

HAMPSHIRE COUNTY COUNCIL

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| Committee: | Employment in Hampshire County Council Committee |
| Date: | 11 November 2021 |
| Title: | Pay, Policy and Legislation Update |
| Report From: | Director of HR, OD and CES |

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Purpose of this Report

1. The purpose of this report is to provide an update to EHCC on the National Pay Award and an update on potential employment related legislative changes.

Recommendation(s)

2. That EHCC note the current position of the national pay negotiations and agree the application of the same national pay award to EHCC Grades H and above (as applied to Grades A – G), on the presumption that it is no more than 1.75%. Consultation with recognised Trade Unions will be undertaken regarding the implementation of this decision. It is not expected that the final settlement will be higher than this but if it is higher a decision will be brought back to EHCC.
3. That EHCC note the final position on the Home Working Allowance following consultation.
4. That EHCC note the updates on government consultations and potential employment legislation changes

Executive Summary

5. The National Employers have made an improved one-year final pay offer of 2.75% for the lowest pay point on the national pay framework and 1.75% for all other pay points. Unison, GMB and Unite members have voted to reject the offer. All three unions are considering next steps, which includes a ballot for industrial action. The LGA has been informed that industrial action ballots are expected to take place in December and January.
6. As reported to EHCC in March 2021 (exempt paper) negotiations to amend the Home Working Allowances have progressed and have now concluded. Recognised trade unions have agreed the proposals, and these are now being implemented.
7. This report provides updates on the following legislation updates and Government consultation topics:
 - Public sector exit payments including 'Special Severance Payments'
 - Government response to a consultation on sexual harassment in the workplace
 - Government response to a consultation on reducing ill health-related job losses

Contextual information

National Pay Award

8. Following the Unions' rejection of the initial 1.5% pay offer made by the National Employers, a final offer of 2.75% for the lowest pay point on the national pay framework and 1.75% for all other pay points was made in August. This offer was made notwithstanding the fact that government indicated a pay freeze for the public sector. The National Employers confirmed to Unions on 19th October that the offer was "full and final" and that negotiations would not be re-opened.
9. Union members have been asked to vote on the final pay offer. All three unions are recommending that their members vote to reject the pay offer. Unison, GMB and Unite members have voted to reject the offer. All three unions are considering next steps, which includes a ballot for industrial action
10. The Employment in Hampshire County Council (EHCC) agreement that governs the terms and conditions of the majority of staff employed by the Council requires the application of the outcomes of the national pay bargaining to Grades A-G. It is not possible to influence the national pay negotiations at this point.

11. In July, EHCC agreed to the implementation of the pay award to Grades A-G. EHCC also agreed that if the settlement was higher than 1.5%, an update would be brought to EHCC for consideration, prior to consulting with local trade unions regarding implementation of the pay award for grades H and above.
12. EHCC previously noted that if the settlement was higher than 1%, this would be required to be funded through financial contingencies.
13. The local government employer offer of 1.75% exceeds the forecast assumption of 1% included in the medium-term financial strategy. If agreed at 1.75%, the consequent c.£2.5m pressure will need to be covered by general inflation contingencies and reviewed as part of future budget setting.
14. It is recommended that when agreement on the national pay award is reached, EHCC agree to applying the same percentage increase (as applied to Grades A - G) to Grades H and above. If this is agreed by the Committee, Trade Unions will be consulted as required. This recommendation is dependent on the pay award being no more than 1.75% for Grades D and above.

Home Working Allowance

15. As presented to EHCC in March 2021, it was the Council's proposal that the current (taxable) contractual Home Working Allowance be removed and replaced with a non-contractual (non-taxable) Home Working Allowance aligned with the HMRC rate, payable to only those staff that are contractually required to work from home. There are currently 296 contractual home workers employed by the Council. Staff who are hybrid working in accordance with the Council's Open Workplace policy are not eligible to be paid a Contractual Home Working Allowance.
16. During the negotiation process the Council put forward a significantly improved revised proposal that offered to freeze the existing Home Working Allowance for those members of staff currently in receipt of the Home Working Allowance. Additionally, the Council proposed that the new Home Working Allowance would only apply to new members of staff.
17. The negotiations concluded on 6 August and following further discussions, the Council and the Trade Unions reached agreement as set out in paragraphs 18-20 below.
18. The EHCC collective agreement will be updated to reflect these changes.

Existing staff in receipt of the current (taxable) contractual Home Working Allowance

19. Staff who are in roles that are eligible to receive the current (taxable) Home Working Allowance will continue to receive the allowance, applied pro rata, based on their annualised hours entitlement, until such time that they leave the employment of Hampshire County Council or move into a role that is not eligible to receive the allowance.

New Employees and Internal Job Changes, effective 1 October 2021

20. Any new starters who meet the eligibility criteria to receive a home working allowance will be paid a pro-rated Home Working Allowance aligned to the HMRC allowance rate (currently £6 / week).
21. Existing members of staff who are appointed to a role that meets the contractual home working eligibility criteria will be paid a pro-rated Home Working Allowance aligned to the HMRC allowance rate (currently £6 / week).

Exit Payments and Special Severance Payments

22. As reported to EHCC in July 2021, MHCLG asked all Councils to share data on exit payments that were made between 1 April 2014 and 31 March 2021. Hampshire County Council complied with this requirement, and it is understood that annual reporting of this data will now be required.
23. It is further understood that the Government intends to make a further announcement 'in the Autumn' about exit payment caps. EHCC will be updated when further details are known.
24. On 2 July, MHCLG launched a consultation on Special Severance Payments. The intention of the guidance was not to limit such payments, but to set an expectation that such payments should be exceptional and where required, would be subject to a senior level of approval.
25. Hampshire County Council responded to the consultation to seek clarification of what was in scope of such payments and to feedback concerns about the suggested level of approval. Hampshire County Council already has a robust process to ensure exit payments represent value for money. Our existing governance matrix defines levels of approval for such exit payments. Our matrix and business process will be reviewed when the final guidance is published.

Government response to consultation on sexual harassment in the workplace

26. Consultation on sexual harassment in the workplace ran between 11 July and 2 October 2019. Sexual harassment in the workplace has been prohibited for some time and is defined in the Equality Act 2010 as unwanted conduct of a sexual nature, and the conduct has the purpose or effect of violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.
27. The purpose of that consultation was to:
 - seek views on the existing legal framework that prevents sexual harassment, and
 - to ask the public about their experiences in order to gather insight in this area
28. The response was published on 21 July 2021. The main finding was that many consultees were supportive of a new duty to prevent harassment and believed it would prompt employers to take positive steps in this area.
29. The government intends to introduce a new duty to require employers to prevent sexual harassment. They will also introduce explicit protections from third-party harassment.
30. The government will support the Equality and Human Rights Commission to develop a statutory code of practice that will help employers to understand whether they have taken 'all reasonable steps' to prevent harassment. They will also produce guidance that complements the statutory code of practice.
31. The government will also look closely at extending the time limit to six months for bringing claims about sexual harassment. The current time period is three months, which is the same for all claims under the Equality Act. The government have indicated that any extension to time limits for sexual harassment claims would also need to apply to other Equality Act-based claims.
32. Hampshire County Council already has a Dignity at Work policy that sets out clear expectations on our workforce including a zero tolerance of harassment, discrimination, bullying and abuse and that it will respond promptly to any incidents of these. The Dignity at Work Policy may need to be reviewed once further detail of the new statutory code of practice and guidance is known.
33. At the time of writing, there are no known timescales for the consultation on regulations changes, the statutory code of practice, or draft guidance. EHCC will be updated when further detail is known.

Government response to consultation on reducing ill health-related job losses

34. On 20 July 2021, the government published its response to a consultation that sought views on how to reduce ill health -related job losses. This consultation follows on from a 2017 document 'Improving Lives: The Future of Work, Health and Disability'. The 'Improving Lives' document set out the government's plans to transform employment prospects of disabled people and those with long-term health conditions up to 2027.
35. The response is heavily focussed on improving advice and support to Small and Medium Enterprises. The key elements of most relevance to the Council are:
- The Government no longer intends to introduce a Right to request workplace modifications, however it does feel that more should be done to make people and employers aware of their rights and obligations. The Council already has a Reasonable Adjustments policy, with supporting guidance and resources to aid managers and staff.
 - The Government has asked the Health and Safety Executive to explore ways to strengthen non-statutory guidance on how employers can best support disabled people and those with long-term health conditions to remain in work.
 - Further consultation will take place on Statutory Sick Pay, adjustments and other changes that would support phased returns to work; The Council already supports employees with phased returns to work where this would enable or better support a more successful return.
 - Exploring ways to improve capacity in the market to address OH workforce shortages, particularly clinical staff, although it is recognised that this will take time.
 - A review of the 'fit note' which is required from the 8th calendar day of absence. This will include a review to widen who is authorised to sign the note, and embedding these in hospital systems to reduce the burden on GPs to provide them for hospital stays
 - Increasing visibility and marketing of the Access to Work scheme that supports individuals with disabilities to remain in work. The Council has guidance on the Access to Work scheme and applies it where appropriate.
36. The Council is a Disability Confident-Committed Employer, which underpins our approach to recruitment and support of individuals with a disability. The Council's existing guidance, Occupational Health and Wellbeing provision, and our staff networks work together to support individuals with a disability to work for, and remain in work with, the Council in the way the government

envisages for all employers. As guidance is released, our documents and processes will be reviewed, and any required changes made.

New consultation – Making Flexible Working the Default

37. The government launched a new consultation on 23 September 2021, that is proposing several changes to regulations that provide the statutory right to request flexible working. The consultation is asking questions on the following:
- The impact of allowing all UK employees to request a flexible working arrangement from day one with their employer
 - Whether the list of reasons an employer can refuse a request are still valid
 - Requiring an employer to demonstrate that they have considered alternatives to the request, rather than a simple refusal
 - The frequency with which employees can request to work flexibly (currently limited to once in a 12-month period) and how fast employers need to respond to such a request
38. EHCC will be aware that the Council recently introduced an Open Workplace Policy that sets out how managers and employees can reap the benefits of working flexibly in roles where this can be accommodated. The Open Workplace policy is in addition to the Council's Right to Request Flexible Working policy, which is a statutory requirement. Several of the proposals in the consultation would necessitate a change to the Councils' Right to Request Flexible Working policy if legislation is amended.

Government response to consultation on carer's leave

39. The government sought views in 2020 on its proposed introduction of a new right to take up to 5 days unpaid carers leave per year. An outline of the proposal was provided to EHCC in July 2020. The consultation showed overwhelming support for this new right and therefore government will legislate for this provision as soon as parliamentary time allows. This new entitlement will:
- be a 'day one' right - requiring no previous service; and
 - be for the care of a dependent - a spouse, civil partner, child, parent, a person who lives in the same household as the employee (other than by reason of them being their employee, tenant, lodger, or boarder) or a person who reasonably relies on the employee for care; and
 - depend on the person being cared for having a long-term care need. This would be defined as a long-term illness or injury (physical or mental), a disability as defined under the Equality Act 2010, or issues related to old age. There would be limited exemptions from the

requirement for long-term care, for example in the case of terminal illness.

- be flexible, allowing individuals to take leave in a minimum of half-day blocks, or full days, or one whole week
- require the employee to give notice. The notice must be the twice the length of time being requested as the length of the leave, plus one day. This separates the entitlement from the existing

40. The Council will update its policy in line with the legislative requirement when it is implemented.

Outstanding National Consultations and Government responses

41. As reported at EHCC in July, we continue to monitor these consultations in order that we are ready to support any appropriate actions should they become necessary:

- Ethnicity pay gap reporting
- Measures to address one-sided flexibility

Consultation and Equalities

42. 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

43. Hampshire County Council utilises two decision-making tools to assess the carbon emissions and resilience impacts of its projects and decisions. These tools provide a clear, robust, and transparent way of assessing how projects, policies and initiatives contribute towards the County Council's climate change targets of being carbon neutral and resilient to the impacts of a 2°C temperature rise by 2050. This process ensures that climate change considerations are built into everything the Authority does.

Climate Change Adaptation and Carbon Mitigation

44. The carbon mitigation tool and climate change adaptation tools were not applicable on this occasion because the decision relates to a programme that is strategic/administrative in nature.

Conclusions

45. The recommendations in this paper will provide authority to implement pay awards for grades H and above, where certain conditions described in paragraph 13 are met. This will prevent any unnecessary delays to consulting on and subsequently paying the award once the national position on the pay award is settled.
46. Implementing changes to the Home Working Allowance will ensure that all new starters, or staff who are new to post that is a contractual home worker is remunerated in accordance with the new agreed EHCC terms and conditions.
47. Monitoring consultations and announcements on legislative changes or new requirements will allow adjustments to policies and business processes to be implemented and therefore continued compliance.
48. Updates on other matters covered in this paper, notably sexual harassment in the workplace and making flexible working the default and other national consultations will be provided as further details and clarity are provided.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

This proposal 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> |
|------------------------------------|-------------|
| Pay, Policy and Legislation update | July 2021 |

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:

1. 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.

2. Equalities Impact Assessment:

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