

# Public Document Pack



## NOTICE OF MEETING

<b>Meeting</b>	Employment in Hampshire County Council Committee
<b>Date and Time</b>	Thursday 23rd March 2023 at 10.00am
<b>Place</b>	Mitchell Room, Ell Court, The Castle, Winchester
<b>Enquiries to</b>	members.services@hants.gov.uk

Carolyn Williamson FCPFA  
Chief Executive  
The Castle, Winchester SO23 8UJ

## FILMING AND BROADCAST NOTIFICATION

This meeting may be recorded and broadcast live on the County Council's website and available for repeat viewing, it may also be recorded and filmed by the press and public. Filming or recording is only permitted in the meeting room whilst the meeting is taking place so must stop when the meeting is either adjourned or closed. Filming is not permitted elsewhere in the building at any time. Please see the Filming Protocol available on the County Council's website.

## AGENDA

### 1. APOLOGIES FOR ABSENCE

To receive any apologies for absence received.

### 2. DECLARATIONS OF INTEREST

All Members who believe they have a Disclosable Pecuniary Interest in any matter to be considered at the meeting must declare that interest and, having regard to Part 3 Paragraph 1.5 of the County Council's Members' Code of Conduct, leave the meeting while the matter is discussed, save for exercising any right to speak in accordance with Paragraph 1.6 of the Code. Furthermore all Members with a Personal Interest in a matter being considered at the meeting should consider, having regard to Part 5, Paragraph 4 of the Code, whether such interest should be declared, and having regard to Part 5, Paragraph 5 of the Code, consider whether it is appropriate to leave the meeting while the matter is discussed, save for exercising any right to speak in accordance with the Code.

### 3. MINUTES OF PREVIOUS MEETING (Pages 3 - 8)

To confirm the minutes of the previous meeting

#### **4. DEPUTATIONS**

To receive any deputations notified under Standing Order 12.

#### **5. CHAIRMAN'S ANNOUNCEMENTS**

To receive any announcements the Chairman may wish to make.

#### **6. PAY AND LEGISLATION UPDATE (Pages 9 - 24)**

To receive a report from the Director of People and Organisation providing an update to EHCC on several relevant pay and legislative issues.

#### **7. SENIOR MANAGEMENT ADJUSTMENTS (Pages 25 - 30)**

To receive a report from the Director of People and Organisation providing an update to EHCC on changes to the Chief Officer Group following the forthcoming retirement of the Director of Children Services.

#### **ABOUT THIS AGENDA:**

**On request, this agenda can be provided in alternative versions (such as large print, Braille or audio) and in alternative languages.**

#### **ABOUT THIS MEETING:**

**The press and public are welcome to attend the public sessions of the meeting. If you have any particular requirements, for example if you require wheelchair access, please contact [members.services@hants.gov.uk](mailto:members.services@hants.gov.uk) for assistance.**

County Councillors attending as appointed members of this Committee or by virtue of Standing Order 18.5; or with the concurrence of the Chairman in connection with their duties as members of the Council or as a local County Councillor qualify for travelling expenses.

# Agenda Item 3

AT A MEETING of the Employment in Hampshire County Council Committee of  
HAMPSHIRE COUNTY COUNCIL held at the castle, Winchester on Tuesday 8th  
November 2022

Chairman:

p Councillor Kirsty North

p Councillor Gary Hughes  
p Councillor Adrian Collett  
p Councillor Steve Forster  
a Councillor Keith House

p Councillor Zoe Huggins  
a Councillor Stephen Parker  
p Councillor Stephen Philpott

## 39. APOLOGIES FOR ABSENCE

Apologies had been received from Cllr North and so Cllr Hughes chaired the meeting.

Apologies had also been received from:

- Cllr Parker, a Conservative group deputy was not available.
- Cllr House, Cllr Porter was present as the Liberal Democrat group deputy.

## 40. DECLARATIONS OF INTEREST

Members were mindful that where they believed they had a Disclosable Pecuniary Interest in any matter considered at the meeting they must declare that interest at the time of the relevant debate and, having regard to the circumstances described in Part 3, Paragraph 1.5 of the County Council's Members' Code of Conduct, leave the meeting while the matter was discussed, save for exercising any right to speak in accordance with Paragraph 1.6 of the Code. Furthermore, Members were mindful that where they believed they had a Personal interest in a matter being considered at the meeting they considered whether such interest should be declared, and having regard to Part 5, Paragraph 5 of the Code, considered whether it was appropriate to leave the meeting whilst the matter was discussed, save for exercising any right to speak in accordance with the Code.

It was noted that dispensation had been granted to enable Members of this Committee to consider issues relating to Members Allowances.

## 41. MINUTES OF PREVIOUS MEETING

The minutes of the last meeting were reviewed and agreed.

## 42. DEPUTATIONS

There were no deputations received.

43. **CHAIRMAN'S ANNOUNCEMENTS**

The Chairman made no announcements.

44. **AMENDMENTS TO THE MEMBERS' ALLOWANCES SCHEME 2022/23**

The Employment in Hampshire County Council (EHCC) Committee considered a report of the Chief Executive regarding amendments to the Members' allowance scheme 2022/23.

The report included several recommendations from the Independent Remuneration Panel in relation to the newly proposed Deputy Leader SRA, alongside the existing SRAs for Opposition Group Leaders and Opposition Group Spokespersons.

The SRA for the roles of Assistant to the Executive – Adult Services and Public Health and Assistant to the Executive – Children's Services and for the role of Chairman of the River Hamble Harbour Board were recommended to continue at the previously agreed rates.

During discussion it was noted that the proposals would lead to Opposition Group Spokespersons awards varying depending on the political composition of the relevant committee. It was suggested that there may be a way to standardise this, such as using the membership of all Select Committees in the formula, but that this would need to be carefully considered. It was agreed that Officers would investigate this ahead of the required agreement by Full Council.

RESOLVED:

That the EHCC Committee:

- Thank the IRP for their work in considering this matter, and their recommendations as referred to in this report.
- Recommend to the County Council that approval be given to amendment of the Members' Allowances Scheme for 2022/23, which considers the recommendations of the IRP and the views of the EHCC Committee. Delegation is given to the Chief Executive, in consultation with the Chairman of the EHCC Committee, to formulate the calculations required to implement the proposed changes to include the EHCC Committee's views.
- Recommend to the County Council that Members' Basic Allowances and SRAs be adjusted for the year 2022/23 by 3.56%.

45. **HAMPSHIRE COUNTY COUNCIL PAY STATEMENT - FINANCIAL YEAR 2023/24**

The Employment in Hampshire County Council (EHCC) Committee considered a report of the Chief Executive regarding the Hampshire County Council Pay Statement – Financial Year 2023/24.

It was noted that this pay statement was required by the Localism Act and was for EHCC's consideration ahead of Full Council. Officers stated that the pay statement would be updated if the pay negotiations conclude before this. Following a question, the Committee heard that the County Council publishes the ratio between the highest paid and the lowest paid but does not have a specific policy on what the ratio should be.

RESOLVED:

- That the EHCC Committee recommends to the County Council approval of the Pay Statement as detailed in this report and as Appendix A, setting out the County Council's policies in respect of pay accountability for the financial year 2023/24 in accordance with the requirements of the Localism Act.
- That the EHCC Committee delegates authority to the Chief Executive, in consultation with the Chairman of the EHCC Committee, to make any changes to the draft Pay Statement consequential upon any changes to legislative requirements or other statutory guidance or changes to remuneration of staff, the creation of new roles, and changes to existing roles or responsibilities determined prior to consideration of the Pay Statement by full Council.

#### 46. **PAY, POLICY AND LEGISLATION UPDATE**

The Employment in Hampshire County Council (EHCC) Committee considered a report of the Director of HR, Organisational Development and Communications & Engagement regarding a Pay, Policy and Legislation Update.

It was noted that this report provided an overview of three areas. These were the progress of the 2022 National Pay Award, the introduction of a Recruitment and Retention allowance and an amendment to the Council's Sickness Absence policy to reflect current practice in relation to employees injured while on duty.

Officers set out the significant challenges in recruiting and retaining members of staff in several of the Council's core service areas alongside the proposed policy to address this issue. It was noted that any payment would be a small percentage of the individual's salary and would require Director agreement.

Members heard that when sickness absence arises as a result of an accident at work, the existing terms and conditions provided for sick pay separate to an employee's normal sickness pay. The current methodology has been in place for several years; however, it has not been formally recorded in a policy, which this report sought to rectify.

In response to questions members found that:

- Hampshire employees already received more leave than the National Pay Award was proposing and so this would not lead to an increase in allocation for staff.
- Salaries in all areas are continuously reviewed to ensure they are broadly in line with the market.

- Any recruitment or retention payment would be a one-off payment, applicable to an individual or group of roles for a fixed period. A minimum period of employment would be required ahead of payment.
- There was evidence of the effectiveness of recruitment and retention payments from other sectors as well as from the authority's Children's Services department which had already used them to a degree. Their effectiveness would also be reported on through the Annual Workforce Report.
- Coronavirus would not qualify as 'Industrial Sickness' as it was not possible to confirm where it had been contracted from.

RESOLVED:

- That EHCC note the current position on the National Pay Award for 2022.
- That EHCC agree to amend the Council's salary policy to include the provision to pay a Recruitment and Retention allowance to new or existing employees where appropriate to do so.
- It is further recommended that EHCC delegates, to the Director of Human Resources, Organisational Development and Communications and Engagement, the authority to make any final amendments to the salary policy wording prior to its implementation following the conclusion of the consultation with Trade Union representatives and departmental management teams.
- That EHCC approve the proposed Sickness Absence policy amendments in Appendix 2. This means the current arrangements for payments to employees that are injured on duty will continue.

47. **ORGANISATIONAL RESTRUCTURE - CHIEF EXECUTIVE'S UPDATE**

The Employment in Hampshire County Council (EHCC) Committee considered a report of the Chief Executive regarding the proposed organisational restructure. It was noted that this report built on changes presented to the committee previously and that since those changes, further consideration had been given to how the authority could be better organised to respond to and deliver the ambitions and priorities of the County Council.

Members received a detailed overview of the principles underpinning the proposed high-level organisation model and an explanation of the move from departments to directorates. It was noted that Culture, Communities and Business Service's and Economy, Transport and Environment would be disbanded. In their place two new directorates would be created: Hampshire 2050, delivering on the Hampshire 2050 vision and Universal Services, bringing together the delivery of public facing services available to all.

The committee heard how this would lead to some redundancies and recruitment to some posts would be required and the proposed salary framework and severance payment structure was provided.

In response to questions members found that:

- The new Director role for Hampshire 2050 would aim to further increase collaboration with District Councils, focusing on Hampshire in a broader sense.
- There was a review of the County Council's current scrutiny arrangements to see how best to keep them in line with the proposed structure.
- The restructure aimed to increase on the current levels of cross department working. It was noted that while some areas, such as Public Health, sat within a particular directorate there would be mechanisms to allow them to fully engage with the other directorates.

RESOLVED:

That the EHCC Committee:

Note the principles underpinning the redesign of the Organisation structure and Senior Leadership (Chief Officer and Deputy Chief Officer) roles, as outlined in paragraph 16 of the report.

Note the changes to the current organisational structure (directorates and service reporting lines), as outlined in paragraphs 17 to 20 of the report and Appendix 3. These are summarised below:

a) The Economy, Transport and Environment (ETE) and the Culture, Communities and Business Services (CCBS) departments will be disbanded.

b) A new directorate will be created (Universal Services) which will bring together those services which are universally available to all residents of Hampshire.

c) A new directorate (Hampshire 2050) will be created which will place a clear focus on the PLACE that is Hampshire, and our ambitions for the County as described in the Hampshire 2050 Vision.

d) The renaming of the HR, OD, Communications and Engagement department to the People and Organisation directorate, and which will incorporate Law and Governance corporate functions.

Note the various changes to the Senior Leadership team (Chief Officer and Deputy Chief Officer) roles and the selection and appointment process for these, as outlined in paragraphs 21 to 29 of the report and in Exempt Appendix 4.

Agree the proposed new salary framework for Chief Officers and Deputy Chief Officers, as noted in paragraphs 30 to 32 of the report and detailed in Appendix 5. The salary framework formalises existing pay arrangements and does not represent an increase in Chief Officer or Deputy Chief Officer remuneration.

Provide delegated authority to the Chief Executive to agree the remuneration of Chief Officers and Deputy Chief Officers as part of this restructure, and for future recruitment of Chief Officer and Deputy Chief Officer roles, including the spot-salaries of appointed officers, providing these are aligned to and within the parameters of the proposed salary framework as detailed within paragraph 33 of

the report, except for two existing contractual arrangements noted in paragraph 35 of the report.

Confirm that the delegated authority above includes a delegation to approve severance payments to Deputy Chief Officers and Chief Officers, including Special Severance Payments below £100,000. As noted in paragraph 34 of the report, before exercising such delegation in respect of Special Severance Payments of £20,000 or more, but below £100,000, the Chief Executive will consult with the Chair of EHCC Committee.

Note the estimated financial savings of £740,000 that will be delivered by these proposals, as noted in paragraph 36 of the report.

48. **EXCLUSION OF THE PRESS AND PUBLIC**

As there was no requirement to go into exempt session, the press and public were not excluded from the meeting.

49. **ORGANISATIONAL RESTRUCTURE - CHIEF EXECUTIVE'S UPDATE  
(EXEMPT APPENDIX)**

The exempt appendix was considered as part of item 9 on the agenda without being directly referenced, and therefore there was no requirement to go into exempt session.

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Chairman, Employment in Hampshire  
County Council Committee



## HAMPSHIRE COUNTY COUNCIL

### Report

<b>Committee:</b>	Employment in Hampshire County Council
<b>Date:</b>	23 March 2023
<b>Title:</b>	Pay and Legislation Update
<b>Report From:</b>	Director People and Organisation

**Contact name:** Andy Bailey, Assistant Director HR and OD

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#### Purpose of this Report

1. The purpose of this report is to provide an update to EHCC on the pay award for 2023.
2. To update EHCC on action that Unison are taking in relation to the decision not to award an additional day of annual leave alongside the April 2022 pay award, and an update on national Industrial Action impacting teachers.
3. To update EHCC on the outcome of a judgment in the Supreme Court and its impact on annual leave calculations for part-year workers.
4. To seek approval to clarify the EHCC agreement in relation to the term 'public holidays', to ensure this also means 'bank holidays' and that this includes any additional Public or Bank holidays as may be agreed from time to time.
5. To update EHCC on a new salary sacrifice scheme that will allow staff to purchase Ultra Low Emission Vehicles and for EHCC to note the mileage rates that will be applicable to staff that claim business mileage in these cars.
6. Finally, this paper updates EHCC on legislative changes and Government consultations that have required, or may require in the future, actions from Officers.

#### Recommendations

7. That EHCC note that the National Employer's side has made a full and final offer to the Trade Unions side for the pay award to apply from 1 April 2023, which Unite, Unison and GMB have rejected. The Employer's offer is ;
  - 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.
8. That EHCC agree a pay award of 3.88% to apply to staff on Grades H and above, with effect from 1 April 2023. This is subject to the conclusion of the national negotiations and on the assumption that the Employer's offer does not change.
  9. That EHCC note the consultative ballot undertaken by Unison of its members in Hampshire County Council as well as the national strike of Teachers.
  10. That EHCC note the impact of the Harpur Trust –v- Brazel Supreme Court ruling in relation to annual leave for part-year workers and irregular hours workers.
  11. That EHCC agree that the wording in relation to 'Public Holidays' of the existing EHCC agreement be interpreted to mean 'Public and Bank Holidays' and that this includes any additional national public or bank holidays that may be announced from time to time.
  12. EHCC to note that the Council will be implementing a new salary sacrifice scheme to allow staff to purchase Ultra Low Emission Vehicles. This will contribute to Hampshire's target to be net-carbon neutral by 2050. EHCC also to note that staff claiming business mileage in their salary sacrifice car will be reimbursed using the HMRC Advisory Fuel Rates (AFR) which are dependent on fuel type and engine size.
  13. That EHCC note the government's response to the consultation on 'Making flexible working the default', two new consultations and the legislation passing through the House of Lords.

### **Executive Summary**

14. The Trade Unions have submitted their pay claim for the April 2023 national pay award. The National Employers met on 23 February and made a full and final offer. There was a further meeting of the Employer's side on 8 March, with the recognised unions (GMB, Unite and Unison) at which the Employer's side reiterated the offer. However, the national committees of all three unions have rejected the offer.
15. Unison have undertaken a separate consultative ballot on two matters of dispute. Firstly, on the fact that the nationally negotiated additional day's annual leave from the 2022 pay award does not apply to Hampshire County Council's terms and conditions. The additional day's annual leave does not apply because the annual leave entitlement for Hampshire staff is set by a local collective agreement, which Unison, GMB and Unite signed in 2007, not by the National Joint Committee. Secondly, Unison do not agree with some minor changes made at the end of 2022 to the Salary and Sickness Absence policies. Unison have stated that 73% of members who responded to the ballot supported action on these matters. Unison have not shared what

percentage of members responded.

16. A recent Supreme Court decision in the case of Harpur Trust –v- Brazel has seen an adjustment to how annual leave for part-year workers must be calculated. This decision will in future result in part-year workers receiving proportionately more annual leave for time worked than their full-year colleagues. Officers have implemented these changes in February 2023 payroll, backdated to 1 October 2020. However, government have launched a consultation which may change and even reverse this position in the future.
17. The Council will be implementing a new salary sacrifice scheme to allow staff to purchase Ultra Low Emission Vehicles. This will contribute to Hampshire's target to be net-carbon neutral by 2050. EHCC are asked to note that as these are considered company cars by HRMC, different fuel rates apply to normal business mileage claimed by employees in their own cars.
18. The government has published its response on the 'Make flexible working the default' consultation, which will see new legislation in the future to enact some changes in this area.
19. Two recent consultations have also been launched – one in relation to holiday pay for part-year workers and one in relation to a new Statutory Code for dismissals and re-engagements.
20. Finally, several Bills are progressing through the House of Lords which will lead to new legislation in three areas – minimum service levels during strikes, extension of protection from redundancy during maternity leave, and a new entitlement to one week's unpaid leave for unpaid carers.

### **National Pay Award 2023**

21. The Trade Unions side has submitted its pay claim for April 2023.
22. The trade union pay claim is for:
  - a) Retail Price Index (RPI) + 2 per cent on all pay points. Unions have quoted RPI at 10.7% which means a pay award of 12.7%,
  - b) Consideration of a flat rate increase to hourly rates of pay in order to bring the minimum rate up to £15 per hour within two years,
  - c) A review and improvement of NJC terms for family leave and pay,
  - d) A review of job evaluation outcomes for school staff whose day-to-day work includes working on Special Educational Needs (SEN),
  - e) An additional day of annual leave for personal or well-being purposes,
  - f) A homeworking allowance for staff for whom it is a requirement to work from home,
  - g) A reduction in the working week by two hours,
  - h) A review of the pay spine, including looking at the top end, and discussions about the link between how remuneration can be used to improve retention.
23. On the 23 February 23, the Employer's 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 and to any allowance in payment (sleep in and stand by allowances for EHCC).
24. The national employers pay offer would be directly applicable to Grades A to G as the collective agreement contractually requires us to apply the pay award i.e., the consolidated increase. Within Directorates, 94% of staff (11,794 employees) are paid on grades A-G. In schools, 99.8% of staff (16,440 employees) are paid on these grades. EHCC is responsible for determining the pay award for Grades H and above.
25. The offer from the Employer's side is 'full and final' and therefore it is not expected that the pay offer will change. Trade Unions met the Employer's side for further discussions on 8 March 2023 at which the full and final offer was made again, however this has been rejected by all three unions. The offer does not include any amendments to any terms and conditions as set out in the Trade Union claim.
26. GMB will conduct a consultative ballot of its members, recommending they reject the offer. The GMB ballot will explain that by rejecting the offer, GMB members will be indicating their willingness to take part in future industrial action. Unite are also expected to conduct a consultative ballot of their members. It is anticipated that these ballots will both open towards the end of March and will close 6 weeks later. The outcomes of the ballots for GMB and Unite should therefore be known by mid-late May. As these are consultative ballots, there are no minimum thresholds for turnout, and they are not binding. They are conducted to test member appetite for action, before conducting a full industrial action ballot.
27. Unison have also rejected the offer. However, they will be formally balloting members for industrial action. The ballot will not open until mid / late May. They will be conducting their ballot on a 'disaggregated' basis. This means there could be action taken at each individual council or school, where the threshold for industrial action is met. The thresholds are that (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.
28. 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.
29. EHCC should note that if the Employer's side were to make a revised offer which goes further than the pay award identified in paragraph 23, only amendments to maternity leave and pay as a result of paragraph 22 point (c) would be directly applicable to EHCC terms and conditions. This is because the EHCC collective agreement contractually requires us to follow the

maternity leave and pay section of the national terms and conditions.

30. Any broader changes to 'family leave and pay' would not be applicable, and neither would any changes to national terms and conditions covered by claims (d) to (h) inclusive as these are subject to local agreement.
31. The Council has budgeted for a pay award with an average increase of 5.6% for 2023/2024. This was predicated on the assumption of a flat-rate cash award of £1,871 per annum on all pay points. This was broadly in line with other County Councils.
32. On the assumption that the pay award does not change and that EHCC agree the recommendation in paragraph 33 for Grades H and above, the Employer's offer exceeds this budgeted amount. This will produce a cost pressure in the region of £0.7m, which can be funded from the general inflation contingency budget for 2023/24.
33. As stated in paragraph 24, the pay award directly applies to Grades A-G. The pay award for Grades H and above is determined by EHCC. It is recommended that the pay award of 3.88% is applied to all staff on Grades H and above. If the settlement is higher than this a decision will be brought back to EHCC.

### **Consultative Ballot by Unison**

34. The 2022 EHCC pay award saw an increase of £1925 for all grades (pro-rated for part time staff). This was successfully applied in the December payroll for staff and backdated to 1 April 2022.
35. EHCC will be aware that the national pay offer for 2022 also included an additional day of leave to take effect from 1 April 2023. As communicated to EHCC in November 2022, the additional day of leave does not apply to the Council as our collective agreement only required the application of the pay award (i.e., the percentage increase) element to Grades A-G.
36. Unison, one of our three recognised unions that are signatories to the collective agreement, believes that the Council should apply the additional day of leave, even if it is not contractually obliged to do so.
37. The Council's annual leave entitlement is already more generous than the national Green Book annual leave provisions and this has been communicated to unions and staff. The Council has also communicated that the cost of an additional day of leave could only be funded through further savings, on top of the significant financial challenges the Authority is already facing.
38. In addition to the above, Unison is disputing minor amendments to the Salary policy and the Sickness Absence policy that were made in November and

December 2022.

39. The Hampshire Unison branch conducted a consultative ballot of its members, which closed on 1 March 2023, to see if there was sufficient support for formal action over these matters. Unison asked its members a specific question on annual leave and then a second question on the minor amendments to the Sickness Absence policy and Salary policy.
40. To amend our policies, the Council consults recognised unions through the Joint Consultative Group (JCG). The Council always seeks to reach agreement through meaningful consultation; however, this is not always possible. Unlike changes to our terms and conditions, the Council are not required to agree policy changes with unions. The policy amendments that are referenced by the union seek to achieve the following;
  - Ensure that staff raise issues with their pay promptly. In the same way staff need to claim expenses in a timely manner and they should raise underpayments promptly. This ensures we are paying staff correctly.
  - Providing clarity in the Sickness Absence policy, about claiming payments for additional duties while off sick.
  - To rectify a lack of clarity in our attendance management policy issue when staff moved between the long-term and the short-term sickness management processes. The amendments will ensure managers and staff know what is expected of them in these circumstances.
41. Unison have confirmed that 73% of members who responded to the ballot supported action on these matters. Unison have not shared what percentage of members responded. To take industrial action, Unison must undertake an industrial action ballot of its members. The same thresholds as described in paragraph 27 apply to this local ballot. At the time of writing, Unison have not confirmed when it expects to open the ballot; they will need to consider this alongside the national disaggregated ballot on the pay award, as described in paragraph 27.

### **Industrial Action – Teachers**

42. EHCC will be aware from national press that the National Education Union (NEU), secured the required turnout and support to take industrial action in relation to members that are Teachers. Primarily this has impacted schools, although the Council does have 256 directly employed Teachers. Industrial action occurred on 1 February and, at the time of writing, is due to take place again on 2, 15 and 16 March.
43. While the number of directly employed teachers is small, 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.
44. 6% of Hampshire schools were closed and 47% partially closed because of industrial action. Through advance messages and clear advice to staff about

their options because of school closures, the Council ensured that the services provided by directorate staff was delivered as usual on 1 February 2023 and will seek to do so again on future industrial action dates.

### **Supreme Court Judgement – Harpur Trust –v- Brazel**

45. The Supreme Court has recently passed judgment in the case of Harpur Trust –v- Brazel, which impacts how employers should calculate annual leave for workers who are on permanent contracts, but who work less than 52 weeks per year (part-year workers). The Court ruled that part-year workers should not have their holiday pay pro-rated.
46. The judgment also confirmed that irregular hours workers should have their pay for annual leave determined by the ‘calendar method’ instead of the ‘percentage method’ which was previously advised by ACAS. For the Council, this will affect casual workers – those workers that the Council are not obliged to offer work to, and who are not obliged to accept work.
47. The details of this judgment and the action that officers have taken is covered in the following paragraphs. However, the government launched a consultation on both matters on 12 January 2023, which closed on 9 March 2023. This is described in paragraphs 70-71.

### **Annual Leave for ‘part-year’ workers**

48. For the Council, part-year workers typically refer to staff who work term-time only. This includes support staff in schools, school escorts, school crossing patrols and our catering teams in HC3S. Currently, part-year employees have their annual leave pro-rated to account for the fact they are not required to work 52 weeks of the year. There are 2,386 employees in directorates and 14,778 employees in schools who are part-year workers.
49. The judgment means that all permanent part-year workers (regardless of the number of weeks they are contracted to work in a year) must receive the minimum 5.6 weeks’ statutory annual leave entitlement.
50. This has led to the perverse position that staff working less than 52 weeks per year receive proportionately more annual leave entitlement than someone who works the same number of hours per week, but for 52 weeks of the year.
51. The Supreme Court decision is binding. In February 2023, the Council implemented changes to ensure no part-year worker receives less than 5.6 weeks’ leave. Most part-year workers already receive a minimum of 5.6 weeks annual leave so this decision only impacts 1,170 part-year workers in directorates and 4,815 part-year workers in schools. Furthermore, the Council applied back pay for affected staff, as without this, staff could have submitted an Employment Tribunal claim for unlawful deduction of wages covering a

period of up to 2 years.

52. The Supreme Court decision does not refer to part-time working i.e., where the contract of employment is for less than 37 hours per week. It is therefore still lawful to pro-rate annual leave entitlement for part-time staff.

### **Annual Leave for Irregular Hours /Casual Workers**

53. The same judgment also confirmed that casual workers should have their annual leave entitlement calculated by the 'calendar method'.
54. The Council follows the previously published ACAS recommended approach known as the 'percentage method' to calculate the payment for annual leave for our casual workforce. This method derives from the fact that the standard working year is 46.4 weeks (that is, 52 weeks less the statutory 5.6 weeks annual leave entitlement), and 5.6 weeks is 12.07% of 46.4 weeks. Casual workers therefore receive 12.07% of their hourly rate as pay for annual leave.
55. The Supreme Court decision is that casual workers should have their pay for annual leave determined by the 'calendar method' which calculates the average weekly pay earned in the previous 52 weeks of work (excluding weeks of nil pay). If there are weeks of nil pay in the 52-week period, the reference period should be extended until 52 weeks of pay are included, extending if necessary for a maximum of 104 weeks. Casual workers would then receive 5.6 x their average weekly pay.
56. The Council is currently moving casual staff to be engaged via Connect2Hampshire (C2H). However, in the interim officers are implementing the necessary changes to process and procedures to ensure that the Council is compliant with the Supreme Court ruling.

### **Additional Public Holidays and Bank Holidays**

57. The EHCC collective agreement states that staff are entitled to a number of days annual leave, plus Public Holidays, which are normally 8 per annual leave year. This is pro-rated for part time staff.
58. The term "bank" holiday is used interchangeably with "public" holiday. For all practical purposes there is no difference. There is, however, an academic difference between bank holidays derived from statute and public holidays at common law (such as Christmas Day in England and Wales).
59. It has been the Council's practice to treat both Bank holidays and Public holidays as the same. The council has observed additional Bank Holidays, such as the Queen's Platinum Jubilee and the funeral of Queen Elizabeth II.
60. Observing these days means that staff's annual leave entitlement is increased where appropriate. It is also the Council's intention to observe the



additional Public holiday for the Coronation of HRH King Charles III.

61. It is recommended that EHCC formally agree that the wording of the existing EHCC agreement be interpreted to mean 'Public and Bank holidays' and that this includes any future national Public or Bank holidays that may be announced from time to time.

### **Ultra-Low Emissions Vehicle Salary Sacrifice Scheme**

62. EHCC will be aware of the Council's aim to reach Carbon net-zero by 2050. As part of the Council's action plan, a salary sacrifice scheme for Ultra-Low Emission Vehicles (ULEVs) has been identified and is in the process of being implemented by Officers.
63. A salary sacrifice scheme allows employees to sacrifice a portion of their salary in return for a leased ULEV car, which may be 100% electric, or hybrid. The employee saves National Insurance contributions on the sacrificed amount. The Council also saves Employer National Insurance Contributions on the sacrificed amount.
64. Due to the requirements that need to be met for the scheme to be accepted by HMRC as a salary sacrifice scheme, the leased car must be leased to the Council, and then through a contract, leased to the individual. This means that the car is considered by HMRC to be a company car for the duration of the scheme.
65. The scheme provider provides 'Lifestyle Protection' that protects the employee, and hence the council, from any change in circumstances that may force the employee to terminate their lease early.
66. As a result of the car being a company car, HMRC provide different Advisory Fuel Rates (AFRs) when an employee claims business mileage in their salary sacrifice car. These rates are lower than the Mileage Advisory Payments (MAP) rates which set out rates for business mileage in personal cars.
67. MAP rates are 45p per mile for the first 10,000 business miles and 25p per mile thereafter. AFR rates are between 14p–22p per mile for petrol, and 10p–18p per mile for diesel, depending on engine size. The rate for electric cars (from 1 March 23) is 9p per mile. These rates are reviewed by HMRC every 3 months.
68. In accordance with Paragraph 18.11 of the collective agreement which states that 'All car mileage and motorcycle mileage incurred in excess of home to workplace mileage will be paid at HMRC rates', Officers will take action to update Council systems to enable staff to claim mileage at the AFR rate.

### **Outstanding National Consultations and Government responses**

69. As noted in the Pay and Legislation paper in July 2022 there are several outstanding consultations and there are no updates on the majority of these. However, the government has now responded on Making Flexible Working the Default.
70. As a result of the consultation, the government has committed to:
- Making the right to request flexible working a 'day one' entitlement (this requires secondary legislation),
  - Develop enhanced guidance to raise awareness and understanding of how to make and administer temporary requests for flexible working,
  - Launch a call for evidence to better understand how informal or ad hoc flexible working works in practice,
  - Put forward amendments to primary legislation (The Employment Rights Act 1996) which will:
    - Require employers to consult with their employees, as a means of exploring the available options before rejecting their request,
    - Allow employees to make two flexible working requests in any 12-month period (currently one per 12-month period) and requiring the employer to respond within 2 months (currently 3 months),
    - Remove the requirement for employees to set out how the effects of their flexible working request might be dealt with by the employer.
71. The government is supporting a Private Members Bill - Employment Relations (Flexible Working) Bill that will enact changes to the Employment Rights Act. The Bill reached the third reading stage in the House of Commons on 24 February, and was passed by MPs however, future timescales for implementation of this and legislation to effect a change to a 'day one' entitlement are not yet known.
72. As previously noted to EHCC, the Council already has a Right to Request Flexible Working policy which meets the existing statutory requirements. Officers will review this in line with any new statutory requirement.

## **New Government Consultations and Proposed Legislation**

### **Consultation on holiday entitlement for part-year and irregular hours workers**

73. As highlighted above, the government recently consulted on proposals to address the anomalies caused by the Supreme Court ruling described in paragraphs 45 - 56. The proposals effectively seek to reverse the outcomes of the Supreme Court ruling.
74. If the proposals become legislation, then this is expected to resolve the anomaly created by the Harpur Trust –v- Brazel Supreme Court decision. EHCC will be updated when the outcome of the consultation is known.

### **Consultation on Dismissal and Re-engagement**

75. The Department for Business, Energy and Industrial Strategy (BEIS) has opened consultation on a new statutory Code of Practice that sets out employer's responsibilities when seeking to change employment terms and conditions. The consultation closes on 18 April 2023. The Code has additional weight in that Employment Tribunals have the power to increase an employee's compensation by up to 25% if an employer unreasonably fails to comply with the Code.
76. The Council very rarely resorts to Dismissal and Re-engagement and broadly follow the proposed Code within current practice and generally as a very last resort where the necessary change cannot be achieved through consultation and or negotiation with staff. There are, should the Code be implemented, additional steps that would need to be considered to ensure the Council can defend such action as a 'last resort'. Officers will be responding to the consultation.

### **Strikes (Minimum Service Levels) Bill**

77. The purpose of this Bill, if passed into legislation, would enable the Secretary of State of BEIS to determine minimum service levels to be maintained in certain sectors in the event of a strike.
78. Sectors that are likely to be relevant to the Council are the 'education services' and 'health services' sectors. Consultation which closes on 7 May, may help to determine what health services will be included in the regulations and whether this would be limited only to NHS provision or would also encompass health services provided by the Council, such as care homes and day services. The Bill itself will reach Committee Stage in the House of Lords on 9 March 2023.

### **Protection from Redundancy (Pregnancy and Family Leave) Bill**

79. This Private Members' Bill, backed by the government, has passed through the House of Commons and will have its second reading in the House of Lords on 3 March 2023.
80. The purpose of this Bill is to amend the Employment Rights Act 1996, to enable the Secretary of State to make regulations to extend the period of protection from redundancy from 'during maternity', to 'during or after pregnancy and after periods of maternity'. The Bill also extends this to adoption leave or shared parental leave.
81. The Bill does not define how long 'after' maternity/adoption/shared parental leave the protection will extend for, or whether there are any other qualifying criteria - this will be the subject of the further regulations made by the Secretary of State.
82. Officers will update the relevant policies to meet the new statutory entitlement when further details are known.

## **Carer's Leave Bill**

83. As reported to EHCC in November 2021, the outcome of the Government's consultation on a right to carer's leave received overwhelming support.
84. This Private Members' Bill, backed by Government will amend the Employment Rights Act to create a new entitlement to Carer's leave. The Bill has passed through the House of Commons and similarly will have its second reading in the House of Lords on 3 March 2023.
85. The entitlement is one week of unpaid leave per year for those who provide or arrange care for a dependant with a long-term care need. The Bill also defines who a 'dependant' is and what a 'long-term care need' is.
86. The Bill enables the Secretary of State to make regulations on this entitlement, which will describe how that leave may be taken and what type of care arrangements or provisions are covered.
87. Officers will update the relevant policies to meet the new statutory entitlement when further details are known.

## **Consultation and Equalities**

88. 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**

89. The implementation of the ULEV scheme will contribute to the Council's aim to reach carbon net-zero by 2050. However, the Council's carbon mitigation tool and climate change adaption tools are not applicable to this scheme as it is administrative in nature. The tools are also not applicable to the other updates in this paper for the same reason.

## **Conclusions**

90. 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. The Council will conduct meaningful consultation with recognised unions through JCG.
91. The Council will respond appropriately to the outcome of the consultative ballot. Officers have ensured unions are fully informed of details of the 2023 pay award. This has included which of elements of the pay claim, if ever changed nationally do apply to our terms and conditions, and those that do not.

92. Applying agreed amendments to annual leave for part-year workers' and those with irregular hours, ensures the Council remains compliant with legislation in this area until such time as there are amendments.
93. Implementing a ULEV scheme will contribute to the Council's strategy to reach carbon net-zero by 2050 and implementing the Advisory Fuel Rates with ensure adherence to the EHCC collective agreement.
94. Continuing to monitor consultations, draft legislation or new requirements will allow adjustments to policies and business processes to be implemented and therefore continued compliance.

**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>	Yes
<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>
Employment Relations (Flexible Working) Bill <a href="#">Employment Relations (Flexible Working) Bill - Parliamentary Bills - UK Parliament</a>	
Minimum Service (Strikes) Bill <a href="#">Strikes (Minimum Service Levels) Bill - Parliamentary Bills - UK Parliament</a>	
Protection from Redundancy (Pregnancy and Family Leave) Bill <a href="#">Protection from Redundancy (Pregnancy and Family Leave) Bill - Parliamentary Bills - UK Parliament</a>	
Carer's Leave Bill <a href="#">Carer's Leave Bill - 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.

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## HAMPSHIRE COUNTY COUNCIL

### Report

<b>Committee:</b>	Employment in Hampshire County Council
<b>Date:</b>	23 March 2023
<b>Title:</b>	Senior Management Adjustments
<b>Report From:</b>	Director People and Organisation

**Contact name:** Andy Bailey, Assistant Director HR and OD

**Tel:** 07837 894673

**Email:** andy.bailey@hants.gov.uk

#### **Purpose of this Report**

1. To update EHCC on changes to the Chief Officer Group due to the forthcoming retirement of the Director of Children Services.

#### **Recommendations**

2. That EHCC note the changes to the Chief Officer Group due to the forthcoming retirement of the Director of Children's Services, including the appointment of an interim Director and Deputy Director of Children's Services.
3. That EHCC note the appointment of a new joint Deputy Chief Executive.

#### **Executive Summary**

4. Following the announcement of the retirement of the Director of Children's Services several changes are necessary to the Council's Chief Officers Group. These changes are being implemented under the authority of the Head of Paid Service and in accordance with Standing Orders.

#### **Director and Deputy Director of Children's Services**

5. Steve Crocker has announced his retirement as Director of Children Services.
6. His last working day is on 31 March 2023, after 7 years as Director and over three decades in the field of Children's Services. Under Steve's leadership the directorate has grown in strength and is recognised nationally for high quality and standards in the education, safety and welfare of children and young people across our county.
7. The role of Director of Children's Services is one of the County Council's Statutory Chief Officer roles and is a core member of the Corporate Management Team (CMT) accountable for our statutory responsibilities in

relation to the children of our county as well as collectively accountable for the wider leadership of the whole organisation.

8. Stuart Ashley, who joined the Council in 1986 and is currently Deputy Director of Children Services, will, on an interim basis, take over the role of Director of Children Services.
9. Stuart was formally appointed as a Deputy Chief Officer in July 2016. He has strong experience across the full range of Children Services functions and is a highly capable senior leader leaving Children's Services in very safe hands pending a formal appointment process in due course and in accordance with Standing Orders.
10. The role of Deputy Director of Children's Services is required to cover the statutory responsibilities of the Director in their absence as well as sharing the leadership responsibilities of the directorate. The post holder forms part of the Council's Chief Officers Group.
11. Stephanie How, a qualified children's social worker and currently the Area Director North-West, will, on an interim basis, take over the role of Deputy Director of Children Services pending a formal appointment process in due course and in accordance with Standing Orders.
12. Salaries for both the Interim Director and Deputy Director of Children Services have been agreed by the Chief Executive in accordance with the authority delegated to the Head of Paid Services by EHCC in November 2022.

### **Deputy Chief Executive Appointment**

13. Since Steve Crocker shared the Deputy Chief Executive responsibilities with Graham Allen, Director of Adults Health and Care, the Chief Executive has appointed Rob Carr, Director of Corporate Operations and Chief Financial Officer as the new joint Deputy Chief Executive, with effect from 1 April 2023, in accordance with authority delegated by Cabinet in April 2009.

### **Consultation and Equalities**

14. 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**

15. The Council's carbon mitigation tool and climate change adaption tools are not applicable to the changes detailed in this paper.

### **Conclusions**

16. The senior management adjustments set out in this paper take full advantage of the exceptional skills and talent already available at a senior level within

Hampshire County Council.

17. The new arrangements will ensure that the Council continues to have the necessary capacity and capability at the required level and ensures essential stability and continuity in respect of critical statutory functions at a time of significant challenge.
18. These interim appointments meet the requirements of Standing Orders and are in accordance with the approach followed over several years in such circumstances.
19. A formal appointment process and Member Appointment Panel for both the Director and Deputy Director of Children Services positions will be undertaken in due course and in accordance with Standing Orders.

**REQUIRED CORPORATE AND LEGAL INFORMATION:**

**Links to the Strategic Plan**

This does not link to the Strategic Plan but potentially impacts the County Council's workforce strategy.

**Other Significant Links**

**Direct links to specific legislation or Government Directives**

<u>Title</u>	<u>Date</u>
None	

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

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## **EQUALITIES IMPACT ASSESSMENT:**

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- 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.

### **2. Equalities Impact Assessment:**

Equality objectives are not considered to be adversely affected by proposals in this report and it is not envisaged that an Equalities Impact Assessment will be required.

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