

THREE RIVERS & WATFORD SHARED SERVICES JOINT COMMITTEE

Date of meeting: 13 June 2011

PART A

AGENDA ITEM

9

Title: Update on Proposals for Harmonisation of Terms and Conditions of Employment

Report of: Head of Human Resources

1. SUMMARY

- 1.1 The Harmonisation (terms and conditions of employment) project was set up to deliver consistent terms and conditions of employment across Watford and Three Rivers on a cost neutral basis in order to be fair to all employees, remove inequalities and be better placed for the possible future expansion of the shared service approach.
- 1.2 A set of harmonisation proposals in line with the original project objectives and with a strong emphasis on fairness and equality among staff whilst being mindful of the current climate in terms of people, finance and public perception were reviewed by senior management teams in both Watford and Three Rivers. The proposals were agreed by Committee and put to employees in both Councils during a consultation period from December 2010 to March 2011. The proposals were also discussed with representatives from Unison in both Councils and with staff representatives in Three Rivers
- 1.3 The purpose of this report is to inform the Shared Services Joint Committee of the outcome of the consultation period and to seek approval to implement the proposals contained within this report.

2. RECOMMENDATIONS

- 2.1 That Joint Committee Members note and approve the contents of this report.

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Report approved by:

Tricia Taylor – Executive Director Resources – Watford Borough Council

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3.0 DETAILED PROPOSAL

The proposed changes relate to the areas within the scope of the harmonisation project as follows :

- Annual leave
- Pay protection
- Paternity
- Bank holidays for part time employees
- Honoraria
- Overtime
- Compassionate / Bereavement / Dependency / Special leave
- Dress code
- Smoking
- Disability leave
- Flexi time / TOIL

3.0.1 Please note that Three Rivers employees whose terms and conditions of employment are protected by TUPE (Transfer of Undertakings Protection of Employment) regulations i.e. Refuse, Recycling, Grounds and Environmental Maintenance are not in-scope and are therefore unaffected by any of these proposals. As a separate strand to the project is a feasibility report into the cost of harmonising these work groups with the rest of Three Rivers. This aspect of the project is on-going and a report on the findings will be submitted to Three Rivers Management Board for consideration in due course. It is likely that the report will be submitted towards the end of the summer period.

3.1 Annual leave

3.1.1 Watford currently operate a leave scheme which increases leave entitlement according to pay grade and according to length of service up to 10 years Watford service.

3.1.2 Three Rivers have a two tier scheme of 28 days or 30 days after 5 years local government service (plus 8 employees currently receive either 34 or 31 days due to a protection arrangement). The protection arrangement dates back to 1981 when Three Rivers also awarded additional annual leave according to pay grade and after 10 years Three Rivers service.

3.1.3 There are concerns about the fairness and legality of a scheme which awards additional leave according to pay and after 10 years service and Watford Leadership team and Three Rivers Management Board have already agreed that these concerns must be addressed.

3.1.4 The main concerns around current annual leave arrangements are inequalities within shared service teams, the fairness of the Watford scheme in relation to lower paid staff (whose need for proper rest, work/life balance and childcare provision are no different to those of higher paid staff) and the potential risk around in-direct age or sex discrimination by having to work 10 years to benefit from the maximum annual leave entitlement under the scheme.

3.2 To achieve harmonisation it was proposed that Watford adopt the Three Rivers

annual leave model i.e. 28 days rising to 30 days after 5 years local government service. However, during consultation with staff and Union representatives, this became the main point of contention. The proposed changes adversely affected 265 Watford employees. In addition, Unison advised that if Watford were to pursue harmonisation with Three Rivers they (Unison) would enter into a dispute and would advise members not to agree to any contractual change. In light of this feedback the Leadership team in Watford considered an alternative proposal and agreed **not** to harmonise with Three Rivers regarding annual leave.

- 3.2.1 Watford Leadership Team have reviewed the various options available and now recommend a scheme of 28 days rising to 33 days after 5 years service for all employees including Chief Officers and new starters. No additional leave for 10 years service. Discussions were held with Unison in Watford with a view to obtaining a collective agreement. Unison acknowledged the change in proposal by Watford Leadership Team and asked if the reduction in leave could be phased for all over a 2 year period. This was agreed. Unison will ballot members for their response and if this is positive, will enter into a collective agreement with management. Unison is aware this is the final offer from management. There are no changes proposed for Three Rivers employees other than to discuss the personal protection arrangement for the 8 members of staff outlined above in 3.1.2.
- 3.2.2 **Annual Leave and Shared Services**
The leave scheme set out in this report will go some way to reducing the differential between Watford and Three Rivers maximum leave entitlements which will benefit current and future shared service teams. All Heads of Shared Services believe this difference in annual leave entitlement for employees is manageable.
- 3.2.3 Employees positively impacted : **170** WBC employees would be better off initially, with a split of 130 employees better off and 40 better off initially but no change in the long term.
- 3.2.4 Employees for whom this represents no change : This proposal would represent no change for **162** WBC staff although of these 131 would be worse off in the long term. The extent of the impact on those 131 staff who would be worse off in the long term is as follows:
3 Chief Officers worse off by 7 days
128 staff worse off by 2 days
- 3.2.5 Employees adversely impacted : A total of **122** Watford employees would be adversely impacted. The extent of the impact on those 122 staff who are immediately worse off is as follows :
4 Chief Officers worse off by 7 days
2 Chief Officers worse off by 5 days
116 staff worse off by 2 days
- 3.2.6 The proposed implementation date for these proposed changes is 1 April 2012 meaning that employees continue to benefit from the existing leave arrangements during 2011/12.
- 3.2.7 New recruits would be recruited onto current leave schemes and moved to the new scheme with effect from 1 April 2012.

- 3.2.8 There are proposed transition arrangements for employees in either Council whose leave would reduce. These are set out below :

Current entitlement	Leave entitlement year 2012/13	Leave entitlement year 2013/14
35 days	34	33
38 days	35	33
40 days	37	33

- 3.2.9 **Extra Statutory Days** - At the moment Watford employees have to fix 3 of their leave days to the Christmas period. This was included as part of another consultation process and the majority of staff (over 200) wanted to keep the existing arrangement and Watford employees will continue to fix 3 days leave for the office closure at Christmas. Some shared services remain open during the Christmas period and if Watford staff wish to come in, they have been allowed to do so, retaining the flexibility of when to take their leave entitlement.

3.3 **Bank holidays for part time employees**

- 3.3.1 The current Three Rivers approach causes inequalities among Three Rivers part timers.
- 3.3.2 It was proposed that Three Rivers adopt the Watford approach whereby part timers only receive pro-rata of their entitlement not more by virtue of their working pattern. There was no significant feedback against this proposal and therefore it is now recommended to adopt the Watford approach. This proposal will affect approximately 40 out of 57 Three Rivers part time employees but not significantly - only by a few hours leave at most (to which they are not strictly entitled anyway).
- 3.3.3 This recommendation will achieve harmonisation with Watford, remedy inequalities within shared services and among Three Rivers part time employees.

3.4 **No smoking**

- 3.4.1 This proposal deals with the minor disparities between the two approaches as a shared service / work site issue. There is no disagreement to this proposal.
- 3.4.2 It is recommended therefore that Three Rivers shared service employees based at Watford (Human Resources / Revenues and Benefits) and Watford shared service employees based at Three Rivers House (ICT / Finance) will be made aware of the policies in place at both sites and the need to adhere to whichever one applies to them depending on where they work.

3.5 **Dress code**

- 3.5.1 Watford do not currently have a 'dress code'. Three Rivers has a dress code statement which is as follows :

“Unless a uniform or clothing is provided, we expect you to dress in line with Health and Safety requirements and an office environment or in an appropriate manner to the job you have to do and the environment in which you have to do it. Inappropriate items of clothing, would be for example, jeans, shorts, trainers or any item of clothing displaying a slogan.”

3.5.2 This is not prescriptive enough to be potentially discriminatory and allows for services to retain separate 'uniform' arrangements i.e. CSC, Refuse and to retain other established norms in certain areas i.e. play workers. It also allows staff to dress appropriate to the task for example when needing to carry out dirty work or work in contaminated areas.

3.5.3 Unison raised this proposal during consultation however, they did not provide any alternative proposal to consider. Therefore it is recommended that Watford adopt the Three Rivers dress code 'statement' to achieve harmonisation and remedy inequalities within shared services.

3.6 **Pay protection**

3.6.1 The current Three Rivers pay protection policy (applicable to non shared service employees only) is :

"Salary (including any market factor) is frozen at the existing level, without the addition of National pay awards, annual increments or performance related pay uplift, until the pay level for the new post catches up with pay level for the employee's old post. Therefore the length of pay protection may vary from person to person depending on the difference between the old pay grade and the new and the level of any uplifts being applied to pay scales at that time."

3.6.2 There is a risk to Three Rivers of an equal pay challenge (since Shared Services) due to there now being different pay protection arrangements for shared and non shared service Three Rivers employees.

3.6.3 The harmonisation working group also considered 'indefinite pay protection' for an employee who is no longer undertaking duties commensurate with that level of pay to be unfair and carry the risk of an equal pay challenge.

3.6.4 There was no adverse feedback from Unison, staff representatives or employees to this proposal and it is therefore recommended that Three Rivers adopt the Watford policy of 1 year only – representing no change for Watford employees.

3.6.5 This recommendation would achieve harmonisation between Three Rivers and Watford whilst retaining some protection to staff in future pay reduction situations. This recommendation would also eliminate any risk of any equal pay challenge and reduce Three Rivers future costs.

3.7 **Paternity pay and leave**

3.7.1 Currently Three Rivers give one week paternity leave at full pay plus a further week at statutory paternity pay rates. Watford provide two weeks paternity leave at full pay.

3.7.2 To achieve harmonisation it was proposed that Three Rivers adopt the Watford paternity pay policy. No adverse feedback was received from Unison, staff representatives or employees to this proposal. It is therefore recommended that Three Rivers adopt the Watford paternity pay policy.

3.7.3 This recommendation would remove inequalities within shared services and impact positively (albeit on a very limited number) of Three Rivers employees. For example, in the last financial year only one Three Rivers and one Watford

employee took paternity leave.

- 3.7.4 No additional salary costs would be incurred as agency backfill would not normally apply in paternity situations. There would be very little to be gained by reducing paternity benefits down to the Three Rivers level.

3.8 **Overtime**

- 3.8.1 Watford BC and Three Rivers DC have the same overtime arrangements for part time employees (not applicable until 37 hours worked) and employees on scp 28 and below (overtime rates of x 1.5 for Mon-Sat or x 2.0 for Sun based on hourly rate)
- 3.8.2 There are different arrangements in each Council for staff paid scp 29 and above. Watford give plain time at hourly rate. Three Rivers apply overtime rates i.e. 1.5 or 2.0 times but capped at scp 28.
- 3.8.3 There was no significant feedback raised during consultation and therefore it is recommended that the Watford overtime scheme is adopted to achieve harmonisation and remove inequalities within Shared Services.
- 3.8.4 This recommendation therefore has no impact on any Watford employee and no impact on any Three Rivers employee who is paid on scp 28 or below.
- 3.8.5 This recommendation would represent an estimated £5K annual reduction in Three Rivers overtime costs.

3.9 **Honoraria**

- 3.9.1 Both Watford and Three Rivers award honoraria payments from time to time although Watford do not have a policy or any written guidance in place. As there were no adverse comments received during the consultation period, it is therefore recommended that the new draft policy (revision of the current Three Rivers policy) is adopted by both Councils.
- 3.9.2 This would achieve a harmonised approach between Watford and Three Rivers with more guidance to Heads of Service / Section Heads at the application stage, improved consistency of application and improved monitoring within each Council.

4.0 **Special leave**

- 4.0.1 Both Watford and Three Rivers already have policies in place which cover requests for time off due for compassionate, bereavement or emergency dependency situations.
- 4.0.2 As there were no adverse comments received during the consultation period, it is therefore recommended to adopt one new policy covering all such requests).
- 4.0.3 This would achieve a harmonised approach between Watford and Three Rivers and assist Shared Services Managers with one approach for all their staff. The policy aims to improve consistency and monitoring without making any fundamental changes to current practice in either Council.

4.1 **Flexible working**

4.1.1 Both Watford and Three Rivers already have flexible working policies in place and operate similar flexible working practices.

4.1.2 As there were no adverse comments received during the consultation period, it is therefore recommended to adopt one improved harmonised policy which captures the current practice in each Council but puts the emphasis back on the need for flexible working to be service not employee driven. This new draft policy would achieve a harmonised approach for Watford and Three Rivers and remove any perceived inequalities arising from different policies and guidance within shared services

4.2 **Disability leave**

4.2.1 Currently Watford operate a disability leave scheme. Three Rivers do not have anything documented to capture the approach that may be taken in such circumstances.

4.2.2 As there were no adverse comments received during the consultation period, it is therefore recommended Three Rivers adopt the Watford written policy / guidance. This will achieve harmonisation and remove any perceived inequalities within shared services.

4.2.3 This recommendation also supports the two ticks accreditation and makes no real change to what would happen in practice.

4.2.4 Disability leave only applies to those employees who meet the Disability Discrimination Act (DDA) definition and there would be very little to be gained by reducing this benefit to achieve harmonisation.

5. **IMPLICATIONS**

5.1 **Policy**

5.1.1 The policy has been subject to consultation and any comments have been addressed. Implementation of these new policies, is in line with established policy and procedure in both Councils.

5.2 **Financial implications for Three Rivers DC**

5.2.1 The proposals for overtime would represent savings of approximately £5,000 per annum as from 2011/12 and the proposals for pay protection would provide savings to Three Rivers in the long term the proposed policy is more cost effective than the current.

5.2.2 There no further financial implications for Three Rivers arising from the proposals contained within this report.

5.3 **Financial implications for Watford BC**

5.3.1 Financial costs are incurred in relation to annual leave only where backfilling or agency cover is required to cover the absence due to annual leave. This is the case for Watford Environmental Services Loaders and Drivers and Parks and

Cemetery Operatives. The estimated additional agency spend to cover the additional levels of annual leave is £10k per annum. This will be built into the budget process for 2012 onwards.

5.4 **Legal Issues** (Monitoring Officer)

5.4.1 Both Councils are under a legal duty to promote equality.

5.4.2 For Three Rivers there is concern that the current pay protection arrangement (applicable to non shared service employees) carries the risk of an equal pay challenge.

5.4.3 An annual leave scheme which awards leave according to length of service (of more than 5 years) must be kept under constant review and may leave Watford (or Three Rivers in relation to the 1981 agreement) open to a potential risk of equal pay claims or claims of indirect sex or age discrimination under the Equality Act 2010.

5.4.4 In relation to some of the non-contractual policy areas contained within this report where changes are being recommended the consultation undertaken demonstrates good practice rather than a mandatory requirement.

5.4.5 In order to ensure that any contractual changes (arising post consultation) are legally compliant and implemented in accordance with good employment practice, it is planned to make changes by a variation to the employment contract, preferably through collective agreement with Watford UNISON for Watford employees and Local Liaison Committee for Three Rivers employees.

5.4.6 If collective agreement cannot be reached then individual agreement to a variation of the employment contract will be sought. Please also refer to Section 5.4 Risk Management.

5.5 **Equalities**

5.5.1 Two of these draft proposals will have either a positive or negative effect on a particular group of staff i.e. the paternity proposal will impact positively on Three Rivers District Council male employees and the bank holidays for part timers proposal will impact negatively on predominantly female Three Rivers District Council employees.

5.5.2 However, all of the proposals are designed to address inequalities caused either through unfairly structured policies or through the joining of two sets of employees within shared services.

5.5.3 The current inequalities among the existing Watford employees due to the structure of the current annual leave scheme is set out in the current Watford annual leave scheme equalities data.

5.5.4 Under the current scheme, lower paid Watford employees receive significantly less annual leave than higher paid staff and their costs associated with less annual leave (such as childcare costs) remain higher as a % of salary than that of their higher paid colleagues. It is also likely that the majority of employees in this bracket are unable to access flexible working as they are likely to be employed in front line / operational activities meaning there is less scope for flexibility of when

work is carried out.

5.6 Risk Management

5.6.1 A significant number of Watford BC employees will be adversely affected by the proposed changes to the annual leave scheme. This may have a negative impact on employee morale, motivation and satisfaction levels and subsequently performance levels both now and in the future when the changes are implemented and as phased reductions occur.

5.6.2 If it is agreed to make the recommended changes to annual leave and agreement cannot be reached (either collectively or individually) with employees then in order to implement the proposed changes the Council would need to do so by way of a variation of individual employees' contracts. If employees do not consent to such a variation there is a potential for breach of contract or constructive dismissal claims from employees.

5.6.2.1 Breach of contract claims are dealt with either by the High Court or County Court or by an employment tribunal (but to take a claim to an employment tribunal the employee must have left employment).

5.6.2.2 Constructive dismissal may be claimed where the employee feels that the effect of the changes is intolerable to the extent that there is no alternative but to resign. The employee must be able to show that the breach of contract is significant enough to go to the very root of the contract and involve some major change to one of the key terms of employment, introduced without the employee's agreement.

5.6.2.3 The extent of this risk will largely depend on how likely it is that an employee would choose to resign over the proposed reduction in annual leave entitlement.

5.6.2.4 The potential for industrial action has been greatly reduced by Watford reviewing the proposal for annual leave and recommending an improvement to the original proposal. In the current climate and taking into account the changes that have been agreed recently with Herts County Council, Industrial Action is considered as a moderate to low

5.6.3 Potential risks of not proceeding

5.6.3.1 Existing inequalities within shared service teams in relation to annual leave, paternity and bank holidays for part timers would be unresolved at this time.

5.6.3.2 The position for future Watford / Three Rivers shared services would not be improved.

5.6.3.3 The Watford annual leave scheme would need to remain under annual review to assess the potential for challenge under the Equality Act 2010.

5.6.3.4 The following table gives the risks if, at a later stage, these proposals are agreed, together with a scored assessment of their impact and likelihood.

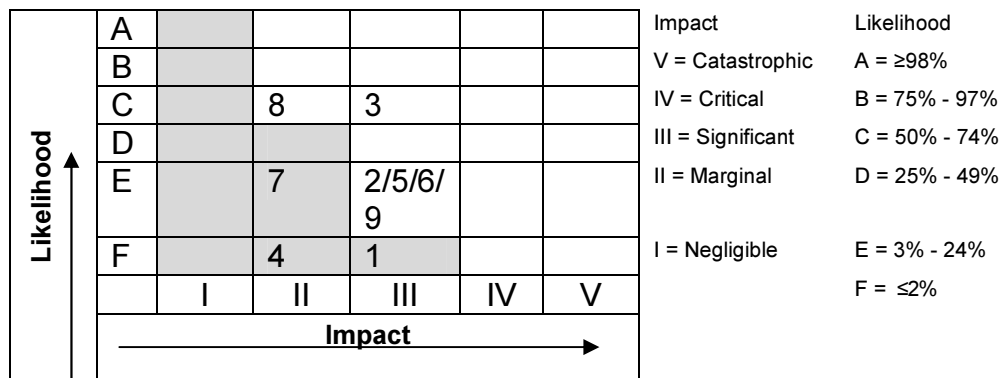
Description of Risk		Impact	Likelihood
1	Breach of contract or constructive dismissal claims from Three	III	F

	Rivers DC employees arising from a failure to gain collective or individual agreement to vary the employment contract		
2	Breach of contract or constructive dismissal claims from Watford employees arising from a failure to gain collective or individual agreement to vary the employment contract	III	E
3	Negative impact on Watford employee morale, motivation and satisfaction and subsequently performance levels at implementation stage and as phased annual leave reductions occur	III	C
4	Negative impact on Three Rivers employee morale, motivation and satisfaction and subsequently performance levels at implementation stage and as phased annual leave reductions occur	II	F
5	Industrial action in Watford over proposed changes to annual leave scheme	III	E

5.6.4 The following table gives the risks that would exist if, harmonisation issues are not addressed, together with a scored assessment of their impact and likelihood:

Description of Risk		Impact	Likelihood
6	Equal pay challenges in Three Rivers DC arising from current pay protection arrangements	III	E
7	Existing inequalities within shared service teams in relation to annual leave, paternity and bank holidays for part timers would be unresolved at this time which may lead to a negative impact on employee morale, motivation and satisfaction and subsequently performance levels	II	E
8	The position for future Watford / Three Rivers shared services is not improved	II	C
9	The potential for challenge under the Equality Act 2010 remains in relation to the Watford annual leave scheme	III	E

5.6.5 The above risks are plotted on the matrix below depending on the scored assessments of impact and likelihood. Risks are tolerated where the combination of impact and likelihood are plotted in the shaded area of the matrix. The remaining risks require either monitoring or managing, in which case a treatment plan is prepared.



5.7 **Staffing implications**

- 5.7.1 Staff in both Watford and Three Rivers have been kept up to date regarding the progression of the Harmonisation project via intranet and staff publications.
- 5.7.2 Formal consultation consisted of group staff briefings in which over 200 employees attended the briefings, in addition to written information being provided on Watford and Three Rivers intranets. Collective consultation was also conducted with Unison and staff representatives.
- 5.7.3 Staff one to one meetings to discuss individual issues with their manager and HR, accompanied if they wish by a staff representative (either union or Three Rivers DC non union) or work colleague were agreed and carried out where requested.

Background Papers

- Draft harmonised honoraria policy
- Draft harmonised special leave policy
- Draft harmonised flexible working policy
- Extract from Watford disability leave policy
- Current annual leave schemes and current position
- Current Watford annual leave scheme equalities data