

WEST DUNBARTONSHIRE COUNCIL

Report by Chief Executive

Special Council Meeting – 19 August 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 discussions with the Trade Unions and the revised costings associated with harmonisation of terms and conditions of employment as indicated in the Council decision of 14th May 2008
- Highlight key risks in relation to the delivery of Best Value and affordable services including impact on staffing levels
- Highlight 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
- Present options to address shortfall in funding to support implementation
- Review proposals for implementation in light of ongoing discussions with Trade Unions and recent legal developments
- Agree process for implementation of Single Status Agreement

2. Background

2.1 Following the decision taken 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:

- An improved package of terms and conditions of employment
- Implementation of pay model and associated backdating of revised pay scales to 1st April 2006
- Termination of existing bonus schemes with effect from 31st October 2008
- Extension of protection period from 3 to 5 years
- Planned implementation date of 1st November 2008

It was recognised that the proposed improvements would however still require to undergo an Equality Impact Assessment and the Trade

Unions were invited to make a formal response to these proposals by 31st August 2008.

- 2.2** As the arrangements proposed and subsequently agreed by Council on 14th May 2008 differed significantly from the proposal submitted by Officers, and as such were not fully costed or accounted for in terms of budget provision, a further report was made to Council on 25th June 2008. This report outlined key concerns over the ability of the authority to deliver the enhanced Terms and Conditions package agreed by Members. The projected costs of this proposed package amounted to an additional unbudgeted sum of £1.95M in the current financial year (2008/9) and a projected future financial burden of £4.69M required annually on top of the £21.3 million which has already been set aside to address implementation and backdate increases to contractual base pay. This sum also included a contingency for retraining costs as part of the strategy for mitigating the number of red circled employees and also for addressing any appeals that may arise. This provision will require to be reviewed as circumstances develop.
- 2.3** At the meeting on 25 June 2008, the Council agreed to call on the Labour Group to comply with the findings of the report and identify where the current in year implementation shortfall of £1.95M is to be drawn from and where the £4.69M recurring costs are to be met from. In addition, the Council agreed to instruct the Chief Executive to contact KPMG to bring forward their planned review of the evaluation and treatment of Single Status and equal pay costs.
- 2.4** The Chief Executive advised all Elected Members in his letter of 1 July 2008 (Appendix 1) that the Council decision could not be implemented unless the Council identified how the projected budget shortfall could be met.
- 2.5** The Chief Executive, Executive Director of Corporate Services and the Head of Human Resources & Organisational Development met with SNP and Labour Councillors on 10 and 11 July to discuss the critical position the Council now faces with regard to funding, the potential impact on staffing levels and future competitiveness of services.
- 2.6** As a result of discussions, the Chief Executive advised that he would ask the Provost to convene a Special Council Meeting in order to reconsider the Single Status agreement and the earlier decisions which had been taken by Council. In the meantime, further discussions would take place with Leaders of the two main political groups and the Trade Unions to identify ways of closing the budget shortfall of £6.64M as identified in the report to Council on 25 June 2008.
- 2.7** Under the Local Government in Scotland Act 2003 Councils have a legislative requirement to ensure Best Value and therefore cannot incur a resource commitment without having identified the budget to achieve this. The Audit Scotland Report 2007 highlighted the requirement for the Council to embed

the principles of Best Value within the organisation and improve leadership of the Best Value agenda. In addition Members must ensure that their decision-making processes are open and transparent, with the council business managed in a manner that supports accountability and where the reasoning which underpins the decisions of the council is clearly documented and traceable.

- 2.8** At the Council Meeting of 25th June 2008 The Legal Officer advised the Council that it did have an obligation to address the predicted shortfall in the budget in terms of Best Value guidance and the sound management of its finances. He also pointed out that the Council's decision with regard to the implementation of the Single Status Agreement was still subject to an independent Equality Impact Assessment.
- 2.9** Following discussions with the Council's external auditors KPMG it was confirmed that implementation based on the costs highlighted to Council on 25th June 2008 would result in clear challenges to the Council to be able to demonstrate Best Value in relation to the cost of delivering services to the council taxpayers. KPMG further advised that Council might wish to investigate the effect that higher pension contribution rates may have on the overall cost to the Council.
- 2.10** Since the previous Council reports there have been significant developments in case law during July in relation to equal pay which must be taken into account in any decision reached by Council. These include the judgement in the Allen v GMB case where the Appeal Court ruled that the GMB union discriminated against female workers at Middlesbrough Borough Council when it prioritised pay protection for men over obtaining back-pay for female workers and the judgement in the Redcar & Cleveland Borough Council v Bainbridge and others, and Middlesbrough Borough Council v Surtee and others where transitional arrangements for protecting male workers' pay, even while measures were put in place to bring comparable female workers' pay up to the same level, were discriminatory. These rulings are likely to have a significant impact on current and potential tribunal claims and increase the Council's vulnerability in this regard.
- 2.11** It is important that Members receive the fullest possible advice in advance of the Council Meeting, therefore it is requested that they direct any relevant questions, queries, etc to officers in advance of the meeting, thus allowing the opportunity to carry out appropriate research, obtain costings, consider legal ramifications, etc of any proposals which may be put forward by Members.
- 2.12** There is a distinct possibility that some options may be discussed at the Council Meeting despite the fact that these options may be in breach of statutory codes or, indeed, legislation itself. Elected Members are asked to be mindful of proposing Motions or amendments which may result in the Council breaching any code or

legislation. All Elected Members are urged, in the strongest possible terms, to discuss any proposals they have with officers in advance of the Council Meeting. These discussions will be confidential but they will allow officers to obtain and provide relevant advice to Elected Members on the financial implications of any proposals being put forward and officers will also be able to provide advice on whether or not the proposal may be in breach of any guidance, code or statute.

- 2.13** It is strongly recommended that Elected Members avail themselves of this opportunity in advance of the Council Meeting. It may not be possible to provide detailed, costed and up to date information on the evening itself. The Accounts Commission did recently criticise the Council because it felt that the Council's decision making process failed, on occasion, to be open and transparent. The Council was reminded that Council business requires to be managed in a manner which supports accountability and where the reasoning which underpins decision making is clearly documented and traceable. The Accounts Commission has pointed out that full financial consequences of decisions should be assessed before major financial decisions are taken or commitments entered into.

3. Progress to date

3.1 Terms and Conditions

- 3.1.1** A joint Trade Union and management working group was established to ensure greater clarity was provided in relation to the exact nature of the terms and conditions which were to be harmonised and at what level. The Trade Unions presented a set of proposals to Management on 4th July 2008, as requested by Council on 14th May 2008, and through discussions these were adjusted to address key concerns in relation to affordability and flexibility in modernising working practices.

The revised Trade Union proposals are outlined in Appendix 2 and reflect the following changes to the final management proposals presented to Council on 14th May 2008:

Condition	From: (Original Management Proposal)	To: (Trade Union Proposal)
Core working Hours	7am – 9pm Mon-Sun	8am – 8pm Mon - Fri
Nightshift	Time plus 1/5 th	Time plus 1/3rd
Work outside core hours	Variable 10-20% for alternating shifts and irregular hours	10% salary enhancement subject to qualifying criteria
Weekends working	No additional payment	10% enhancement (as part of 5/7, 6/7 roster)

Overtime payments	Time and a half	Sunday – Double time All other times – Time and a half
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While the proposals move away from a position of 'harmonisation at the highest level' as detailed in the report submitted to Council on 25th June 2008 and significantly reduce costs in relation to core working hours, weekend working, and costs associated with multiple enhancements, they will still result in unbudgeted costs of £2.14M. No changes were proposed in relation to the reduction of fixed public holidays or in relation to overtime payments at double time for Sunday working and rest day.

3.2 Equality Impact Assessment

3.2.1 The revised proposals as detailed in Appendix 2 have undergone an independent Equality Impact Assessment, conducted by J. Couper who was previously commissioned to undertake work on the original Council offer. The Assessment has highlighted concerns in relation to the following areas:

3.2.2 Terms and Conditions - The Trade Union proposal in relation to Terms and Conditions may appear to support the reduction of inequalities for female staff but that is not necessarily the case. In some areas this proposal would simply maintain existing areas of long standing inequality and would have the effect of widening rather than narrowing the gender pay gap. There are concerns that the proposals, particularly those related to overtime payments and payment for working public holidays, favour traditional male occupations which are generally full time roles and are to the disadvantage of female staff the majority of whom work part time hours. They would appear to suffer direct discrimination arising from the widening gap in overall payment levels due to their lower base pay, and indirect discrimination due to their inability to access in practice some of these enhanced payments.

3.2.3 The Pay Protection proposal to extend pay protection to a 5 year period is in excess of the provisions of the SJC agreement, and likely to have significant financial implications for the Council in light of the recent decisions of the Court of Appeal in the Redcar & Cleveland case. Until such times as detailed legal advice is made available from the Employers' Secretariat on the full implications of the judgement the independent assessor recommends that it would be advisable to remain within the parameters of the national agreement, and to begin the task of costing the potential effects.

3.2.4 In light of the reasons stated above, and the potential for challenge to the proposals, the external assessor is unable to endorse this set of proposed terms and conditions of service as either:

- addressing previous inequalities

- or;
- being non-discriminatory.

3.2.5 The Trades Unions have also previously indicated that their 'technical experts' would also require to assess any proposals in relation to the implementation of the Single Status Agreement to ensure that any proposals agreed through a Collective Agreement would meet the requirements of current Equal Pay legislation, remove direct or indirect discrimination and demonstrate equality of access to all aspects of remuneration.

3.3 External Benchmarking with neighbouring Local Authorities

3.3.1 The revised proposals have also been compared to those implemented/proposed in the neighbouring authorities of Argyll & Bute, East Dunbartonshire, North Lanarkshire, Renfrewshire and Inverclyde. A summary of details are attached as Appendix 4. While some parts of the proposals put forward by Trades Unions reflect those of neighbouring authorities, significant differences remain in relation to double time payments in respect of overtime working on a Sunday, standard working hours and in relation to the number of fixed public holidays, all of which add significantly to the cost of implementation. In addition significant variations in terms and conditions of service will directly impact on the competitiveness of in house services on comparison with neighbouring authorities.

3.3.2 None of the neighbouring authorities have extended the agreed national provision of 3 years protection as part of implementation arrangements.

4. Options to address budget shortfall

4.1 The implementation proposals submitted by management to Council on 14th May 2008 would result in an estimated 8% increase per annum to the Council's paybill and put in place an equality based pay and grading structure. While this represents a considerable increase to the overall paybill the increases in predominantly low paid female jobs are significantly higher than 8%.

4.2 Notwithstanding the issues highlighted by the Equality Impact Assessment the costs associated with the proposal put forward by the Trades Unions as detailed in Appendix 3 are estimated to be £6.28M. As current budget provision in relation to terms and conditions of employment is estimated to be £4.14M the proposals if adopted would result in a budget shortfall of £2.14M per annum with a budget shortfall in the current financial year of £0.9M based on implementation at 1st November 2008.

4.3 As the Council would breach best value requirements by incurring expenditure without identifying a funding source a range of measures would require to be put in place to address the budget shortfall in the current and future years. Measures could include the following:

4.4 Adjustments to the package of Terms and Conditions

4.4.1 It must be acknowledged that through the process of clarification the Trade Unions have been flexible in securing the best deal possible for their members while recognising the issues associated with affordability and as a consequence there has been movement from the position of 'harmonisation at the highest level' in several aspects of the terms and conditions package. Nonetheless these still vary considerably from those implemented in neighbouring authorities and it is likely that this will hinder the ability of the Council to demonstrate Best Value. Therefore in considering the range of options to be put in place to ensure affordability for now and the future it remains open to Council to consider adjustments to the package of terms and conditions.

4.4.2 Part 2 of the National Agreement states, "Councils will ensure that discriminatory practices are identified and removed, and non-discriminatory practices introduced in all areas of employment..." The National Agreement also advises that the parties "...endeavour to minimise costs whilst ensuring service delivery standards are maintained."

4.4.3 Amendments to replace double time overtime enhancements at time and a half or increasing the qualifying threshold for double time overtime enhancements to 48 hours would reduce proposed costs by an estimated £106,000 per annum.

4.4.4 Reduction in the number of fixed public holidays from 12 to 8 with 4 days added to annual leave entitlement (as implemented in neighbouring authorities) would also reduce proposed costs by £274,000 per annum through a decrease in premium payments while enhancing service delivery to the residents of West Dunbartonshire Council.

4.4.5 Further amendments to the proposals in relation to Service Hours to reflect a standard working week of Monday – Sunday 7.00 a.m. – 10 p.m. would reduce costs by £224,000 per annum.

4.4.6 Further amendments to proposals in relation to Night Shift payments to reflect a 20% enhancement would reduce estimated costs by £198,000 per annum.

4.5 Proposals relating to back dating of pay

4.5.1 In the absence of a Collective Agreement backdated to 2006 there is no contractual entitlement to backpay as individuals did not actually change their Contract of Employment however Council signalled its intention to meet this commitment at the Council Meeting on 14th May. Given recent case law developments, the Council's best value duties and the general fiduciary duty incumbent on local authorities, the Council requires to review this position. This would result in a cost reduction of £21.1M in the budget set aside for implementation at 1 April 2006. However, as a consequence Council would require to revisit expired compromise agreements and offer compensatory payments with an estimated cost of £7.0M. In addition it is recognised that Council may still wish to acknowledge the goodwill of staff in implementing the Single Status Agreement and therefore make some form of payment to reflect the realignment of terms and conditions of employment where staff voluntarily accept the changes. To proceed on this basis would significantly reduce risk in relation to future litigation in respect of Equal Pay.

4.6 Backdating of payments to ex – employees.

4.6.1 As legal advice indicates that backpayments would be open to challenge and as there is no contractual responsibility to make payments to former employees no payments should be made to former employees. The impact of this will be assessed on an individual basis where former employees fall into the category of staff previously covered by compromise agreements who would be potentially eligible for a compensatory payment in this regard.

4.7 Reduction in overtime/ Reconfiguration of Services

4.7.1 While the majority of overtime paid within West Dunbartonshire Council is non contractual it is in some instances critical to maintaining service delivery. Savings could be accrued by the cessation of all non-essential overtime in the current and future years and by the reconfiguration of services to reduce the necessity to make overtime payments. This may result in an increase to staffing levels by way of a 'spend to save' approach to reducing overtime costs. A target to reduce costs to the value of £200,000 could be achieved by adopting this approach.

4.8 Remedial action currently in place to address budget shortfall

4.8.1 In order to take immediate action in relation to the current year (2008/09) arising from both this issue and from other budgetary pressures (e.g. energy costs) facing the Council, the Corporate Management Team have introduced a number of initial actions to offset the potential budgetary position.

- Vacancy Freeze on the filling of all non essential vacancies
- Spending restrictions on supplies and services and administration costs

It is anticipated that a saving of £750,000 will be achieved through these mechanisms.

4.8.2 Members are reminded that these actions repeat restrictions introduced during the last financial year (2007/08) and that they are also on top of the number of corporate savings and efficiencies applied during the budget process for the current year. Accordingly the financial benefit of these actions this time around may not be as effective in accruing savings.

4.8.3 In relation to addressing the financial position facing the Council for years 2009/10 and beyond, a financial overview covering both 2009/10 and 2010/11 will be presented to the Council on the 27 August. This report will identify a funding gap for both years, resulting from both Single Status and other issues that will require to be addressed by Council from a number of sources including:

- Implementation of a number of the actions within the budgetary statement approved by Council on the 14 February 2008
- Corporate efficiencies arising from the improvement and efficiency programme
- Service reductions and savings Options
- Increased Sales, Fees and Charges

4.9 A further option would be for Council to fund the increased cost of £2.14M by increasing Council Tax levels. In doing so, the Council would not be eligible to receive the additional funding of £2.416M for 2009/2010 allocated by the Scottish Government in return for a standstill Council Tax. The following table outlines the potential impact to Council Tax levels of this action, on an incremental base, to account for any reduction to the total of £2.14M arising from the proposals within paragraph 4.4.

Reduction to AEF	Additional Cost	Total Shortfall	% Inc Council Tax	Req Band D	Band D Increase	% Increase
£	£	£	£	£	£	
0	0	0	38,508,090	1163	0	0.00
2,416,000	2,140,000	4,556,000	43,064,090	1301	138	11.87
2,416,000	1,890,000	4,306,000	42,814,090	1293	130	11.18
2,416,000	1,640,000	4,056,000	42,564,090	1285	122	10.49
2,416,000	1,390,000	3,806,000	42,314,090	1278	115	9.89
2,416,000	1,140,000	3,556,000	42,064,090	1270	107	9.20
2,416,000				1263	100	8.60

	890,00	3,306,000	41,814,090			
2,416,000	640,000	3,056,000	41,564,090	1255	92	7.91
2,416,000	390,000	2,806,000	41,314,090	1248	85	7.31

5. Best Value/Modernisation of Service Delivery

- 5.1** While current proposals in relation to the Terms and Conditions of Employment would require an additional £2.14M per annum to be secured to allow implementation to proceed consideration must also be given to the impact on services of additional employee costs and in particular terms and conditions of employment that prohibit the delivery of modern and flexible services to the residents of West Dunbartonshire.
- 5.2** In order to ensure that the Council's Best Value duties are complied with decisions to fund the shortfall in funding of the Trades Unions proposals in relation to Terms and Conditions of Employment would have to be made by Elected Members after considering the impact of any decision on efficiency, effectiveness, economy and equalities. In line with Audit Scotland / Accounts Commission comments on the Council's decision making processes, it is also essential that such a decision be taken only with as full as possible an understanding of the impact it will have on the Council's finances, Given the large sums of money involved, it is reasonable to expect a positive benefit to the Council in relation to the provision of modern Best Value services.
- 5.3** In identifying savings to fund increased costs associated with Terms and Conditions of service Council must ensure that efficiency savings made through initiatives such as the diagnostic pathways initiative are not utilised to fund enhancements to terms and conditions of service that may have a detrimental effect on Best Value service delivery
- 5.4** As concerns have previously been highlighted by Audit Scotland in relation to the Council's financial decision making processes, Council remains under increased scrutiny as part of continuing auditing arrangements within West Dunbartonshire Council.
- 5.5** 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. While the revised proposals reduce the cost burden in relation to continued service delivery from the levels reported to Council on 25 June 2008, 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.

5.6 Any proposals adopted in relation to terms and conditions of service, while demonstrating equality, must not constrain the development of modern and flexible services. As services are required to demonstrate competitiveness it is essential that management and Trade Unions work together to ensure that a responsive terms and conditions of employment package is adopted that will allow services to further develop and respond to the requirement to modernise.

6. Risks

6.1 West Dunbartonshire Council remains one of last Councils in Scotland to implement the Single Status Agreement. While this may invite comment on the strategic decision making processes from Audit Scotland the Council remains increasingly exposed not only from potential litigation from employees but also to possible enforcement action from the Equality and Human Rights Commission (EHRC). It is imperative that the Single Status Agreement is implemented without further delay.

6.2 Following the recent decision in the Allen v GMB tribunal case (16/7/2008) there exists a real possibility that Trades Unions will be advised not to enter into local Collective Agreements in respect of the Single Status Agreement making imposition the only realistic implementation route.

6.3 The current proposals will require to be adjusted in light of the Equality Impact Assessment and in the event that Council reaches a decision to adjust terms and conditions to reflect either this position or reduce costs then given that the Trade Unions have recently balloted their members on the current proposals it would be unlikely that they would enter into a collective agreement on adjusted terms. At the very minimum they may decide to rebalot however there can be no assurance that they would recommend acceptance to their members.

6.4 While there is no consensus on the way ahead in respect of the implementation of the Single Status Agreement Council is unable to focus its staffing resources on its strategic aims and objectives to the benefit of the residents of West Dunbartonshire.

6.5 In the absence of further compromise agreements for the period April 2006 until implementation the Council remains highly exposed to litigation.

7 Implementation

7.1 Trade Union Consultative Ballot

7.1.2 The Joint Trades Unions undertook consultative ballots with their memberships in relation to the revised proposals on Terms and Conditions.

7.1.3 The Trade Unions have advised that a majority of their memberships have voted to accept the revised Trade Union proposals in respect of terms and conditions of employment. As these proposals had not been subject to an independent equality impact assessment prior to ballot it must however be noted that they do not fully meet the requirement to fulfil statutory obligations in respect of equal pay and do not remove indirect discrimination.

7.2 Collective Agreement

7.2.1 In order to implement the Single Status agreement within West Dunbartonshire Council individual contracts of employment will require to be varied. Variations to contracts of employment can be made either by collective agreement with recognised Trades Unions, agreement with individual employees or by imposition which would involve termination of existing contracts of employment and offer of re engagement on new conditions.

7.2.2 Given the outcome of the Equality Impact Assessment and the significant funding shortfall of £2.14M in the Trade Union proposal in relation to terms & conditions it is unlikely that a revised set of proposals on terms and conditions of service can be implemented by collective agreement. Recent case law may also prove prohibitive to a collective agreement being reached and any agreement reached may prove ineffective in protecting the Council from further legal challenge in respect of Equal Pay.

7.3 Allen v GMB

7.3.1 In the recent case Allen v GMB (Court of Appeal 16/7/2008) the Court of Appeal upheld an earlier Employment Tribunal decision that the GMB in recommending acceptance of a collective agreement had indirectly discriminated against its members. While each individual Trade Union must consider the implications of this decision it cannot be guaranteed that Trades Unions will enter into a collective agreement within West Dunbartonshire Council.

- 7.3.2** In light of recent case law developments the safest options in relation to the implementation of the Single Status Agreement as previously advised to Council would be variation of contract through either imposition or by individual acceptance of variations to contract.
- 7.4** In the event of a collective agreement not being reached, it will not be possible to implement at 1st November 2008. A minimum of 12 weeks notice would require to be served to terminate contracts of employment and re engage staff on new revised contracts of employment. In addition a sufficient lead in time would be required to invite staff to change their contract on a voluntary basis in the first instance and make appropriate adjustments to management practice and recording processes etc and to understand changes in terms of impact on services and individual employees. It is envisaged that a revised implementation date of 1st March 2009 would be required.

8. Other Issues

8.1 Personnel

- 8.1.1** In the absence of the implementation of the Single Status Agreement there exists much uncertainty within the workforce particularly in relation to the recruitment & retention of staff.
- 8.1.2** The revised proposals will incur an estimated unbudgeted provision of £2.14M and will undoubtedly have an impact on service provision and in staffing terms would equate to approximately 100 FTE jobs.

8.2 Legal

- 8.2.1** A number of significant legal problems restrict the Council's ability to implement the Council's decision of 14 May 2008 as amended by the decision of 25 June 2008. The issues are: -
- 8.2.2** Five year protection – while the Council's decision in May aimed to reduce the detriment to those who will suffer a wage drop, this arguably continues present pay inequalities for a further five years. In other words, the predominantly male groups of workers who went down at job evaluation will still be paid more for five years than the predominately female groups of workers who went up at job evaluation. The very recent (29 July 2008) Court of Appeal decision in Redcar and others v Bainbridge and others considered this issue. It states that authorities will have to either (a) pay the female groups the same as those who are protected (ie- pay them above their evaluated salary for the protection period) or (b) objectively justify why affected groups of women workers who did not suffer detriment are not placed on the same protected salary as similar groups of men workers. Although also subject to challenge, there are arguments that a three year protection period can be justified as part of the national single status agreement. A five year protection can now only be justified on the basis

that it was financially impossible to also pay the women such an increase. As the national agreement provides for three year preservation, and as other councils have opted for three year preservation, this Council could also have opted for three year preservation. Thus there is no realistic prospect of defending a five year protection based on financial necessity. Accordingly five year preservation is likely to be contrary to law insofar as it continues inequality and contravenes the Equal Pay Acts.

- 8.2.3** Collective Agreement - In light of the Allen v GMB case, the chances of securing a collective agreement with the unions are also very slim, particularly one involving a five year pay preservation. In this recent case, the courts confirmed that the GMB was itself responsible for discrimination by entering into a collective agreement with a council which prioritised pay protection over obtaining back pay for female workers. While fear of similar legal action is likely to make the unions cautious about entering into any collective agreement, one involving five year pay preservation would be particularly risky for them.
- 8.2.4** Backdating of increases -The combined effect of the Bainbridge and Allen cases and a five year pay protection is also likely to unravel the backdating proposals, as well as other terms and conditions which are more favourable than other comparable councils.
- 8.2.5** As mentioned, the effect of Allen v GMB is that the unions are now unlikely to conclude any collective agreement, let alone one involving five year preservation. Imposition of single status by way of new contracts would then be necessary. As new contracts would only start on, say 1 March 2009, they could not retrospectively alter pay prior to this. As such any extra payment prior to that date would not be backdating but would either be compensation to groups of female equal pay claimants (and should be secured by further compromise agreements) or a goodwill gesture to other staff.
- 8.2.6** In terms of Bainbridge, any five year pay protection will only be legitimate if it can be objectively justified on the basis that it is financially impossible to also pay the female groups the same as those who are protected. If the Council is offering more generous terms to its employees than other councils (eg – backdating to all employees, as well as the other terms and conditions detailed in section 4 of this report) then it will be nigh on impossible to demonstrate that the council did not have the money to pay the female workers. In other words, the money from these enhanced terms could have gone to the female workers.
- 8.2.7** The decision as it presently stands is also contrary to Section 1 of the Local Government Scotland Act 2003 which imposes a duty on local authorities to secure best value. It is also contrary to the guidance approved by Scottish Ministers under Section 2(1)(a) of the 2003 Act, which guidance “tells local authorities what they are expected to

demonstrate in fulfilment of the statutory duties which make up the best value regime provided by the Act". More specifically the Council's decision can be seen as being in breach of the following:-

- a) Section 1 of the 2003 Act requires the local authority to maintain an appropriate balance between quality of performance of its functions and the cost to the authority of that performance. In turn in maintaining that balance the authority shall have regard to efficiency, effectiveness, economy and equal opportunities. The guidance also requires "sound management of resources, making the best use of public resources including employees – keeping a considered and appropriate balance between cost quality and price". Insofar as (i) the terms and conditions proposed in May are significantly more expensive than neighbouring and comparable authorities and (ii) the funding of these has not been identified, there is no evidence to demonstrate that the Council has applied any such balance.

- As the five year protection now appears to be unlawful in light of recent court decisions, it is in breach of Chapter 8 of the guidance. Paragraph 3(d) requires that "employment policies are fully in line with their commitment to equal opportunities". Paragraph 4 requires "that there is a programme of equal pay audits and equal pay reviews of the workforce to ensure that pay and rewards systems meet the legislative requirements and any existing areas of discriminatory practice are being addressed".

- Chapter 4 paragraph 13(d) of the guidance requires that "the full financial consequences of decisions are assessed at an appropriate time, before major financial decisions are taken or commitments entered into". In the absence of identified funding for such a major decision the Council would be in breach of this provision.

- Similarly the Code of Conduct for Councillors contains a general principle that "Accountability and Stewardship – you must ensure that the Council uses its resources prudently and in accordance with the law".

8.2.8 Accordingly the decision as it stands is open to legal challenge. In addition to the risk of legal challenge under the Equal Pay Acts, the Council's Auditors have a duty under Section 55 of the 2003 Act to consider the Council's compliance with Best Value. This can result in qualification of the local authority's accounts or action by the Accounts Commission following a report by the Controller of Audit. Similarly the breach of the Councillors Code could result in a reference to the Standards Commission for Scotland. Both have similar powers which can result in disqualification of Councillors. Any such action would represent a significant and unfortunate backwards step in the Council's improvement journey following the previous audit.

8.2.9 The previous decision cannot be implemented as no funding has yet been identified and officers do not have delegated powers to make the cuts or savings required to fund the decision. The decision as it stands is also imprecise in parts (such as the reference to highest rates requested by the union, in the effect of backdating on compromise agreements, and the application of backdating to 'affected' workers).

8.2.10 A fresh decision requires to be taken. The previous decision was taken before significant developments in the law regarding pay protection and frustrated by an inability to implement it. In light of these factors, consideration of the matter afresh does not require suspension of standing orders.

8.3 Financial

8.3.1 The council's unaudited accounts for the year ending 31 March 2008 show an unallocated balance on the general fund of £2.277M which is 47 % of the Council's recommended prudential balance of £4.826M. In addition to single status, the Council is facing number of budgetary pressures within its 2008/09 budget and the Corporate Management Team has introduced a number of spending restrictions in-year to address this position. Paragraph 4.2 confirms that the revised budget shortfall arising out single status to be around £0.9M in the current year and £2.14M per annum thereafter. Paragraphs 4.4 to 4.9 identify a number of options to address this shortfall while maintaining current service delivery and providing Best Value to the residents of West Dunbartonshire.

9. Conclusions

9.1 While the Council decision of 14 May 2008 has significantly moved forward the Single Status Agenda in relation to agreement of a new equality proofed pay and grading model implementation cannot proceed on the basis of the current proposals for the following reasons:

- a) they do not meet the requirements of a successful equality impact assessment
- b) significant elements of the proposal may be regarded as contrary to law
- c) sufficient budget has not been identified to fund the proposals

9.2 In order to move implementation forward Council must therefore carefully consider the funding options contained within this report in order that a package of proposals can be put together to address the potential funding shortfall of £0.9M for 2008/09 and £2.14M per annum thereafter.

Recurring cost reduction options:

- Para 4.4.2 Overtime enhancements -£106,000
- Para 4.4.3 Fixed Public Holidays - £274,000
- Para 4.4.4 Service Hours - £224,000
- Para 4.4.5 Nightshift Payments - £198,000

Non-recurring cost reduction options:

- Para 4.7.1 Reduction in Overtime/Reconfiguration of Services - £200,000
- Para 4.9.1 Spending Restrictions - £750,000

9.3 Given the recent judgements in relation to equal pay Council must also consider its position in relation to arrangements for protection and backpayment. The Council would be open to legal challenge if it was to proceed on the basis of a 5 year protection period. While it is recognised that there also remains a significant risk associated with a 3-year period it is accepted that this was an integral part of the national agreement and therefore should remain intact with regards to implementation.

9.4 As a result of the foregoing the Council should:

- reduce the five year pay protection period to no more than three years,
- make payment to groups of predominantly female workers who had equal pay claims for the period 1 April 2006 to implementation by means of further compromise agreements at an estimated cost of £7M,
- consider a goodwill payment to other workers in recognition of acceptance of realignment of terms and conditions of employment against best value principles of efficiency, economy, effectiveness, and equal opportunities, keeping an appropriate balance between cost, quality and price. It is estimated that the costs associated with a tax free payment would be £7M.

9.5 On agreement of the terms and conditions package by Council and the arrangements for protection and backpayment Council should then proceed to implementation by the quickest route possible. Further delays in implementation present very serious risks from both from a legislative and a staff morale perspective and as a consequence Council should invite staff to change their contract by means of an individual agreement in the first instance and thereafter by imposition, via termination and re-engagement. This approach has been

successful in other Local Authorities with at least an 80% sign-up to new contracts.

10. Recommendations

10.1 It is recommended that Council:

- Identify options for cost reductions as summarised at para 9.2 in order to agree a package of terms and conditions which support implementation of the Single Status Agreement
- Agree a 3-year protection period in accordance with the national agreement signed by the Trade Unions and Local Authorities across Scotland
- Recognise the risk associated with the current proposals for back pay in accordance with Best Value principles and Equal Pay legislation and instead agree a goodwill payment for staff in recognition of acceptance of realignment of terms and conditions of employment. The Chief Executive should be delegated authority to develop a framework for achievement of this within current budget provision.
- Put in place arrangements to effect compromise agreements for those groups of staff whose agreements expired in 2006
- Implementation date of 1 March 2009 by means of imposition and individual agreement
- Termination of Bonus Schemes at 28 February 2009.

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David McMillan
Chief Executive
Date: 13 August 2008

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Appendices: Appendix 1 – Letter to Councillors, July 2008

Appendix 2 - Revised Proposals on Terms & Conditions

Appendix 3 - Costs associated with revisions to Terms & Conditions

Appendix 4– Comparisons of terms and conditions with neighbouring authorities

Background Papers: WDC Council Report 28 June 2006, WDC Council Report 20 December 2006, WDC Council Report 27 June 2007, WDC Council Report 19 December 2007, WDC Council Report 14 May 2008, WDC Council Report 25 June 2008.

Wards Affected: N/a