

Governance Committee
22 June 2020
Part I
Unison Recognition
Report by Interim Director of Human Resources and Organisational Change

Summary

Unison has requested recognition for negotiating the annual pay review for employees on SMG4, HAY; and Public Health/Agenda for Change grades. Under current arrangements this is a local decision of the Chief Executive.

The Governance Committee considered this matter at the meeting on 20 May and requested a further report for the meeting on 22 June.

Recommendation

The report seeks the approval of the Governance Committee for the Director of Human Resources and Organisational Change to enter into and maintain a recognition agreement with Unison to include recognition rights for employees on HAY; and Public Health/Agenda for Change grades for pay reviews.

Proposal

1. Background and Context

- 1.1 The County Council does not have a formal recognition agreement with Unison although recognition has been exercised through practice over many years, for example through entering onto collective agreements on terms and conditions and consultation over proposed redundancies and business transfers where the Transfer of Undertakings Protection of Employment Regulations (TUPE applies). This report is primarily concerned with employees who are covered by the National Joint Council for Local Government Services (NJC). Of the three trade unions on the NJC, Unison is the only one representing employees in the County Council.
- 1.2 Annual cost of living pay reviews for most employees are undertaken through national collective bargaining which is incorporated into individual contracts of employment. Employees on SMG4, HAY; and Public Health/Agenda for Change terms and conditions (approximately 512 employees) are not covered by these national arrangements. Pay reviews for these employees is a local decision made by the Chief Executive, after direct consultation with individual employees. Although Unison is consulted during this process there is no formal negotiation with Unison as part of the process.

- 1.3 In September 2018 Unison requested recognition for employees on SMG4, HAY; and Public Health/Agenda for Change terms and conditions. Unison's request followed a contentious pay review in Summer 2018 and was specifically for recognition regarding the local and annual pay review and for any proposals for variation to pay systems. This is the first stage in a process that can lead to a statutory declaration of union recognition through the Central Arbitration Committee.
<https://www.gov.uk/government/organisations/central-arbitration-committee>
- 1.4 Initial progress in discussing recognition stalled as the relationship with Unison became increasingly strained. Progress recommenced over the summer of 2019 and a draft agreement was reached but progress was paused pending appointment of a new Chief Executive and Director HR&OC.

2. Trade Union Recognition

- 2.1. A trade union is recognised by an employer when the parties engage in collective bargaining through a statutory or voluntary process. Collective bargaining is defined as being "negotiations relating to or connected with" one or more of the following for a defined group of employees:
- a) terms and conditions of employment (including physical conditions of work);
 - b) engagement or non-engagement, or termination or suspension of employment of a worker or workers;
 - c) allocation of work or duties between workers;
 - d) disciplinary issues;
 - e) a worker's membership or non-membership of the union;
 - f) facilities for union officials; or
 - g) machinery for negotiation and consultation.
- 2.2. Trade union recognition may be a voluntary arrangement or imposed through a statutory process by application to the Central Arbitration Committee (CAC).
- 2.3. Voluntary recognition is a matter of agreement between the employer and the trade union, with recognition for an agreed group(s) of workers (bargaining units) for the purposes the parties agree. It will typically: be set out in writing; be accompanied by an agreement on trade union facilities (release time, use of premises, access to equipment, resources etc) and include a provision for either side to give notice that it wishes to withdraw from the arrangement, often between three and six months.
- 2.4. In the first instance the statutory process encourages the parties to reach agreement between themselves on a voluntary basis. If this is not achieved the CAC will determine: the make-up of the bargaining unit (the group of workers covered by recognition); determine whether recognition should be granted and if so the process for collective bargaining.
- 2.5. The basic principle is that statutory recognition will be granted if the union demonstrates that most workers in the bargaining unit wish it. The CAC may make a declaration without a ballot if more than 50% of the workers in

the bargaining unit are members of the union. If a ballot is held, the threshold for recognition is:

- a) a majority of employees in the ballot voting to recognise the union and
- b) at least 40% of the employees in the bargaining unit voting to recognise the union.

2.6. Unison state that their membership is close to the 50% of the proposed bargaining unit (employees on Hay and AfC grades).

2.7. Statutory recognition gives the union a legal right to the following:

- a) Participate in collective bargaining on pay, hours and annual leave on behalf of all workers in the bargaining unit.
- b) To receive information prior to conducting collective bargaining;
- c) To receive information and be consulted on health and safety issues;
- d) To receive information and be consulted on certain pension issues;
- e) Paid time off for union officials to carry out union duties or undergo industrial relations training;
- f) To information and consultation on proposed redundancies; and
- g) To information and consultation in connection with the proposed transfer of and an undertaking.

2.8. In practice Unison is already recognised for these purposes for employees on Hay and AfC grades so statutory recognition will mean little change other than introducing local collective bargaining for pay awards for employees on Hay and AfC grades, i.e. the addition of the pay provision at paragraph 2.7(a) above.

2.9. The following additional implications also arise from the statutory process:

- a) Where the parties agree recognition voluntarily after the union has made an application for statutory recognition (the employer having previously refused the request before the statutory process starts), the employer cannot unilaterally terminate the agreement for three years, but the union can end it at any time.
- b) Statutory recognition will be in place for at least three years unless both parties agree to end the arrangement earlier.
- c) Statutory recognition can be ended through the employer applying for statutory de-recognition (which cannot be done for three years after recognition is granted). The statutory process for de-recognition (similar to that for recognition) is unlikely to succeed unless union membership falls in the bargaining unit.
- d) Any future changes to the bargaining unit (for example following changes in organisation structure, worker numbers etc) will require both sides to follow a statutory process and apply to the CAC.
- e) Where the CAC specifies the method of collective bargaining, that method is legally binding and enforceable through the courts.

3. Proposal

- 3.1. It is proposed to enter into a voluntary recognition agreement with Unison that will:
 - a) Introduce recognition for pay purposes for approximately 497 employees on Hay grades and Public Health Agenda for Change terms and conditions (this is already in place for other NJC staff).
 - b) Mean that any future cost of living pay awards or changes to pay structures for this group, will be negotiated with Unison with the outcome applying to all employees irrespective of whether they are trade union members. Individual employees will be kept informed of proposals and still be able to contribute their views.
 - c) Document and clarify the groups of employees that Unison is already recognised for, regarding redundancy consultation and business transfers (TUPE); clarifying what has been the practice in the County Council for many years.
 - d) Set out trade union facility time arrangements although no significant increase in facility time costs is expected.
- 3.2. Unison initially requested the inclusion of SMG4 within the voluntary recognition agreement. This group was included in the 2018-19 and 2019-20 local pay negotiations. However, this group are already recognised for all T&Cs other than the annual pay award. In discussion with Unison, HR put the view that it wished to retain more control over this group's pay and therefore be able to link it to performance more readily, hence the recommendation not to include this group.
- 3.3. Other than introducing recognition for pay reviews for employees on Hay and Public Health Agenda for Change grades the proposed recognition agreement will not change current practices. It will regularise current arrangements which are not documented and provide clarity in areas which in the past have been issues of dispute and tension.
- 3.4. Entering into a voluntary agreement will avoid completion of the statutory recognition process through the Central Arbitration Committee and the disadvantages that may come with that:
 - a) An outcome of statutory recognition that leaves WSCC with less control compared to a voluntary agreement and being dependant on Unison's agreement or a statutory process to make future changes (also see 2.9 above).
 - b) Occupying HR and/or legal resource in responding to the statutory recognition process (analysing Unison evidence, gathering own evidence, preparing responses to CAC, liaising with the person appointed to oversee a ballot, attending hearings etc).
 - c) Creation of further tension with Unison, lower employee engagement and a distraction from normal business.

d) Negative publicity and adverse reputational impact associated with the imposition of statutory arrangements where an employer is unable to resolve differences internally.

3.5. Entering into a voluntary agreement will also be a constructive step in rebuilding a relationship that had become strained and signal the intention of a more positive engagement with Unison and staff generally which is valuable as we move forward with delivering on our priorities and service improvement plans.

4. Resources

4.1. There are no specific resource requirements from the proposal.

5. Consultation

5.1. Discussions have taken place with Unison and a draft recognition agreement has been agreed in principle.

5.2. For employees on Hay and Public Health Agenda for Change grades, the proposal will mean that future pay reviews will be negotiated with Unison rather than consulting all postholders individually. Employees impacted by the proposal have been consulted and no adverse responses have been received from staff.

6. Risk Implications and Mitigations

Risk	Mitigating Action (in place or planned)
Unison seeks and obtains statutory recognition (which might extend to employees on SMG4 grades).	Entering into a voluntary agreement will prevent the statutory process being pursued, avoid time and money responding to this statutory process and keep the County Council in greater control of the outcome.
The pay negotiations with Unison become unwieldy and the improved relationship with Unison does not materialise.	The proposed agreement will contain provision for either party to service six months' notice to end the agreement.

Other Options Considered

6.1 The option exists to decline Unison's request in which case an application to the Central Arbitration Committee (CAC) for statutory recognition will proceed. Time and resources will need to be invested in responding to this process and there is a strong likelihood, given the level of Unison membership, that statutory recognition will be granted. There is also the possibility of statutory recognition including the SMG4 group which is excluded from the voluntary recognition proposal. A return to a more challenging relationship with Unison could also be expected at a time when

we are seeking positive engagement and wishing to take the trade unions and staff with us on our improvement journey.

- 6.2 An alternative consideration would be to offer an undertaking that future pay awards for Hay and Agenda for Change employees will reflect nationally negotiated cost of living pay reviews. Whilst this would have the advantage of removing a need for separate pay bargaining arrangements with Unison, it would limit the flexibility to seek outcomes that better reflect the County Council's priorities. Neither would it enable the same opportunity to regularise existing recognition arrangements that are not documented.

7. Equality Duty

- 7.1 There are no specific equality implications arising from the proposal.

8. Social Value

- 8.1 There are no specific implications.

9. Crime and Disorder Act Implications

- 9.1 There are no specific implications.

10. Human Rights Implications

- 10.1 There are no specific implications.

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Background Papers

None