

WEST DUNBARTONSHIRE COUNCIL

At the Special Meeting of West Dunbartonshire Council held in the Council Chambers, Council Offices, Garshake Road, Dumbarton, on Tuesday 19 August 2008 at 7.00 p.m.

Present: Provost Denis Agnew and Councillors George Black, James Bollan, Margaret Bootland, Jim Brown, Geoff Calvert, Jim Finn, William Hendrie, David McBride, Jonathan McColl, Ronnie McColl, Jim McElhill, Patrick McGlinchey, Craig 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; Andrew Fraser, Head of Legal, Administrative and Regulatory Services, and George Hawthorn, Senior Administrative Officer.

Also

Attending: Stephen B. Brown, Legal Officer.

Apologies: Apologies for absence were intimated on behalf of Councillors Gail Casey, Douglas McAllister and Willie McLaughlin.

Provost Denis Agnew in the Chair

PROVOST'S REMARKS

Provost Agnew welcomed Andrew Fraser, Head of Legal, Administrative and Regulatory Services to his first meeting of the Council. Provost Agnew also informed the Council that Mr Stephen Brown had been invited to the meeting to provide legal advice.

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 J. McColl declared a financial interest in the following item of business and left the meeting. It was noted that Councillor McColl was a former employee of the Council.

Councillors Millar and R. McColl declared a financial interest in the following item of business (residing with a family member who may be affected by the single status agreement) and left the meeting.

At this point Councillor Bollan moved that the Council should suspend standing orders in order to consider the item on Single Status as a period of six months had not passed since the Council had made a decision on that issue. He also asked why Mr Brown was present and asked if the Council was protected if it acted on the advice of a person who was not employed by the Council?

Following discussion, Mr Fraser informed the Council that, in his opinion, there were a number of reasons why the Council did not require to suspend standing orders in order to consider the implementation of the single status agreement and these are summarised as follows:-

- (1) according to the recent (29 July 2008) Court of Appeal decision in *Redcar and others v Bainbridge*, five year pay protection could not be justified as it continues inequality and therefore the proposal would contravene the Equal Pay Acts, if implemented. The decision also contravened the Scottish Government's Guidance on Best Value (and thus Section 1 of the Local Government (Scotland) Act 2003) as the full financial consequences of the decision had not been assessed before the decision was taken;
- (2) that the existing proposals could not be implemented as the Council had not identified sufficient budget to fund the proposals; and
- (3) that the existing proposals were imprecise.

Accordingly the decision was frustrated and required to be considered afresh.

Mr Fraser also informed the Council that in accordance with Standing Order No. 40 (9), he had appointed Mr Brown as Legal Officer. The Council's insurers had advised that Mr Brown was covered by the Council's insurance to the same degree as if he had still been a full-time employee of the Council.

Thereafter, and having heard Councillor Bollan in response to Mr Fraser's comments, Provost Agnew ruled that there was no requirement for standing orders to be suspended in order to allow the Council to consider the undernoted item of business.

PROPOSALS FOR IMPLEMENTATION OF THE SINGLE STATUS AGREEMENT

A report was submitted by the Chief Executive:-

- (i) providing an update on discussions with the trades unions and the revised costings associated with harmonisation of terms and conditions of employment as indicated in the Council decision of 14 May 2008;
- (ii) highlighting key risks in relation to the delivery of Best Value and affordable services including impact on staffing levels;
- (iii) highlighting key risks in relation to ongoing failure to meet statutory obligations in respect of Equal Pay, and particularly in light of significant developments in case law since July 2008;
- (iv) presenting options to address the shortfall in funding to support implementation;
- (v) reviewing proposals for implementation in light of ongoing discussions with trades unions and recent legal developments; and
- (vi) seeking agreement to the process for implementation of the Single Status Agreement.

A revised copy of Page 17 of the above report was circulated to all Members of the Council.

At this point, Provost Agnew informed the Council that he had received a request from the trades unions to address the Council and indicated that he was willing to allow it, with the agreement of Council. Thereafter, the Council agreed to hear the deputation from the trades unions.

Denise McLafferty, UNISON, on behalf of all the relevant trades unions, informed the Council that the trades unions expected the Council to honour its decision on 14 May 2008. She informed the Council that the trades unions had adopted a pragmatic approach to the negotiations with senior management on the terms and conditions package resulting in a significant reduction in the cost to the Council. She also pointed out that the trades unions had balloted their members on the revised terms and conditions package and that 80% of members had agreed to accept the revised package. In concluding, Ms McLafferty asked the Council to agree to pay in full all back monies due to those employees who were entitled to it and warned that failure to do so could result in actions being taken against the Council.

Provost Agnew thanked Ms McLafferty for her contribution and she returned to the public gallery.

At this point, Councillor Rooney pointed out that the previous decision of Council on 25 June 2008 had instructed the Labour Group to identify funding to meet the estimated budget shortfall and therefore Council would need to suspend standing orders to allow the Administration to put forward its proposals.

After hearing Mr Brown, Legal Officer, Provost Agnew ruled that the suspension of standing orders was not required.

Thereafter, Councillor Robertson, seconded by Councillor McElhill, moved:-

This Council fully understands its responsibility to its staff and the residents of West Dunbartonshire. As West Dunbartonshire's biggest employer, Council must ensure that the long term future of providing jobs and frontline services are secure, deliverable and affordable.

It is paramount that Council preserves the ability to retain services in-house and does not lose out to the private sector under Best Value legislation.

Following Labour's inability to provide information on how the Council decision of the 14 May 2008 could be implemented, and following advice given by the Chief Executive, that he could not implement that decision, Members have been compelled to reconsider the proposals for implementation of the Single Status Agreement.

This Council therefore agrees the following package which supports implementation of the Single Status Agreement:-

- Alter the qualifying threshold for overtime enhancements as follows; between 37 and 48 hours, all workers will be paid time and a half. After 48 hours all workers will be paid double time.
- To give greater flexibility to staff, we agree to change the number of fixed public holidays from 12 to 8 with 4 days added to annual leave entitlement.

The 8 fixed public holidays will be, January 1, January 2, Easter Monday, May Day Holiday Monday, Glasgow Fair Monday, September Weekend Monday, 25 December, 26 December, notwithstanding it is open to staff to use their 4 floating days at their own discretion.

- Council further agrees to amend Service Hours to reflect a standard working week of Monday to Sunday, 7.00 a.m. to 9 p.m. Current rosters or working patterns of individuals will remain as currently agreed. This will ensure that all staff are treated fairly and equitably, given that many of the low paid female workers are disadvantaged by current working practices.

- Stop all non-essential overtime in the current year and future years. In addition, where practicable, services should be reconfigured to reduce the requirement for overtime.
This supports previous views expressed to elected members by staff and their representatives that current practices are a drain on resources and are hampering service delivery.
- Council will continue with current restriction on non-essential spending and freeze on filling non-essential vacancies.
- To reduce the legal risk in the light of recent court judgements, Council agrees to a 3-year protection period in accordance with the national agreement signed by the trades unions and Local Authorities across Scotland commencing from the date of imposition.
- Council delegates authority to the Chief Executive to develop a framework to make a goodwill payment of £1500 pro rata for all staff in recognition of acceptance of realignment of terms and conditions of employment.
- Council delegates authority to the Chief Executive to put in place arrangements to effect compromise agreements for those groups of staff whose agreements expired in 2006 with an accompanying compensation package.
- Council also agrees an implementation date of 1 March 2009 by means of imposition and individual agreement with termination of Bonus Schemes at 28 February 2009.
- Finally, Council instructs the Chief Executive to create an “Implementation Fund” which will run for the duration of the full implementation of single status to safeguard the Councils ability to address equal pay issues and recurring pay costs in the future.

All surplus funds previously budgeted single status accruals plus £1 million from the Council’s reserves should be placed within this fund.

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, trades unions and staff for their dedication in bringing these proposals forward. Council is particularly pleased to note the recognition given by Officers in paragraph 4.4.1 of the report to the trades unions for their commitment, flexibility and pragmatism in arriving at the revised package of Terms and Conditions outlined in this report. Council is delighted that the indicative costs for the revised Terms and Conditions has been reduced by over £2m p.a. through consultation in accordance with the Council decision of 14 May 2008.

Council notes the decision of 14 May and further notes that, prior to this report, officers have tabled no options for consideration by Members. It would be totally unacceptable for elected members to 'pluck' figures out of the air without properly considered officer recommendations and would be in direct conflict with all advice following the Audit Scotland Best Value report.

Terms and Conditions

Council is concerned that the move to a reduction in current Terms and Conditions re overtime working appears to be argued on Equality Impact Assessment and Best Value grounds. Reference is made at paragraph 3.2.2 – Equality Impact Assessment. Council accepts the precept that overtime proposals and possibly public holiday payments may favour traditional male occupations, given that more males are in full time employment than females. That having been agreed, Council does not agree that a reduction of payment rates from double time to time and a half alone would address these 'concerns'. Therefore, Council does not consider that these comments are relevant to the proposal to reduce overtime and/or public holiday payments.

Reference is made at paragraph 3.3 of the report to External Benchmarking. The argument being put forward is that because other Local Authorities have seen fit to undermine current Terms and Conditions, this in some way justifies West Dunbartonshire Council doing the same.

Current weekend overtime rates at double time on Sundays have been recognised in both public and private sectors for many years. In consideration of the 'catch-all' Best Value argument, if the argument that cutting Terms and Conditions is the same as Best Value is accepted then there is no reason to stop at a reduction to only time-and-a-half. The same argument could be used in future to secure a reduction to plain time or time off in lieu with no payment or indeed other cuts in wages.

This Council sees this proposition as an attack on current Terms and Conditions that have been properly negotiated and agreed by Unions and Councils and that staff have enjoyed for many years. This Council sees the Best Value argument to bring about change at this time as opportunistic and irrelevant to the Single Status agreement. Change to Overtime Working must be brought about by negotiation utilising the recognised negotiating mechanisms in place, and taking all factors into consideration.

Pay Protection

Council takes seriously the Equality Impact Assessment recommendation contained in the report with particular reference to recent Case Law decisions. Council accepts that an extension of the protection period from three to five years greatly extends the Council's vulnerability to challenge following recent Case Law decisions. It is a matter of regret and reluctance, therefore, that Council agrees to conform to a three year protection period as recommended. However, Council agrees to keep this matter under review and should circumstances change, it will restore its desire to offer a five year protection period, if at all possible.

Therefore, in recognition of the loyalty and commitment shown by the Unions, the needs of the Council to deliver Best Value, the legal and moral implications of the decisions to be taken and in consideration of all potential risks to the Council, Council agrees to accept the Unions proposals for Terms and Conditions as outlined in Appendix 2 of the report, with the reduction of the Pay Protection period to three years, with review as circumstances dictate.

Detriment

Detriment will take time to be worked through but this Council is determined that detriment will be eradicated at the earliest possible opportunity and within the absolute maximum of three years from implementation of Single Status.

Implementation

This Council restates its declared policy of implementation of the new arrangements as at 1 November 2008 and with a collective agreement with Unions in place, Council will move to pay all back pay to which employees will be legally entitled, without delay.

In this situation, there will be a budget shortfall in the current financial year of £900k as outlined in paragraph 4.2 of the report.

Council agrees that this shortfall will be funded by the following cost reductions:

Para 4.7.1 – Reconfiguration of services @ £200k pa

Para 4.8.1- Remedial Action already in place - £750k

Given the Government's commitment to provide 1000 extra Police Officers, the Budget decision to fund Community Police Officers @ £200k p.a. is reversed.

The estimated saving of £150k as a result of strike action on Wednesday 20 August 08 to be transferred to General Services Fund.

These cost reductions totalling £1.30m will adequately cover any shortfall in this financial year

Future costs will be factored into the normal Budget process and will be accommodated thereafter. Council expects that the Budget decision of 14 February 2008 to secure an additional 1% (£1.7m) budget savings in this financial year, whilst not being totally realisable in this financial year, will be achieved from 2009 onwards.

Failure to secure a Collective Agreement

In the event of a failure to secure a Collective Agreement, Council accepts the position outlined in paragraph 7.4 that it will not be possible to implement an agreement at 1st November 2008 and accepts a revised implementation date of 1 March 2009.

In this situation, it remains the Council's intention to pursue individual acceptances and agreements wherever possible and encourages the trades unions to support the Council in its efforts. Council will work with unions to achieve maximum support for individual agreements.

Council is clear that imposition will be a measure of last resort but accepts that imposition may be necessary should collective or individual agreements not be in place. In this circumstance, Council notes that in imposing a contractual change, there is no legal obligation to backdate payment although legal advice also confirms that backdating of the revised pay scales may be possible in appropriate circumstances.

Council accepts that to deny members of staff 3 years backdating, although not unlawful, would be grossly unfair, morally reprehensible, and would have a devastating negative effect on the morale of a large majority of our staff. Such demotivation would seriously undermine respect for, and commitment to the Council's and to its duty to deliver Best Value. Council is clear in its moral obligations to backdate pay to the maximum affordable limit and to all relevant employees, including former employees – Council is aware of possible challenges to 'illegal deductions'. However, Council accepts that the huge costs involved must be affordable.

Compromise Agreements

Officers have stated that the Compromise Agreements at an estimated cost of £7m in paragraph 9.4 of the report are based on a 80%-90% offer. Council notes that it has set aside £21m to accommodate payment of back pay.

Therefore, in the event of individual agreements or imposition, Council agrees that Compromise Agreements are to be paid at the rate of 100%.

Goodwill Payments

Council agrees that if staff believe that they have been 'short-changed' on 'Goodwill Payments', there will be a massive detrimental effect on morale. This detrimental effect could well lead numbers of employees to legally challenge the Council and must be avoided if at all possible. It is Council policy to fund initial legal advice and in this situation huge, but unquantified and unbudgeted financial and staff costs would accrue to the Council. Council does not believe that these risks have been adequately addressed in the report but Council cannot ignore them.

Therefore, Council will pay Goodwill Payments at the highest level commensurate with prudence and affordability. A further report will be required by Council once a full options appraisal has been carried out.

Recommendations

1. Council instructs the Chief Executive to make a formal offer to the trades unions based on the content of the Motion and the Summary of Proposed Terms and Conditions for SJC Employees as laid out in Appendix 2 of the report, with the reduction of the Pay Protection period from five years to three years but with the commitment to review this aspect in the light of developing legal advice.
2. Council will fund the budgetary shortfall for the current financial year as outlined in this Motion and make budgetary provision within budgets for future years along with other burdens.
3. 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.
4. In the event of a Collective Agreement having been reached with the trades unions, Council agrees to:-
 - Make arrangements for the termination of all existing Bonus Schemes with effect from 31 October 2008.
 - A planned implementation date of 1 November 2008, at the rates of pay effective from 1 April 08.
 - To make payment of backpay to all relevant employees to the legal limit as soon as possible.
5. In the event of a Collective Agreement not being able to be reached with the trades unions, Council agrees to:-
 - Termination of Bonus Schemes at 28 February 2009

- Whether by individual agreement or by imposition, an implementation date of 1 March 2009 under the same Terms as paragraph 1 of these Recommendations.
- Compromise Agreements are to be paid at the rate of 100%.
- Pay Goodwill Payments at the highest level commensurate with prudence and affordability. The Chief Executive is requested to bring forward a report to Council within four months following a comprehensive options appraisal. Rates will be agreed by Council following consideration of the Chief Executive's recommendations.

ADJOURNMENT

After hearing Councillor Black, the Council agreed to adjourn for a short period to allow Members to consider the terms of the motion and the amendment.

The meeting reconvened at 7.55 p.m. with all those Members shown on the sederunt in attendance with the exception of Councillors J. McColl, R. McColl and Millar.

Following debate, the Council agreed to proceed by way of a Roll Call Vote.

On a vote being taken, 8 Members voted for the amendment (namely Councillors Black, Bolland, Bootland, Calvert, McBride, McGlinchey, McNair and Rooney); and 8 for the motion (namely Provost Agnew, Councillors Brown, Finn, Hendrie, J. McElhill, C. McLaughlin, Robertson and Smillie).

There being an equality of votes Provost Agnew used his casting vote in favour of the motion which was accordingly declared carried.

Note: A copy of the revised terms and conditions, as amended to include the proposals contained with the above motion by Councillor Robertson, are shown as the Appendix to these minutes.

The meeting closed at 8.45 p.m.

**Revised Terms & Conditions
For SCJ Employees**

Working Week:	Service hours between 7a.m. and 9 p.m. Monday to Sunday. Standard working week of 37 hours.
Working Time:	Existing working hours and working patterns will remain unaltered.
Week-end Working:	There will be no enhancement paid to staff required to work Saturdays and/or Sundays as part of the normal pattern of their standard working week.
Paid Lunch Breaks:	There will be an unpaid meal break of at least 30 minutes in work days of 6 hours or more duration.
Responsibility Allowance:	Individual will be paid Acting Up for the rate of job or % thereof from day 1.
Overtime Rates:	Over 37 hours paid at time and a half. Over 48 hours paid at double time. Overtime on Public Holidays paid at double time.
Alternating/rotating Shift Allowance:	10%
Sleep-in Allowance:	£31.86 a night to cover the sleeping in requirement and up to half an hour's call out per night.
Standby & Call Out Payments:	To be harmonized at national rate.
Irregular Hours/Unsocial Hours:	Employees working an average of 8 hours outside the period 1½ hours before and/or 1½ hours after the normal working hours (i.e. outwith core working hours of 7.00a.m. – 9.00p.m.) Mon-Sun will be paid an out of hour's allowance of 10%.
Night Shift Allowance:	Paid at time and a third.
Employees will have an entitlement to one enhancement only and cannot receive an enhancement on an already enhanced rate.	
Public Holidays:	8 fixed days across all services. 2 x Christmas 2 x New Year Easter Monday May Day Holiday Glasgow Fair Monday September Weekend Monday

	Annual Leave would increase by 4 days
Public Holiday Allowance:	Double Time for all hours worked + 1 day in lieu.
Salary Frequency:	To be reviewed on implementation of single status.
Bonus:	Removal of non-measured bonus payments from 28 February 2009.
Pay Protection:	3 Years Pay Protection on a cash conserved basis.
Notice Period:	1 week for posts in Grade 1 or 2 4 weeks for all posts Grade 3 to Grade 7 8 weeks for all other posts covered by agreement
The Council will continue to be required to give employees at least one week's notice of termination of employment for each year of service up to a maximum of 12 weeks i.e. compliance with employees' minimum statutory entitlements.	