



THE LONDON BOROUGH
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DATE: 11 March 2014

To: Members of the
LOCAL JOINT CONSULTATIVE COMMITTEE

Employer's Side

Staff Side and Departmental Representatives

Councillor Nicholas Bennett J.P.
Councillor Eric Bosshard
Councillor Stephen Carr
Councillor Ellie Harmer
Councillor Russell Mellor
Councillor Tony Owen
Councillor Colin Smith
Councillor Diane Smith
Councillor Michael Turner

Adam Jenkins, Unite
Glenn Kelly, Staff Side Secretary
Mary Odoi, Unite
Kathy Smith, Unite
Max Winters, Education & Care Services

A meeting of the Local Joint Consultative Committee will be held at Bromley Civic Centre on **WEDNESDAY 19 MARCH 2014 AT 6.30 PM**

Rooms have been reserved for Members and the Staff Side to meet separately at 6pm before the meeting commences at 6.30pm. The Assistant Chief Executive (Human Resources) will be available from 6.00pm to brief Members.

MARK BOWEN
Director of Corporate Services

A G E N D A

- 1 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS**
- 2 DECLARATIONS OF INTEREST**
- 3 MINUTES FROM THE PREVIOUS MEETING OF LOCAL JOINT CONSULTATIVE COMMITTEE HELD ON 11TH DECEMBER 2013 (Pages 3 - 8)**
- 4 STAFF SIDE ITEMS FOR CONSIDERATION**
 - a SCHOOLS HEALTH AND SAFETY AUDIT**

The Vice Chairman of the LJCC Committee previously attended a meeting of

the Bromley Education Safety Committee, where it was stated that a considerable number of schools in the Borough did not have current statutory records regarding fire, water and electricity testing within the school.

The Vice Chairman was informed that should a Health & Safety Inspector visit these particular schools, closure might possibly be a consideration in some cases.

In a recent legal case Essex County Council lost a landmark Supreme Court case over the scope of a Local Authority's duty to pupils in its care.

The Staff Side would like to draw this matter to the attention of the LJCC Committee, and would like to raise two questions:

1-Is Bromley Council aware of these issues?

2-What action is the Council proposing to deal with these problems?

5 EMPLOYER'S SIDE ITEMS FOR CONSIDERATION

a EMPLOYMENT CONTRACT TYPES_(Pages 9 - 16)

6 DATE OF NEXT MEETING

The Committee is requested to note that the next meeting will be held on 22nd July 2014.

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Agenda Item 3

LOCAL JOINT CONSULTATIVE COMMITTEE

Minutes of the meeting held at 6.30 pm on 11 December 2013

Present:

Employer's Side

Councillor Nicholas Bennett J.P.
Councillor Eric Bosshard
Councillor Ellie Harmer
Councillor Russell Mellor
Councillor Tony Owen
Councillor Colin Smith
Councillor Diane Smith
Councillor Michael Turner

Staff Side and Departmental Representatives

Adam Jenkins, Unite
Glenn Kelly, Staff Side Secretary
Mary Odoi, Unite
Kathy Smith, Unite
Max Winters, Education & Care Services

1 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

Apologies for absence were received from Councillor Stephen Carr.

2 DECLARATIONS OF INTEREST

Councillors Diane Smith and Colin Smith declared a personal interest by virtue of their daughter being employed by the London Borough of Bromley Library Service.

3 MINUTES FROM THE PREVIOUS MEETING OF THE LOCAL JOINT CONSULTATIVE COMMITTEE HELD ON 8TH OCTOBER 2013

The minutes were agreed.

4 STAFF SIDE ITEMS FOR CONSIDERATION

The Vice Chairman asked the Committee to note that she had requested an item relating to health and safety in local schools be put forward to be raised at this meeting, but this had been deferred for the attention either of the Director of Environmental Services or the Health and Safety Committee. The Chairman noted that the LJCC Committee was not aware of this, and that the matter would be looked into, and if appropriate it would be raised as an agenda item for the next meeting.

A) ZERO HOURS

It was noted by the Committee that the number of staff currently on Zero Hours contracts was twenty one, and these were based in Education, Care and Health Services. It was further noted that the number of staff on casual contracts was currently five hundred and seventy three. The Staff Side were concerned that the updated figures meant that Zero Hours contracts had increased by 17% since October. The Staff Side were of the opinion that no employee of the Council should be employed on Zero Hour contracts. The Staff Side were also concerned about the use of casual contracts which they felt in some cases could be worse than Zero Hours contracts. The Staff Side stated that in many of these cases, staff were being employed in regular patterns of work and so should be employed on fixed term contracts instead. The Staff Side indicated that they were looking to initiate a debate on the matter.

The Employer's Side responded that in most cases there were valid business reasons for the use of Zero Hours contracts, but that they were not averse to debating the matter in greater depth. The Chairman stated that it was important for the Committee to understand the legal difference between Zero Hours contracts and casual contracts. This information was not available to the Committee at the meeting.

Councillor Colin Smith stated that there was a place for the use of Zero Hours contracts, but that the contracts should not be abused. Councillor Colin Smith also reiterated the point that more information was required in terms of legal matters and also in terms of cost, and that this information was not available to the Committee on this occasion. Charles Obazuaye (Assistant Chief Executive) requested that the Staff Side provide any evidence that was available concerning the possible abuse of staff on Zero Hours or casual contracts. This would be a matter that Human Resources would then investigate further.

The Chairman concluded the debate around Zero Hours contracts by requesting that the Employer's Side submit a report for the next LJCC Committee meeting, outlining the salient legal and financial matters. The Chairman requested that the Staff Side submit a report outlining the argument against Zero Hours contracts; any alleged abuses of the contracts should be included in the report. The Committee would then study and debate both reports at the next LJCC meeting to determine the way forward.

B) PAY AWARD 2014/15

The Staff Side indicated that they were seeking a £1.00 per hour pay rise for Council staff. The Staff Side stated that there had been a three year pay freeze and a two year pay limit, and so in real terms living standards had fallen by 18%. The Staff Side stated that 400,000 jobs had been lost in the last three years, and resultantly the pay bill for Bromley had decreased by ten million pounds. The Staff Side believed that Bromley Council had one hundred and five million in reserves, and that this money could be used to fund a pay rise. The Staff Side noted that thirty seven million pounds had

been set aside by the Council to invest in the Borough. A case was developed along the premise that 60% of the workforce lived in the Borough, and that it was estimated that for every £1.00 paid in wages, 50% of this money would be spent within the Borough, thus stimulating economic development locally.

The Staff Side highlighted that no offer had been made nationally by the employers, and it was hoped that the national offer would be more than Bromley Council had made via local terms and conditions. The Staff Side stated that they were likely to ballot members, and would recommend that the pay offer be rejected.

The Chairman noted that he was aware of the anticipated pay offer nationally, and that it was unlikely that this would exceed 1%.

The Chairman outlined the pay award that had been offered by Bromley Council:

- Staff on less than £21,100 (FTE, spinal point 20 and below) the proposal is for a 1.7% increase in 2014
- Staff on £21,000 or more (FTE) the proposal is for a 1.2% increase
- For management grades the proposal is for a 1% increase

It was felt by the Committee that this was a good offer bearing in mind the likely offer nationally, and considering the current economic climate.

Councillor Colin Smith noted that reserves could only be used once, but that wage increases were required annually. The money that had been set aside to invest locally was also going to be invested to raise an extra 6% income for the Council, and that this may be used in part to fund future pay awards. Councillor Smith felt that the £1.00 an hour wage increase was not sustainable.

Councillor Nicholas Bennett asked the Staff Side if they had taken into account changes to income in real terms resulting from the recent increase in income tax allowances. Mr Glen Kelly from the Staff Side responded that this was a matter that could be looked into and reported back on, if required.

The Assistant Chief Executive stated that the request from the Unions was not sustainable in the current economic climate, and the Council's offer was reasonable.

Kathleen Smith (Vice Chairman) developed the argument that low wages for council employees would mean that more working council employees would have to claim housing benefit. This showed that there was a direct correlation between low wages and claims for housing benefit.

The Chairman concluded the discussion about the pay award by highlighting that society as a whole faced these problems, and reiterated the opinion of Members that the 1.7% being offered for those on the lowest end of the pay scale, was in fact a good offer. The Chairman felt that Bromley Council had shown social consideration and compassion.

Mr Glenn Kelly (Staff Side Secretary) stated that the pay increase in real terms equated to half the cost of the rise in inflation, and that the views of council staff would be clarified by a ballot.

Councillor Nicholas Bennett stated that if there was an increase in wages along the lines suggested by the Unions, then this would have to go to a public referendum as it may mean that Council Tax would have to rise by greater than 2%.

Kathleen Smith (Vice Chairman) developed the argument that low wages for council employees would mean that more working council employees would have to claim housing benefit. This showed that there was a direct correlation between low wages and claims for housing benefit.

The Chairman concluded the discussion about the pay award by highlighting that society as a whole faced these problems, and reiterated the opinion of Members that the 1.7% being offered for those on the lowest end of the pay scale, was in fact a good offer. The Chairman felt that Bromley Council had shown social consideration and compassion

C) MARKET TESTING

The Staff Side expressed frustration at what they perceived was a lack of transparency with regard to market testing. The Staff Side stated that they had been promised detailed discussions and access to information, but that in reality this was not occurring. The Staff Side expressed the view that they feared the concept of market testing was driven by ideology as the primary motivating force. The Staff Side gave the example of services that the Council were good at running, and felt that it would be good to explore the possibility of performing these services for other Councils, to save jobs and also to make money. In terms of meetings being held to discuss these issues, it was confirmed that the last such meeting was held on November 22nd 2013. The Vice Chairman stated that there was a need for information sharing and a closer working relationship.

Councillor Bennett stated that any change in service provider must be on the proviso that the service delivered was at least as good as, if not better than that provided previously. The Council were not entertaining poorer services. Councillor Bennett felt that it would be good in this regard if social enterprise from Council employees could be harnessed and encouraged. Councillor Bennett stated that as far as Education was concerned, existing units within the Council would be awarded the contracts if they were cost effective and provided a good service.

Councillor Colin Smith stated that the Committee was not motivated by any form of ideology. The Members' interest was in looking at every line of service for value for money. This could manifest in a variety of forms

including shared enterprise, shared services, and greater efficiencies from various sources. It was also the case that some services could be taken back in house.

Glenn Kelly stated that Council staff were not interested in Social Enterprise.

The Chairman concluded that the concerns of the Staff Side with respect to consultation and not having enough meetings would be passed on by the Committee.

5 DATE OF NEXT MEETING

The date of the next meeting was confirmed as 19th March 2014.

6 ANY OTHER BUSINESS

It was noted that Richard Harries was no longer a Co-opted member of the Committee,

The Meeting ended at 7.50 pm

Chairman

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London Borough of Bromley

Report HHR14002

PART I – PUBLIC

Agenda Item No.5a

Decision Maker: LOCAL JOINT CONSULTATIVE COMMITTEE

Date: 19th March 2014

Decision Type: Non-Urgent Non-Executive Non-Key

TITLE: EMPLOYMENT CONTRACTS

Contact Officer: Sue Sydney, Assistant Director, HR
Tel: (020) 8313 4359 Email: sue.sydney@bromley.gov.uk

Chief Officer: Director of Human Resources

Ward: N/A

1. REASON FOR REPORT

- 1.1 At the last meeting of this Committee, Members asked for a brief report on employment contracts in the Council.
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2. RECOMMENDATION(S)

- 2.1 Members to note and comment on the contents of the report.

Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Excellent Council
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Financial

1. Cost of proposal: N/A
 2. On-going costs: N/A
 3. Budget Head/Performance Centre:
 4. Total current budget for this Head:
 5. Source of Funding:
-

Staff

1. Number of staff (current and additional):
 2. If from existing staff resources, number of staff hours:
-

Legal

- 1) Legal Requirement: Statutory Requirement
 - 2) Call In: Call in is not applicable
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected)
-

Ward Councillor Views

- 1) Have Ward Councillors been asked for comments: Yes/No/N/A
- 2) Summary of Ward Councillors comments:

3. COMMENTARY

3.1 Employment – Contract Types

3.1.1 In general employment contracts whether standardised or non-standardised contracts including casual, zero hours and variable contracts, etc. are determined by business managers based on a number of factors, including the following:-

- a) budget/funding pressures including funding being linked to external sources.
- b) service demand fluctuations
- c) service/organisation redesigns
- d) addressing workforce challenges including succession planning

3.1.2 The majority of the Council's employees have a standard contract of employment which may be permanent or temporary.

3.1.3 Permanent employment is for an indefinite period and ends when either party decides to terminate the contract. It therefore follows that employers have greater need for flexibility in the deployment of staff during periods of uncertainty and transition.

3.1.4 Temporary contracts are used where the contract is not expected to be indefinite. There is likely to be a temporary need, e.g. pending an anticipated service change, or to cover the absence of another employee, to undertake a specific project, or cope with a peak in workload.

3.1.5 Where business demand is unpredictable greater flexibility in the deployment of staff may be needed without the obligations and duties associated with employing individuals on fixed hours. Where the need for staff fluctuates from week to week "zero hours" or "variable hours" contracts may be used. Where business demand fluctuates and is not continuous casual or "bank" staff may be used. As stated in paragraph 3.1 above managers generally offer the right employment contract to reflect the demands and pressures on their services. This is vitally important given the unprecedented financial context and the challenge of recruiting and retaining the right mix of staff on the right terms and conditions of service. HR work with managers on the legal implications of employment contracts ensuring the right balance between the Council's business and legal interests. As part of the Special Recruitment Measures agreed by the Chief Executive, the Director of Human Resources scrutinises every vacancy request to it is the right fit for the organisation.

3.1.6 Who is an employee is a legal and factual question. There is a significant difference between an employee, a worker and a self-employed person. The difference is in the level of employment rights associated with each of these 3 categories. As stated above there are different types of employees, and their employment rights in most cases are linked to the issue of 'continuity of service' and not necessarily the label on the contract. Employment rights derive mainly from an employee's continuous service. For some rights no service is required e.g. the right to paid annual leave, to be paid the national minimum wage and to protection under the Whistleblowing and Equalities legislation. For other rights a continuous period of employment is needed

e.g. redundancy pay (2 years) unfair dismissal (1 year or 2 years if started after 6 April 2012).

- 3.1.7 If an employee holds more than one contract of employment at the same time the start date of each contract will determine the length of continuous employment under that contract. Hence s/he may be eligible for something under one contract e.g. redundancy pay, but not under the other.
- 3.1.8 Continuous employment accrues from week to week. If an employee works any part of a week (even one day) the whole of the week counts in calculating continuous service. On this basis if a casual employee is asked to work regularly s/he can build up continuous service and accrue employment rights even if s/he turns down work in a week in which s/he has already done some work.
- 3.1.9 In reality “types” of worker or employee do not always have a specific definition in law and it will depend on the terms of the contract that is put in place. Clear and express contract terms are important but even when a contract is drafted in a particular way the tribunal/court may override this if they decide the terms do not properly reflect the true nature of the relationship between the parties.
- 3.1.10 The definitions given in the table below are as they are typically used in the Council.

Contract Type	Description/Comments	Notice Requirement	Number Currently in LBB (not schools)
Temporary (open ended)	Not indefinite but the date on which the contract will terminate is not known/specified	Yes, based on length of continuous service under the contract	0
Fixed term	A contract with a specified start date which ends on a specified date or on the occurrence of a particular event (e.g. loss of external funding) or completion of a task (e.g. return to work of absent colleague, on completion of a project or piece of work).	Only if either party wishes to end the contract earlier than the date/event specified in the contract itself	137 (including 21 TTO Temporary)
Zero hours	Individual has a continuous contract but is not contracted to work a set number of hours and is paid only for the hours that s/he works. The Council has no obligation to offer any hours but the employee is normally	Yes (in LBB) based on length of continuous service under the contract	15

	<p>obliged to be available and to accept the work offered.</p> <p>May also be for a fixed term (see above)</p> <p>No guaranteed regular fixed income and fluctuating hours may present practical difficulties for employees with other responsibilities.</p>		
Variable hours	<p>Individual has a permanent or temporary contract. Hours may vary from week to week but with a specified minimum and/or maximum number of hours per week. The Council has an obligation to pay not less than the minimum number of hours stated in the contract. The employee is required to work the hours they are given each week/month within the stated range.</p>	Yes unless for a fixed term.	197
Casual	<p>No “mutuality of obligation” i.e. no obligation on the Council to offer work and no obligation on the individual to accept the work if offered.</p> <p>No contract of employment during non-work weeks.</p> <p>Favoured by employees who require/like flexibility and can choose when they work</p>	No	294

<p>Term-time only</p>	<p>May be indefinite or temporary. Employee works during term-time and is not required to work during part or all of the school holidays.</p> <p>Payment is spread over the 12 months of the year and continuity of employment continues during the weeks when there is no requirement to work.</p> <p>Attractive to employees with childcare responsibilities.</p>	<p>Yes unless for a fixed term</p>	<p>115 (including 21 TTO Temporary)</p>
<p>Annualised hours</p>	<p>Employee agrees to work for a specified number of hours per year for an indefinite or temporary period.</p> <p>Gives flexibility in how work is scheduled. Some working time may be specified, with the remaining hours kept in reserve.</p> <p>Contract continues during weeks in which there are no requirement to work.</p>	<p>Yes unless for a fixed term</p>	<p>0</p>

4. POLICY IMPLICATIONS

- 4.1 The Council is unequivocally committed to recruiting and retaining a motivated and flexible workforce on competitive local terms and conditions of service. Every employment contract will reflect the prevailing challenges and opportunities in the organisation.

5. FINANCIAL IMPLICATIONS

- 5.1 None arising from this report

6. LEGAL AND PERSONNEL IMPLICATIONS

6.1 As set out in the report.

Non-Applicable Sections:	
Background Documents: (Access via Contact Officer)	

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