

Cabinet

18 July 2018



Title	Proposal for future arrangements for terms and conditions for Spelthorne employees		
Purpose of the report	To make a recommendation to Council		
Report Author	Sandy Muirhead, Group Head, Commissioning and Transformation		
Cabinet Member	Councillor John Boughtflower	Confidential	No
Corporate Priority	This item is not in the current list of Corporate priorities but still requires a Cabinet decision		
Recommendations	<p>Cabinet recommends to Council:</p> <ul style="list-style-type: none">(a) To agree that the Council takes steps to move to local arrangements for agreeing future pay awards for all employees(b) To agree that the Council takes steps to move to local terms and conditions for all employees(c) To agree formal proposals for consultation with UNISON and employees(d) To agree a timetable and process for implementing the move to local pay and conditions from April 2019(e) To delegate to the Chief Executive (in consultation with the Leader) authorisation to formally conclude a Collective Agreement with UNISON on local pay awards and local terms and conditions(f) To delegate to the Chief Executive authorisation to consult directly with staff on local pay awards and local terms and conditions if a Collective Agreement with UNISON cannot be reached by 31 August 2018. This may run in parallel with any continuing consultation with UNISON to finalise the terms of any Collective Agreement.		
Reason for Recommendation	In line with the need to be more self-sufficient as national funding has been withdrawn, the Council wishes to move to deciding local pay awards and operating local pay, terms and		

	conditions for all employees moving away from the national arrangements for these matters. This will mean that in future the Council can fully take account of local circumstances and affordability with maximum flexibility.
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1. Arrangements for pay awards and conditions of service

- 1.1 The Council currently applies national pay awards agreed by the national local government negotiating bodies. National pay awards set out the percentage pay award to be applied and other changes to the national pay spine. The emphasis is on pay award levels and changes to pay structures which address national issues and pay considerations rather than local circumstances, flexibility or affordability. The Council has little influence on the pay award and implementation arrangements agreed nationally, which must be applied.
- 1.2 Over the years the Council has made several pay decisions over and above national arrangements in order to retain a competitive edge in the local recruitment market and to take account of local circumstances. This has included an additional Spelthorne Allowance (currently called Spelthorne Pay Supplement) on top of national pay rates which is now incorporated into base pay and enhanced pay awards in some years (this incorporated the national inner fringe allowance added to spine points for councils just outside of London). These actions have ensured that Spelthorne pay rates have kept ahead of the national pay spine and the bottom point of the Council's pay spine has continued to be above the statutory national minimum wage (NMW) pay rate.
- 1.3 In contrast the bottom points of the national pay spine had fallen behind in relation to statutory national minimum pay rates and anticipated future movements in national minimum pay. Consequently the national pay award for 2018/19 has required considerable bottom loading to lift pay rates above the NMW rate. The Council has to implement some of this bottom loading even though our own pay rates are already comfortably above NMW rates and such bottom loading distorts local relativities in the first few pay grades.
- 1.4 The 2018/9 pay award is the first year of a two-year pay award agreement nationally. The second year pay award for 2019/20 is due to restructure the national pay spine from April 2019 to future proof national pay rates in relation to anticipated changes in the NMW. Due to previous local actions Spelthorne does not need to restructure the Spelthorne pay spine in this way and implementing the changes agreed nationally will cause significant difficulties with relativities at the bottom end of the pay scales, particularly in the direct services area of the Council.
- 1.5 Many councils in the South East have moved away from national pay awards to local arrangements and Spelthorne is now the only council in Surrey which is still subject to national pay awards. The Chief Executive and Management Team have concluded that continuing to be bound by national pay awards is no longer in the Council's best interests and believes that the Council should seek to move to local arrangements for pay awards, so that full regard can be taken of local circumstances and affordability. This is consistent with the need

for council budgets to use local solutions to balance the books in view of the loss of national funding.

- 1.6 As well as applying national pay awards the Council also applies national terms and conditions for all employees, as amended by Spelthorne. The national terms and conditions that apply are the Joint National Committee (JNC) for Chief Executives for Chief Executives, the Joint National Committee (JNC) for Chief Officers for the Deputy Chief Executives, Group Heads and specified professional posts and the National Joint Council (NJC) for Local Government Services for other posts.
- 1.7 It would be consistent with a move to local arrangements for agreeing pay awards to also move to local terms and conditions by incorporating the current national conditions of service that apply to Council employees into local Spelthorne terms and conditions of employment. This would transfer control for any future changes to the Council, enabling it to retain flexibility and take account of local circumstances if necessary. These wider terms and conditions of employment continue to be appropriate for the Council's needs and there is no requirement to change them.
- 1.8 The Pay Policy Statement agreed by Council for 2018/19 states that Spelthorne BC is considering a move from national pay to local pay and will commence consultation accordingly, with affordability and local flexibility to be taken into consideration. The Pay Policy states that should Council agree to proceed to local pay it would be effective for the 2019/20 Pay Policy effective from April 2019 and any national pay award for 2019/20 as part of a two year deal will not apply to the Council as a local arrangement may be in place.

Changing terms and conditions

- 1.9 Changing the terms and conditions of employment that apply to employees, including arrangements for agreeing pay awards, cannot simply be done unilaterally by employers. Formal consultation on the changes proposed is required. Following consultation, changes can be agreed with individual employees or, where the proposed changes are to apply to the whole workforce, a collective agreement can be reached with a recognised Trade Union which would mean that the changes would be applied to all employees (whether members of the Union or not). The Council recognises UNISON for the purposes of consultation and alerts employees in their contracts of employment that UNISON will be consulted in relation to proposed changes to terms and conditions which are then binding on all employees.
- 1.10 If it is not possible to reach agreement with employees (either through consultation with the Union or after direct negotiation with employees), employers may decide that they still need to proceed to change terms and conditions of employment for key operational or financial reasons. In that event, the mechanism is to give notice to bring current contracts of employment to an end and to offer new, changed conditions in their place. This is known as termination and reengagement. Although the mechanism is to achieve change by termination and reengagement the intention from the outset is that employment continues uninterrupted under new conditions.

2. Options analysis and proposal

- 2.1 **Option 1** is to continue to apply national pay awards and national terms and conditions. This option ties the Council to national decisions and to implementing the second year of the national 2 year pay award including restructuring of the pay spine. It does not provide local control or increase future flexibility to take account of local circumstances or affordability.
- 2.2 **Option 2** and **Option 3** are to formally consult with UNISON and employees on the proposal to move away from national arrangements for pay awards, terms and conditions and to move to local Spelthorne pay and conditions with effect from 1 April 2019. The proposals for change are set out in **Appendix 1**.
- 2.3 **Option 2** is to enter into consultation with UNISON with a view to agreeing a Collective Agreement to move to local Spelthorne arrangements for pay awards and local Spelthorne terms and conditions of employment from 1 April 2019, the agreement to apply to the whole workforce. If UNISON's agreement to the proposals is secured, it is proposed that the Chief Executive (in consultation with the Leader) is authorised to formally conclude a Collective Agreement with UNISON. In parallel with the formal consultation with UNISON, there would be informal consultation and engagement with the workforce about the proposals and information about the consultation with UNISON including via Spelnet and staff meetings.
- 2.4 Reaching a Collective Agreement with UNISON would enable the Council to move to local pay, terms and conditions without the need to formally consult with the whole workforce or give notice to all employees to change employee contracts. It is expected that the local branch of UNISON and Regional Officers from UNISON will be involved in the consultation. It is not known whether UNISON will agree a Collective Agreement to move away from national pay and conditions. It may become apparent that it is not possible to conclude a collective agreement in time to implement a Spelthorne pay award for 1st April 2019.
- 2.5 **Option 3** applies in the event that it is not possible to conclude a Collective Agreement with UNISON to agree a change to local Spelthorne pay awards and local Spelthorne terms and conditions. Under this option the Council would formally consult directly with all employees on the proposal to move to local pay, terms and conditions and would consider all the responses to the consultation with all employees and UNISON. There would be a report back to Cabinet and Council for a decision on whether to proceed to implement local pay awards, terms and conditions by giving notice to terminate current contracts and offering new contracts on local Spelthorne terms and conditions in their place. It is proposed that the Council proceed to Option 3 if it has not been possible to achieve a Collective Agreement (Option 2) by the end of August 2018.

2.6 **Risks**

There is a risk that consultation on proposals to change pay, terms and conditions will be unsettling to staff with a negative impact on staff morale. There is a risk of industrial action. Proceeding to change terms and conditions by dismissal and reengagement has the risk of claims for unfair dismissal or breach of contract. If the employer fails to consult properly as required by regulations, employees may be able to claim a protective award of up to 90

days' pay for each employee. Proper consultation and engagement with staff, ensuring that there is adequate time for consultation and adhering to statutory and contractual notice requirements mitigates these risks. Any compensation would be likely to be limited as the Council would be offering reengagement on new terms which would be broadly comparable to existing terms.

- 2.7 There is a risk that some staff decide not to accept new terms and conditions and leave the organisation at the end of March 2019, potentially causing difficulties in covering jobs and functions. This is minimised by engagement and extensive consultation with the workforce and by confirming that staff are valued and it is not intended that anyone should lose their jobs as a result of the proposed change to local pay and conditions.
- 2.8 **The proposal** is to take action to move to local arrangements for pay awards, terms and conditions by consulting with UNISON and the workforce, using **Option 2** initially, moving to **Option 3** if required to ensure that changes can be implemented by 1 April 2019.

3. Financial implications

- 3.1 Employee salaries and wages represent the substantial majority of the Council's net budget with the impact of pay awards considered as part of budget setting each year (or later if the national pay awards are delayed). Decisions on national pay may be taken by the national bargaining groups at times which do not fit with the Council's budget cycle and national pay awards may be higher than budgeted locally, in which case balancing financial savings must be achieved. If local Spelthorne arrangements for pay awards are in place they can be linked to the budget setting process and be in place for pay awards to be implemented at the beginning of each April.

4. Other considerations

- 4.1 Pay arrangements and terms and conditions of employment must comply with UK legislation including the Equality Act and national minimum wage rates. Spelthorne ensures that employment policies, procedures and arrangements comply with the relevant legislation and statutory guidance.
- 4.2 Each council is a separate employer and it is open to councils to decide to move away from national terms and conditions to local ones. Such a move must be done in a way which complies with employment law and guidance. It is possible to reach a Collective Agreement with the recognised trades union, UNISON in Spelthorne's case, for a change to terms and conditions that applies to the whole workforce (option 2).
- 4.3 If it is not possible to reach a collective agreement Spelthorne could decide to consult with the whole workforce on proposals for a change to terms and conditions (option 3). A period of at least 45 days is required for consultation in that event. Responses to that consultation from employees and from the trades union must be carefully considered to decide whether to go ahead with the proposed change, to remain with the status quo or to modify arrangements in the light of consultation responses.
- 4.4 After consultation, if the decision is taken to proceed to implement a change to terms and conditions it may be achieved by a process known as 'dismissal and reengagement', writing to each employee to bring their current contract of

employment to an end and offering a new contract of employment with changed terms and conditions of employment in its place. A notice period of 3 months is required. This approach is a mechanism to achieve a change to terms and conditions which is supported by a strong business case. The workforce remains the same size at the end of the process with employees remaining in the same posts. It does not lead to any redundancies or other changes to the size or shape of the organisation.

- 4.5 Complying with employment law requirements and statutory guidance from ACAS will help to minimise the risk of employment tribunal or other claims from employees. Failure to do so will mean that any claims from employees may be successful with the risk of financial awards against the Council.
- 4.6 Staffing is not an Executive matter and therefore changes to staff terms and conditions have to be agreed by Council or a delegation given specifically by Council to the Chief Executive as Head of Paid Service.

5. Timetable for implementation

- 5.1 The timetable for implementation of a change to terms and conditions is attached at **Appendix 2**. The full period from now until the end of March 2019 is required in order to effect a change to terms and conditions of employment if the Council had to proceed by way of termination and reengagement (option 3) to start in April 2019.
- 5.2 A Collective Agreement with UNISON could be achieved in a shorter period (option 2). However if a Collective Agreement has not been achieved by the end of August 2018, the Council would need to commence formal direct consultation with all employees on the proposals by the middle of September 2018 in order to achieve a change to terms and conditions for a 1st April 2019 effective date by termination and reengagement (option 3). This formal direct consultation with all employees may run in parallel with any continuing consultation with UNISON to finalise terms of any Collective Agreement.
- 5.3 Starting formal consultation with all employees later than mid-September 2018 would mean that a move to local Spelthorne pay, terms and conditions could not be achieved by 1 April 2019.

Background papers: There are none

Appendices:

Appendix 1 Proposals for consultation: a proposal to move to local Spelthorne arrangements for pay awards and Spelthorne terms and conditions.

Appendix 2 Timetable for implementation