

WEST DUNBARTONSHIRE COUNCIL

At the Special Meeting of West Dunbartonshire Council held in the Council Chambers, Council Offices, Garshake Road, Dumbarton, on Wednesday 14 May 2008 at 7.00 p.m.

Present: Provost Denis Agnew and Councillors George Black, James Bollan, Margaret Bootland, Jim Brown, Geoff Calvert, Gail Casey, William Hendrie, David McBride, Jim McElhill, Patrick McGlinchey, Craig McLaughlin, Willie McLaughlin, Marie McNair, John Millar, Iain Robertson, Martin Rooney and May Smillie.

Attending: David McMillan, Chief Executive; Bill Clark, Executive Director of Social Work and Health; Elaine Melrose, Executive Director of Housing, Environmental and Economic Development; Terry Lanagan, Executive Director of Educational Services; Joyce White, Executive Director of Corporate Services; Tricia O'Neill, Head of Human Resources and Organisational Development; Paul McGowan, Pay Modernisation Manager; David Connell, Head of Finance and ICT; Stephen Brown, Head of Legal, Administrative and Regulatory Services and George Hawthorn, Senior Administrative Officer.

Apologies: Apologies for absence were submitted on behalf of Councillors Jim Finn, Douglas McAllister, Jonathan McColl and Ronnie McColl.

Provost Denis Agnew in the Chair

DECLARATIONS OF INTEREST

Provost Agnew, Councillors Hendrie and Rooney declared a non-financial interest in the following item of business and remained within the meeting. It was noted that members of their families, who did not reside in their households, were employed by the Council.

Councillor Millar declared a financial interest in the following item of business (residing with a person who may be affected by single status) and left the meeting.

PROPOSALS FOR IMPLEMENTATION OF THE SINGLE STATUS AGREEMENT

(a) Request for a Deputation

In accordance with the terms of Standing Order No. 14, the Council agreed to hear a deputation from the trades unions in respect of the Single Status Agreement.

Thereafter, Denise McLafferty, Service Conditions Officer, Unison addressed the Council on behalf of all the trades unions.

Ms McLafferty indicated that imposition of the proposals within the management report would result in industrial action and therefore asked the Council to take into account the views of the trades unions when deciding on the Single Status Agreement and, among other things, requested that the proposed preservation period be extended to 5 years.

At this point, Ms McLafferty asked Provost Agnew to allow the trades unions to respond to Members' questions during the debate. Provost Agnew advised that there was no provision for this within the Council's Standing Orders and, in his opinion, it would not be appropriate, therefore he refused the request.

Councillor Bollan moved that the trades unions be allowed to respond to questions during the debate. Provost Agnew informed Councillor Bollan that this was not a matter for Council to consider and that he had already ruled on this matter.

Thereafter, Councillor Bollan requested that his dissent be recorded in these minutes.

(b) Report by the Chief Executive

A report was submitted by the Chief Executive:-

- (i) providing an update on the conclusion of the Job Evaluation exercise and on consultations undertaken with employees and their representatives;
- (ii) providing an update on negotiations with Trades Unions and the outcome of trades unions consultative ballots; and
- (iii) providing recommendations to Council as a result of the failure to reach a collective agreement with Trades Unions and detailing proposals in relation to the imposition of the SJC 'Single Status' Agreement within West Dunbartonshire Council that would:-
 - meet the Council's statutory obligations in relation to the Equal Pay Act and Gender Equality Duties;
 - avoid the Council being subject to enforcement action from Equalities and Human Rights Commission;
 - ensure the Council can continue to deliver Best Value and affordable services; and
 - satisfy the requirements of the Local Government Scotland Act 2003 – Best Value Guidance in relation to the need for probity in the use of financial resources.

Councillor Robertson, seconded by Councillor C. McLaughlin, moved:-

This Council thanks all staff and unions involved in the single status and job evaluation process.

The Council notes that even with the present offer from management that the implementation cost of single status will be in excess of £20million over the next 3 years.

The Council also recognises that the Single Status is a necessary, but painful process that this Council must go through in order to deal with its statutory duties under the equal pay act.

The Council notes that imposition, while disappointing is still a distinct possibility – the Council believes that there are still valid concerns that require to be addressed before imposition is considered.

Given that there has been further discussions with management, unions and staff since this report was published this Council agrees to the following:-

1. The Council does not agree at this stage to the current revised proposals for pay and grading for terms and conditions as detailed in the report, due to the high number of concerns.
2. To that end the Council instructs the management to continue further meaningful negotiations to seek to attain a compromise position on these concerns, ideally with an independent observer. These discussions will continue until a special Council meeting to be held in June 2008. For this meeting officers will present a report detailing the outcome of the negotiations including any areas of outstanding dispute and any associated costs with regards to changes in terms and conditions and variations in pay grading. The report should also detail the costs and implications associated with agreeing to continue to pay the cost of living award.
3. The Council does however agree that in order to maximise the ability to remove people from detriment that we should move to a 4 year protection period starting from the 1st April 2008.
4. The Council expresses concern that if the report was agreed at this point it would result in around 5% (approx 251 employees) suffering detriment. The Council agrees that it will implement a number of strategies to work towards removing those people in detriment and those processes should be put into place as soon as practical.
5. The Council also agrees that a robust job appeals procedures must be put in place to ensure that staff who have indicated a disagreement to their job profile are given the opportunity to have their disagreement thoroughly investigated.
6. Given councillors strategic and monitoring responsibility as detailed in the Councillor's Code of Conduct – Council instructs officers to bring forward a report on a monthly basis to full Council on progress of implementation of recommendation 2 of this motion. The report should track the number of appeals, outcomes as well as the numbers of staff still in detriment.

As an amendment, Councillor Bootland, seconded by Councillor Rooney, moved:-

This Council recognises that the motivation, quality and commitment of our staff is by far the Council's greatest asset in delivering Best Value and it is vital that the Council's Equal Pay and Single Status Agreement has the full confidence of the greatest majority of our staff. Indeed, this Council fully accepts that without the fullest confidence of our staff, it will be all but impossible to deliver a Best Value service to the residents of West Dunbartonshire.

In consideration of this report to Council, this Council wishes to record its thanks to Officers, Trade Unions and staff for their dedication in bringing these proposals forward. It has not been an easy process and has been the source of great stress and anguish for many people. It is in recognition of the commitment and resilience of everyone involved that this Council expresses its gratitude.

That having been said, this Council does not believe that the Recommendations laid out in this report:-

- fully address the needs of the Council to deliver Best Value;
- fully recognise the legal and moral implications of some of the recommendations and as a consequence; and
- fully identify all potential Risks to the Council:-

and therefore this Council agrees, in addition to commitments already given, to address the following:

Terms and Conditions of Service

As outlined in paragraph 3.3.8 of the report, Council will harmonise existing terms and conditions at the highest rate as requested by the Trade Unions, recognising the requirement for an Equality Impact Assessment.

Incremental progression will be applied at 1st April 2009, even if the proposed implementation date of 1st November 2008 slips for whatever reason and in recognising that this requires a relaxation for the incremental rule due to these exceptional circumstances.

Backdating and Compromise Agreements

Council notes that in imposing a contractual change, there is no legal obligation to backdate payment. Council notes also that if a collective agreement had been possible, Council would have been obliged to backdate payment.

Council notes the legal advice that backdating of the revised pay scales may be possible in appropriate circumstances and accepts that to deny members of staff 2 ½ year backdating on the basis of a minority percentage rejection

would be grossly unfair, morally reprehensible and would catastrophically undermine the Council's duty to deliver Best Value.

In attempting to enter into Compromise Agreements under the same terms as previously on offer as outlined in paragraph 3.9, there is considerable, and almost certain, Risk to the Council of a substantial number of claims under the Equal Pay Act that would be sure to follow. There is absolutely no guarantee that staff would settle for around half of the amount they would be due should they succeed at Employment Tribunals. It would be reckless of this Council to ignore the Risk to the Council of substantial, and unquantifiable, claims being made against it for years to come.

Therefore, this Council will have revised pay scales backdated in full to 1st April 2006 for all affected staff. In so deciding, Council further notes that this decision has the considerable benefit to all concerned, of removing the need to enter into Compromise Agreements as outlined in paragraph 3.9 and removes the unacceptable risk to the Council that will follow on from failure to reach such agreements.

Detriment

It is recognised by all parties that a position of 'no detriment' cannot be legally sustained. Therefore the issue of detriment will take time to be worked through. Both the Council and Trades Unions are committed to address the detriment issue over time to minimise its affect as much as possible and, hopefully, eradicate any outstanding issues.

Council confirms that the protection period will be last for five years and therefore extended to 30th November 2013.

Council agrees that a full progress report outlining the successes that have been achieved in eradicating detriment, and identifying any outstanding issues with recommendations that will address them is to be brought to the Council in May 2011. This will allow a reasonable period to time for combined effort thereafter to achieve the goal of minimal detriment by 30th November 2013.

In addition to the above, Council agrees to:-

- Make arrangements for the termination of all existing Bonus Schemes with effect from 31st October 2008;
- Council recognises that the improved package of proposals would require to be the subject of further consideration by the recognised trades unions and invites them to provide a response by 31st August 2008; and
- A planned implementation date of 1st November 2008 in respect of the Councils offer of September 2007 (as amended), at the rates of pay effective from 1st April 08, and as further amended by this Amendment to Council dated 14th May 08.

As a second amendment, Councillor Bollan, seconded by Councillor Black, moved:-

Given a substantial majority of employees voting have rejected the management offer on single status it would be unfair, unwise and unreasonable to impose the current offer on our staff. As a Council we need to accept this offer is unacceptable.

In view of this rejection by employees fresh negotiations with the Trades Unions need to commence immediately and continue until an agreed settlement is reached.

The guidance officers need to work within in the new negotiations is that any agreement should comply with current legislation and should inflict no detriment either in wages or conditions on any existing member of staff.

Council will harmonise terms & conditions at the highest rate as requested by the Trades Unions.

Every existing member of staff who is red circled will retain their existing salary & conditions along with all cost of living increases until they leave the employment of WDC.

This protection will end when any existing employee seeks and secures another appointment within WDC.

Any additional funding required being from the reserves.

ADJOURNMENT

After hearing Provost Agnew, the Council agreed to adjourn for a short period to allow Members time to consider all of the motions and amendments which had been circulated.

The meeting reconvened at 8.00 p.m. with all those Members shown on the sederunt in attendance, with the exception of Councillor Millar.

It was noted that a Briefing Note by the Chief Executive concerning the outcome of the Independent External Review of the Job Evaluation Process had been circulated to all Members of the Council during the adjournment.

At this point, Provost Agnew invited the Head of Legal, Administrative and Regulatory Services (Legal Officer) to comment on the legality of the motions and amendments. The Legal Officer informed the Council that while all motions and amendments were competent, the content of the Councillor Bollan's amendment could not be implemented as it would be unlawful to do so. In response to Members' questions, the Legal Officer explained that the Council's Standing Orders allowed the Council to consider and discuss such motions and amendments and pointed out that recently the Council had not taken the opportunity to change this provision within the Standing Orders.

In response to a further question, the Legal Officer explained that, in his opinion, the implementation of the proposals within Councillor's Bollan's amendment would be unlawful because the amendment stated "Every existing member of staff who is red circled will retain their existing salary & conditions along with all cost of living increases until they leave the employment of WDC." which could be subject to legal challenge and it was likely that this challenge would be upheld.

Thereafter, Provost Agnew was heard in response to a number of questions concerning previous rulings at Council meetings.

ADJOURNMENT

In terms of Standing Order 13 (a), Provost Agnew indicated that he was vacating the Chair because of disorder in the meeting. The Provost left the Chambers and the meeting was adjourned for a short period.

The meeting reconvened at 8.18 p.m. with all those persons on the sederunt in attendance, with the acceptance of Councillor Millar.

Provost Agnew informed all Members of the need to comply with the terms of the Councillors Code of Conduct both within and outwith the Chambers and reminded them of the advice contained within the letter issued by the Chief Executive.

The Chief Executive reminded Members of the need to be mindful of their duty to ensure best value when taking decisions and highlighted that some of the proposals under consideration could have serious financial implications. The Chief Executive indicated that he was not entirely clear what effect the successful motion would have on the terms and conditions and he asked the respective movers to make the position clear. Thereafter, the Executive Director of Corporate Services was heard in response to questions on the harmonisation of the conditions of service at the highest rate.

Following debate and having heard the Legal Officer, the Council agreed to proceed by way of a Roll Call Vote.

On the first vote being taken, 2 Members voted for the second amendment (by Councillor Bollan) (namely Councillors Black and Bollan), 8 Members voted for the first amendment (by Councillor Bootland) (namely Councillors Bootland, Calvert, Casey, McBride, McGlinchey, W. McLaughlin, McNair and Rooney) and 7 Members abstained (namely Provost Agnew, Councillors Brown, Hendrie, McElhill, C. McLaughlin, Robertson and Smillie).

On the second vote being taken, 8 Members voted for the amendment (by Councillor Bootland) (namely Councillors Bootland, Calvert, Casey, McBride, McGlinchey, W. McLaughlin, McNair and Rooney); 6 for the motion (by Councillor Robertson) (namely Councillors Brown, Hendrie, McElhill, C. McLaughlin, Robertson and Smillie) and 3 abstained (namely Provost Agnew, Councillors Black and Bollan).

Accordingly the amendment was declared carried.

Provost Agnew thanked everyone in the public gallery for their good behaviour during the proceedings.

The meeting closed at 9.15 p.m.