financial Strategy (MTFS) 2012/13 savings have been identified for 2012/13 and beyond. Those savings (£300,000 net in 2012/13 and £530,000 net in 2013/14) are based on phased implementation of the modernising proposals with a buy-out in the first year, funded from the savings generated.

The changes may impact on the recruitment and retention of workers with shortage skills, it is estimated that mitigating this impact with market supplements will cost in the region of £50,000, which has been allowed for within the MTFS.

The various modernising proposals have various implementation dates. In addition, different savings are achievable based on when, within 2012/13, these take place. A cautious implementation date of 1 September 2012 would result in both costs and savings. The gross savings of £600k and costs for LLW and buy-out £265k, give a net saving of £335k.

If the modernising proposals are agreed, there will be SAP configuration costs which, dependant upon the final changes, are estimated to be at least £75,000. This has been identified in the capital programme.

Performance Issues

The project to modernise terms and conditions of employment will ensure that they best support future requirements of the council and support improvements to service delivery. There are no specific performance indicators affected by the project excepting that service delivery may be affected if there are recruitment and retention difficulties in shortage skills areas. The cost of mitigating that impact is set out in the financial implications above.

Environmental Impact

There are no environmental impacts directly related to this project.

Risk Management Implications

Key risks have been that there will be a failure to agree with the unions; a failure to communicate clearly and in a timely manner with the workforce and stakeholders; failing to sufficiently consider and address equalities impacts. Additional risks are identified under the Legal Comments above.

Risk included on Directorate risk register? No

Separate risk register in place? Yes, high level risks are identified within the Project Initiation Document,

Corporate Priorities

If the modernizing proposals are implemented, the project will support future requirements of the council and will therefore better enable delivery of each of the corporate priorities.

Section 3 - Statutory Officer Clearance

Name: Steve Tingle	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 9 January 2012		
Name: Hugh Peart	<input checked="" type="checkbox"/>	Monitoring Officer
Date: 16 January 2012		

Section 4 – Performance Officer Clearance

Name: Alex Dewsnap



Divisional Director
Partnership,
Development and
Performance

Date: 9 January 2012

Section 5 – Environmental Impact Officer Clearance

Name: John Edwards



Divisional Director
(Environmental
Services)

Date: 10 January 2012

Section 6 - Contact Details and Background Papers

Contact: Lesley Clarke, Organisational Development Manager, 0208 420 9309

Background Papers:

Agenda item 10 of Cabinet meeting of 17 March 2011 -
<http://modern.gov:8080/mgChooseDocPack.aspx?ID=60262>

Cabinet Information Item - Progress Update on Modernising Terms and Conditions of Employment, 17 November 2011 -
<http://modern.gov:8080/ieListDocuments.aspx?CId=249&MIId=60642&Ver=4>

**Call-In Waived by the
Chairman of Overview
and Scrutiny
Committee**

NOT APPLICABLE

[Call-in applies]