

Report to: **Hub Committee**
Date: **19 March 2019**
Title: **Employee Terms and Conditions of Employment**
Portfolio Area: **Resources and Performance – Cllr Edmonds**
Wards Affected: **All**
Relevant Scrutiny Committee:

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: **After Call In
27 March 2019**

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Recommendations:

1. That Hub Committee notes the options available in respect of employee terms and conditions as set out in this report
2. That Hub Committee agree that the Head of HR Practice, in consultation with the Chief Executive and Trade union representatives
 - Develop a policy that enables employees to purchase additional annual leave
 - Develop a policy for unpaid career breaks
 - Review the Managing Attendance Policy and present recommendations to Senior Leadership Team by September 2019
 - Review the Essential User Car Allowance Scheme and eligibility by September 2019
 - Review the Councils' Redundancy scheme

1. **Executive summary**

- 1.1. At its meeting in September 2018, Council resolved to continue with the Local Government Terms and Conditions of Employment Green Book for at least 2019/20 and resolved that officers review all options for reducing staff costs by varying terms from the Green Book from 2020/21, with an initial report back by the end of 2018/19.

- 1.2. This Report focuses on two main aspects. First, it considers the current contractual situation, the presence of the national joint collective bargaining machinery and the legal considerations to be taken into account if changes in terms and conditions were proposed. Second, the Report looks at a number of options pursued by other local authorities. In conclusion, the Report makes one recommendation to promote the purchase of additional annual leave by employees.

2. **Background**

- 2.1. The combined expenditure on salary and associated costs for the two Councils in 2018/19 is £16.33m and accounts for 23.9% of gross expenditure. A number of other local authorities have implemented changes to the terms and conditions of employment to reduce expenditure.
- 2.2. The Council is a part of the National Joint Council for Local Government Services. This is the national collective bargaining machinery under which local authorities across the country negotiate on pay and other collective terms and conditions of employment. The Agreement reached is contained with the 'Green Book' and is incorporated into employee's contracts of employment.
- 2.3. The Green Book is divided into sections. The main contractual terms of employment are contained within Part 2 of the Agreement and can only be amended through the national collective agreement with the recognised trade unions. The employers' side is represented by the Local Government Association. Part 3 of the Green Book does permit amendment by local collective agreement with the local recognised trade unions.
- 2.4. The same provisions apply to employees who are not members of recognised trade unions. During any period of consultation over a proposed change in terms and conditions of employment, the Council would invite non-trade union members to put forward ideas and suggestions for consideration, although agreed changes would be implemented under a collective agreement.
- 2.5. The Council is very unlikely to secure a collective agreement with the recognised trade unions that varies the terms of Part 2 of the Green Book. The trade unions hold a firm national line in order to protect national collective bargaining and would not permit local variations. Local agreement could be reached for terms within Part 3. However, this is limited to terms such as car allowances and additional payments for overtime and out of hours working and the Council has successfully reached collective agreements in the past few years on these issues to reduce expenditure.
- 2.6. In the absence of a collective agreement, the Council could consider giving notice to dismiss employees and make an offer to reengage them on the amended terms and conditions. This would amount to a dismissal in law and the Council would be vulnerable to multiple claims of unfair dismissal.
- 2.7. Such an approach would also damage employee relations. It would adversely affect future constructive dialogue, consultation and negotiation with the trade unions and would have a significantly adverse impact on

employee morale and goodwill. The dismissal and re-engagement of employees is not a recommended course of action.

- 2.8. The Council could withdraw from the Local Government Association and sever its ties with national collective bargaining. This in itself could amount to an action that goes to the heart of the employment contract and be challenged by the trade unions that it amounts to a dismissal and re-engagement on new terms and conditions. If the Council was able to move away from the national agreement without, in effect, dismissing employees from their existing contract of employment, it would leave the Green Book terms and conditions as part of individual contracts of employment but future changes, including national pay awards, would not be binding. As a result, the Council would need to conduct its own pay negotiation and reach its own settlement with trade unions and employees. Whilst withdrawing from the Green Book would remove the restriction on making changes to key terms and conditions of employment, the Council would still be subject to the normal employment law regulations about changing terms and conditions in a fair and reasonable way.
- 2.9. The Council should also be mindful of s145B of Trade Union and Labour Relations (Consolidated) Act 1992 which prohibits a worker who is a member of a trade union from being offered revised terms and conditions of employment that are no longer subject to collective bargaining with a recognised trade union. This provision was recently used by individuals employed by London Borough of Bromley when faced with a unilateral decision to move away from national pay collective bargaining in favour of local pay bargaining. The Council was heavily fined by the Employment Tribunal for being in breach of the law.

3. **Outcomes/outputs**

- 3.1. The table below illustrates the options for making changes to terms and conditions. It is based on research carried out by Local Government Association on changes made by authorities across the country. There are not many councils attempting to make such changes.
- 3.2. As the employees are shared across both Councils, the figures stated in the table are the total across both Councils.

Proposed Options	Consequence and risk	Projected saving	Recommendation
To withdraw from the National Joint Council and negotiate local pay awards and other changes to terms and conditions	<p>The risks identified are in the Introduction and further legal advice would be needed before any action taken.</p> <p>Although the Councils can influence the outcome of national pay negotiations through participation at a regional level, the Agreements reached do reflect national concerns rather than local issues.</p>	The recent two-year national pay award of 2% per year on most spinal column points increased the annual salary bill by	<p>This option is not recommended.</p> <p>However, it is recommended that the Head of HR continues to monitor the impact of national agreements on pay and conditions of service to make sure the impact</p>

Proposed Options	Consequence and risk	Projected saving	Recommendation
	<p>For example, the recent two year pay award was 'bottom loaded' to mitigate the impact of the rising national living wage. This was not an issue for the Councils as we do not employ many employees in the traditional low paid local government jobs in social services and education. The impact was that the increase in the Councils' wage bill was less than it would have been if the overall increase was evenly distributed amongst all spinal column points. The changes to the national pay spine were also driven by the impact of the national living wage, but the Councils' were able to adapt to the new pay spine without serious cost or disadvantage to employees.</p>	<p>£280,000 pa in South Hams and £95,000 pa in West Devon. This would be offset by any local agreement on pay.</p>	<p>on the Councils' is not disproportionate or disadvantageous.</p>
<p>To reduce the contractual working week to 36 hours for existing staff</p>	<p>Require collective agreement with trade unions to vary Green Book or to dismiss and re-engage all employees.</p> <p>It would reduce both the hours and income of employees by approximately 3%. For an employee on median earnings that would represent a loss of approximately £750 if we introduced a 36 hour week.</p> <p>It would reduce capacity and potentially have an adverse impact on service</p>	<p>Circa £250K per annum for 36 hour week</p>	<p>This option is not recommended given it would reduce capacity and potentially have an adverse impact on service delivery and employee financial well-being</p>

Proposed Options	Consequence and risk	Projected saving	Recommendation
	delivery and employee financial well-being.		
To reduce contractual working week to 36 hours for new appointments	<p>Require variation from Green Book or agreement from new starters to agree to work reduced hours.</p> <p>It would create a two-tier workforce and potentially make it harder to attract strong candidates for vacant posts. It will also have an adverse impact on service delivery.</p> <p>The proposal is also potentially discriminatory if a significant number of new appointees share the same characteristic protected under the Equalities Act, e.g. gender or age profile</p>	Limited savings due to reliance on turnover of staff	This option is not recommended as it would create a two-tier workforce and an adverse impact on service delivery.
To offer employees the opportunity to purchase additional annual leave.	<p>Develop and promote a policy that would give employees the ability to request the purchase of additional annual leave, with the cost spread over an agreed period.</p> <p>The Council would retain discretion on whether to agree to the purchase of additional leave.</p> <p>Take up might be limited, thereby reducing target savings. If there is significant take up there would be an impact on capacity to deliver services and the potential cost of funding a replacement officer.</p>	Based on median earnings, each week purchased by an employee would generate an income of £425 per week	It is recommended that a policy is developed by Head of HR and, subject to discussion with trade unions and the wider workforce, it is approved and implemented by the Chief Executive.

Proposed Options	Consequence and risk	Projected saving	Recommendation
	<p>It may be welcome by some employees and supports the Councils' commitment to improving the well-being of staff and developing an agile and flexible workforce.</p>		
<p>To offer employees the opportunity to take an unpaid Career Break</p>	<p>Although employees already have opportunity to request a career break or time off work to undertake voluntary work, a revised policy could be promoted and employees encouraged to participate.</p> <p>The Council would retain discretion to approve any request for a career break and may take into account the impact and service delivery or the cost of delivering the service in an alternative way.</p> <p>A career break can help retain employees and enable them to pursue an interest or development opportunity without leaving the Council.</p>	<p>Based on median earnings, the Council would reduce its salary costs by £400 per week per employee</p>	<p>It is recommended that a policy is developed by Head of HR and, subject to discussion with trade unions and the wider workforce, it is approved and implemented by the Chief Executive.</p>
<p>Require all employees to take 2 days of unpaid leave per year</p>	<p>Require collective agreement to vary Councils' Annual leave Policy or to dismiss and re-engage all employees.</p> <p>Any new policy would need to meet minimum statutory and Green Book holiday entitlements.</p> <p>The requirement to take unpaid leave would have some adverse impact on service delivery and on</p>	<p>The saving on the annual salary budget would be approximately £55K pa</p>	<p>This option is not recommended as it would have an adverse impact on service delivery and the financial well-being of employees.</p>

Proposed Options	Consequence and risk	Projected saving	Recommendation
	the financial well-being of staff.		
<p>Make changes to Green Book sickness scheme by one or more of the following:</p> <ol style="list-style-type: none"> 1. Withhold sick pay for either first 1, 2 or 3 days of absence 2. Reduce sick pay entitlement for long term absence by either reducing length of paid and unpaid sick pay or increasing qualifying period of continuous service 3. Introduce either provision for new starters only 	<p>Require collective agreement or dismissal and re-engagement. The proposal would be a 'red line' for the trade unions and would be very unpopular with employees</p> <p>The Green Book sickness scheme is seen as a 'gold standard' compared to the private sector. The Councils' absence levels are higher than the private sector, although broadly in line with other parts of the public sector.</p> <p>The removal of sick pay in the early stages of illness could encourage 'presenteeism', where employees continue to work when not fit to do so.</p> <p>The reduction of sick pay for longer term absences will adversely impact employees with long standing medical conditions or life threatening or debilitating conditions and leaving them potentially vulnerable to financial hardship.</p> <p>Introducing a revised scheme for new starters will create a two-tier workforce and is potentially discriminatory if a significant number of appointees share a</p>	<p>It is difficult to attach a cost to sickness absence. In many cases, there is no additional cost as the work is allocated to a colleague or not carried out.</p>	<p>It is not recommended. However, it is recommended that the Head of HR revisits the Managing Attendance policy in consultation with key people managers to make sure it provides a robust process for the effective management of staff absence. The Head of HR should make recommendations for changes to the policy to SLT by September 2019.</p> <p>It is further recommended that Internal Audit carry out an audit on how the Policy is implemented and to make recommendations to inform the review.</p>

Proposed Options	Consequence and risk	Projected saving	Recommendation
	<p>characteristic protected under the Equality Act, e.g. gender or age profile.</p> <p>The Council already has a robust approach to managing attendance, including the requirement to make personal contact with a manager at the start of absence, a Return to Work interview and the use of the Bradford Factor to measure and monitor absence levels.</p> <p>There is also an expectation that employees will, from time to time, be unable to work through illness that is no fault of their own and that the Managing Attendance policy will identify and robustly tackle anyone who is regularly absent or where a pattern of absence emerges.</p> <p>New starters are subject to a probationary period that includes scrutiny over attendance levels and an employee with poor attendance may not pass the probationary period.</p>		
<p>Reduce the mileage allowance below the current rate of 45p</p>	<p>Reach a collective agreement to vary the Green Book provisions and the Councils' Travel and Subsistence Policy.</p> <p>The HMRC currently allow an employee to claim 45p per mile before incurring</p>	<p>A reduction of 1p per mile in the allowance would bring an approximate annual</p>	<p>It is not recommended, although the Head of HR should review the current essential car user allowance and eligibility criteria</p>

Proposed Options	Consequence and risk	Projected saving	Recommendation
	<p>a tax liability. This is the rate currently payable by the Councils.</p> <p>The Government website on Advisory Fuel rates suggests a rate of 22p per mile to reflect the cost of fuel. However, this does not include the cost of wear and tear and other factors taken into account by the HMRC rate.</p> <p>The Council has already significantly reduced the Essential Car User Allowance by 40% to £603pa and also reduced the number of eligible employees by revising the qualification criterion.</p> <p>The Council does rely on the use of employee's private cars for effective service delivery.</p>	<p>saving of £1200 at South Hams and £800.</p>	<p>and report to Chief Executive by September 2019.</p>
<p>To review the discretions exercised by the Councils under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006</p>	<p>The Councils have a duty under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 to formulate, publish and keep under review its discretionary powers under sections 5 and 6 of the Regulations.</p> <p>Under s5, the Councils can calculate the amount of a redundancy payment based on an employees' actual weekly pay rather</p>	<p>There are no proposals to make large scale redundancies so the saving will be minimal.</p>	<p>It is recommended that the Head of HR brings a report to Council to review the exercise of its discretions under the Regulations by no later than 31 March 2020.</p>

Proposed Options	Consequence and risk	Projected saving	Recommendation
	<p>than the statutory cap on a weeks' pay. This discretion is currently applied.</p> <p>Under s6, the Councils can increase the amount of a redundancy payment so long as it does not exceed 104 week's pay.</p> <p>Under s6, the Council currently enhances the statutory redundancy payment payable by a factor of 2.</p>		

4. **Options available and consideration of risk**

4.1 The options available and consideration of risk is set out in the table above.

5. **Proposed Way Forward**

- 5.1. It is recommended that the Council approve the option to develop and promote a policy to enable employees to request the purchase of additional annual leave and to request an unpaid career break.
- 5.2. It is recommended that the Head of HR continues to monitor the impact on the Councils of national agreements on pay and conditions of service and reports to the Chief Executive annually.
- 5.3. It is recommended that the Head of HR revisits the Managing Attendance Policy and makes any recommendations for change to SLT by September 2019.
- 5.4. It is recommended that the Head of HR reviews the essential car user annual allowance and the eligibility criteria
- 5.5. It is recommended that the Council reviews the exercise of its discretions under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 by March 2020.
- 5.6. All other proposals set out in section 3.2 are not recommended.

6. **Implications**

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The terms and conditions of employees are governed by the contract of employment, incorporating National Agreement on Pay and

		<p>Conditions of Service (the Green Book). There are legal restrictions in employment law on the ability of the Council to make unilateral changes to terms and conditions of employment. The Council is also part of the national collective bargaining machinery which limits its ability to make local decisions on terms and conditions of employment.</p> <p>The Council have an obligation to review the discretions exercised under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006</p>
Financial	Y	The recommendations as set out in this report will potentially have financial implications for the Council. All options recommended for further exploration would seek to reduce costs. It is not however recommended at this time to make adjustments to the Councils Medium Term Financial Plan given the majority of recommendations would not be implemented until the next financial year at the earliest.
Risk	Y	Any changes to terms and conditions employment that are perceived as disadvantageous by staff could adversely affect staff morale and performance. This would have a negative impact on service delivery and customer satisfaction.
Comprehensive Impact Assessment Implications		
Equality and Diversity	Y	An equality impact assessment would need to undertaken before any changes in terms and conditions of employment are implemented to make sure they do not have an unlawful adverse impact on any group of employers with a protected characteristic under the Equality Act.
Safeguarding	N	There are no safeguarding implications.
Community Safety, Crime and Disorder	N	There are no potential positive or negative impact on crime and disorder reduction
Health, Safety and Wellbeing	Y	Changes that adversely affect employees could have a negative impact on their well-being, both emotionally and financially.

Supporting Information

Appendices:

None

Background Papers:

None

Process checklist	Completed
Portfolio Holder briefed	Yes
SLT Rep briefed	Yes
Relevant Exec Director sign off (draft)	Yes
Data protection issues considered	Yes
If exempt information, public (part 1) report also drafted. (Cabinet/Scrutiny)	NA