

# HAMPSHIRE COUNTY COUNCIL

## Report

<b>Committee:</b>	Employment in Hampshire County Council
<b>Date:</b>	2 November 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, including Teachers and Soulbury staff, associated union ballots for industrial action and ballots in relation to pay and conditions for teachers.
2. To update EHCC on the approach to meeting our statutory obligations to inform and consult trade unions of proposals to make redundancies affecting 20 or more people at a single establishment in accordance with section 188 of the 1992 Trade Union and Labour Relations (Consolidation) Act (TULRCA).
3. To update EHCC on significant legislative changes that may require in the future, actions from Officers.

### Recommendations

4. That EHCC note that the pay award for Local Government employees (those paid on EHCC terms and conditions) has not yet been accepted by recognised trade unions who remain in dispute with national employers.
5. That EHCC note that all teacher unions have confirmed their members have voted to cease strike action in relation to the pay award of 6.5% from 1 September 2023. However, NASUWT remain in dispute on 'excessive workload and long working hours' and are taking industrial action short of strike in Autumn.
6. That EHCC note several new employment-related Acts that are pending commencement regulations.

## **Executive Summary**

7. As reported to EHCC in March and June 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 was rejected by all three local government unions.
8. UNISON and Unite balloted their members for industrial action on a disaggregated basis. Neither union met the turnout legal threshold to take industrial action in Hampshire. GMB has conducted a disaggregated ballot for its Hampshire County Council members, which closed on 24 October. At the time of writing, the outcome of the ballot was not known.
9. Four teacher unions had balloted for industrial action on pay and working conditions. While all four unions' members have ceased industrial action on the pay award, one union (NASUWT) remains in dispute about 'excessive workload and long working hours' and has been taking continuous action short of strike since 18 September 2023.
10. Any employer that proposes to make 20 or more employees redundant at a single establishment within a period of 90 days, must in accordance with section 188 of the 1992 Trade Union and Labour Relations (Consolidation) Act (TULRCA), consult with and give notice [termed a section 188 letter] to appropriate employee representatives (recognised union or if there is not one, elected representatives). The Council has previously submitted one such section 188 letter to trade union representatives at the start of a new 2-year savings programme. However, moving forward notice will be issued on a quarterly basis as necessary at the point that we have a more detailed and accurate understanding of the workforce impact of each individual change programme.
11. Several employment related Bills have now received Royal Assent and are pending commencement regulations. Details of two new Acts are provided below, however the majority have already been noted in previous EHCC Pay and Legislation papers.

## **Context and Background**

### **NJC National Pay Award 2023**

12. As detailed to EHCC in March and June 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.
13. 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 2023 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.
  14. The national committees of all three unions, Unite, UNISON and GMB, rejected the final pay offer.
  15. The national Unions balloted their members for industrial action. All unions have balloted on a 'disaggregated basis', which means action could be taken at an individual council level. However, while members in Hampshire that voted supported action, less than 50% of their members turned out to vote and therefore industrial action by Unison and Unite members in Hampshire County Council would be unlawful. GMB's ballot closed on 24 October and at the time of writing, the outcome of this ballot is not known.
  16. 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 GMB members for strike action.
  17. Further updates will be provided at the next EHCC Committee.

### **Soulbury National Pay Award and Industrial Action**

18. Approximately 120 employees in the Council are paid on Soulbury Terms and Conditions. This is a nationally negotiated set of terms and conditions that apply to Education Psychologists and Education Inspectors. The terms are negotiated separately from the NJC for Local Government Staff.
19. The pay award for Soulbury staff is applied in September. The pay award for September 2022 has not yet been agreed and negotiations for the pay award for September 2023 have not yet started. The National Employers have reaffirmed their offer and position on pay for 2022 which is a £1925 increase on all Soulbury pay spines and pay points.

20. The Association of Educational Psychologists (AEP) conducted disaggregated ballots, by Local Authority. They balloted members for strike action and action short of strike. The union met the required turnout in Hampshire County Council and the majority of members voted for both strike action and action short of strike. However at the time of writing, dates for strike action are not known, and details of action short of strike are also not known. AEP must provide no less than 14 days' notice of any action. Officers are preparing the necessary advice and guidance and updating relevant procedures to ensure the organisation is prepared when further information is provided by AEP.

### **Industrial Action - Teachers**

21. As reported in June 2023, four teacher unions had a live mandate for industrial action in relation to pay and working conditions.
22. In July, the Schools Teachers Review Body recommended that the pay award for teachers for September 2023 should be 6.5%, which was accepted by the government. Regulations are required to effect this change. These were laid on 13 October 2023, following the parliamentary recess. This has delayed the application of the pay award for teachers, which will be paid in December salary, backdated to 1 September 2023.
23. Following the above announcement, all four unions re-balloted members on whether to continue with industrial action in the Autumn. Members of all four unions agreed that industrial action in relation to the pay award should cease. However, NASUWT has a live mandate for action short of strike, in relation to excessive workload and long working hours.
24. The NASUWT commenced continuous action short of strike on 18 September. The NASUWT has issued instructions to its members in relation to this action, which instruct members to only perform duties in line with their statutory terms and conditions. Guidance has been issued to schools and managers in directorates that employ teachers.

### **Redundancy consultation and notifications where 20 or more employees are proposed to be made redundant**

25. Under the Trade Union and Labour Relations (Consolidation) Act 1992, any employer that proposes to make 20 or more employees redundant at a single establishment within a period of 90 days must, in accordance with section 188 of the 1992 Trade Union and Labour Relations (Consolidation) Act (TULRCA), consult with and give notice [termed a section 188 letter] to

appropriate employee representatives (recognised union or if there is not one, elected representatives).

26. The Council has previously submitted one such section 188 letter to trade union representatives at the start of a new 2-year savings programme. However, moving forward notice will be issued on a quarterly basis as necessary at the point that we have a more detailed and accurate understanding of the workforce impact of each individual change programme.
26. In accordance with section 193 of TULCRA The Council also has a duty to inform the Secretary of State where it proposes to dismiss as redundant 20 or more employees within the same establishment. Such notice must be given at least 30 days before the first of those dismissals takes effect.

### **Updates on government consultations**

27. As previously reported at EHCC in June 2019, the government conducted a consultation that sought views on which data should be reported and by which organisations in relation to the 'ethnicity pay gap'. The government response to that publication was published in July 2023.
28. The outcome was that the government concluded that 'while the ethnicity pay gap reporting can be a valuable tool to assist employers, it may not always be the most appropriate mechanism for every type of employer'.
29. Instead, the government published guidance for employers that wish to voluntarily report. As there is no statutory requirement to report, the Council will not undertake this activity at this time.

### **Proposed Legislation**

30. At EHCC in March and June 2023, EHCC were updated on several Bills that were passing through parliament. The following are now Acts, however they are now pending commencement regulations. There are no specific timescales for implementation other than where indicated. Once regulations are available, officers will take appropriate action to ensure our policies comply with any new requirements.
  - Neonatal care (Leave and Pay) Act 2023 - not expected to commence until 2025
  - Carer's Leave Act 2023
  - Protection from Redundancy (Pregnancy and Family Leave) Act 2023
  - Employment Relations (Flexible Working) Act 2023

- Strikes (Minimum Service Levels) Act 2023

31. In September, two further Bills received Royal Assent and similarly are pending commencement regulations; the Workers (Predictable Terms and Conditions) Act 2023 and the Pensions (Extension of Automatic Enrolment) Act 2023.
32. The purpose of the Workers (Predictable Terms and Conditions) Act 2023, is to give workers and agency workers, the statutory right to request a predictable work pattern. This can relate to hours of work, days of work, or the length of contract/period of engagement. The right will apply to;
  - Workers whose existing working patterns lack certainty
  - Workers on fixed term contracts of 12 months or less (who could request an extension to their contract)
  - Agency workers (who can make their request either to the agency or to the hirer, providing they meet certain criteria)
33. There will be a qualifying period of service, currently anticipated to be 26 weeks, however these do not have to be continuous. The employer must respond to this request in line with the provisions of the Act, but there is no duty to accept the request and the worker can make no more than two requests within a 12-month period. ACAS will producing a Code of Practice for consultation in the Autumn. Commencement is expected in September 2024. Officers will work with Directorates to take any necessary action to meet the requirements of this Act when it commences.
34. The Council must already automatically enrol employees and workers into a pension scheme, providing they meet age and earnings requirements. In reality, the Local Government Pension Scheme (LGPS) and the Teachers Pension Scheme (TPS) provide for enrolment regardless of the minimums prescribed by law. However, there are employees and workers that opt out of the pension schemes, and existing regulations require the Council to 'auto re-enrol' these employees into a scheme every three years, if they meet the statutory minimum age and earnings criteria. The Pensions (Extension of Automatic Enrolment) Act 2023 will mean that a greater number of employees are auto re-enrolled every three years as the minimum age will be reduced from 22 years to 18 years, and the earnings threshold also reduced, which is currently £10,000 per year. The Act is subject to consultation about how and when it will be implemented and therefore is subject to commencement regulations.
35. Officers are closely monitoring two Bills progressing through parliament; the Worker Protection (Amendment of Equality Act) 2010 Bill, and the Paternity (Leave and Pay) Bill. The Worker Protection Bill seeks to introduce an

employer duty to prevent sexual harassment. The Paternity (Leave and Pay) Bill seeks to introduce greater flexibility for fathers-to-be to take their paternity leave in two separate blocks (it must be one block currently), but also to require them to provide 28 days' notice of such leave. Officers will ensure policies are updated if and when these Bills reach Royal Assent and are commenced. There are no known timescales for completion of the parliamentary process, or commencement dates.

36. Officers will continue to monitor other employment-related Bills as they pass through Parliament, bringing updates to EHCC as required.

### **Consultation and Equalities**

37. 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**

38. 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**

39. 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.
40. The Council will wait for the outcome of national negotiations for Soulbury staff before applying any pay award. Any pay award will be backdated to 1 September 2022. Officers will also wait for negotiations to start and conclude on the September 2023 pay award.
41. Officers will ensure the Council is prepared for industrial action once information is received from AEP and in the event that GMB have a mandate from their members for strike action.
42. Implementing a change in process to transition to a quarterly process to notify trade unions will be more timely and accurate.
43. 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>

<b>Section 100 D - Local Government Act 1972 - background documents</b>	
<p>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.)</p>	
<u>Document</u>	<u>Location</u>
None	

## **EQUALITIES IMPACT ASSESSMENT:**

### **44. 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.

### **45. Equalities Impact Assessment:**

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