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## Report of the Director of Resources

### Executive Board

Date: 8<sup>th</sup> February 2008

Subject: Pay & Grading Review

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#### Electoral Wards Affected:

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

(Details contained in the report)

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## EXECUTIVE SUMMARY

In March 2007 the Executive Board agreed a new pay structure for Leeds City Council employees. It also agreed pay protection arrangements subject to final negotiations with the Trade Unions. Since March 2007 negotiations with the Trade Unions have continued. In response to Trade Union concerns about lower paid workers a new slightly amended pay structure has been proposed. In December 2007 the three Trade Unions Unison, GMB and T&G balloted their members on the proposed pay structure and pay protection terms. The ballots returned by Unison and T&G were positive the ballot returned by GMB was negative. This report updates members on the negotiations that have taken place with the Trade Unions, seeks approval for the amended pay structure and confirmation of the position to be taken on pay protection in the light of recent case law.

## **1.0 Purpose Of This Report**

- 1.1 To seek approval to an amended version of the pay structure.
- 1.2 To confirm the position on pay protection for the purpose of the Pay & Grading Review.
- 1.3 To update members on negotiations with the trade unions.

## **2.0 Background Information**

- 2.1 The 1997 Single Status Agreement set out to harmonise pay and terms and conditions of service for former blue collar and white collar employees. The Agreement required authorities to carry out a pay and grading review using the principles of job evaluation.
- 2.2 The National Joint Council for Local Government Services 2004 Pay Agreement set a specific deadline of 1<sup>st</sup> April 2007 for the implementation of a revised pay and grading structure and the full implementation of the Single Status Agreement.
- 2.3 In addition changes to the Equal Pay legislation in 2003 regarding back pay further emphasised the need for the prompt review of the Council's Pay structure.
- 2.4 From the summer of 2006 negotiations have been underway with the Trade Unions to achieve a collective agreement on a new pay model to replace the existing NJC pay scales for former APT&C and manual workers and also on pay protection arrangements to be provided specifically for this pay and grading review.
- 2.5 In view of the scale of the exercise it was agreed that the pay and grading review would be split into two separate phases:-
  - ◆ Phase 1 represents all posts up to and including spinal column point (scp) 28 (scale 6). It was agreed that this work would be prioritised and implemented first.
  - ◆ Phase 2 represents all posts from scp 29 and up to scp 49.
- 2.6 The current position is that a comprehensive Job Evaluation exercise has been undertaken jointly with the Unions and has been completed in relation to jobs in Phase 1. The Job Evaluation exercise has recently commenced in relation to jobs in Phase 2. The intention had been to have the proposed pay structure for Phase 2 in place for October 2008 but the elongated process for implementation of Phase 1 may delay this.
- 2.7 The Council explored a number of pay structures and potential pay models designed to eliminate as far as possible the Council's potential to be challenged under equal pay legislation, to minimise disruption and to maximise stability for employees.
- 2.8 On 14 March 2007 the Director of Corporate Services submitted a report to the Executive Board on a proposed new pay and grading structure, on pay proposals for the Council and on issues associated with implementation. The Executive Board resolved:-
  - a) That the new pay and grading structure as presented in the report be implemented.

b) That, subject to final negotiations with the Trade Unions, the pay protection arrangements as set out in the report be approved. For those staff whose grade changes adversely as a result of the job evaluation exercise:-

- ◆ A period of no longer than 3 years protection – attracting annual pay awards and increments in line with the NJC for Local Government services pay agreements.
- ◆ Year 4 – go directly to the maximum point of the new substantive grade/pay range.

- 2.9 From March 2007 negotiations continued with the Unions on a weekly basis with a view to securing a Collective Agreement regarding implementation of the new pay structure and pay protection arrangements as referred to above. During those negotiations in response to concerns about low paid workers the original four band pay model agreed by the Executive Board was revised to a three band pay structure to allow lower paid workers to go into the pay structure at a higher scale see Appendix A. The revised three band pay structure will cost the Council an additional £5 million in addition to the original £3 million target set for the initial four band pay structure design.
- 2.10 There are a number of factors and reasons for this further investment including; the removal of spine points 4 and 5 to address the low pay agenda raised by the Trade Unions; the knock on affects of the assimilation throughout the bands; the reduction in jobs that may have faced a loss and the reduction of such losses.
- 2.11 The three Trade Unions, Unison, GMB and T & G balloted their members on the terms of a draft Collective Agreement as set out above in December 2007. Unison and T & G balloted their members in Phases 1 and 2 and returned a positive vote. GMB balloted only their members in Phase 1 and returned a negative vote.
- 2.12 The ALMOs, Education Leeds and through Education Leeds the schools were involved in the negotiations with the Unions on the Collective Agreement as well as the Council.
- 2.13 Paragraph 12 of the National Joint Council for Local Government Services – The National Agreement on Pay and Conditions of Service (the Green Book) states at paragraph 12.2
- “Local Authorities should review their local grading structure, including whether or not to operate a system of pay scales as opposed to single pay points. In conducting such a review, representatives of the recognised Trade Unions should be fully involved. In conjunction with local grading reviews the Authority and the Unions shall agree the terms on which there should be protection against loss of remuneration. Once such a review has been completed, the local grades, using national spinal column points, will supersede the existing national grading provisions and scales referred in appendix 1 2 part 3”.
- 2.14 Even though both Unison and T&G returned a positive ballot the legal requirement under the Green Book is for all of the unions to agree pay protection arrangements before there can be automatic implementation of new pay structures and pay protection arrangements.

### **3.0 Main Issues**

- 3.1 In the absence of a Collective Agreement, and specifically agreement on pay protection signed by all three unions, the options now open to the Council are:-
- 3.1.1 Not to implement a new pay structure. This is not a valid option given that councils were expected to implement the Single Status Agreement by 1<sup>st</sup> April 2007. Any delay in implementation increases the risk of equal pay claims against the authority.
- 3.1.2 To try to renegotiate on the Collective Agreement, in particular to seek agreement specifically on pay protection. There is no information available on the profile of those staff who voted no in the ballot. GMB have indicated though that they want to see what they describe as leveling up, that is putting all employees up to the level of the highest comparator under the job evaluation scheme for the post. The cost of doing so would be £45 million pounds in year one with further pressure in future years due to increments and cost of living pay awards. The average take home pay for staff in phase one of the Pay & Grading Review is £10,500. The cost of leveling up (£45 million) equates to a significant number of jobs using this average salary. Further financial detail is attached at Appendix B including the cost of the new structure, cost of protection and average salary.
- 3.1.3 To implement with employees individually.

### **4.0 Pay protection**

- 4.1 The Executive Board agreed to pay protection terms in March 2007 as referred to above.
- 4.2 The draft Collective Agreement which was balloted on by the unions offered pay protection for 3 years from implementation of the new pay structure which in discussions with the Trade Unions under a signed collective agreement was to be from 1 February 2008. The specific pay protection arrangements including exceptions as set out in the draft Collective Agreement are included at Appendix C to this report.
- 4.3 The issue to be decided on now is whether to continue to offer pay protection as agreed by the Executive Board in March 2007 in the light of case law decided upon since then.
- 4.4 The Council needs to be aware that agreeing pay protection arrangements could result in equal pay claims against the Authority from employees who claim that payments to some employees and not others is discriminatory.
- 4.5 To avoid such claims the Council has to show that pay protection arrangements are a proportionate means of achieving a legitimate aim. The arrangements must be justified for sound operational reasons.
- 4.6 The legitimate aim that the Council is trying to achieve is to implement a new pay structure under Single Status. In doing so the Council is attempting to maintain reasonable employee and union relations and also to cushion a drop in pay for losers.

#### 4.7 **The case law**

- 4.7.1 There have only been two major cases on pay protection in the context of the implementation of the Single Status Agreement in local authorities.
- 4.7.2 The first came in 2006 with *Redcar & Cleveland Borough Council –v- Bainbridge (No1)*.
- 4.7.3 The second case was heard in September 2007 *Middlesborough Borough Council - v- Surtees* .
- 4.7.4 Both cases are currently subject to appeals before the Court of Appeal. The outcomes of those appeals are expected early this year. Advice on the case law is set out in the attached confidential report at Appendix D.

“The information is exempt from public access under Paragraph 10.4.4 and 10.4.5. of the Access to Information Procedure Rules as the public interest in maintaining the exemption outweighs the public interest in disclosing the information. At the current time the Council is defending a large number of equal pay claims before the Employment Tribunal. To release the advice could prejudice claims and prove costly to the Council which would then have an impact on the people of Leeds.”

- 4.7.5 The safest course for the Council to avoid any legal claims is not to pay any protection however, the impact of the new pay structure on some employees would mean an immediate drop in pay so some cushioning would realistically be required. If pay protection is to be paid the longer the period of pay protection or the more that is paid the greater the risk of claims from those employees who do not receive the equivalent . The issues to be considered before agreeing pay protection arrangements are

- ◆ the proportion of employees who are receiving pay protection who received consolidated bonuses giving them higher pay which needed protecting? How many people in this group are men and women?
- ◆ the gender breakdown of those employees who will and will not receive pay protection
- ◆ real consideration of the various options to the Council from paying no pay protection at all, and the impact on employee relations and union relations that this may have, to paying various amounts of pay protection up to three years as previously agreed
- ◆ the costs of extending pay protection to all staff
- ◆ what would the effect on the Council's services be if the amount of money necessary to do this was spent

- 4.8 Financial information and gender statistics providing answers to the above in relation to the relevant groups of employees are set out in Appendix B

4.9 The recommendation is not to offer any more pay protection than that agreed by the Executive Board in March 2007 in view of the risk of legal claims which could arise as a result of an increased offer in terms of amount or increased length of pay protection.

## **5.0 Implications for Council Policy and Governance**

5.1 The Council needs to implement the Single Status to avoid inequality in pay. Following the Job Evaluation exercise agreed with and undertaken by the Trade Unions an appropriate pay structure has been devised which now needs to be implemented.

## **6.0 Legal and Resource Implications**

6.1 Legal advice regarding pay protection is set out in the attached confidential report.

6.2 Resource implications are as set out in Appendix B.

## **7.0 Conclusions**

7.1 The Council needs to implement the outcome of the job evaluation exercise without unnecessary delay to avoid inequality in pay and mitigate future risk of equal pay claims.

## **8.0 Recommendations**

8.1 That the Executive Board:

8.1.1 Approves the amended pay structure as attached at Appendix A

8.1.2 Confirms that the pay protection arrangements for Phase 1 and Phase 2 employees will be as previously agreed by the Executive Board in March 2007 as set out in Appendix C that is that for those staff whose grade changes adversely as a result of the job evaluation exercise:-

- ◆ A period of no longer than 3 years protection – attracting annual pay award and increments in line with the NJC for Local Government service pay agreements effective from 1.2.08.
- ◆ Year 4 - go directly to the maximum point of the new substantive grade/pay range employees.

8.1.3 Notes that the Director of Resources will continue negotiations with the Trade Unions.

8.1.4 Authorises the Director to take steps to implement the new pay structure, by agreement or otherwise, in the light of those negotiations.