

## HAMPSHIRE COUNTY COUNCIL

### Report

<b>Committee:</b>	Employment in Hampshire County Council
<b>Date:</b>	30 June 2023
<b>Title:</b>	Pay and Legislation Update
<b>Report From:</b>	Director People and Organisation

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#### Purpose of this Report

1. The purpose of this report is to provide an update on the national pay award for local government staff for April 2023, associated union ballots for industrial action and ballots in relation to pay and conditions for teachers.
2. To update EHCC on legislative changes and Government consultations that have required, or may require in the future, actions from Officers.

#### Recommendations

3. That EHCC note that the national Unite and UNISON Trade Unions are currently balloting their members for industrial action, in relation to the National Employer's offer for the pay award for 1 April 2023. GMB will open their ballots in September.
4. That EHCC note that ballots for industrial action are also being conducted of Teaching staff in relation to pay, school funding and working conditions.
5. That EHCC note the update following the local consultative ballot undertaken by UNISON in relation to annual leave and amendments to the Council's salary policy.
6. That EHCC note the new potential legislation introducing a future entitlement to neonatal leave and pay and a new consultation covering working time, holiday entitlement and pay, and TUPE regulations.

#### Executive Summary

7. As reported to EHCC in March 2023, the Trade Unions have submitted their pay claim for the April 2023 national pay award and the National Employers made a final offer which has been rejected by all three local government

unions.

8. UNISON and Unite are currently balloting members for Industrial Action. Unison's ballot will close on 4 July 2023 and Unite's will close on 17 July. GMB will conduct a series of 'targeted ballots' starting in September. It is understood that all three unions will respond to the Employer's side following their ballots.
9. There are also national ballots being conducted by teacher unions in relation to their national pay award, school funding and working conditions.
10. UNISON's Hampshire Branch have updated officers that a separate formal ballot is not planned for the time being in relation to their dispute over annual leave for EHCC staff and the policy changes that occurred in 2022.
11. A Bill providing a new entitlement to neonatal care leave and neonatal care pay is expected to progress through parliament, which will allow parents to each take up to 12 weeks of paid leave where they have a responsibility for a child receiving neonatal care. This will be in addition to other leave entitlements, such as maternity and paternity leave and pay. As this would be a new statutory pay entitlement, the legislation is not expected to come into force in the immediate future.
12. The government has launched a consultation on three areas of employment legislation that are part of retained EU employment law and which it considers could benefit from reform. The most significant is a proposal to simplify annual leave and pay calculations. As reported to EHCC in March, the government had already consulted on proposals to amend this area following the decision in the Supreme Court of *Brazel-v- Harper Trust*. These further reforms are welcomed.

### **National Pay Award 2023 – Ballots for industrial action by GMB, Unite and Unison**

13. As detailed to EHCC in March 2023, the Trade Unions side submitted its pay claim for April 2023. In February 2023, the National Employer Side made a full and final offer of:
  - A consolidated increase of £1,925 on salaries up to and including NJC spine point 43 (£49,590). This is pro-rata for part time staff,
  - a 3.88% pay increase on salaries above this.
14. The consolidated increase of £1,925 if agreed, will apply to all staff on grades A-G as required by the EHCC Collective Agreement. The EHCC Committee agreed in March to apply a pay award of 3.88% to all staff on Grades H and above once the national pay award had been agreed. However, if the national award is higher than 3.88%, a decision will be brought back to EHCC.
15. The national committees of all three unions have rejected the pay offer.

16. The national Unions will ballot their members for industrial action. All unions are balloting on a 'disaggregated basis', which means action could be taken at an individual council level. However, all unions are operating on different timescales:
  - UNISON's ballot opened on 23 May and closes on 4<sup>th</sup> July. They are asking their members to vote for strike action, which would occur between 18 July 2023 and 3 January 2024.
  - Unite's ballot opened on 13 June and closes on 28<sup>th</sup> July. They are asking their members to vote for strike action, which would occur in the period 'mid- August to mid-January'.
  - GMB plans to conduct "a series of targeted strike ballots", starting in September. Hampshire has not received notification whether or not it will be the subject of a targeted strike ballot.
17. For industrial action to be lawful, two thresholds must be met; (a) more than 50% of members must take part and (b) of those that turn out, more than 50% must be in favour of industrial action.
18. The timescales of these ballots mean that the position on the pay award will not be known for some months. For the pay award to be agreed, two of the three recognised unions must accept the offer. The Council must therefore wait for the unions to conduct their ballots, and this will delay the application of the pay award until the autumn at the earliest.
19. Communications to staff have been published that set out that the National Employers and the County Council consider the final offer to be a fair offer and reminding staff that any pay award must be funded from existing budgets. Officers are preparing the necessary advice and guidance and updating relevant procedures to ensure the organisation is prepared in the event that there is a mandate from union members for strike action.
20. Further updates will be provided at the next EHCC Committee.

### **Local Consultative Ballot by UNISON**

21. As reported at EHCC in March, UNISON conducted a local (Hampshire) consultative ballot of staff in relation to a dispute over annual leave and some HR policy changes that were implemented in 2022.
22. Following the consultative ballot UNISON indicated that they would proceed to a formal industrial action ballot.
23. UNISON's Hampshire Branch have updated officers that whilst they cannot rule out a formal ballot on these local issues, at some point in the future, a separate formal ballot is not planned for the time being.
24. An update will be brought to EHCC if any further action is taken by Unison.

## **Industrial Action – Teachers**

25. As reported to EHCC in March, members of the National Education Union (NEU), secured the required turnout and vote to undertake industrial action. This resulted in several strike action days in February and March. NEU's current mandate expires on the 14 July.
26. The Schools Teachers Review Body is due to make recommendations on the national award for teachers in June. The NEU have advised that they may take further action in July, if this report is not favourable.
27. Ballots are currently being conducted by NASUWT which closes 10 July. Ballots are also currently being conducted by the National Association of Headteachers (NAHT), and Association of School and College Leaders (ASCL), both of which close on 31 July . Both the NASUWT and NAHT ballots are for strike action and for action short of strike. ASCL is balloting for strike action only. It remains to be seen whether unions co-ordinate any action (should they get a mandate to do so) in the Autumn term.
28. While the number of directly employed teachers is small (256 teachers), strike action in schools has the potential to cause disruption to Directorates, due to school closures (partial or full) and the subsequent requirement on our staff to arrange childcare or take leave.

## **Government Consultations and Proposed Legislation**

### **Neonatal Care Leave and Pay**

29. The Neonatal Care (Leave and Pay) Bill has completed progression through Parliament and is now awaiting Royal Assent. The purpose of this Bill is to create a new entitlement to Leave and Pay for employees that have a responsibility for a child receiving neonatal care (defined as a continuous period of at least 7 days neo-natal care). The right to neonatal care leave will be a 'day one' right.
30. The entitlement to a new 'statutory neonatal care pay' will broadly mirror qualifying criteria for statutory maternity pay e.g. 26 weeks' continuous service, and is expected to follow the same rates of pay. The Bill will allow parents to each take up to 12 weeks of paid leave and will be in addition to other leave entitlements such as maternity and paternity leave. The leave will also need to be taken within 16 months of the birth.
31. Further details will follow in Regulations, for example how much notice must be given, what happens if there is more than one child in neonatal care and what happens if there are several periods of neonatal care etc. As this is a new statutory pay entitlement, other legislation will need to be amended which may mean implementation is not in the immediate future. Officers will

take action to implement once the Regulations are available and the commencement date is known.

## **Retained EU Employment Law Reforms**

32. The government has launched a consultation to seek views on three areas of retained EU employment law which it feels could benefit from reform:
- record keeping requirements under the working time regulations.
  - simplifying annual leave and holiday pay calculations in the working time regulations.
  - consultation requirements under the Transfer of Undertakings (Protection of Employment) regulations (TUPE).
33. The primary driver for reform of these areas is to reduce bureaucracy as the government feels obligations are “too onerous on businesses to be used effectively, or are too complex for workers to know, understand and use<sup>1</sup>”.
34. The proposals seek to retain workers’ rights but seeks to reduce administration burden through record keeping and simplifying processes.
35. In relation to holiday entitlement and holiday pay, it seeks to resolve a number of issues as a result of the Supreme Court Judgement in Brazel -v- The Harpur Trust. However, it also seeks to address some of the issues that were created by the government’s initial proposals in the consultation on these matters (this case and the consultation were reported to EHCC in March). Officers will respond to the consultation which closes on 7 July 2023.

## **Consultation and Equalities**

36. It is not envisaged that an Equalities Impact Assessment will be required for any of the updates included in this paper.

## **Climate Change Impact Assessment**

37. The Council’s carbon mitigation tool and climate change adaption tools are not applicable to changes in these paper as they are administrative in nature. The tools are also not applicable to the other updates in this paper for the same reason.

## **Conclusions**

38. The Council will wait for the outcome of national negotiations before applying any pay award. Any pay award will be backdated to 1 April 2023 once agreed.

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<sup>1</sup> Government consultation document: [Retained EU Employment Law consultation \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

39. Officers will ensure the Council is prepared for industrial action in the event that unions have a mandate from their members for such action.
40. Officers will continue to monitor consultations, draft legislation or new requirements to ensure that adjustments to policies and business processes are implemented as appropriate and continued compliance with statutory requirements.

**REQUIRED CORPORATE AND LEGAL INFORMATION:**

**Links to the Strategic Plan**

<b>Hampshire maintains strong and sustainable economic growth and prosperity:</b>	No
<b>People in Hampshire live safe, healthy and independent lives:</b>	No
<b>People in Hampshire enjoy a rich and diverse environment:</b>	No
<b>People in Hampshire enjoy being part of strong, inclusive communities:</b>	No

**Other Significant Links**

<b>Direct links to specific legislation or Government Directives</b>	
<u>Title</u>	<u>Date</u>
<a href="#">Neonatal Care (Leave and Pay) Act 2023 - Parliamentary Bills - UK Parliament</a>	

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

<u>Document</u>	<u>Location</u>
None	

## **EQUALITIES IMPACT ASSESSMENT:**

### **Equality Duty**

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

### **Equalities Impact Assessment:**

It is not envisaged that an Equalities Impact Assessment will be required for any of the updates included in this paper.