

LOCAL JOINT CONSULTATIVE COMMITTEE

Minutes of the meeting held at 6.30 pm on 5 April 2018

Present:

Employer's Side

Councillor Russell Mellor (Chairman)

Councillor Nicholas Bennett J.P.

Councillor Stephen Carr

Councillor David Cartwright QFSM

Councillor Simon Fawthrop

Councillor Colin Smith

Councillor Michael Turner

Councillor Angela Wilkins

Staff Side and Departmental Representatives

Gill Slater (Unite Representative) (Vice-Chairman) (Unite Representative and Vice Chairman)

Nicola Musto, Environment and Community Services

Adesina Suleiman, Education, Care & Health Services

69 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

Apologies were received from the following Departmental Representatives, Barry McIver, Jackie Goad, Stuart Henderson and Kirsty Wilkinson.

Apologies were received from Councillor Kate Lymer, and the Leader attended in her absence.

70 DECLARATIONS OF INTEREST

There were no declarations of interest.

71 MINUTES FROM THE PREVIOUS MEETING OF LOCAL JOINT CONSULTATIVE COMMITTEE HELD ON 25th OCTOBER 2017

The minutes of the LJCC meeting held on 25th October 2017 were agreed.

Gill Slater asked if going forward, the LJCC agenda could incorporate an item for a Matters Arising report. The Committee discussed the merits and demerits of Matters Arising reports generally, and it was noted that the LJCC historically had not required such reports. The majority of committee members felt that a Matters Arising report was not required for the LJCC.

It was suggested that the Council's policy concerning Matters Arising reports should be clarified at a Full Council meeting.

RESOLVED that the minutes of the previous meeting be agreed and signed as a correct record.

72 NOMINATION OF VICE CHAIRMAN

Gill Slater, in her capacity as the representative from Unite, nominated herself for the position of LJCC Vice Chairman.

The nomination was seconded by Councillor Michael Turner and agreed by the Committee.

RESOLVED that Gill Slater be appointed as Vice Chairman of the LJCC.

73 UPDATE FROM DEPARTMENTAL REPRESENTATIVES

Nicola Musto and Adesina Suleiman attended on behalf of the Departmental Representatives.

Ms Musto updated the Committee concerning the work that she had been undertaking as Bromley's 'Well-Being Champion for Mental Health'. Ms Musto tabled a document on the evening for the attention of Committee members. The document was well-received by the Committee and gave an overview of the following mental health areas:

- Definition of a Wellbeing Champion
- Statistical data concerning mental health issues
- Differences between physical and mental health
- Causes of mental health difficulties
- Signs of mental health issues
- Support Mechanisms
- How to discuss mental health issues
- Ways of reducing stress

The Director of Human Resources (Charles Obazuaye) gave positive feedback on the document and reported that HR had been working closely with Ms Musto to provide support as required. Managers had been provided with guidance around the signs that a person developing mental health issues may exhibit, as well as guidance on how to deal with such issues. LBB had a legal and social responsibility to support staff in this regard. It was in the Council's interest to support the work, as stress-related absenteeism would reflect on productivity.

Ms Musto was asked if she had been provided with training, and she confirmed that she had been provided with training from MIND. She had recently met with Antoinette Thorn from HR, to discuss how the work could be developed and expanded. Councillor Carr suggested that the work be expanded in co-operation with relevant statutory partners. Ms Slater queried if LBB was involved in other national initiatives.

Councillor Carr expressed his thanks to Ms Musto for all of the hard work that she had undertaken in this area. The Chairman similarly expressed his

appreciation and best wishes for the future development of the work. Councillor Fawthrop agreed that the momentum of the work should continue unabated.

RESOLVED that the mental health and well-being update from the Departmental Representatives is noted.

74 RISKS ASSOCIATED WITH CONTRACTING LOCAL AUTHORITY FUNCTIONS TO LARGE OUTSOURCING COMPANIES

The Director of Commissioning (Lesley Moore) attended to update the Committee on how LBB managed risks when contracting out services to large outsourcing companies. The Council spent around £200m on contracting with third party providers (around 40% of overall expenditure) and this had provided significant savings to the Council over the years, avoiding cuts in services.

As part of the risk management process, the contracts data-base was programmed with an alerting system that provided notifications when a financial check on the contractor was required. Additionally, considerable time was spent on the tendering and contracting process, and on reviewing the financial status of companies. Councillor Fawthrop urged caution so that due diligence was also applied to smaller contracts. He stated that in some government contracts, credit rating clauses were factored in.

The Vice-Chairman agreed that LBB had improved its oversight of contract monitoring. However, she pointed out that 'Carillion' had been regarded as solvent and then had collapsed quickly. She asked if LBB had contingency plans in place if such an incident occurred with a large company that LBB may have outsourced a sizeable contract to. She stated that Amey was working to tight margins, and asked if the relevant contingency plans were in place.

Councillor Carr responded that he could only recall three contracts that had experienced significant problems since the outsourcing process began:

- Bromley Connexions
- Children's Services
- Legal Services

These contracts had all been brought back in house quickly when required. He was confident therefore, that such matters could be dealt with swiftly and effectively. He referred back to the original question which noted the Union's concerns with the quality of service provided when services were outsourced. He stated that as these services would have been carried on by former Bromley staff, was not such a statement an insult on the quality of work undertaken by these staff? On this basis he asked if the Vice Chairman would withdraw the statement.

The Vice-Chairman responded that she was not insulting staff in any way. She explained that there were other factors that would affect service levels such as reduced staff numbers, and the need to back-fill.

The Leader stated that the Council had no plans to reverse its commissioning strategy as this had proved effective and saved the Council a lot of money. He referred to a failed strike at a GLL controlled library and expressed the view that the reason for the strike was politically motivated. He stated that if any contracts failed after being outsourced, the service would be TUPED back in to the Council and the situation would be reviewed. As part of the contracting process the Council always asked for a Performance Bond or a Parent Company Guarantee. The bond was then available to meet any additional costs that the Council may incur as a result of contract failure.

For the sake of clarity, the Director of HR explained what was meant by TUPE. It meant that when contracts were outsourced, the employees maintained their existing terms and conditions. The new employer may propose changes in very exceptional circumstances where there were economic, technical or organisational reasons.

Councillor Angela Wilkins expressed the view that not all contracts ran smoothly and she cited as her examples the Waste Services contract and the Domiciliary Care contract. The Director of Commissioning responded that the Waste Services contract had served the Council well and that with the features that had been programmed into the functionality of the Contracts Database she was confident that previous issues would not resurface.

Councillor Fawthrop said that in terms of Internal Audit, their remit tended to cover 'failed performance' rather than financial viability. It was now the case that all contracts had exit plans and 'bust' clauses and so LBB was comprehensively protected.

The Director of Commissioning highlighted that larger providers could invest in IT and generally take advantage of economies of scale.

The Chairman concluded the discussion by stating that in his view, the management of outsourced contracts was very sound and thorough. Contractors were scrutinised and penalties were invoked if required.

75 THE ANNUAL PAY AWARD

Ms Slater expressed her disappointment that the pay award of 2% was below the RPI which was 3.6% at the time of the meeting. The unions regarded this as a pay cut in real terms. It was noted that the national offer had not yet been accepted. Ms Slater stated that it was important the Council offered realistic pay increases in order to avoid problems with staff retention.

Councillor Carr referred to the statement that had been written by Unite in the question:

'How do Members propose to honour commitments made to staff, that their annual pay award would be better than those agreed nationally and that as the number of directly employed staff fell, LBB would pay staff better?'

Councillor Carr asserted that this was a false statement in that the supposed promise to pay staff better than the nationally agreed terms had never been made. He asked Ms Slater what source could be provided to justify the statement. Ms Slater responded that in her view, assurances were implied in meetings. Councillor Carr requested that the statement be withdrawn on the basis that it was not correct. The Chairman asked Ms Slater if she was prepared to withdraw the statement. Ms Slater responded that she was not in a position to withdraw the statement as it was not hers to withdraw.

The Chairman stated that the question was a mis-representation of the facts, and he agreed with Councillor Carr's rebuttal. The Chairman reminded the Committee that in addition to the 2% pay award, lower paid staff had been offered extra payments in the April pay round, and that the Council also had a pot of £200k that was going to be used for merited pay awards.

The Director of Human Resources stated that the question and the argument were obtuse, and that raising the matter now was wrong. He took exception to the question. The Director stated that he had led the pay negotiations and at no time did the Council promise that they would pay more than the national agreement. However, it was the case that over the last four years, Bromley staff had been paid better than the national agreement. He expressed the view that the question had been raised as a ploy to undermine the moral of Bromley staff. He said that Bromley staff did not support Unite in this matter and that was why there had not been any industrial action. The days of large pay increases had passed.

Ms Slater expressed the view that the matter was not just about large pay awards, but that it was about pay awards reflecting increases in the cost of living and that public sector workers were being financially penalised by decisions to remain in the private sector.

The Director informed the Committee that Bromley staff would receive their pay award in their April pay, which was not the case when pay awards were agreed via national terms and conditions, where it took longer to finalise and action. The Director expressed the view that the merited pay award scheme was popular with staff.

The Chairman wanted the Committee to also note that LBB was trying to help lower paid staff, which was something in the past which had been opposed by the unions. The Director of HR addressed the matter of recruitment and retention and stated that the union's data was inaccurate and that LBB had a very low attrition rate; staff were not leaving and 80 staff had been recruited into Children's Services.

Councillor Angela Wilkins objected to the comment that the unions did not have the correct figures and stated that she was unhappy with the tone used by the Director of HR.

Councillor Fawthrop responded that in his view the discussions had been constructive and that there was nothing wrong with the tone of the meeting and the comments expressed by all parties. He stated that poor performance could not be rewarded, and that it was not logical to suggest that poor performers should get a pay rise. He asked if LBB could be certain that it did not have 'bell curves' that it applied.

The Director of HR responded that it was LBB's policy that pay awards be linked to performance, and that LBB did not apply the bell curve. Performance was assessed individually. The number of poor performers across the Council at the time of the meeting was approximately 30, and that it was likely to be the case that 20 would have their pay increases withheld.

Councillor Fawthrop stated that it was important that 'poor performers' knew what was expected of them so that they had the opportunity to improve. The Director of HR explained that the process would be dealt with by line managers. If a pay increase was going to be withheld, then the manager would inform the staff member in writing, and the staff member would be informed of what he/she would need to do to improve.

Councillor Michael Turner commented that he was not aware that LBB withheld pay rises. The Director of HR responded that pay rises were not automatic, but were linked to performance. Councillor Nicholas Bennett asked about pay increments in addition to the standard 2% pay increase. It was confirmed that poor performers would not be eligible for either. Levels of pay could be re-instated if required, but not retrospectively.

Ms Slater commented that she had raised the matter concerning the pay award 'late' as the previous LJCC meeting had been cancelled. Councillor Wilkins asked if the matter of withholding pay was applicable at all levels. It was confirmed that this was the case except for teachers.

76 FINDINGS OF THE RECENT EMPLOYMENT TRIBUNAL CASE

The Director of HR suggested that this matter may be sub judice as there was a remedy hearing outstanding. It was the case that at the main tribunal hearing, LBB had been successful in 41 out of the 43 issues raised against the Council. The remedy hearing was to discuss the outstanding matters.

The Director of HR stated that there was nothing exceptional about the case that it should be published by the Council and it was LBB's practice not to report on tribunal hearings—in any case the findings of the case had already been published by the Tribunal Service and the information was freely available on the internet. The Director informed the Committee that no recommendations for the Council had been issued by the Tribunal.

Ms Slater stated that the Council had been found wanting on two points during the course of the Tribunal hearing and on this basis the matter should be discussed at the LJCC. She expressed the view that the whole of the tribunal case revolved around the relationship between the Council and the union. Resultantly, there were still lessons that could be learnt, even from the rest of the hearing where the Council had not been found deficient.

The Director of HR responded that the tribunal hearing was not about LBB's relationship with the unions, but it was an individual case. Such matters were not appropriate to be discussed at the LJCC. The Director offered to meet outside of the LJCC with Ms Slater if required.

Councillor Wilkins stated that she was a witness at the tribunal hearing. She felt that there were matters that had been discussed that were related to the LJCC, and that on that basis the matter should come back to the LJCC for further discussion. She asked if the date of the remedy hearing was known.

Councillor Nicholas Bennett commented that he had also been called to give evidence at the tribunal case, and noted that the resulting report had been published. He said that there had been three areas of remedy noted, and that two of these had been in relation to an individual requesting time off. The third matter was related to attending a conference connected to trade union activity, which was in turn subject to an ECJ ruling. He felt that in all of these cases, there were no lessons to be learnt by the Council that would justify the matter coming back to the LJCC. Councillor Simon Fawthrop agreed that there was no justification for the matter to be discussed at a future LJCC meeting. He cited the following reasons for this:

- The matter was sub-judice
- It was a case relating to an individual
- It was not a case related to the functioning of the LJCC
- The details had already been published

Ms Slater was disappointed that the majority of Members felt that there were no lessons to be learned. She felt that the LJCC was inextricably linked to the unions, which was a view that Members disagreed with. She felt that what was at stake were important issues concerning how the Council related to the unions.

Councillor Carr remarked that in his view the unions did not want to consult and negotiate with the Council. He would have preferred if they would sit down and take the opportunity to do so. Ms Slater responded that there were areas highlighted in the Tribunal case where the Council had crossed a line and that there were lessons that could be learnt.

Councillor Bennett motioned that the request for the matter to be discussed at a future meeting of the LJCC be dismissed for the reasons that had already been outlined in the meeting. The motion was seconded by the Leader. So it was resolved that the matter would not be brought back to a future LJCC

meeting. Councillor Angela Wilkins did not agree with the motion or the resolution.

RESOLVED that the issue of the findings of the recent tribunal case was not an appropriate matter to be brought back to a future LJCC meeting for reasons discussed in the meeting.

77 LEVELS OF ILL HEATH BROUGHT ABOUT BY STRESS AND MENTAL HEALTH ISSUES

Councillor David Cartwright referred to the text of the question which read as follows:

'...the reality faced by Bromley staff, is one of poor basic working conditions, aggressive HR processes and high levels of work related stress.'

Councillor Cartwright questioned the truth of this statement and felt that the statement should be refuted as it was not true. Councillor Wilkins reminded the Committee that what was being requested was for the Council to undertake an audit of staff working conditions and well-being. Councillor Cartwright responded that it would not be right to undertake an action based on a false premise.

Mention was made of the appeal process for disciplinary hearings; many of the Members felt that having a three stage appeal process was too protracted. The Director of HR stated that poor working conditions were never an issue at appeal hearings.

The Leader mentioned problems that had occurred with the Amey contract. He said that failings had been identified and rectified. Similarly, the Director of HR stated that when required, Amey had been challenged by the Departmental Representatives and Members. It was not in the Council's interests to have poor working conditions. With respect to any cases involving dismissal, Members were informed. It was also noted that LBB had not lost any dismissal cases at tribunal hearings.

The Committee noted a document that had been tabled by the Director of HR. This detailed the number of employees categorised as suffering from 'Stress, Depression, Anxiety and Mental Health' issues over the last three years. The total number of LBB employees suffering from such issues during 2017/2018 was 46, with an average number of days off per person of 23.

The Director of HR stated that the absence figure was low, and it was also very important to note that many of these cases would not be related to stress and depression caused by the working environment at LBB.

The Chairman expressed the view that the opinion presented by the Union was factually incorrect. Ms Slater re-affirmed her view that there had been poor working conditions experienced by staff as a result of Amey's

deficiencies. She commented that until recently, there had not been any cold water for one of the ladies' toilets. The toilet referred to was still dirty.

Ms Slater expressed disappointment that a union representative was not allowed to attend Departmental Representative meetings.

Ms Slater referred to the ACAS guidance (2015) on conducting workplace investigations that was part of the agenda pack. She stated that the way that LBB was conducting workplace investigations was not in line with the ACAS code of practice, particularly with respect to the role of the investigator. She said that the Bromley procedures dated from 1992 and that the procedures outlined that they should be jointly agreed by the LJCC; furthermore it indicated that there were amendments in 2016 which, she noted, were not brought to the LJCC. She requested that the Bromley procedures be revisited in line with best practice and the matter come back to a future LJCC meeting.

Ms Slater asserted that with respect to disciplinary hearings, it should be the case that one set of documents be provided to each Chief Officer. She felt that procedural change was required to make the process less adversarial and unpleasant for all parties.

The Director of HR responded that with respect to procedures conforming to ACAS guidelines, the Council had never received any complaints from the tribunals concerning this. The Director of HR assured that the main report for a disciplinary hearing would have been provided to the staff member concerned in plenty of time, and in accordance with ACAS guidelines. By definition, such matters would have an element of adversarial content. The Director of HR clarified that the Council had a procedure specifically for managing absences.

The Leader expressed the view that the wording of the question was based on a false premise and was itself adversarial. It was designed for a unite trade union website, and was politically motivated.

Councillor Fawthrop came back to the issue of improving procedures, and he asked if hearings were recorded. The Director of HR replied that this was not currently the procedure, but it could be considered for the future, as well as associated clerking issues.

Councillor Wilkins feared that the baby was being thrown out with the bathwater, and that the requested audit was sensible.

Councillor Cartwright suggested that a positive way forward would be for Ms Slater to take up the Director's offer of a dialogue outside of the meeting. Councillor Cartwright said that LBB was not sending children up chimneys and that some of the matters raised were for management action. He felt that the terms of reference required for the suggested audit could take a year, were not achievable, and the cost would be prohibitive.

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The Chairman stated that the proposal should be rejected and the meeting was closed at 8.30pm.

78 DATE OF NEXT MEETING

The Chairman expressed his thanks to both the Employer's Side and the Staff Side, and especially to the Committee Clerk for his dedicated approach in dealing efficiently with all matters pertaining to the provision of effective administrative support for the Committee.

The date of the next meeting was confirmed as 18th July 2018.

The Meeting ended at 8.30 pm

Chairman