

CANNOCK CHASE COUNCIL

COUNCIL

29TH APRIL 2009

REPORT OF DIRECTOR OF SERVICE IMPROVEMENT

DISPUTE OVER ANNUAL LEAVE PROVISIONS

1. Purpose of Report

The purpose of this report is to present possible options for resolving the current dispute over leave provisions raised by UNISON following the termination of protection arrangements for leave provisions as specified in the Council's single status agreements.

2. Recommendation(s)

2.1 That Council consider the range of options contained in this report in relation to the current dispute over leave entitlements and having taken into account Financial, Legal and Human Resource Implications, indicate the preferred option for addressing the issue.

2.2 Subject to the outcome of 2.1 involving reinstating leave entitlements, Cabinet /Council be requested to consider a further report on the Financial Impact of the preferred option and the methodology for funding any compensating saving requirement

3. Conclusions and Reason(s) for the Recommendation(s)

In accordance with the requirements of the single status agreement a review of leave provisions has been conducted in conjunction with UNISON and ACAS during February and March 09. A factual review of leave provisions elsewhere in Staffordshire has been undertaken and a range of options have jointly been identified for Council to consider.

4. Key Issues

The trade union, UNISON, is currently in dispute with Cannock Chase Council in relation to leave provisions arising from the implementation of the single status agreement.

A range of options has been identified in this report for Council to consider.

No provision exists within the Approved Budgets for the additional cost of re-instating the leave, either in full or part, and dependant upon date of implementation, Council will need to identify compensating savings to offset the additional cost.

The financial implications of the proposals are detailed in Section 4 of the Report

REPORT INDEX

Background	Section 1
Details of Matters to be Considered i.e. Options Considered, Outcome of Consultations etc.	Section 2
Contribution to CHASE	Section 3
Financial Implications	Section 4
Human Resource Implications	Section 5
Legal Implications	Section 6
Section 17 (Crime Prevention)	Section 7
Human Rights Act Implications	Section 8
Data Protection Act Implications	Section 9
Risk Management Implications	Section 10
Equality and Diversity Implications	Section 11
Other Options Considered	Section 12
List of Background Papers	Section 13
Annexes to the Report i.e. copies of correspondence, plans etc.	Annex 1, 2, 3 etc
Report Author Details: Director of Service Improvement	

Section 1Background

Arising from the implementation of the Council's Single Status agreement, effective from 1st April 2005 for NJC employees (and 1st August 2005 for Chief Officers) annual leave provisions were reduced from previous levels by virtue of that agreement. The reduction in leave was negotiated as part of the means of affording pay protection arrangements and the revised grading structure. The implementation of the agreement resulted in an overall increase on the salaries budget by 4%. Basic annual leave entitlements were reduced and four extra statutory and discretionary days (May and August Bank holiday Tuesdays and two discretionary days at Christmas) were removed which represented a net reduction of up to 7 days for each individual in post at the date of implementation.

Leave entitlements for employees in post on 31 March 2005 were protected for three years to 31st March 2008 but new employees appointed after that date were contracted into the new, lower levels of entitlement. Employees who were promoted internally or otherwise took up new appointments after 1st April 2005 also transferred onto the new leave entitlements.

Concerning the new leave and associated protection arrangements the single status agreement reads as follows:

*"The Council will open on the two extra statutory days (May Bank Holiday Tuesday and August Bank Holiday Tuesday), and the two discretionary days at Christmas. These will no longer be additional leave days for employees. However, the fixed discretionary day at Christmas will remain. However, for employees in post on 1st April 2005, these four days (pro rata for part time employees) will be added to annual leave and protected until 31st March 2008, when the situation will be reviewed. Should an employee change post during this time, protection will not apply to the new post " *1*

In this respect the agreement committed the Council to undertake a 'review' in relation to annual leave.

In the early part of 2007 UNISON requested that the review into leave arrangements be undertaken but discussions with the recognised trade unions actually commenced in the autumn of that year initially between the Director of Organisational Improvement and UNISON and subsequently between the Deputy Chief Executive and UNISON. It has since been acknowledged by all parties that these talks did not conclude the review of leave entitlements as specified in the Single Status agreement. The discussions culminated in a report that was submitted to Council on 20th October 2008 setting out a proposal to re-instate up to 4 days of the leave entitlement that were negotiated out by virtue of the single status agreements.

The report in October also incorporated a number of other provisions including increase in mileage allowances and modifications to the Council's redundancy compensation scheme. The Council rejected the proposals specifically in relation to the re-instatement of the annual leave provisions with a proviso that the Council would be willing to reconsider these issues once the financial climate improves.

UNISON registered their disagreement with the decision on the basis that the proposals contained in the October report should have been considered as an overall package of measures that should have been either accepted or rejected in their entirety rather than accepting some, but not all, of the proposals.

In accordance with the Trade Union and Labour Relations (Consolidation) Act 1992 UNISON, on 19th January 2009, notified the Authority of their intention to ballot their members on industrial action in relation to "a trade dispute over the employer's failure to implement the negotiated agreement on annual leave which was finalised in October 2008". *2

On 6th March UNISON served the Authority with notice of "continuous action short of strike action" *3 effective from Friday 13th March 2009.

In order to attempt to resolve this dispute, UNISON met with ACAS to determine whether they could undertake Collective Conciliation between both sides. ACAS were invited to assist with resolving the dispute and as a result of a meeting held on 25th February 2009 it was agreed that a small group would be established to consider leave provisions. It was agreed that investigations would be undertaken to ascertain the levels of leave enjoyed by other neighbouring Authorities and to understand how many employees who were in post at the implementation single status. It was also agreed that having undertaken such factual investigations a range of options on leave would be submitted to Council for consideration.

References:

*1 – from Single Status agreement , *2 – letter from UNISON 19th January 2009 *3 – Letter from UNISON 6th March 2009

Section 2

Details of Matters to be Considered

Investigations have been undertaken, as agreed with ACAS and UNISON, to identify levels of leave entitlements enjoyed by other Councils. The result of these investigations are attached at Annex 1

This analysis demonstrates that the basic leave entitlements for employees of Cannock Chase Council are broadly in line with other Councils in the West Midlands, but that there is a significant variation across Councils in the amount of bank holiday, extra statutory and discretionary leave applied. Cannock Chase Council is amongst the lowest in having the 8 statutory bank holidays only whereas many others range between 10 and 13 bank/extra statutory/discretionary leave days.

Around 400 of the Council's current employees were in post on 1st April 2005 and were entitled to protected leave arrangements up to 31st March 2008. The implication of this statistic is that a significant proportion of the Council's employees have experienced a reduction in leave entitlements as a result of the termination of leave protection arrangements.

Following these investigations the perspective from UNISON on these findings is as follows:

- UNISON consider that employees terms and conditions were considerably worsened as a result of the implementation of the single status agreement – in particular double time for overtime was no longer payable, unsocial hours payments were removed, employees graded G and above lost rights to time and a half for overtime, car mileage rates were reduced and annual leave provisions were reduced.
- UNISON consider that employee rights to leave entitlements are the lowest in the Midlands and consider that in offering less favourable terms the Council will have difficulties in recruiting and retaining high calibre personnel. When comparing the maximum total of entitlement across the West Midlands, UNISON believes that it is particularly evident that the lower graded staff at

Cannock Chase Council are disproportionately affected over all other Councils and this cannot be allowed to continue.

- UNISON considers that the national single status agreement was negotiated in order to eradicate unequal and unfair terms and conditions for all staff, but particularly so for historically disadvantaged employee – low paid women workers as an example. UNISON feel that the single status agreement has disproportionately affected the very staff it was negotiated to support and protect. UNISON considers that the Council are at risk of facing future equal pay claims and possible sex discrimination claims.

In view of the points above it is the view of UNISON that 4 days leave should be re-instated for all employees as described in option 6 below in order to ensure that the Authority reflects broadly comparable terms with many other Authorities in the West Midlands. The full submission from UNISON is found in Annex 2 and should be read in conjunction with the main body of the report.

There are a number of options that Council can now consider in relation to the current dispute.

1. Do nothing – i.e. allow the reduced leave arrangements to remain in place strictly in accordance with the leave provisions set out in the single status agreement.
2. Defer a decision – i.e. council indicated, in October, that it would re-consider the question of leave provisions once the financial climate had improved. Under this option a date, or conditions, for a future consideration of this issue would need to be specified
3. Agree to re-instatement of 1 day's leave
4. Agree to re-instatement of 2 day's leave
5. Agree to re-instatement of 3 day's leave
6. Agree to re-instatement of 4 day's leave either at fixed dates or as an addition to basic leave entitlement. Note: the preference indicated by UNISON is for re-instatement of 4 days leave to be taken on fixed dates specifically Easter Bank Holiday Tuesday, Whitsun Bank Holiday Tuesday, August Bank Holiday Tuesday and one day at Christmas.

Section 3

Contribution to CHASE

The contents of this report do not directly relate to the CHASE objectives however the maintenance of a good employee relations climate is fundamental to the achievement of all organisational goals.

Section 4

Financial Implications

The previous Annual Leave Protection arrangements arose as a direct result of the Single Status Agreement. This agreement consisted of a growth in the wages bill of 4% offset by equivalent savings on employee budgets. The Agreement, which represented the optimum solution for the Council within the prevailing constraints at that time, required the changes to the Terms and Conditions of employees to be converted into practical savings.

Although such savings were inbuilt into budgets the majority of these savings could only occur at the end of the protection period for Leave, Extra Statutory Days and Discretionary Days or when turnover occurred in the authority enabling new starters to be subject to the new terms and conditions. Consequently this lead to an increased use of Agency staff by services or casual staff (Leisure operations) together with overspendings on other services whereby the inbuilt turnover budget is not being achieved.

The impact of the termination of protection arrangements cannot be properly assessed due to the one – off control measures introduced in 2008-09 to address the budget situation. However the budget for 2009-10 assumes that the demand for casual and agency staff will therefore fall back within existing budgets as additional productive days are generated.

Within the report there are 6 options put forward for consideration of the Annual Leave arrangements.

There are some major assumptions used to estimate the cost of these options. These being:

- The 'cost' to the Council for each day of leave is estimated to be £80.
- The split of days between General Fund and the HRA has been based on the FTE equivalents used as part of the 2009-10 budget. This equates to 80.92% General Fund and 19.08% HRA.
- The additional days leave detailed within this report equate to the total number of days lost to the Council, not the total number of days that would be required to be covered by Casual / Agency staff. The 2009-10 budget FTE equivalents have been used to identify those services where posts would need to be covered by alternative means. This equates to 29.7% cover for the General Fund and 10.05% for the HRA.

Options 1 and 2 would involve no additional cost to the Council whereas the impact of Options can be summarised as follows :

	Total potential loss in productivity		Additional Budget required for cover requirements	
	HRA £	General fund £	HRA £	General Fund £
Extra 1 Day	3,800	44,200	1,000	11,600
Extra 2 days	7,600	88,400	2,000	23,200
Extra 3 Days	11,400	132,600	3,000	34,800
Extra 4 days	15,200	176,800	4,000	46,400

Option 6 relates to the linkage of the extra days to Bank Holidays and the additional cost will be mitigated if services are closed on these days with no requirement for agency staff or casual cover and additional potential savings on running costs.

This would however involve Leisure Facilities being closed for a further day, in addition to Bank Holidays and Christmas arrangements agreed as part of this years budget process, and an analysis of the financial impact would need to be determined

Any potential loss in productivity would necessitate that Service Managers, Heads of Service and Directors manage the workforce to ensure service standards are maintained but Financial Regulations are adhered to ensuring that services are delivered within the agreed budget and the use of Casual and agency staff is in accordance with agreed Policies and Procedures.

No provision exists within the Approved Budget for the actual additional cost to the Council of staff cover as identified in the above table.

In accordance with standard Financial Management Practice a Supplementary Estimate should only be granted whereby the issue could not have been foreseen at the time the Budget was produced and the issue reflects current Council Policy or arises from new Legislation. All growth (and saving) proposals should be considered as part of an annual budget process - delivering change – enabling their relative contribution to Council objectives and priorities to be assessed in light of the Councils overall Medium Term Financial Strategy

Council will therefore need to identify compensating savings to offset the additional cost or defer the issue for consideration as part of the 2010-11 budget process.

Section 5

Human Resource Implications

UNISON members make up approximately 1/3rd of the total contracted workforce for Cannock Chase Council. Clearly should the current dispute escalate further this could have significant implications for business continuity. Action is currently being taken by UNISON members in terms of 'action short of strike action' ³ which can be interpreted as 'working to rule' – for example working strictly to contracts of employment, withdrawal of goodwill, refusal to undertake overtime, refusal to work outside of contracted hours and so on.

Should matters remain unresolved the current dispute has the potential to escalate into actual strike action, which could affect all departments or be targeted at specific services to achieve maximum disruption. Whilst the Council could re-deploy other members of staff to cover critical functions (subject to work being consistent with existing job descriptions) providing cover via use of agency personnel would not be appropriate. Staffing Agencies are not permitted, by law, to provide personnel in order to perform work normally undertaken by an employee engaged in a lawful industrial dispute.

Should the Council decide to re-instate up to 4 days leave the Council has the option of applying the increase either to all employees or just to those who were in post on 1st April 2005 (and have not changed their role since then). Since the purpose of single status was to achieve fair and consistent pay and conditions for employees it is recommended that any decision to grant additional leave should be applied to all employees within the scope of the single status agreements (pro-rata for part time employees).

Section 6

Legal Implications

The Council is under a contractual obligation to undertake and review of leave entitlement under the single status agreement. A review was undertaken in 2007/2008 resulting in a report being considered by Council on 20 October 2008. However, it is disputed by Unison whether the negotiations and particularly the outcome of those discussions were properly reflected in the report to Council. As such a potential breach of contract challenge could be mounted in relation to the alleged failure on the part of the Council to undertake a review of leave protection as required under the single status agreement.

The proposals for annual leave entitlement set out in this report seek to address the issues raised by Unison but also mitigate heavily any potential challenge that may be brought against the Council in connection with its obligations under the single status agreement.

The proposals should be considered against the Council's obligations under equal pay legislation, namely, the Council's overriding obligation to treat and pay (unless otherwise legally justifiable) the implementation of equal terms and conditions for all employees.

Section 7

Section 17 (Crime Prevention)

There are no specific crime prevention implications associated with this report.

Section 8

Human Rights Act Implications

There are no specific human rights implications associated with this report.

Section 9

Data Protection Act Implications

There are no specific data protection implications associated with this report

Section 10

Risk Management Implications

The current dispute incorporating action short of strike action or any escalation of industrial action may impact on service delivery – particularly if action were targeted at critical functions.

Section 11

Equality and Diversity Implications

A key objective of the single status agreement was to achieve equality for employees in terms of a fair and transparent approach to pay and grading and other terms and conditions of employment. For this reason it would not be desirable to re-instate leave entitlements only to those people in post on 1st April 2005. Should the Council decide to re-instate up to 4 days leave entitlement it is recommended that this should be applied to all employees of the Council covered by the single status agreements.

Section 12

Other Options Considered

A range of options are described in the main body of this report.

Section 13

List of Background Papers

See Annexes

Annexes

Annex 1 – Leave arrangements at other Authorities

Annex 2 – Letter from UNISON.

Analysis of Annual Leave Arrangements in Local Councils (Staffordshire/West Midlands)

Source	Qualifier	Minimum	With 5 years Service	Total after 5 years Service	Bank Holidays (inc Statutory and Xmas)	Maximum Total	Single Status	Other Comments
Working Time Regs from 1/4/09	N/A	28	0	28	0	28		28 days inclusive of Bank Holidays
Green Book (Part 2 para 7.2)	N/A	20	5	25	10	35		
Red Book (part 2 para 7.2)	N/A	21	5	26	12	38		
Chief Officers (para 23)	N/A	30	0	30	8	38		Minimum inclusive of long service, extra statutory etc
Chief Executive (para 13)	N/A	30	0	30	8	38		Minimum inclusive of long service, extra statutory etc
CCDC Green Book	Grade A - F	20	5	25	8	33	Single Status Completed	
	Grade G - K	25	5	30	8	38	Single Status Completed	
CCDC Chief Officers	N/A	30	5	35	8	43	Single Status Completed	
CCDC Chief Executive	N/A	30	5	35	8	43	Single Status Completed	

Council 1	In post after 1/1/08	24	5	29	10	39	Single Status Completed
	In post before 1/1/08	25	5	30	10	40	Single Status Completed
Council 2	Grade 1 - 5	20	5	25	12	37	Single Status Completed
	Grade 6 - 7	21	5	26	12	38	Single Status Completed
	Grade 8 - 10	23	5	28	12	40	Single Status Completed
	Grade 11 - 14	25	5	30	12	42	Single Status Completed
Council 3	Scp 4 - 21	23	5	28	10	38	Single Status Completed
	Scp 22 - 29	24	5	29	10	39	Single Status Completed
	Scp 30 - 43	26	5	31	10	41	Single Status Completed
	Scp 44 +	27	5	32	10	42	Single Status Completed
	Chief Executive	33	0	33	10	43	Single Status Completed
Council 4	Scale 1 - 4	20.5	5	25.5	13	38.5	Single status not completed
	Scale 5 - 6	22.5	5	27.5	13	40.5	Single status not completed
	Scale SO1 - PO49	24.5	5	29.5	13	42.5	Single status not completed
	Asst CE +	24.5	5	29.5	13	42.5	Single status not completed

Council 5	N/A	25	5	30	8	38	Single status completed	
Council 6	N/A	27	5	32	8	40	Single status completed	Data taken from recent vacancies
Council 7	N/A	20	5	25	12	37	Single status - unknown	Data taken from website showing min/max
	N/A	32	5	37	12	49	Single status - unknown	Data taken from website showing min/max
Council 8	N/A	24	5	29??	??		Single status completed	
Council 9	See Table Below							

Council 9	SALARY	0-4 YRS	5-14 YRS	15-24 YRS	25 YRS PLUS
	Up to SCP 21	23	29	30	31
	Point 22 - 28	24	29	30	31
	Point 29 - 40	26	30	31	32
	Point 41 Plus	27	31	32	33

LG/12.14.15

CB/IP

Claire Breeze: 0121 685 3142 Fax: 0121 685 4430

E-mail: c.breeze@UNISON.co.uk

Ms Anne Bird

Director of Human Resources

Cannock Chase District Council

PO Box 28, Beechcroft Road

Cannock

Staffs WS11 1BG

27 March 2009

Dear Ann

Please find below information that Cannock Chase District Branch of UNISON would like to be included within Declan's report to DMT on 9 April 2009.

Single Status was implemented in April 2005. This agreement drastically worsened employees' terms and conditions and disproportionately impacted on low paid workers (predominantly women).

Staff Forfeited the following Terms and Conditions to this archaic agreement:

- a) Double Time Payments
- b) Loss of Unsocial Hours payment between the hours of 6.30pm–8.30pm due to the extension of core hours to 8.30pm
- c) Grade G and above lost their enhanced payments of time and a half
- d) Car Mileage claims were reduced to the minimum allowance regardless of engine size and model
- e) Massive reduction in annual leave and bank holiday entitlements with the loss of 7 days tapering down in entitlement for a large percentage of staff
- f) New employees suffering a minimum leave entitlement

As part of the Single Status Agreement, Cannock Chase District Council committed to undertake a review of Annual Leave and Bank Holiday payments after implementation.

It is agreed by all parties that a review was never undertaken by the authority.

Following an analysis of many other local authorities' leave and bank holiday entitlements, it has become apparent that Cannock Chase District Council are paying its loyal and dedicated staff the lowest entitlements in the West Midlands.

UNISON are more than concerned, appalled even, that this Council has used Single Status as a tool to deteriorate the terms and conditions of our members and their staff. Annual Leave and Bank Holiday payments equate to pay and the above changes reflect a serious loss of pay. Pay that members were entitled to and rightly deserved up to the implementation of this agreement.

The National Single Status Agreement was negotiated to improve the terms and conditions of thousands of women workers who have historically suffered inequality at work. Single Status pay structures were negotiated to eradicate unequal pay and lift those members from historic inequality. The reduction in our members' Annual Leave entitlement and Bank Holiday entitlement has disproportionately impacted upon the most vulnerable of staff and this is simply not acceptable to UNISON.

UNISON will be looking very closely at the Single Status pay and grading structure which was implemented in 2005. We will be requesting that an Equality Impact Assessment is undertaken as a matter of urgency as this activity is already 3 years overdue and UNISON will also begin an assessment as to where members may have Equal Pay claims and/or possible Sex Discrimination claims.

How can Cannock Chase District Council hope to attract and retain high calibre staff when they offer less favourable terms and conditions than every other authority in the West Midlands?

At our meeting on Wednesday 25 March 2009, Declan proposed the following:

- a) Do nothing
- b) Minded to make changes but defer decision
- c) Will offer 1, 2, 3 or 4 days
- d) Any other possible mix

Following this proposal, UNISON proposed the full return of:

- a) Easter Bank Holiday Tuesday (April)
- b) Whitsun Bank Holiday Tuesday (end of May)
- c) August Bank Holiday Tuesday
- d) Concessionary Christmas Day

Or the return of 4 days annual leave entitlement

Please show your staff and our members the respect they truly deserve. This outstanding issue is affecting the moral of members and staff, employees who demonstrate their goodwill

and commitment to the Council day after day after day. Please do not threaten the goodwill of your staff. If it is lost, goodwill is not easy to win back.

I do hope that you will ensure that UNISON's passion and commitment to resolve this issue is reflected in your report to DMT and wider Cabinet members when appropriate.

Yours sincerely

Claire Breeze

Regional Organiser