

WEST DUNBARTONSHIRE COUNCIL

Report by Chief Executive

Council Meeting – 25 June 2008

Subject: Proposals for Implementation of the Single Status Agreement

1. Purpose

1.1 The purpose of this report is to:

- Provide an update on the decision taken by Council at the Special Meeting on 14th May 2008 in relation to implementation of the Single Status Agreement.
- Highlight the significant financial implications associated with the Council decision
- Identify key risks in relation to the continued delivery of Best Value and affordable services including the potential impact on staffing levels resulting directly from the proposed changes to Terms & Conditions of Service.

2. Background

2.1 Following agreement by Council at a Special Meeting on 14th May 2008 Officers were instructed to put in place the following summary of arrangements for implementation of the Single Status Agreement:

2.2 Terms and Conditions of Service

2.2.1 Harmonisation of Terms and Conditions of Service at the highest rate as requested by the Trade Unions, recognising the requirement for an Equality Impact Assessment.

Specific reference was made to paragraph 3.3.8 of the report submitted to Council which indicated harmonisation of existing terms and conditions at the current highest rates and extending these provisions to staff not currently in receipt of such allowances would cost an additional £2.67m which could not be accommodated within departmental budget provision on a recurring basis.

The position was further clarified by the Director of Corporate Services at the Council Meeting of 14 May 2008 who indicated that the £2.67m costs quoted in paragraph 3.3.8 of the report were indicative costs associated with applying new pay scales to existing terms and conditions provisions and that to 'harmonise existing terms and conditions at the highest rate as requested by the Trade Unions' as

stated in the proposed amendment would incur significant additional costs which were not provided for. Members were reminded of the need to be mindful of their duty to ensure Best Value in reaching any decision and the potential for further scrutiny of decisions by Audit Scotland.

2.3 Backdating and Compromise Agreements

2.3.1 Revised pay scales would be backdated in full to 1st April 2006 thereby removing the need to enter into further Compromise Agreements.

2.4 Detriment

2.4.1 The protection period would be extended to 30th November 2013 and therefore assuming an implementation date of 1 November 2008 would be for a period of 5 years. In view of the Council's commitment to addressing detriment a full progress report would be brought back to Council in May 2011 outlining successes and any outstanding issues.

In addition Council agreed to:

- Make arrangements for the termination of all existing bonus schemes with effect from 31st October 2008
- Invite the Trade Unions to respond to the improved package of proposals by 31st August 2008
- A planned implementation date of 1st November 2008

Council is asked to note that the expiry of a protection period of 5 years from 1 November 2008 would be 31st October 2013 and not 30th November 2013 as stated in the amendment agreed by Council.

2.5 As the arrangements proposed and subsequently discussed and agreed by Council differed significantly from the recommendations outlined in the report submitted by Officers, and as such were not fully costed or accounted for in terms of budget provision, the Chief Executive reminded Members at the meeting of 14 May 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.

2.6 At the Council meeting of 28 May Council noted that clarification on the meaning of "highest rate" had been sought from Councillor Bootland and thereafter the Trades Unions. The Chief Executive informed the Council that based on the clarification provided, it was estimated that the cost of implementing this decision would be an additional £5 million per annum (approx) for which there was no budget provision.

3. Progress to date

3.1 Terms and Conditions

3.1.1 Following the decision taken by Council on 14 May 2008 Officers have sought clarification on the amendment agreed and approached Trades Unions with a view to establishing what was meant by harmonising Terms and Conditions at the highest rate. Subsequently a joint Trade Union and management working group has been established to ensure greater clarity is provided in relation to the exact nature of the terms and conditions which are to be harmonised and at what level. The difficulty for the Council is that it currently applies a myriad of conditions across services that draw from a range of sources including:

- Manual Workers Scheme of Pay and Conditions (Green Book)
- APT & C Scheme of Pay and Conditions
- Specific Conditions for Nursery Nurses and Residential Workers
- Strathclyde Regional Council Scheme of Pay and Conditions (Blue Book)
- Dumbarton District Scheme of Pay and Conditions
- Clydebank District Scheme of Pay and Conditions
- Local Agreements e.g. within Social Work Services and Libraries
- Individual Contracts of Employment

It should be noted that while some elements of Conditions of Service have been harmonised within West Dunbartonshire Council the majority of Single Status employees remain under the terms and conditions of the predecessor authorities or are employed on agreed contractual variations to these.

3.1.2 In determining what is meant by the “highest”, consideration requires to be given to whether or not this means the highest enhancement currently paid, the highest possible enhancement across the range of terms and conditions, or the highest most frequently occurring enhancement (the mode). It must also be recognised that a critical component in addressing equal pay was to ensure the consistent application of terms and conditions across the Council and as a consequence harmonising to the highest rate will extend the provision of enhanced terms and conditions to large groups of staff who are currently not in receipt of such allowances under existing contracts of employment.

3.1.3 Initial costings associated with uplifting terms and conditions beyond that indicated in the proposal put to Council by Officers are estimated to be in the region of £8.83m per annum. The cost of existing conditions came to £4.14m and this expenditure is assumed to be

contained within existing budgets. No budget provision has been set aside for the estimated additional £4.69m. Appendix 1 contains a cost breakdown by department based on core terms & conditions.

- 3.1.4** On agreement with the Trade Unions as to what is meant by harmonisation at the highest rate further work will be carried out in relation to the costings. It should also be noted that the employee groups who gain most significantly from the extension of enhanced terms and conditions i.e. the majority of staff within Social Work Services are among those who are already set to gain significantly from the Pay Modernisation process with base pay increases between 13% and 41%.
- 3.1.5** The Trade Unions have indicated that within the working group they will not necessarily be looking to harmonise at the highest possible rate but will be looking to maintain what was already harmonised between manual and APT&C staff, and seek harmonisation where there are differences at the higher rate. They have also indicated that there are areas on which they would not be prepared to move and this would include the existing national provision in relation to weekend working currently not paid to the majority of employees within Social Work & Health working weekends as part of local arrangements. Details of the proposed % salary increases for key employee groups within Social Work and Health are detailed as Appendix 2.
- 3.1.6** External Benchmarking with neighbouring Local Authorities (East Dunbartonshire, Argyll & Bute, Inverclyde and Renfrewshire) and comparisons across Scotland highlight the potential for West Dunbartonshire Council to have one of the most costly sets of terms and conditions in Local Government in Scotland. While it should be acknowledged that this may make the Council more attractive from a recruitment and retention perspective there is however the risk that there is a much higher cost associated with the provision of services. This will not support the Council in meeting its requirements to ensure Best Value, fully address the efficient government agenda or to continue delivery of affordable services. Many of the nationally agreed terms & conditions relating to enhancements, irregular working and overtime payments have not been updated since the Single Status Agreement of 1999 and do not reflect modern service delivery needs or equality legislation. All local authorities that have implemented Single Status by agreement or imposition have moved away from the former national conditions of service in order to reflect modern service delivery requirements, ensure Best Value and to maintain staffing levels while retaining jobs in house.

3.2 Equality Impact Assessment

- 3.2.1** The guidance of the Equalities and Human Rights Commission (formally the Equal Opportunities Commission) advises that terms and conditions of employment should:-

- provide equality of access to allowances and enhancements,
- be non-discriminatory in terms of levels of allowances and enhancements,
- not undermine the pay equality delivered by the new grading and pay structure by causing gender gaps in total pay,
- ensure pay policy, procedure and practice is free from gender bias.

3.2.2 In harmonising terms of conditions to the highest rate there exists the potential to widen the current gender pay gap particularly where employee groups do not have the opportunity to access enhancements to pay. Equality is not just about letting everyone have equal access to pay enhancements but how that actually works in practice e.g. female workers may have no opportunity to get overtime payments on Sunday while predominantly male dominated jobs have potential to receive such overtime payments. Any proposal agreed as part of a collective agreement would require to undergo an equality impact assessment, however until a final proposal is reached in relation to terms & conditions of service this work will be unable to commence. Should the proposals not satisfy Equal Pay legislation the Council will not have fulfilled its statutory obligations and may face enforcement action from the Equality and Human Rights Commission.

3.3 Backdating

3.3.1 Council should note that as detailed in the report to Council of 14th May 2008 there is no legal obligation to backdate pay. The Council must 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 and satisfy any external audit requirements. The challenge for the Council is to demonstrate justification of expenditure of public money on this scale when there is no legal requirement and it does not protect them sufficiently from ongoing tribunal claims.

3.3.2 The decision taken by Council on 14th May 2008 will not entirely remove the potential risk of future equal pay claims from the employee groups who had previously entered into compromise agreements and by not securing further compromise agreements remains exposed to litigation.

3.4 Detriment

3.4.1 The agreed 5 year protection agreed by Council is one of the highest protection periods agreed within any Scottish Local Authority and considerably extends the nationally agreed 3 year protection period. While there is no current case law to determine the validity of this protection period in relation to equality legislation the Council may still be exposed to legal challenge. In addition the Council's agreed position

in relation to detriment may be challenged under the equality requirements of Best Value legislation.

3.4.2 Should the implementation date of 1 November 2008 be delayed then the expiry of the 5-year protection period would require to be extended accordingly.

3.5 Continued Consultation with Trade Unions

3.5.1 While Council has invited the Trade Unions to respond to the improved package by 31st August 2008 with a view to reaching a collective agreement it should be noted that any agreement reached will be dependent on TU membership voting yes to the new proposals.

3.5.2 It is hoped that the Trades Unions will recommend acceptance to their members however there can still be no guarantee of reaching a collective agreement until the conclusion of this process. Given the potential impact of the revised proposals on the Council's ability to continue to deliver services, the award of significantly high pay increases to a minority of employee groups and the ongoing issue of detriment for a small number of employees at the expiry of the protection period it may still be difficult for TU members to give the TU leadership a mandate to enter into a collective agreement. It should also be noted that while all three Trade Unions have indicated that they have the authority to sign a collective agreement within West Dunbartonshire experience in other councils has seen Trade Unions unable to commit to agreement given the fact that they may remain vulnerable to litigation.

3.5.3 Paragraph 16 of the National Agreement on Pay and Conditions of Service (Single Status Agreement) states that "in implementing the provisions of the agreement the local parties should endeavour to minimise costs while ensuring service delivery standards are maintained". As the current proposals will undoubtedly impact on service delivery this may breach section 16 of the implementation agreement and advice will be sought from the Joint Secretaries on the implications of this in reaching a collective agreement.

3.5.4 Trade Unions have expressed concern about their ability to respond to the improved package by 31st August 2008 and Council should note that if this date cannot be achieved it is likely that the agreed implementation date of 1 November 2008 will require to be moved to a later date.

3.5.5 In the event that a collective agreement cannot be reached the Council would still require to consider imposition through the process of dismissal and re-engagement. This would require a minimum timescale of 4 months from the date of any such decision.

4. Best Value Implications

- 4.1** As part of the provisions of the Local Government Scotland Act 2003 – Best Value Guidance Council has a responsibility for the sound management of resources, including employees, contractual arrangements, ICT, land and property and financial resources – keeping a considered and appropriate balance between cost, quality and price. Increased costs relating to terms and conditions of service will have direct implications for many frontline services and their ability to demonstrate Best Value. The Council must be satisfied that 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 have been met and that justification of expenditure of public money on this scale can be demonstrated.
- 4.2** Many front line service delivery models have been developed to meet the requirements of Best Value and competitive service delivery. Services such as Home Care, Residential Services, Sheltered Housing, Leisure and many other services will be at risk with increased staffing costs having severe implications on their continued and future viability. Should services not remain competitive excessive staffing costs may prove unattractive for other providers to take on given current TUPE regulations. This may result in Council being unable to deliver services or be burdened with delivering statutory services at a prohibitive cost.
- 4.3** As Council will be aware all decision making will be closely scrutinised by Audit Scotland particularly in relation to concerns expressed previously in the Best Value Audit report in relation to the financial decision making processes within West Dunbartonshire Council.

5. Costs associated with Terms & Conditions of Service

- 5.1** Costs associated with harmonising the core Terms & Conditions of Service at the highest level are estimated to be £8.83m per annum. A departmental breakdown is detailed in Appendix 1. It must be noted that until a final proposal has been agreed with Trades Unions, Officers will be unable to confirm actual costs of harmonising Terms & Conditions of Service although there exists the possibility that costs may significantly increase when other non core terms and conditions are taken into consideration.
- 5.2** Current estimates would indicate that the implications of harmonising Terms & Conditions of Service based on preliminary discussions with Trade Unions will result in a minimum additional unbudgeted cost in the region of £4.69m on a recurring annualised basis. If confirmed in August this position would require an immediate budget review to address the potential shortfall of £1.95m during 2008/2009 and identify an equivalent amount of efficiencies and/or service cuts.

6. Other Issues

6.1 Personnel

6.1.1 The estimated unbudgeted provision of £4.69m will undoubtedly have an impact on service provision and in staffing terms would equate to approximately 200 FTE jobs.

6.2 Legal

6.2.1 Following clarification by Trades Unions on the content of the revised proposal in relation to terms and conditions of service an Equality Impact Assessment will require to be undertaken to ensure that any proposal meets current equality legislation.

6.3 Financial

6.3.1 Current estimated costs to harmonise terms and conditions of service at the highest level as detailed in Appendix 1 are £8.83m per annum. This equates to additional costs of £1.95m in the current year and £4.69m, inflation adjusted, on a recurring basis.

6.3.2 Further additional costs will be incurred through the outcome of successful appeals, backdated to 2006, and any strategies put in place to mitigate detriment. These cannot be fully determined at this stage but would require to be included in future budget provision.

6.3.3 At the time of writing this report, the financial results for 2007/2008 have still to be finalised. However, the forecast balances at March 2008 are:-

General Fund	£1.799m
HRA	<u>£0.501m</u>
Total	<u>£2.3m</u>

6.3.4 The recommended prudential reserve level based on 2008/2009 budgets are:-

General Fund	£4.727m
HRA	<u>£0.620m</u>
Total	<u>£5.347m</u>

6.3.5 The balances available are 43% of the recommended prudential level therefore officers would strongly advise that the additional costs highlighted in paragraph 5.2 would require an immediate budget review during 2008/2009 to identify an equivalent amount of efficiency savings and service cuts.

6.3.6 The key financial risks associated with the proposed implementation arrangements relate to the unbudgeted costs associated with the implementation of terms and conditions at the highest level and the impact of this on future service delivery. The Council's external Auditors, KPMG, in the Audit Plan Overview presented to Council in February 2008 highlighted the risks associated with continued delays in implementation, and signalled their intention to review the Council's valuation and treatment of single status and equal pay costs. As part of this scrutiny Council will undoubtedly require to provide further detail on the plans in place to address the budget shortfall which has not yet been accounted for in the Single Status provision.

6.4 Risks

6.4.1 Following the decision taken at the Special Council Meeting of 14th May 2008 to "invite the Trade Unions to respond to the improved package of proposals by 31st August 2008" it must be noted that does not allow members to be advised of the content, potential costs and consequences of any revised proposal that Trade Unions may put to their members.

6.4.2 Trade Unions have indicated that should terms and conditions of service be harmonised to the highest level that they would recommend acceptance of a revised proposal to their members, however, in light of the serious implications that such a proposal may have in relation to service delivery there is no guarantee that a collective agreement can be reached.

6.4.3 While backdating of increases to base pay to April 2006 will partially address the Council's vulnerability to future litigation relating to equal pay it will not remove this risk entirely.

6.4.4 Harmonising terms and conditions of service to the highest level will result in many employees currently contracted on all inclusive rates of pay receiving additional payments in relation to weekend working and shift allowance. This will directly impact on service delivery and undermine the Council's ability to demonstrate Best Value.

6.4.5 Following the recent Best Value Audit report the Council remains under close scrutiny from Audit Scotland and must be able to demonstrate that the decision making process is based upon sound financial advice and demonstrates Best Value.

6.4.6 If the Council does not review the 2008/2009 budget to take appropriate corrective action, an overspend of £1.95m will be incurred. Members are asked to note that the Council is under an obligation to address any potential overspend of this magnitude, failing which, action will almost inevitably be taken by external Auditors.

6.4.7 Many services will be at risk with increased staffing costs having severe implications on their continued viability, particularly in Social Work services, for example, Home Care, Residential Units, etc. This will result in the Council being unable to deliver services or be burdened with delivering statutory services at a prohibitive cost.

7. Conclusions

7.1 While proposals agreed at the Special Council Meeting of 14 May should place Council in a better position to reach a collective agreement in relation to the local implementation of the Single Status Agreement and, subject to an equality impact assessment, achieve pay equality, there remains a concern that the harmonisation of terms and conditions and their extension to all employee groups will have an impact on our future ability to deliver in-house services.

8. Recommendations

8.1 The Council is requested to note the contents of the report and identify how Officers should proceed with establishing proposals for:

- Financing the projected budget shortfall of £1.95m in the remainder of the current financial year 2008/9.
- Financing the projected future financial burden of £4.69m, inflation adjusted, on a recurring basis.

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David McMillan
Chief Executive
Date 19 June 2008

Person to Contact:	Tricia O'Neill Head of HR &OD Telephone: 01389 737584 tricia.o'neill@west-dunbarton.gov.uk Paul McGowan Pay Modernisation Manager Telephone: 01389 737645 paul.mcgowan@west-dunbarton.gov.uk
Appendix 1:	Costs of Harmonising terms and conditions at highest rate
Appendix 2:	Examples of potential % pay increases within Social Work
Background Papers:	WDC Council Report 14 May 2008,

Minute of WDC Council Meeting 14 May 2008,
Minute of WDC Council Meeting 28 May 2008

Wards Affected: N/A