

## ANNUAL COUNCIL

TUESDAY 19 MAY 2015

### PART I

#### 26. OCCUPATIONAL SICK PAY – CHANGE TO TERMS & CONDITIONS (CED)

##### 1. Summary

1.1 This report follows the report considered by Policy & Resources Committee on 23 March 2015, the recommendation of which was “That Committee agree the proposal from the Councillor Members of the Staff Employer Forum and recommend its adoption by Council.” This proposal was to reduce the Occupational Sick Pay [OSP] allowance from 6 Months’ Full Pay and 6 Months’ Half-Pay to 3 Months’ Full Pay and 4 Months’ Half-Pay.

1.2 After a lengthy discussion, the consequent (draft) Policy & Resources Minute (PR95.14) read as set out in italics below:

1.3 *The Chairman advised that discussions on this matter had been taking place for over two years and hoped the Committee could move forward with a conclusion on the matter.*

*The Chairman advised that the recommendation before the Committee had been agreed unanimously by the six elected Members on the Forum.*

*As detailed under Paragraph 2.11, a Member said they did not recall that the proposal would not be linked to the length of service but it would be applicable to all employees equally. It had not been Members’ intention to improve or increase OSP for the first year and second year service. These should remain as detailed in the table under Paragraph 2.3 on Page 154. The proposal to reduce OSP was not a financial decision but, with greater austerity and staffing numbers reduced, it was more difficult to get cover during long term sickness absence.*

*The Chief Executive advised that the Fit for Work guidance mentioned by the speaker was the first time this had been raised and perhaps should have been brought up earlier than on the night of the meeting. The Terms and Conditions for the staff working at the Depot were different from the conditions under review at the meeting. If TUPE’d staff at the depot went off sick they only received statutory sick pay.*

*Members raised the following points and the following responses were provided:*

*Members coming into this process for the first time had no indication of the level of sickness absence at the Council when compared with other neighbouring authorities. It was advised that figures were available to Members and could be circulated before the Council meeting in May. It was noted that managing long term sickness absence required a considerable amount of time.*

*Would the changes to the sickness absence apply to Depot staff? No they were TUPE’d over and had separate Terms and Conditions.*

*Members did not wish to make a decision before the Annual Council meeting in May. It was requested that information on sickness absence at all Hertfordshire*

*Authorities be provided to all Members. Cllr Martin Trevett supported that approach.*

*Members wanted consideration given that depot staff should have the same OSP as other Council staff and there should not be a two-tier system. It was noted that there had been no intention, as part of this proposal, to change the Terms and Conditions for the TUPE'd Depot staff.*

*With regard to the reference made on the Fit for Work guidance, when had this guidance been issued? The website indicated 9 March 2015.*

*Why should the Committee make a decision tonight? Why not receive a more detailed report back to this Committee in July with a recommendation to Full Council? Another two months into the Committee cycle would not make any significant difference. Members did not have enough information tonight to make a recommendation.*

*Comparable data with other Local Authorities was required on the arrangements for OSP and the circumstances in which they changed their OSP Terms and Conditions.*

*The Forum had not met for 10/12 years and consideration would be given to provide a better system for the future.*

*The Chief Executive advised that rather than making a recommendation to Annual Council why not wait to receive the information and background papers? Officers would be guided by Members, having read all the information sent to them, on whether they wished to consider the meeting at Annual Council or the meeting after.*

*The Chairman moved, duly seconded, the motion that no recommendation be made but that the details requested by the Committee be circulated to all Members and an updated report be presented at the Annual Council meeting on 19 May 2015 where a full debate could be held. The matter had been given the fullest consideration and should be moved forward.*

*On being put to the Committee the motion that no recommendation be made but that the details requested by the Committee be circulated to all Members and an updated report be presented at the Annual Council meeting on 19 May 2015 where a full debate could be held was TIED the voting being 6 For, 6 Against and 0 Abstentions. On the motion being TIED the Chairman presiding over the meeting used her casting vote making the voting 7 For, 6 Against and 0 Abstentions.*

**RECOMMEND:**

*That no recommendation be made but that the details requested by the Committee be circulated to all Members and an updated report be presented at the Annual Council meeting on 19 May 2015 where a full debate could be held.*

- 1.4 The long Minute has been reproduced in full so that Councillors can appreciate the complexity of the Committee's deliberations. Since that time, all Councillors in position before the election on 7 May have been given access to all the material made available to the Staff Employer Forum so all the information requested above has been made available.

## 2. Details

2.1 On 12 September 2013, staff were issued with a consultation document, *Proposals To Revise Occupational Sick Pay Entitlement*. This was a formal consultation document for Local Liaison Committee and employees following a decision by Management Board to review occupational sick pay entitlement, as announced at Extended Management Board on 30 July 2013.

2.2 It enabled the proposed occupational sick pay review to be explored with employees and Local Liaison Committee (including Unison), with the aim of achieving a collective agreement. Responses to the consultation proposals were submitted directly to Human Resources, via line managers, or via Local Liaison Committee/Unison.

2.3 The document set out the Current Occupational Sick Pay entitlement as follows

Length of service	OSP entitlement
During the 1 <sup>st</sup> year of service	1 month's full pay and (after completing 4 months' service) 2 months' half pay
During the 2 <sup>nd</sup> year of service	2 months' full pay and 2 months' half pay
During the 3 <sup>rd</sup> year of service	4 months' full pay and 4 months' half pay
During the 4 <sup>th</sup> and 5 <sup>th</sup> year of service	5 months' full pay and 5 months' half pay
After 5 years' service	6 months' full pay and 6 months' half pay

A month for the purpose of Local Government Sick Pay is defined as 23 days. The period during which occupational sick pay is paid and the rate of sick pay in respect of any period of absence is calculated by deducting from the employee's entitlement on the first day of the aggregate of periods of paid absence during the 12 months immediately preceding the first day of absence [the rolling year]).

2.4 The rationale for the proposals was set out thus: *In the current economic climate, many consider the OSP provision of 6 months' full pay and 6 months' half pay to be very generous. Authorities across the country have reviewed the OSP entitlement (including Hertfordshire County Council) and it was considered that we also needed to carry out a review at TRDC.*

2.5 *The basic salary costs for long term sickness and short term sickness are approximately the same, but the associated costs for the organisation in managing a longer-term absence are often significantly greater.*

2.6 *Reports indicate that many employees on longer term absence return to work at the time when their full OSP entitlement is about to reduce to half pay, regardless of the duration of the full pay provision.*

2.7 The proposal was as follows, and applied to every single member of TRDC staff save those on different (TUPE) terms at the Depot, who receive nothing but the statutory sick pay with no enhancements, and are the lowest paid in the organisation. Given the business case for the changes, it follows that this report also applies to those staff TUPE'd over to Three Rivers District Council via the former shared services. However, this group of staff has not been included in the current consultation process as they were not TRDC employees at the time the consultation started. Advice received is that they should remain excluded for the moment and a separate consultation exercise be undertaken with them detailing the Economic, Technical or Organisational (ETO) reason/s for moving away from their TUPE-protected term.

<b>Length of service</b>	<b>OSP entitlement</b>
During the 1 <sup>st</sup> year of service	1 month's full pay and (after completing 4 months' service) 2 months' half pay
During the 2 <sup>nd</sup> year of service	1 month's full pay and 2 months' half pay
During the 3 <sup>rd</sup> year of service	1 month's full pay and 4 months' half pay
During the 4 <sup>th</sup> and 5 <sup>th</sup> year of service and thereafter	1 month's full pay and 5 months' half pay

There was no proposed change to the current arrangements for when occupational sick pay is paid (the rolling year). Management Board's original proposals were designed to enable managers to bring in cover for staff on long-term sick leave, to relieve pressure on staff not absent though illness.

2.8 The proposals included an exemption for all disability-related sickness absence, which would continue on the current 6 months' full pay and 6 months' half pay entitlement.

2.9 Unsurprisingly, staffside were unhappy and invoked the Staff Employer Forum. This body met on 25 November 2013, and the minuted actions were:

- that a further meeting of the Staff Employer Forum be held in January 2014 to consider this matter further with the following information provided:
- Consultation Document to revise Occupational Sick Pay Entitlement provided by Management Board.
- Response of Management Board to concerns already raised by Staff Side.
- Response to Survey undertaken by Staff Side.
- Detail on Sickness absence and reasons for different rates in departments.

- Information on provisions at other local authorities.

2.10 The Forum met again on 22 January 2014 and 1 May 2014. The actions agreed after the latter were:

1. that more information be provided to Members before a decision could be made;
2. an informal meeting to be arranged between Councillors, with an allocated officer, to agree further questions;
3. with the elections occurring in May 2014, it was acknowledged that the timing was an issue and it was not possible to make a decision before the Council meeting in June; and
4. the decision on OSP be postponed to a more suitable time.

2.11 When the Forum was reconvened on 30 January 2015 with all the requisite information, Councillors went in to private session and effectively rejected the Management Board proposals and the existing OSP terms & conditions, proposing instead:

During the 1 <sup>st</sup> year of service	1 month's full pay and (after completing 4 months' service) 2 months' half pay
During the 2 <sup>nd</sup> year of service	2 months' full pay and 2 months' half pay
During the 3 <sup>rd</sup> year of service and thereafter	3 months' full pay and 4 months' half pay

There was no proposed change to the current arrangements for when occupational sick pay is paid (the rolling year).

2.12 Staffside requested further time for a ballot, which was granted, but they included on the ballot paper the existing terms and conditions. Unsurprisingly, the staffside voted to retain existing terms and conditions even though these had already been rejected by the Forum Councillor members.

2.13 During the final meeting of the Forum, it was also realised by all sides that the constitutional set-up of the Forum was not fit for any purpose, and these will be reviewed in a separate operation ready for Council in July 2015.

2.14 Since the result of the ballot, which was reported to Full Council on 24 February, Councillor members of the Forum have opined to the Chief Executive that no change to the Occupational Sick Pay Terms & Conditions was not an option; that the Ballot which took place did nothing to achieve a solution; that the Staff Employer Forum is not fit for purpose to resolve the matter; that the matter must be resolved via a report to P&R and thence Council on 19 May 2015. This report is the result of that.

2.15 Since last Council, Unison has informed the Leader and the Chief Executive that, notwithstanding the proposals set out in this report were not even published then, it is formally registering a dispute with this Council, and it believes this should trigger a disputes resolution process. However, the Disputes Resolution Procedure in this Council is, in effect, the Employer Staff Forum, and Unison was party to the prolonged period of unsuccessful

negotiation entered into since the proposals were first made. Given this, and Unison's adopted position at Policy & Resources Committee that no change should be made at all to Occupational Sick Pay entitlement, it is not envisaged that mediation at this stage would be productive. Besides, Policy & Resources Committee Members referred the matter to Full Council and a report is therefore expected here. Members will doubtless recognise that, should it not be happy with any decision, Unison will ballot its members for industrial action.

- 2.16 For information, 216 Council employees are not members of any union, representing 64.9% of the workforce. Unison membership is 88, representing 26.4%, and the GMB Union has 29 members, representing 8.7%.
- 2.17 At P&R Committee, the Unison representative put forward the view that, if any changes went through, Three Rivers District Council's staff would have "some of the worst conditions in the country". This is actually untrue. There are no plans to introduce no OSP on the first few days of sickness absence, no changes to mileage rates nor free car parking, no changes to enhanced redundancy provision, nor abolition of pay scales, examples of all of which have been effected in other local authorities.
- 2.18 At Hertfordshire County Council, from April 2012 and with Union agreement, workers were no longer paid for the first two days they were absent through illness. Also, the length of time over which sick pay can be claimed was cut back from six months' full-pay and six months' half-pay to four months' full-pay and four months' half-pay. A subsidiary of Norfolk County Council, Norse Care, which runs residential homes, removed the first four days' sick pay, abolished six months' full-pay and six months' half-pay and reduced sickness absence hugely. Rutland and Worcestershire County Councils have reduced mileage rates, and the latter has removed the first three days' sick pay. Hertsmere has reduced OSP to five months' full-pay and five months' half-pay with the first day of sickness unpaid, although the member of staff can take it as annual leave.

### **Summary**

- 2.19 From the beginning, these proposed changes have not been about saving money but on letting managers manage services when long-term absences occur. It is analogous to the conditions (albeit on a longer fuse) obtaining in the majority of those at the depot: there is no OSP for them in order that, at an hour's notice, a replacement can be obtained from an agency so the waste vehicles etc. can carry out their rounds, the money being contained within the workforce budget.
- 2.20 Because these original proposals were made in order to deal with a particular situation within the non-depot workforce, the terms and conditions of the depot workforce were never part of the proposals nor of the deliberations of the Forum. Any suggestion to look at the terms and conditions of the depot workforce are a separate operation.
- 2.21 As Policy & Resources Committee decided not to make a recommendation to Council, Council is of course able to consider at least three options
1. It can consider 'no change';
  2. It can consider the recommendation of the Staff Employer Forum of three months' full pay and four months' half-pay;
  3. It can revert to the original purpose of the proposals which argued that the one month's full pay was the main advantage of the proposals, with five months' half pay a workable further aid to managers.

3. **Options/Reasons for Recommendation**

3.1 The Councillor Members of the Forum made a proposal which has been rejected because of the nature of the ballot so, in the absence of any meaningful negotiation from the staffside, that proposal is brought to Full Council, the only body which is able to vary terms and conditions.

4. **Policy/Budget Reference and Implications**

4.1 The recommendations in this report are not within the Council's agreed policy i.e. existing Terms and Conditions, but are within its budgets.

5. **Financial, Legal, Equal Opportunities, Staffing, Environmental, Community Safety, Customer Services Centre, Communications & Website, Risk Management and Health & Safety Implications**

5.1 None specific, except **staffing**, and there is reference to industrial disputes in the staffside evidence to the Forum, and the comments of the Unison representative.

6. **Impact Assessment**

6.1 An EIA was undertaken and its conclusion was that the proposals will apply equally to all employees and in fact remove a current inequality which means entitlement is based on length of service.

6.2 There is no evidence that any protected group would be differently affected by the proposal as alternative and additional leave, flexible working arrangements and support are available for employees requiring leave in specific circumstances (e.g. disability leave, special leave etc.).

6.3 What actions were identified to address any detrimental impact or unmet need?  
None required.

7. **Risk Management and Health & Safety Implications**

7.1 The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. In addition, the risks of the proposals in the report have also been assessed against the Council's duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.

7.2 The subject of this report is covered by no service plans. Any risks resulting from this report will be included in the strategic risk register and, if necessary, managed within the Strategic Plan at Management Board level.

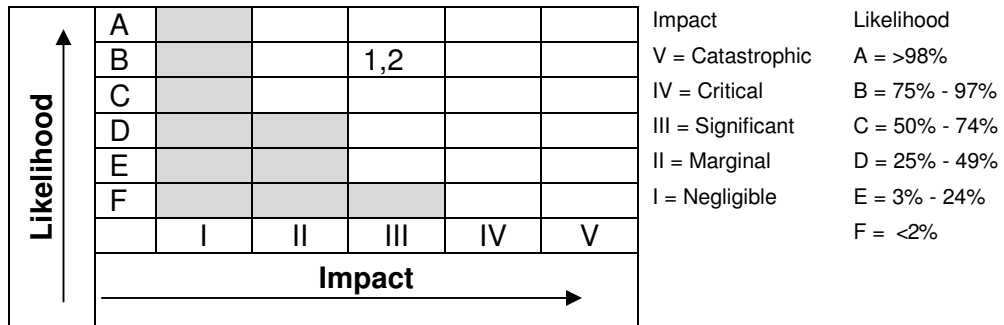
7.3 The following table gives the risks if the recommendation is agreed, together with a scored assessment of their impact and likelihood:

Description of Risk		Impact	Likelihood
1	Unhappiness of staff with risk of industrial dispute	III	B

7.4 There are no risks to the Council in rejecting the recommendation(s).

Description of Risk		Impact	Likelihood
2	Risk of further long-term sickness with consequent excessive staff resource needed to manage it and a	III	B

7.5 The above risks are plotted on the matrix below depending on the scored assessments of impact and likelihood, detailed definitions of which are included in the risk management strategy. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood are plotted in the shaded area of the matrix. The remaining risks require a treatment plan.



7.6 In the officers' opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks. The effectiveness of treatment plans are reviewed by the Audit Committee annually.

8. **Recommendation**

8.1 Council considers the three proposals – or any others- from the Councillor Members of the Staff Employer Forum, the Staffside or the Management Board for adoption.

Report prepared by: Steven Halls, Chief Executive

9. **Data Quality**

Data sources: n/a

Data checked by: S Halls

1	Poor	
2	Sufficient	
3	High	✓

10 **Background Papers**

Confidential Minutes of the Staff Employer Forum

11 **APPENDICES / ATTACHMENTS** - none