

HAMPSHIRE COUNTY COUNCIL

Decision Report

Committee:	Employment in Hampshire County Council
Date:	8 November 2024
Title:	Pay and Legislation Update
Report From:	Director People and Organisation

Contact name: Nikki Lucas, Assistant Director HR and OD

Email: nicola.lucas@hants.gov.uk

Purpose of this Report

1. The purpose of this report is
 - to provide an update on the current position on the national pay awards for 2024, which cover local government staff, teachers and Soulbury staff
 - To recommend an amendment to the Council's Managing Performance policy
 - To update EHCC Committee on previously notified significant legislative changes that now require actions from Officers.

Recommendations

2. That EHCC Committee notes that the 2024 national pay award for Local Government employees (those paid on Grades A-G EHCC terms and conditions) has been agreed nationally.
3. That EHCC Committee agrees in principle to amend the Managing Performance policy for Hampshire County Council employees as defined in this paper.
4. That EHCC Committee delegates, to the Director of People and Organisation, authority to finalise and implement the proposed amended Managing Performance policy, including making any amendments required following consultation with the Trade Unions.
5. That EHCC Committee delegates, to the Director of People and Organisation, authority to determine and take the necessary steps to implement such

amendments to other HR policies as are required in order to ensure they do not go beyond the legal minimum for a fair process.

6. That EHCC Committee notes the new legal obligation to prevent sexual harassment in the workplace has come into force and note the significant legislative proposals within the Employment Rights Bill.

Executive Summary

7. The Trade Unions have submitted their pay claim for 1 April 2024 – 31 March 2025. Their claim is for an increase of at least £3,000 or 10% on all spinal column points (whichever is greater).
8. The Employer's side made a full and final offer of:
 - An increase of £1,290 (pro-rata for part-time employees) on salaries up to and including £51,515, which equates to EHCC 2007 Grades A – G
 - An increase of 2.5% on salaries above this
 - An increase of 2.5% to sleep-in and standby rates
9. The recognised unions balloted their members on whether to accept the offer. Two unions (Unite and UNISON) rejected the offer, GMB accepted. UNISON has balloted its members in Hampshire County Council on whether to take strike action in respect of the offer, however they did not achieve at least 50% turnout for any action to be lawful.
10. Following the outcomes of ballots nationally UNISON has accepted the pay offer. Now that two unions have accepted, the pay award is agreed, and officers will now implement this in payroll.
11. The Secretary of State agreed with the recommendation of the Statutory Teachers Review Body, that the pay award for 2024 for teachers should be 5.5%. This is now subject to approval through parliament, which is expected to conclude in November 2024. The pay award will be backdated to 1 September 2024 when it is applied in payroll.
12. The national negotiations for the 2024 pay award for Soulbury staff (which would apply from 1 September 2024) have yet to commence, although the officers' side have submitted their pay claim, which is for a pay increase of at least RPI inflation plus 5 per cent on all pay points and allowances
13. As reported at EHCC Committee in June 2024, the County Council's updated Managing Sickness Absence policy was approved by the Director of People and Organisation and has now been implemented. To enable managers to

manage all other underperformance in a pro-active and timely way, it is proposed that the County Council's Managing Performance policy is amended to align with the Managing Sickness Absence policy.

14. The key change in the Managing Performance policy would be to remove, in the same way as for Managing Sickness, one of the formal stages in managing underperformance. The proposed policy is in Appendix 1.
15. As previously reported to EHCC Committee, The Worker Protection (Amendment of Equality Act 2010) Act 2023 introduced a new obligation on employers to take reasonable steps to prevent sexual harassment in the workplace with effect from 26 October 2024.
16. The government has published the Employment Rights Bill, which contains several significant proposals affecting employment legislation. These proposals include;
 - Bringing forward a framework for a Fair Pay Agreement process in the adult social care sector, covering the pay and terms and conditions for this sector.
 - Establishing the School Support Staff Negotiating Body, covering pay, terms and conditions, training and career progression.
 - Removing the current 2-year qualifying period for protection from unfair dismissal. There will be an initial statutory probation period for new recruits, during which there will be a lighter-touch process for employers to follow to dismiss an employee.
 - Requiring large employers (>250 staff) to produce action plans on how to address their gender pay gaps and on how they will support employees through the menopause. This will be backed up by a Regulatory Enforcement Unit for equal pay.
 - Changing the right to paternity leave and unpaid parental leave to be a 'day one right'.
 - Extending bereavement leave and pay to employees that suffer a bereavement, rather than just parents whose child dies before their 18th birthday.
 - Strengthening protection for pregnant workers, making it unlawful to dismiss them within 6 months of their return to work except for in specific circumstances.
 - Making flexible working the default, unless the employer can prove it's unreasonable.
 - Address one-sided flexibility by banning exploitative zero-hours contracts, abolishing fire and rehire practices, and strengthening provisions on collective redundancy.
 - Bring forward measures to modernise Trade Union laws.

17. The Government intends consulting on these during 2025 with them coming into force no earlier than 2026.

Context and Background

NJC National Pay Award 2024

18. As set out to EHCC Committee in June 2024, the Trade Unions' pay claim for the year 1 April 2024 to 31 March 2025 is for an increase of at least £3,000 or 10% on each spinal column point, whichever is greater. There are other elements to the pay claim which were noted in the EHCC Committee Pay and Legislation paper in June 2024, although these elements of the NJC agreement do not apply to Hampshire County Council staff.

19. The employers' side made a full and final offer of:

- An increase of £1,290 (pro-rata for part-time employees) on salaries up to and including £51,515, which equates to EHCC 2007 Grades A – G.
- An increase of 2.5% on salaries above this.
- An increase of 2.5% to sleep-in and standby rates.

20. All three recognised unions balloted their members on whether to accept the offer. Following this, the national committee of GMB accepted the offer. However, the national committees of Unite and UNISON rejected the offer.

21. UNISON balloted their members on whether to take industrial action. Their ballot closed on 16 October 2024. Those that turned out to vote supported industrial action, however as only 22% of members that were entitled to vote did so, the turnout threshold of 50% was not met. Officers do not know the outcome of ballots across the country; however, UNISON has now accepted the pay offer.

22. Unite balloted their members in some local authorities. Unite's members in Hampshire County Council were not included in this. Where Unite did ballot, the ballot closed on 15 October. Unite has not put their signature to the pay circular. However, as only two of three unions need to agree, the pay award is now agreed.

23. The pay award agreed nationally applies to Grades A-G. EHCC Committee agreed in March 2024 to apply the national pay award agreed to staff on Grades H and above, with effect from 1 April 2024. This was on the basis that national negotiations are concluded and that the national pay award does not exceed the 3% allowance for pay for those staff. As these criteria are met, officers will implement the pay award in December payroll for all EHCC staff.

Teachers National Pay Award 2024

24. The School Teachers Pay and Review Body (STRB) recommended a pay increase of 5.5% which was accepted by the Secretary of State. The pay award for teachers cannot be applied until the Pay Order has completed parliamentary processes, which are expected to conclude around the 9 November 2024. Once parliamentary processes have been completed, officers will take steps to apply the pay award to staff. Assuming parliamentary processes conclude as anticipated, the pay award will be applied in December 2024, backdated to 1 September 2024.

Soulbury National Pay Award 2024

25. 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.

26. The Officer's side have submitted their pay claim for 2024, which is for a pay increase of at least RPI inflation plus 5 per cent on all pay points and allowances. They have also requested continued discussions on the pay structure of Soulbury. The Employer's side conducted a workforce and pay survey with local authorities in July 2024, however negotiations have yet to commence.

Managing Performance policy and future policy changes

27. The challenge to deliver Legal Minimum Service Level (LMSL) applies to how we manage our workforce. In doing so, we are seeking to ensure there are no additional management obligations that go further than the legal minimum.

28. Following the significant financial challenges the County Council is facing; all HR policies are being reviewed to ensure they do not go beyond the legal minimum service levels. An initial review identified just the Managing Sickness Absence as having more steps than were required. The proposed changes to the sickness absence policy were approved by EHCC Committee in March 2024 and have now been implemented. However, following further analysis and challenge, officers have identified that we can also reduce the formal steps within our Performance Management policy.

29. It is anticipated that as the review progresses to policies and procedures, officers may also identify other policies in the future that can be amended and still comply with statutory codes of practice. EHCC Committee approval to amend the Managing Performance policy (as set out below) with a delegation to the Director of People and Organisation to make amendments to other

policies to align them to LMSL is sought so that this work can progress at pace.

30. Our current Performance Management policy has four stages (for those with 2 or more years' continuous service). This is one more stage than is required to demonstrate a fair process as set out by ACAS, in the management of staff in the context of unsatisfactory performance.
31. It is proposed that, should an employee with more than two years' service be unable to sustain the required level of satisfactory performance, the number of stages required to manage this situation are reduced from four to three. The three stages would mirror those within the Managing Sickness Absence - a Management Discussion stage followed by two formal stages.
32. Removal of one formal stage from the policy provides the Council with a procedure that balances the need to treat our workforce fairly, whilst ensuring that there is an effective and procedurally fair process to manage the situation where employees are not able to perform at the required standard.
33. The proposed changes to the Managing Performance policy complies with the minimum requirements of ACAS. The statutory ACAS Code of Practice on discipline and grievances at work sets out key steps for employers in the management of discipline which includes poor performance. The key steps are to establish facts, inform the employee of the problem, allow an employee to be accompanied at a formal meeting, decide appropriate action and allow the employee to appeal a formal outcome. There is also the requirement to deal with performance issues fairly, which includes employers raising issues promptly and acting consistently.
34. A consistent approach to managing underperformance, with consistent stages and consistent language supports our managers to be effective in managing underperformance, regardless of its cause. The use of an Improvement Period and greater guidance on reasonable periods of time for improvement will improve consistency and therefore fairness across the workforce.
35. The Council values the strong partnership it has with our recognised trade unions. Recognised unions are consulted and engaged on changes to HR policies and guidance. As HR Policies are not part of the EHCC collective agreement (2007) any changes to policy do not have to be negotiated with trade unions. Through business-as-usual arrangements we have shared with unions our intention to amend the Performance Management policy as proposed.
36. Trade Unions have expressed concern about the impact of introducing policies which provide for employees who are underperforming to be dismissed earlier than they would be under the current policy. They also have

concerns relating to matters such as length of the Improvement Period, length of notice to be invited to a formal meeting and withholding of pay progression. In relation to withholding of pay progression, this is already a policy provision under our Salary policy. The proposed changes in the Performance Management policy seek to provide clarity and therefore consistency about when this should apply. If EHCC Committee agree to the proposals, meaningful consultation will continue with trade unions with the aim of seeking agreement of all parties on these points.

37. However, it is anticipated that the recognised unions may not agree with or support the change to the Managing Performance policy, or other future amendments where the impact is less favourable to their members. While agreement regarding policy changes does not have to be reached with recognised unions, consultation is undertaken with a view to reaching agreement. However, should we be unable to reach agreement the Council can implement changes to HR policy without union agreement.
38. It is anticipated that it may not be possible to agree changes to the Managing Performance policy, or similar future policy amendments where changes are less favourable to members, particularly as agreement could not be reached on the changes to the Managing Sickness Absence Policy.
39. It is possible that failure to reach agreement on these changes could lead to action by our recognised unions, in the form of ballots for industrial action or action short of strike.

Legislation - update on changes reported in previous EHCC Committee papers

40. Officers were expecting a new right to request predictable terms and conditions to come into force during the Autumn of 2024. However, the government intend to address this as part of their proposals to address one-sided flexibility within the Employment Rights Bill and they have launched a consultation on these proposals which closes 2 December.
41. It is anticipated that two consultations/Acts will not be taken forward any further/will be repealed by the Labour government;
 - The Strike (Minimum Service Levels) Act 2023 and associated consultation documents on those minimum levels on specific sectors.
 - Consultation on hiring agency workers to cover striking staff.
42. A new obligation on employers to take reasonable steps to prevent sexual harassment at work came into effect on 26 October 2024. This has previously been reported to EHCC Committee in November 2023. Employers must take

reasonable steps to prevent harassment of its workers from other workers and, through the EHRC guidance on these provisions, employers must also take the same steps in relation to 3rd parties. It should be noted that the Employment Rights Bill contains provisions that would extend the obligation, which are detailed below.

43. The County Council proactively addresses risks through its Zero Tolerance statement and by conducting risk assessments with staff who occupy high-risk roles such as those working alone. The County Council is considering its obligations in respect of other groups, including contractors and agency staff.

Legislation - The Employment Rights Bill

44. The Employment Rights Bill has been published, which will now progress through Parliamentary process. The Government has stated its intention to consult on the reforms during 2024 and 2025, with reforms coming in no earlier than 2026. The government has already launched four consultations which close in early December. The majority of the proposals will impact the employment of staff by the County Council, including its staff in schools. A brief summary of the major proposals is provided below.
45. The establishment of an Adult Social Care Negotiating Body (ASCNB) would see the creation of a national body with the remit to negotiate the pay, and terms and conditions for staff in the adult social care sector. The remit will cover pay, terms and conditions and 'any other specified matters' that relate to the employment of social care workers in the adult social care sector.
46. Similarly, the Employment Rights Bill proposes the introduction of a School Staff Negotiating Body (SSSNB), a national body with the remit to negotiate the pay, terms and conditions for support staff in schools. In addition, the Body would have the remit of advising on training standards and career progression.
47. Legislation currently provides employees who have 2 or more years' continuous service with their employer, the right to claim unfair dismissal, if they believe they have been dismissed unfairly from their employment. The length of service requirement has varied over time. The current two-year requirement has been in place since 2012.
48. The Employment Rights Bill provides for the removal of the two-year qualifying period, and it is the government's intention to consult on the introduction of a statutory probationary period. It is expected that the statutory probationary period would be in the region of 6-9 months, but further details are not yet known. During a probationary period, it would be expected that employers can take a 'lighter touch' process to dismiss an employee. This change is unlikely to be implemented before Autumn 2026.

49. There will be a new requirement on large employers (>250 staff) to produce an equality action plan showing the steps that they are taking in relation to their employees with regard to prescribed matters related to gender equality. The two specific measures within the Bill are (a) addressing the gender pay gap and (b) supporting employees going through the menopause. This requirement will be backed up by a Regulatory Enforcement Unit for equal pay.
50. The Council already publishes its gender pay gap in line with current legislation and therefore the additional step would be to publish an action plan. The Council has a 'How to Guide' focussed on the menopause, which draws together support mechanisms that are available to managers and employees. The Council is already signed up to the Menopause Workplace Pledge, a set of commitments with the goal of supporting staff through this key time in their life.
51. It is proposed that the right to take paternity leave becomes a 'day one right'. Paternity leave is currently one or two weeks of paid leave to be taken within the first 52 weeks of the child's birth/adoption and currently requires an employee to have 26 weeks' continuous service with their employer.
52. It is proposed that the right to take unpaid parental leave becomes a 'day one right'. Unpaid parental leave is the right to take up to 18 weeks of unpaid leave (a maximum of 4 weeks in any one year) throughout the child's life until the age of 18 years. This leave currently requires an employee to have one year of continuous service with their employer to be eligible.
53. The government recently introduced statutory parental bereavement leave and pay, which provides for 2 weeks' leave and pay following the death of a child. The proposal is that the entitlement to leave and pay is extended to other bereavements. There is no clarity on whether the bereaved person must be a relative to the person who has died.
54. Workers who are in a 'protected period' through pregnancy/maternity leave have protections in relation to redundancy – in that during the protected period, if an employee is selected for redundancy, the employer must provide them with suitable alternative employment if it is available. The proposal is to extend that protection to any dismissal. The Bill also includes measures that would extend protection for employees from dismissal for a period of 6 months after they return from statutory leave (the current protection applies only during leave).
55. The law changed on 6 April 2024, giving employees the right to request flexible working from day one of employment. The Bill proposes an extension of this, 'making flexible working the default', unless the employer can prove it

is unreasonable. Further clarity on what this means in practice would be provided in subsequent regulations/guidance.

56. The government recently introduced a statutory Code of Practice on termination and re-engagement ('fire and re-hire') practices, setting out minimal steps employers should take if they terminate and re-engage staff on different terms and conditions. The Employment Rights Bill proposes to make the dismissal of staff in these circumstances an automatically 'unfair dismissal'. The government has launched a consultation on its proposals, which closes on 2 December.
57. The Employment Rights Bill proposes to address one-sided flexibility by taking several actions. One is to ban exploitative zero-hours contracts. The Council does not use zero-hour contracts and therefore this will have no impact. A proposal to amend the requirements on when collective redundancy obligations are triggered may impact the County Council, however further detail will need to be provided by the government through consultation.
58. The Bill includes proposals that would update Trade Union laws, for example, by requiring employers to provide a statement to employees of their right to join a trade union, introducing an 'access agreement' which sets out how the trade unions can request access to the workplace and by simplifying the amount of information unions are required to give employers in industrial action notices. There are several other minor amendments contained within the Bill in this area. The government has launched a consultation on its proposals, which closes on 2 December.
59. The Worker Protection (Amendment of Equality Act 2010) Act 2023 which came into force on 26 October, to require employers to take reasonable steps to prevent sexual harassment in the workplace is proposed to be extended under the Employment Rights Bill. The proposals would see the word 'all' inserted into the obligation – so that employers must take 'all reasonable steps' to prevent sexual harassment. The Employment Rights Bill also proposes to amend the legislation to require employers to take the same steps in relation to third parties (rather than this requirement being solely within the EHRC guidance). Both of these proposals were contained within the original Worker Protection Bill in 2023 but were removed through parliamentary process.
60. Detailed analysis of all measures contained within the Employment Rights Bill is currently being conducted by officers, to understand all proposals within it. In addition to the Bill, government has announced a 'next steps' document outlining reforms it will look to implement in the future. The future legislative agenda will therefore be set by the regulations that will implement provisions within the Employment Rights Bill, which will become clearer during 2025. Updates will be provided to EHCC Committee when further information is known through government consultations and draft regulations.

Consultation and Equalities

61. An Equalities Impact Assessment is being completed as part of the consultation process for the proposed changes to the Managing Performance policy. The impact assessment does not clearly identify that this policy change may negatively impact a particular group of staff that share a protected characteristic. It is possible that staff with a disability may require reasonable adjustments to support them to perform well. The current and proposed policy requires managers to implement reasonable adjustments before taking formal action under the policy.
62. It is not envisaged that an Equalities Impact Assessment will be required for any of the other updates included in this paper.

Climate Change Impact Assessment

63. 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.

Conclusions

64. Officers will apply the pay award for EHCC and Teachers in December payroll.
65. Officers will continue to monitor the Local Government Associated for updates on the Soulbury pay award for 2024.
66. Updates to the Managing Performance policy, and potential future policy updates will provide the Council with procedures that balance the need to treat our workforce fairly, whilst ensuring that there is an effective and procedurally fair process to manage the situation where employees are not able to perform at the required standard.
67. Officers will continue to analyse the provisions within the Employment Rights Bill and monitor consultations to ensure policies and procedures are updated as new legislation comes into force in the coming two years.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

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

Other Significant Links

Direct links to specific legislation or Government Directives	
<u>Title</u>	<u>Date</u>

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:

68. 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.

69. Equalities Impact Assessment:

70. An Equalities Impact Assessment is being completed as part of the consultation process for the proposed changes to the Managing Performance policy. The impact assessment does not clearly identify that this policy change may negatively impact a particular group of staff that share a protected characteristic. It is possible that staff with a disability may require reasonable adjustments to support them to perform well. The current and proposed policy requires managers to implement reasonable adjustments before taking formal action under the policy.

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