

# Cabinet

11 December 2018



<b>Title</b>	Proposal to move to local pay, terms and conditions		
<b>Purpose of the report</b>	To make a recommendation to Council		
<b>Report Author</b>	Debbie O'Sullivan/Angela Tooth		
<b>Cabinet Member</b>	Councillor John Boughtflower	<b>Confidential</b>	No
<b>Corporate Priority</b>	This item is not in the current list of Corporate priorities but still requires a Cabinet decision		
<b>Recommendations</b>	<p>(a) To note the position on consultation with UNISON with a view to concluding a Collective Agreement on local pay awards and local terms and conditions</p> <p>(b) To consider the responses from UNISON and employees to the formal consultation period</p> <p>(c) To decide whether to recommend any changes to the proposals taking account of the consultation responses</p> <p>(d) To decide whether to proceed to implement the proposals to move to local pay awards and local terms and conditions by giving notice (dismissal and reengagement)</p> <p>(e) To delegate to the Chief Executive authorisation to implement the changes.</p> <p><i>NOTE: As detailed in point 2 below, consultation will continue with UNISON with a view to conclude a Collective Agreement. This Cabinet Report has been submitted in order for deadlines to be met should a Collective Agreement not be agreed.</i></p>		
<b>Reason for Recommendation</b>	In the light of consultation responses received to decide whether to proceed to implement changes to the method of deciding pay awards and to operate local pay, terms and conditions for all employees moving away from national arrangements for these matters.		

**1. Proposals to move to local arrangements for pay awards, terms and conditions**

- 1.1 Council on 19 July 2018 decided on proposals to move to local arrangements for deciding pay awards and local terms and conditions so that in future the council can fully take account of local circumstances and affordability with maximum flexibility. Council agreed a timetable and process for implementing a move to local pay and conditions from April 2019, including consultation with UNISON with a view to concluding a Collective Agreement to bring in the changes and formal consultation with the workforce on the proposals if required.

**2. Progress towards agreeing a Collective Agreement**

- 2.1 The Chief Executive has continued to consult with UNISON with a view to concluding a Collective Agreement on local pay awards and local terms and conditions. If a Collective Agreement is concluded the agreement would apply to the whole workforce and it would not be necessary to give notice to each individual member of staff to implement the change.
- 2.2 Consultation with UNISON has been ongoing since the summer, with positive dialogue and cooperation on both sides. Nevertheless it has not yet been possible to conclude an Agreement as there remain a number of points where the parties are not able to agree.
- 2.3 Efforts to conclude a Collective Agreement will continue until the Cabinet meeting in December, with a verbal update at the meeting. If an Agreement is not concluded by that time it would be necessary to proceed to implement the changes by other means in order to introduce the proposed changes by 1 April 2019 (this would be by dismissal and reengagement).

**3. Information and Consultation with employees**

- 3.1 Since the Cabinet meeting in July employees have been provided with full information on the proposals to move to local pay awards and local terms and conditions, the proposed timetable and the process. This has included briefings and updates at Staff Meetings, meetings at day centres, depot and nursery for employees based away from Knowle Green, information on Spelnet and in hard copy, responses to queries and concerns. Employees have been able to raise queries or concerns in a number of ways, and any concerns brought to management's attention have been responded to.
- 3.2 As a Collective Agreement was not concluded by the end of August 2018 a letter and the proposals were sent to all employees at the beginning of September, with a Formal Consultation period running from 3 September 2018 to 2 November 2018. During the Formal Consultation period employees were able to submit their responses to the proposals and also raise any queries that they might have. A set of Frequently Asked Questions (FAQs) has been available to employees to read alongside the formal proposals to answer queries and provide clarification. Any queries raised during the Formal Consultation period have been responded to. UNISON was also able to respond to the Formal Consultation.
- 3.3 The Formal consultation period was for a 2 month period, meeting the legal requirement for a period of at least 45 days consultation on proposals for changes of this kind. The longer period was to ensure that all employees had ample opportunity to consider the proposals, to raise any queries they might

have, and to make their responses. It also enabled discussions to continue towards reaching a Collective Agreement.

3.4 Employees have been able to respond to the consultation in a variety of ways including by using a template response form, by email, letter or other document. Secure mailboxes/wallets have been provided at locations away from Knowle Green with a sealed ballot box available for responses at Knowle Green.

3.5 Three queries emailed to HR during the consultation period were responded to directly. These were not a response to the proposals put forward but indicated a level of concern about pensions entitlement, continuity of service, a possible move to zero hours contracts and the working of Collective Agreements. Pensions entitlement, continuity of service and contract type are not affected by the proposals, with no proposal to move to zero hours contracts.

#### **4. Responses to formal consultation**

4.1 There have been only 2 responses from employees. UNISON have not responded to the Formal Consultation.

4.2 One response was a detailed response to each proposal. This was broadly supportive with suggestions that managers have discretion to award an additional pay award above the local Spelthorne pay award if justified, and objecting that UNISON represented all staff. The other response was in relation to the proposal to end the lease car arrangement as a staff benefit and the impact of this on a member of staff in terms of material change.

#### **5. Options analysis and proposal**

5.1 **Option 1** is to continue to apply national pay awards and national terms and conditions of service and not to move to local arrangements for pay awards and local terms and conditions. This option means that the Council will have to continue to implement national pay awards, with the second year of the national 2 year pay award payable in April 2019 and a restructuring of the pay spine from 1 April 2019. Any future changes to national terms and conditions would have to be implemented. It does not provide local control or increase future flexibility to take account of local circumstances or affordability.

5.2 **Option 2** is to agree a change to local Spelthorne pay awards and local Spelthorne terms and conditions, with some minor modification to the proposals to take account of points raised during consultation. The change would be implemented by giving notice to terminate current contracts and offering new contracts on local Spelthorne terms and conditions in their place.

5.3 **Option 3** is to agree a change to local Spelthorne pay awards and local Spelthorne terms and conditions as proposed, with the change implemented by giving notice to terminate current contracts and offering new contracts on local Spelthorne terms and conditions in their place.

#### **5.4 Risks**

There is a risk that moving to local arrangements for pay awards and local terms and conditions will be unsettling for staff with a negative impact on staff morale or retention. There is a risk of industrial action. Proceeding to change terms and conditions by dismissal and reengagement has the risk of claims of unfair dismissal or breach of contract. Communication with staff following the

Formal Consultation period mitigates these risks as does ensuring that statutory and contractual notice requirements are met. The level of responses to the Formal Consultation have not indicated widespread disquiet about the proposal to move to local pay awards and local terms and conditions, although it does not mean there will be no adverse impact. Complying with employment law requirements and statutory guidance from ACAS will help to minimise the risk of employment tribunal or other claims from employees.

- 5.5 There is a risk that some staff decide not to accept new terms and conditions and leave the Council at the end of the notice period at the end of March 2019, potentially causing difficulties in covering jobs and functions. This risk is minimised by communication with staff, by confirming that staff are valued and that it is not intended that anyone should lose their jobs as a result of the changes to terms and conditions.
- 5.6 **The proposal** is to take action to implement a move to local pay awards and local terms and conditions as set out in **Option 3** to ensure that the new arrangements can be introduced effective from 1 April 2019.

## **6. Financial implications**

- 6.1 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 national pay awards have been delayed). Decisions on national pay may be taken by the national bargaining groups at times which do not fit the Council's budget cycle or may be higher than budgeted locally, in which case balancing financial savings must be achieved. If local Spelthorne arrangements for pay awards are agreed they can be linked to the budget setting process and can take account of local circumstances and affordability, with pay awards implemented at the beginning of the financial year.

## **7. Other considerations**

- 7.1 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.
- 7.2 Each council is a separate employer and it is open to Spelthorne to decide to move away from national terms and conditions to local ones. Such a move must comply with employment law and guidance. A Formal Consultation period on the proposals has taken place. Responses to the consultation from employees and the trades union must now 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 the consultation responses.
- 7.3 If the decision is taken to proceed to implement a change to terms and conditions it will 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 on the new terms and conditions in its place. A notice period of 3 months is required to effect such a change for the whole workforce. The workforce remains the same size and shape at the end of the process with employees remaining in the same posts. It does not lead to any redundancies or changes to the size or shape of the organisation.

- 7.4 Staffing is not an Executive matter and therefore changes to staff terms and conditions of employment have to be agreed by Council or a delegation given specifically by the Council to the Chief Executive as Head of Paid Service.

**8. Timetable for implementation**

- 8.1 If a move to local arrangements for pay awards and local terms and conditions is agreed, letters will be sent to all staff before the end of December 2018, giving 3 months notice of the termination of their current contract of employment and offering a new contract of employment on the new terms and conditions to commence on 1 April 2019. The new arrangements for agreeing pay awards will be followed for the pay award effective from 1 April 2019. It is anticipated that letters to staff will be sent by 21 December 2018.

**Background papers:**

Responses to Formal Consultation

**Appendices:**

Cabinet report 18 July 2018