

Employment Committee

Minutes of the meeting held on Thursday 28 October 2021 at the Town Hall, Royal Leamington Spa at 6.00pm.

Present: Councillor Tracey (Chairman); Councillors; Bartlett, Day, B Gifford, Grey, Hales, Kennedy, Kohler, Mangat, Margrave and Tangri

9. Apologies and Substitutes

- (a) there were no apologies for absence given; and
- (b) Councillor Cooke substituted for Councillor Grey and Councillor Redford substituted for Councillor Day.

10. Declarations of Interest

There were no declarations of interest made.

11. Minutes

The minutes of the meeting held on 7 September 2021 were taken as read and signed by the Chairman as a correct record.

12. Organisational Change Policy Statement Update

The Committee considered a report from People and Communications that sought approval to amend the Joint Organisational Change Policy Statement from a Lead Authority/TUPE approach to Stratford-on-Avon (SDC) and Warwick (WDC) District Councils' service integration, to a process based on the extended use of Section 113 Agreements and delegated authority to the Heads of Paid Service to implement this.

At the respective SDC and WDC Cabinet meetings in July 2020, the following recommendations were approved:

(1) That the principle of shared working with Stratford-on-Avon District Council/Warwick District Council be confirmed as part of the adopted policy framework; and

(2) That agreement(s) be entered into with Stratford-on-Avon District Council/Warwick District Council pursuant to Section 113 of the Local Government Act 1972 and all other enabling powers so that employees can be placed at the disposal of the other Council as may be required, subject to the Leader of the Council endorsing business cases for any such services.

Under this agreement, the use of S113 was used on an individual basis for all Joint Deputy Chief Executive and Joint Head of Service posts.

Prior to commencing the service integration for all staff, an alternative approach was considered. The approach favoured a lead authority model which would result in staff being transferred by TUPE to the nominated lead employer for that service. This approach received the agreement of both UNISON branches at Stratford-on-Avon District Council and Warwick District Council.

In March/April 2021 the respective Employment Committees approved the Joint Organisational Change Policy Statement which determined that where joint teams were to be established, a 'lead employer/TUPE' model should be used. The approach relied upon a decision being reached between the Chief Executives as to which would be the lead Council for each joint team. Employees from the other Council would be transferred in accordance with TUPE Regulations with re-structuring of the joint team following the transfer.

Since the agreement to use the 'Lead Employer/TUPE' model in spring 2021 there was the opportunity for further review.

Consideration was given to the strength of feedback from both Unison and employees through regular joint meetings, communication through briefings and the Working Together Hub. Concerns were raised by both Unison and staff that the use of the Lead Employer Model implied a 'takeover'. There was also angst about using TUPE when the workforce may need to be transfer again in April 2024 with the potential political merger into a new Council.

In addition, further discussions took place with other Councils which had completed or were on a similar journey; ensuring we were continually reviewing considering best practice and learning points.

In reviewing the approach, external specialist legal advice was taken and reviewed to ensure there was robust consideration to the revised recommendations.

The proposed change was to extend the use of S113 of the Local Government Act 1972 (the Act) as a mechanism for legally enabling staff to carry out work for both authorities. As detailed above, this approach was used for the Joint Management Team posts.

The Act stated that "a local authority may enter into an agreement with another local authority for the placing at the disposal of the latter for the purposes of their functions, on such terms as may be provided by the agreement, of the services of officers employed by the former, but shall not enter into any such agreement with respect to any officer without consulting him."

One benefit of using the S113 approach across the whole workforce would be to give the essence of working together in partnership as the foundation of the joint working. However, staff remained with their current employer and all staff transferred together to the proposed new authority in 2024. This followed the approach agreed and adopted for JMT and negated the necessity to potentially transfer employers twice within a short space of time. Furthermore, should the proposed merger not progress, the use of S113 agreements would allow greater flexibility.

In addition, it was recognised that in the event that a political merger to a new authority was not agreed by the Councils or approved by the Government, S113 would provide greater flexibility in respect of next steps.

The use of S113 required a variation in staff employment contracts. As was usual practice, where a workforce-wide change in terms and conditions was proposed, both Councils sought to reach a 'collective

agreement' with Unison (the authorised body for collective bargaining) which would agree the change for all staff.

In addition to the collective agreement, the Councils were required by the Act to carry out individual consultation with each member of staff affected. This consultation would be carried out as part of the re-structuring consultation process for each team in accordance with the service integration timeline.

The Members/Trade Unions Joint Consultation and Safety Panel supported the recommendations in the report but also highlighted significant concerns that this might result in two people doing the same job under different terms and conditions including pay. They felt that the Council needed to fully understand at a broad level what the potential costs would be of equalising terms and conditions including pay and needed to be able to assess the financial risk to both Councils.

In response to questions from the Committee, the Chief Executive explained that it was anticipated that the proposal on the 13 December Council meeting would cover all financial issues. To ensure equal treatment of staff, the Council had commissioned advice from West Midlands Employers but this- was still in the early stages. The Chief Executive also recognised that this issue would not be straightforward as WDC and SDC had approximately 800 employees collectively. In response to a comment from Councillor Redford regarding redundancies, the Chief Executive stated that the Head of Finance would be providing assumptions within the business case for redundancy pay-outs, but the possibility of redundancies did not translate to mass redundancy. This was because it could include redeployment as WDC had with over 100 employees over the last 10 years. The Chief Executive made it clear that he recognised the concerns raised by Members and the Unions, and that the finer details of these concerns would be resolved once each Service Integration plans were brought forward.

In response to questions from Members, the Head of People and Communications confirmed that West Midlands Employers was supporting the Council in addressing pay modelling and considering the criteria regarding evaluation schemes. SDC currently used the NJC evaluation scheme, which ranged from A-E, whereas WDC currently used the Hay evaluation scheme, which ranged from A-J. The Head of People and Communications stated that as they were different schemes, the measurements were slightly different, meaning that, for example, someone on A at WDC might be on a C at SDC. This meant that how the two Councils communicated was extremely important, especially since job descriptions could vary between Councils despite the same job title. The task would be to decide which scheme was used across the board. Other authorities had chosen not to merge pay schemes when merging with another Council in all other respects as the task was so complicated.

In response to two questions from Councillor Kohler, the Head of People and Communications stated that there were pros and cons to both a TUPE model and the S113 model. However, if the merger went ahead, TUPE would begin then. She said that any vacancy at either Council would not be the same "like-for-like", this meant that when a vacancy occurred, the department could be consulted, and reviews be undertaken before the recruitment process began. Replacements would be recruited from the

same Council where the previous employee worked, with a caveat that this would be dependent on the role type. The Head of People and Communications also confirmed that SDC voted in favour of this report earlier in the day.

It was proposed by Councillor Kennedy and seconded by Councillor Bartlett, and it was

Recommended to Council that

- (1) the wording, agreed in March/April 2021 by the respective Committees of SDC and WDC, which approved the joint Organisational Change Policy Statement, paragraphs 4.1 and 4.2:

4.1 Where a joint team is to be set up, a 'lead employer' will be agreed by the Chief Executives of the Councils, all staff within scope for the joint team, who are not employed by the lead employer will transfer to the employment of the lead employer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE regulations"); and

4.2 Once the lead employer has been agreed the process followed will be in accordance with the TUPE regulations and then, if necessary, the Joint Redundancy and Redeployment Procedures.

be replaced with:

4.1 To use Section 113 of the Local Government Act 1972 jointly across the organisations, which allows a local authority to enter into an agreement with another authority to place its officers at the disposal of the other authority, subject to consultation with the staff concerned; and

- (2) the Heads of Paid Service at (SDC) and (WDC) enter into a Collective Agreement with both SDC and WDC branches of UNISON to vary terms and conditions of employment to incorporate the use of S113 Agreements in employee contracts be approved.

(The meeting ended at 6.45pm)

CHAIRMAN
17 February 2022