



# Northumberland

## County Council

### **CABINET**

Date: 11 September 2018

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### **Current Status of Active Northumberland Terms and Conditions/Job Evaluation Negotiations**

Joint Report of the Executive Director of HR/OD and Deputy Chief Executive and Executive Director Finance and Deputy Chief Executive

Cabinet Member: Councillor Nick Oliver, Corporate Services and Cabinet Secretary

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#### **1. Purpose of report**

- 1.1 To inform members of the progress to date regarding negotiations with the Trade Unions in relation to the proposed new Payline, Terms and Conditions and Job Evaluation process.
- 1.2 To inform members of the proposed 'next steps' to the process.
- 1.3 To inform members of the short term financial commitment required.
- 1.4 To make members aware of the potential risk of claims for breach of TUPE rights which may arise from the process and may require formal support to be given to Active Northumberland by Northumberland County Council.

#### **2. Recommendations**

Members are recommended to:

- 2.1 Note the content of information within the report.
- 2.2 Consider the implications for the proposed changes in relation to the ongoing changes in the strategic direction of Active Northumberland.
- 2.3 Approve the short term financial commitment required.

- 2.4 Note the potential risk of claims for breach of TUPE rights which may arise from the process.
3. The report is relevant to the “We want to be efficient, open and work for everyone” priority included in the NCC Corporate Plan 2018-2021.

#### **4. Background/Current Position**

- 4.1 The Job Evaluation (JE) exercise was completed for Active Staff in early 2018 and negotiations regarding the proposed Payline and Terms and Conditions started shortly afterwards.
- 4.2 Active Northumberland currently have staff on up to 8 sets of varying terms and conditions leading to disparity within the workforce and members of staff doing the same job, for different rates of pay, having different amounts of annual leave entitlement and different enhancements when working additional hours. The Council, Active Northumberland and the Joint Trade Unions (TUs) have all been eager to harmonise the terms and conditions as soon as was practically possible.
- 4.3 A number of options have been developed for a salary band structure (i.e. the levels of salary people will receive) and the pay line (i.e. how many JE points equal what level of salary is awarded to individuals) and these were presented to the Active Board based on modelling work undertaken within HR. A preferred option was agreed and this was included within draft terms and conditions issued to trade union colleagues for negotiations. An agreement with regard to holiday pay based on the Bear vs Scotland ruling and associated ongoing case law was also included within the proposed terms and conditions.
- 4.4 Over a series of meetings as part of the negotiation process, various changes to the terms were requested by the TUs, some of which were accepted in full or part, others which were rejected. Following the final meeting on 20 July 2018, when it looked like no further progress could be made by either party, the lead TU reps for Unison and GMB approached Mark Tweedie and Leanne Furnell, Strategic HR Lead and Andrew Meikle, HR Manager with a proposal whereby if a disparity in the bottom two pay bands in terms of numbers in each was addressed, they would accept in principle the rest of the terms and conditions.
- 4.5 This was able to be achieved and the TUs have agreed all matters of the proposed JE scheme, Payline and Terms and Conditions in principle pending the ballot of members and the required national approval by their TU bodies.

#### **5. Key Changes to Terms and Conditions**

- 5.1 As outlined above, there are a number of different terms and conditions within Active Northumberland meaning that the new proposed terms and conditions are beneficial to some, and a detriment to others.
- 5.2 Many of the proposed terms and conditions of service closely mirror the Council terms with regard to some pay (e.g. family leave) and non pay (e.g. appraisal and development), but some are more specific to Active and the financial climate in which they operate. Table 1 below outlines some of the key elements of the terms and conditions and the full document is attached should members wish to seek further clarity on the full details of the proposal.

Table 1

Term	Description						
Pay Protection	Employee's suffering a loss due to the JE process will have their original salary of 100% protected for a period of 12 months from the implementation date.						
Additional Hours	Additional hours worked above contracted hours will all be paid at flat time. No enhancements will be paid on hours over 37 or those worked at weekends with the exception of any work undertaken between 11pm and 6am. As an interim agreement, from the date of implementation until 30 November 2018, hours worked in excess of 37 a week will attract time and a quarter. This was done to allow a period of transition for the staff who currently receive time and a half for hours worked over 37.						
Annual Leave	Staff who have continuous service of less than 10 years will have an annual leave entitlement of 25 days plus Bank Holidays (pro rata for part time employees). Staff with 10 years+ will have an entitlement of 30 days plus Bank Holidays (pro rata for part time employees).						
Sick Pay	<table border="1" data-bbox="858 1955 1422 2063"> <thead> <tr> <th data-bbox="858 1955 1046 2063">Amount of Service</th> <th data-bbox="1046 1955 1235 2063">Amount of Full Pay</th> <th data-bbox="1235 1955 1422 2063">Amount of Half Pay</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Amount of Service	Amount of Full Pay	Amount of Half Pay			
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1st year	1 month	1 month								
2nd year	2 months	2 months								
3 years +	4 months	3 months								
Pension	Current employees who are members of the LGPS can continue to pay into that scheme. New employees will be able to join the SPORTA pension.									
Performance Related Pay	<p>Should the income of Active increase within a year, then staff will be entitled to a one off payment as a percentage of their salary within that financial year. The amounts they could get are:</p> <p>Increased financial income of up to 5% = 1% employee award  Increased financial income of up to 10% = 2% employee award  Increased financial income of up to 15% = 3% employee award  Increased financial income in excess of 20% = 4% employee award.</p>									

5.3 Active Salaries will be paid at as a spot salary point, with no increments within each pay band.

## 6. Financial Impact of Proposed Arrangements

6.1 It was agreed prior to negotiations starting around terms and conditions that the implementation of JE and the pay band would backdated to 1 April 2016.

6.2 Based on the agreed pay band and modelling done to date around changes to employees salaries based on the evaluated job descriptions they will go onto, the estimated cost for the backdating and in year costs of **salaries for contracted staff only** is in the region of £1.2m, broken down as shown in table 2 below:

Table 2

16/17	£385,956.33
17/18	£385,956.33

18/19	£428,786.46
Total	£1,200,699.12

The difference in 18/19 is due to an extra £500 being added to the bottom two bands from April 2018.

- 6.3 In addition to the backdated costs, there is also pay protection to pay to those staff who are suffering a decrease in salary as a result of JE. This will be paid for 12 months from the date of implementation. In terms of additional cost, that will only become active from April 2018 and based on modelling is estimated to be in the region of £250,000.
- 6.4 There are additional costs associated with the implementation of JE and the holiday pay agreement, including but not limited to;
- Backdating of any overtime done by staff whose new rate of pay is more than it was previously;
  - Backdating of pay for staff on casual assignments;
  - Backdating of pay for staff who have left either an assignment or Active entirely but who will still be entitled to new rates of pay for the roles they did;
  - Backdating of holiday pay to April 2017;
  - Staff being successful as a result of appealing their JE score

The costs associated with these are yet to be calculated and in some instances, for example the backdating of overtime pay, it will be incredibly difficult to implement accurately due to the way in which overtime was claimed.

- 6.5 All costs outlined thus far are estimates and are subject to change based on numerous variables. It is anticipated that the total cost of the implementation of JE and all associated costs is estimated to be in the region of £2 - 3m.

## **7. Risk of Employment Tribunal Claims for breach of TUPE rights**

- 7.1 Active Northumberland was formed by bringing together all of the leisure centres in Northumberland in 2015. This incorporated TUPE transferring staff under their terms and conditions they had in their relevant centres.
- 7.2 Whilst the TUs have been pushing for harmonised terms and conditions and have not mentioned TUPE, there is a chance that employees who suffer a detriment of any sort could submit a claim to an employment tribunal for breach of TUPE rights.
- 7.3 The chances of this are highly unlikely, and when NCC implemented JE and Single Status, which involved moving former district staff onto NCC terms and conditions and pay, no Employment Tribunal claims were made.

7.4 Nevertheless, there is a chance and should claims be successful, there could be a significant extra cost to the Council for this.

## **8. Next Steps**

8.1 Consultation 'road shows' are scheduled in for the first two weeks in September that will be attended by management, HR and the TUs. They will be an opportunity for staff to ask questions and understand the rationale for the change and the challenges being faced by the organisation.

8.2 Following or during the same time as the road shows, the TUs will ballot their members to see if they wish to accept the terms and conditions. The TUs have committed to recommending the offer to their members.

8.3 At the same time, all contracted Active Northumberland employees will be written to with details of their evaluated job score and what their new salary will be and will be asked if they wish to accept that whilst the consultation around terms and conditions is ongoing. Should they do so, they will automatically accept whatever is agreed and also lose their right to appeal the score. They will then be paid their new salary and backdated salary due to them as soon as possible.

8.4 Legal advice will be sought further if required in relation to the risk of TUPE claims should this be raised by employees.

## **9. Conclusion**

9.1 Good progress has been made to get Active to a position where the implementation of the new terms and conditions is close.

9.2 There is a significant financial impact on Active as a result of JE, and there is agreement that the Council will cover the back dated and in year costs of that.

9.3 There is an awareness that employment tribunal claims may be submitted by employees in relation to loss of TUPE protection, although highly unlikely that this may be the case, the Council need to be aware of the possibility of this.

**Implications:**

<b>Policy:</b>	Large changes to policy, but it is to ensure consistency across the organisation.
<b>Finance and value for money:</b>	The changes come at significant cost to both Active Northumberland and NCC. This report highlights those costs, but the organisation is in a position where the status quo cannot continue any longer and harmonisation is required. Whilst the cost is high, it is lower than it could have been and also ensures parity for people doing the same job.
<b>Legal:</b>	Small chance of claims to an employment tribunal with regard to breach of TUPE regulations.
<b>Procurement:</b>	Not applicable for this report.
<b>Human Resources:</b>	A number of staff are forecasted to suffer a significant loss in salary as a result of JE. Whilst this will be protected for 12 months from the date of implementation, the impact on the moral/engagement of those staff will need to be managed. There could be large numbers of staff who chose to exit the organisation.
<b>Property:</b>	Not applicable for this report.
<b>Equalities:</b>	An Equality Impact Assessment will be prepared to look at the impact of job evaluation and the new terms and conditions of service on the Active employees.
<b>Risk Assessment:</b>	Not applicable for this report.
<b>Crime and Disorder:</b>	Not applicable for this report.
<b>Customer Consideration:</b>	Not applicable for this report.
<b>Carbon Reduction:</b>	Not applicable for this report.
<b>Wards:</b>	This report affects all wards across the County.

**Background papers:**

Draft terms and conditions document.

**Report sign off:**

Finance Officer	Barry Scarr
Monitoring Offer/Legal	N/A
Human Resources	Leanne Furnell
Procurement	N/A
IT	N/A
Executive Directors:	Barry Scarr/Kelly Angus
Portfolio Holder(s)	Cllr N. Oliver

**Author and Contact Details**

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