

# Notice of Meeting

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## Personnel Committee

**Monday, 17th September, 2018 at  
11.00 am**

**in the Council Chamber Council Offices  
Market Street Newbury**

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Date of despatch of Agenda: Friday, 7 September 2018

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Moira Fraser / Janet Giddings on (01635) 519045/519422

e-mail: [moira.fraser@westberks.gov.uk](mailto:moira.fraser@westberks.gov.uk) / [janet.giddings@westberks.gov.uk](mailto:janet.giddings@westberks.gov.uk)

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**WestBerkshire**  
C O U N C I L

**To:** Councillors Pamela Bale (*Chairman*), Richard Crumly (*Vice Chairman*),  
Dennis Benneyworth, Jeff Brooks, Carol Jackson-Doerge

**Substitutes:** Councillors Paul Bryant, Lee Dillon, Mollie Lock and Gordon Lundie

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# Agenda

## Part I

**Page No.**

1. **Apologies for Absence**  
To receive apologies for inability to attend the meeting (if any).
2. **Minutes** 5 - 10  
To approve as a correct record the Minutes of the meeting of the Committee held on 07 March 2018 and 08 May 2018.
3. **Declarations of Interest**  
To remind Members of the need to record the existence and nature of any personal, disclosable pecuniary or other registrable interests in items on the agenda, in accordance with the Members' [Code of Conduct](#).
4. **Transgender Policy** 11 - 36  
*Purpose: To seek Personnel Committee's approval of the new policy which aims to set out the Council's approach to transgender equality in recruitment and at work, and how it will support employees undergoing gender reassignment.*
5. **Implementing the 2019 Pay Award** 37 - 54  
*Purpose: To make changes to the Council's Pay Policy Statement.*

Andy Day  
Head of Strategic Support

If you require this information in a different format or translation, please contact Moira Fraser on telephone (01635) 519045.



## DRAFT

Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

### PERSONNEL COMMITTEE

#### MINUTES OF THE MEETING HELD ON WEDNESDAY, 7 MARCH 2018

**Councillors Present:** Pamela Bale (Chairman), Paul Bryant (Substitute) (In place of Dennis Benneyworth), Richard Crumly (Vice-Chairman) and Mollie Lock

**Also Present:** Robert O'Reilly (Head of Human Resources), Rebecca Bird (HR Officer) and Moira Fraser (Democratic and Electoral Services Manager)

**Apologies for inability to attend the meeting:** Councillor Dennis Benneyworth

**Councillor Absent:** Councillor Carol Jackson-Doerge

#### PART I

##### 8. Minutes

The Minutes of the meeting held on 12 February 2018 were approved as a true and correct record and signed by the Chairman.

Robert O' Reilly confirmed that he had sent the information on expenditure on salaries in the current financial year and how this compared with the 2018/19 forecast to Councillor Richard Crumly immediately prior to this meeting (see Minute 5 Statutory pay Policy 2018 on page 4 of the paperwork). He confirmed that the 2017/18 expenditure was £37.4m. The comparison with the 2018/19 could not be undertaken until the accounts were closed down.

##### 9. Declarations of Interest

There were no declarations of interest received.

##### 10. Revised Sickness Absence Procedure PC3396)

The Committee considered a report (Agenda Item 4) which sought to amend the Sickness Absence Reporting and Management Policy, Procedure and Guidance to improve the management of long term sickness absence and to reduce the risk of claims at Employment Tribunal. Rebecca Bird in introducing the item noted that following a recent employment tribunal the Council had been advised by counsel that the existing policy could expose the council to the risk of tribunal claims when dismissing staff because of absence. One of the issues was that staff with long term absence might be considered to be disabled under the Equality Act 2010. Members requested that Robert O' Reilly circulate the cost of external legal representation at that tribunal to the Committee outside of the meeting. **(RoR to Action).**

Ms Bird explained that there were four key changes to the policy.

- (1) Inclusion of settlement agreements as an option for resolution of formal cases. The aim was to increase the range of options open to managers and Heads of Service and to provide a compassionate and pragmatic alternative to dismissal on grounds of ill health capability, which would also eliminate risk of disability discrimination claims. In cases of long-term absence, this might be where the

## PERSONNEL COMMITTEE - 7 MARCH 2018 - MINUTES

timescale for a successful return to work was unknown and the employee had already been absent for more than six months, or had exhausted their entitlement to full sick pay. The terms of any settlement agreement would not exceed any remaining entitlement to sick pay and notice. The Head of Service would agree the terms of any settlement agreement and would agree to fund the legal fees of the employee (maximum of £350 plus VAT).

While settlement agreements were referred to throughout the document the most significant changes were set out in paragraph 16 (Alternatives to Dismissal)

Councillor Richard Crumly queried if there was any scope to reduce employees' entitlement to sick pay. He noted that currently employees that had more than five years' service were entitled to receive six months' full pay and six months half pay. Robert O' Reilly responded that this was one of the issues looked at by the Task Group that had been set up to look at staff terms and conditions under the Corporate Programme. They had agreed not to progress any changes as it would put the Council out on a limb in relation to other authorities, very few people made use of this entitlement and if they did it was usually because they were very seriously or terminally ill and changes would require all staff to be dismissed and re-employed in order to change their terms and conditions. The task group had therefore concluded that the risks associated with this proposal outweighed any benefits that would be derived.

Robert O'Reilly reminded the Committee that sickness absence was regularly monitored and that average absence at the Council was below the average of the public sector and the national average for local authorities. Absence rates had remained relatively stable over the last three years. Councillor Mollie Lock commented that if staff were unhappy sickness rates were likely to increase.

Rebecca Bird commented that the Council already made use of settlement agreements, more often in schools, but they had not traditionally used for sickness cases.

*(Councillor Mollie Lock left the meeting at 11.50am)*

- (2) The term "Decision Hearing" would be used for the final stage of the procedure which might lead to dismissal. These were previously called "Dismissal Hearings" which implied pre-judgement of a case.

The Committee felt that this was a sensible adjustment.

- (3) More information and guidance about disability and responsibilities to make reasonable adjustments. Feedback from managers was that there was insufficient information available in the procedure about these topics and their responsibilities.

Ms Bird explained that section 5 (Disability) had been included to provide additional guidance for managers following feedback HR had received on this issue. Section 10 (Disability, making reasonable adjustment and redeployment) had been modified to provide greater clarity.

- (4) More detail about Ill Health Retirement and entitlements. HR had received legal advice which stated that an Ill Health Retirement was a dismissal in law because it was a decision made by the Council, therefore staff were entitled to paid

**PERSONNEL COMMITTEE - 7 MARCH 2018 - MINUTES**

notice. The proposed amendments clarified that entitlement and describe a process for decision-making which had not been clear previously. Section 37 (Ill health retirement) had been amended to reflect these changes.

This section also provided clarity on employees accessing their pension early. Councillor Pamela Bale queried if there might be a cost to the Council should employees chose to this. Officers confirmed that there was a cost to the Council.

Ms Bird also drew Members' attention to the consent form on page 42 of the agenda which HR had developed. This should assist with clarifying the process with the individual before the start of any medical assessment.

Councillor Crumly queried whether or not the Council still had a policy in relation to continuous service and if so whether that put the Council at risk to more claims of unfair dismissal. Robert O'Reilly explained that the continuous service policy meant that contractual rights (e.g. leave and sickness absence entitlements) were transferred with the employee but the statutory right to claim unfair dismissal were not transferred. However, the right to count continuous service towards a redundancy payment was covered by separate legislation (The Redundancy Modification Order).

Councillor Pamela Bale thanked Officers for revising the policy. She requested that in future it would be useful to show the adjustments on the policy so that changes could be identified more easily. Officers confirmed that any formatting issues would be addressed before the policy was published.

**RESOLVED that: the revised Sickness absence – Reporting and Management Policy, Procedure and Guidance be approved.**

*(The meeting commenced at 11.30 am and closed at 12.07 pm)*

**CHAIRMAN** .....

**Date of Signature** .....

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# DRAFT

Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

## PERSONNEL COMMITTEE

### MINUTES OF THE MEETING HELD ON TUESDAY, 8 MAY 2018

**Councillors Present:** Pamela Bale (Chairman), Dennis Benneyworth, Jeff Brooks, Richard Crumly (Vice-Chairman) and Carol Jackson-Doerge

#### PART I

**1. Election of Chairman**

**RESOLVED that** Councillor Pamela Bale be elected Chairman of the Personnel Committee for the 2018/19 Municipal Year.

**2. Appointment of Vice-Chairman**

**RESOLVED that** Councillor Richard Crumly be appointed Vice-Chairman of the Personnel Committee for the 2018/19 Municipal Year.

*(The meeting commenced at 7.50 pm and closed at 7.51 pm)*

**CHAIRMAN** .....

**Date of Signature** .....

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## Transgender Policy - Summary Report

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<b>Committee considering report:</b>	Personnel Committee date to be confirmed Operations Board on 12 July 2018
<b>Portfolio Member:</b>	Councillor Rick Jones
<b>Date Portfolio Member agreed report:</b>	16 June 2018
<b>Report Author:</b>	Katie Penlington
<b>Forward Plan Ref:</b>	PC3559

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### 1. Purpose of the Report

- 1.1 To seek Personnel Committee's approval of the Transgender Policy. This is a new policy which sets out the Council's approach and commitment to ensuring that transgender people are treated with dignity and are not unlawfully discriminated against or disadvantaged in the workplace.
- 1.2 The Transgender Policy is an important aspect of the Council's commitment to equal opportunities in employment and is designed to be read in conjunction with the Council's existing [Equality in Employment Policy](#).

### 2. Recommendation

Personnel Committee is recommended to approve the Transgender Policy

### 3. Implications

- 3.1 **Financial:** None
- 3.2 **Policy:** The Transgender supports the Council's existing Equality in Employment Policy
- 3.3 **Personnel:** The Policy supports the recruitment and retention of employees based on their skills and qualifications and sets out action to be taken to reduce the risk of unlawful discrimination against transgender people. The Policy sets out how employees who are transitioning will be supported.
- 3.4 **Legal:** To support the Council in fulfilling the requirements of the Equality Act 2010.
- 3.5 **Risk Management:** None
- 3.6 **Property:** None
- 3.7 **Other:** None

### 4. Other options considered

- 4.1 Not to have a separate Transgender Policy and to rely solely on the existing Equality in Employment Policy.

## Executive Summary

### 5. Introduction / Background

- 5.1 The Transgender Policy is a new policy which sets out the Council's commitment to ensuring that transgender people are treated with dignity and are not unlawfully discriminated against or disadvantaged in the workplace.
- 5.2 The Policy is an important aspect of the Council's commitment to equal opportunities in employment and is designed to be read in conjunction with the Council's existing [Equality in Employment Policy](#).
- 5.3 Gender reassignment is one of the nine protected characteristics covered by the Equality Act 2010. The Act protects a person from discrimination, harassment and victimisation if they are "proposing to undergo, are undergoing, or have undergone a process (or part of a process) of gender reassignment". There is no requirement for the person to be under medical supervision as gender reassignment is considered to be a personal rather than a medical process. Under the Act, a person who takes time off work for gender reassignment must not be treated less favourably in respect of employment decisions, for example by being denied access to training or promotion opportunities.
- 5.4 The Act also protects anyone who is perceived to have the characteristic of gender reassignment or is associated with someone who has the protected characteristic of gender reassignment, such as an individual's partner or a friend.
- 5.5 The Gender Recognition Act 2004 allows transsexual people to apply for a gender recognition certificate (GRC), which will give them legal recognition in their acquired gender and enables them to obtain a new birth certificate. Transgender people do not have to apply for a GRC to be protected under the Equality Act.
- 5.6 The Gender Recognition Act safeguards the privacy of an individual with a GRC by defining information relating to the gender recognition process as "protected information" and, except "in certain specific circumstances" (for example, for the purpose of preventing or investigating crime), it is a criminal offence to disclose such information without the individual's consent.
- 5.7 A separate Transgender Policy is appropriate as transgender equality is very sensitive and the issues around supporting staff who are transitioning are quite complex. In addition to stating how the Council aims to prevent discrimination against transgender people in recruitment, the proposed Transgender Policy sets out how the Council will support employees who are transitioning and the steps it will take to ensure confidentiality is maintained appropriately.

### 6. Proposal

- 6.1 The Transgender Policy is approved and implemented.

### 7. Conclusion

- 7.1 Personnel Committee is recommended to approve the Transgender Policy.

## 8. Appendices

8.1 Appendix A – Equalities Impact Assessment

8.2 Appendix B – Supporting Information

8.3 Appendix C – Transgender Policy

## Appendix A

### Equality Impact Assessment - Stage One

We need to ensure that our strategies, policies, functions and services, current and proposed have given due regard to equality and diversity as set out in the Public Sector Equality Duty (Section 149 of the Equality Act), which states:

- “(1) A public authority must, in the exercise of its functions, have due regard to the need to:**
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;**
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; This includes the need to:**
    - (i) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;**
    - (ii) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;**
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, with due regard, in particular, to the need to be aware that compliance with the duties in this section may involve treating some persons more favourably than others.**
- (2) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.**
- (3) Compliance with the duties in this section may involve treating some persons more favourably than others.”**

The following list of questions may help to establish whether the decision is relevant to equality:

- Does the decision affect service users, employees or the wider community?
- (The relevance of a decision to equality depends not just on the number of those affected but on the significance of the impact on them)
- Is it likely to affect people with particular protected characteristics differently?
- Is it a major policy, or a major change to an existing policy, significantly affecting how functions are delivered?
- Will the decision have a significant impact on how other organisations operate in terms of equality?
- Does the decision relate to functions that engagement has identified as being important to people with particular protected characteristics?
- Does the decision relate to an area with known inequalities?
- Does the decision relate to any equality objectives that have been set by the council?

Please complete the following questions to determine whether a full Stage Two, Equality Impact Assessment is required.

<b>What is the proposed decision that you are asking the Executive to make:</b>		To approve the Transgender Policy.	
<b>Summary of relevant legislation:</b>		The Equality Act 2010 The Gender Recognition Act 2004	
<b>Does the proposed decision conflict with any of the Council's key strategy priorities?</b>		No	
<b>Name of assessor:</b>		Katie Penlington	
<b>Date of assessment:</b>		8 <sup>th</sup> January 2018	
<b>Is this a:</b>		<b>Is this:</b>	
<b>Policy</b>	<b>Yes</b>	<b>New or proposed</b>	<b>Yes</b>
<b>Strategy</b>	<b>No</b>	<b>Already exists and is being reviewed</b>	<b>No</b>
<b>Function</b>	<b>No</b>	<b>Is changing</b>	<b>No</b>
<b>Service</b>	<b>No</b>		
<b>1 What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?</b>			
<b>Aims:</b>		To seek approval of a new Transgender Policy which sets out the Council's approach to commitment to ensuring that transgender people are treated with dignity and are not unlawfully discriminated against or disadvantaged in the workplace.	
<b>Objectives:</b>		To ensure that the Council recruits employees according to their skills and qualifications and to reduce the risk of unlawful discrimination against transgender people. It is also designed to ensure employees who are transitioning are supported appropriately.	
<b>Outcomes:</b>		The Council recruits the most suitable applicants for vacancies without unlawfully discriminating. Managers and staff understand how to support colleagues who are transitioning.	
<b>Benefits:</b>		The Council is able to recruit and retain the most appropriate employees and to fulfil its obligations under the Equality Act.	
<b>2 Note which groups may be affected by the proposed decision. Consider how they may be affected, whether it is positively or negatively and what sources of information have been used to determine this.</b>			
(Please demonstrate consideration of all strands – Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race,			

Religion or Belief, Sex and Sexual Orientation.)		
Group Affected	What might be the effect?	Information to support this
Age	The Policy applies equally to all applicants and employees regardless of their age	
Disability	The Policy applies equally to all applicants and employees regardless of whether or not they are disabled.	
Gender Reassignment	The Policy is designed to reduce the risk of unlawful discrimination against transgender people in recruitment and in employment. It aims to support employees who are transitioning.	
Marriage and Civil Partnership	The Policy applies equally to all applicants and employees regardless of whether or not they are married or in a civil partnership.	
Pregnancy and Maternity	The Policy applies equally to all applicants and employees regardless of pregnancy or maternity.	
Race	The Policy applies equally to all applicants and employees regardless of their race.	
Religion or Belief	The Policy applies equally to all applicants and employees regardless of their religion or belief.	
Sex	The Policy applies equally to all applicants and employees regardless of their birth sex or any that they identify with.	
Sexual Orientation	The Policy applies equally to all applicants and employees regardless of	

	their sexual orientation.	
<b>Further Comments relating to the item:</b>		
<b>3 Result</b>		
<b>Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?</b>	<b>No</b>	
Please provide an explanation for your answer: The Policy applies equally to all applicants and employees.		
<b>Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?</b>	<b>No</b>	
Please provide an explanation for your answer: The Policy applies equally to all applicants and employees.		

If your answers to question 2 have identified potential adverse impacts and you have answered ‘yes’ to either of the sections at question 3, or you are unsure about the impact, then you should carry out a Stage Two Equality Impact Assessment.

If a Stage Two Equality Impact Assessment is required, before proceeding you should discuss the scope of the Assessment with service managers in your area. You will also need to refer to the [Equality Impact Assessment guidance and Stage Two template](#).

<b>4 Identify next steps as appropriate:</b>	
<b>Stage Two required</b>	No
<b>Owner of Stage Two assessment:</b>	
<b>Timescale for Stage Two assessment:</b>	

**Name:**

**Date:**

Please now forward this completed form to Rachel Craggs, Principal Policy Officer (Equality and Diversity) ([rachel.craggs@westberks.gov.uk](mailto:rachel.craggs@westberks.gov.uk)), for publication on the WBC website.

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# Transgender Policy – Supporting Information

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### 1. Introduction/Background

The Transgender Policy is a new policy which sets out the Council's commitment to ensuring that transgender people are treated with dignity and are not unlawfully discriminated against or disadvantaged in the workplace.

### 2. Supporting Information

- 2.1 The Policy is an important aspect of the Council's commitment to equal opportunities in employment and is designed to be read in conjunction with the Council's existing [Equality in Employment Policy](#).
- 2.2 Gender reassignment is one of the nine protected characteristics covered by the Equality Act 2010. The Gender Recognition Act 2004 also provides certain further protection to those who obtain a gender recognition certificate (GRC). Further details of these Acts can be found in the summary report and in the draft Transgender Policy

### 3. Conclusion

Personnel Committee is requested to approve the Transgender Policy for implementation.

### 4. Consultation and Engagement

- 4.1 Human Resources and the following trade unions have been consulted in developing the Transgender Policy:

Unison, GMB and AEP

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#### Strategic Aims and Priorities Supported:

The proposals will help achieve the following Council Strategy aim:

- MEC – Become an even more effective Council**

The proposals contained in this report will help to achieve the following Council Strategy priority:

- MEC1 – Become an even more effective Council**
- 

#### Officer details:

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# Transgender Policy

## Document Control

<b>Document Ref:</b>	TRPV1	<b>Date Created:</b>	January 2018
<b>Version:</b>	1	<b>Date Modified:</b>	
<b>Revision due</b>	January 2021		
<b>Author:</b>	Katie Penlington	<b>Sign &amp; Date:</b>	
<b>Owning Service</b>			
<b>Equality Impact Assessment: (EIA)</b>	Date undertaken:		
	Issues (if any):		

<b>Chief Executive</b>	Sign & Date:	
<b>Corporate Director (Communities)</b>	Sign & Date:	
<b>Corporate Director (Economy and Environment)</b>	Sign & Date:	

## Change History

Version	Date	Description	Change ID
1	January 2018	New policy	
2			
3			

*This Policy is not for publication externally*

# Contents

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1. Purpose .....	3
2. Applicability .....	3
3. Policy .....	3
4. Terminology.....	3
5. The law.....	4
The Equality Act 2010 .....	4
The Gender Recognition Act 2004 .....	4
6. How the Council supports transgender employees.....	5
7. Recruitment.....	5
8. Employment .....	5
9. Names and pronouns .....	6
10. Employee records, data handling and confidentiality .....	6
11. Communication .....	7
12. Bullying and harassment.....	7
13. Single sex toilet facilities .....	8
14. Dress codes .....	8
15. Training on transgender issues .....	8
16. Supporting an employee who is transitioning.....	8
17. Roles and Responsibilities .....	9
18. Failure to comply with WBC Transgender Policy .....	10
19. Review.....	10
Appendix One: Transgender Action Plan .....	11
Glossary.....	14
Other Relevant Documentation .....	15

## 1. Purpose

1.1 The purpose of this policy is to set out the Council's commitment to ensuring that transgender people are treated with dignity and are not unlawfully discriminated against or disadvantaged in the workplace. This commitment is an important aspect of the Council's commitment to equal opportunities in employment and should be read in conjunction with the Council's [Equality in Employment Policy](#).

1.2 The Chief Executive and Corporate Board have approved the Transgender Policy.

## 2. Applicability

2.1 This Policy applies to:

2.1.1 All non-school based employees working for the Council, including those working from home or at non-Council locations.

2.1.2 Other persons including Elected Members, Consultants, Agency staff and Contractors working for the Council, external organisations working with the Council, whilst engaged on Council business .

2.2 It is the responsibility of each employee and other person mentioned in Section 2.1 to familiarise themselves with and adhere to this Policy.

2.3 Adherence to this Policy is a condition of working for the council or using its assets.

2.4 This Policy has had consultation with Heads of Service and Trade Unions and has been ratified by the Personnel Committee.

## 3. Policy

3.1 West Berkshire Council believes diversity and inclusion bring benefits to the organisation and that people work better when they can be themselves.

3.2 The Council opposes all forms of unlawful and unfair and discrimination, and believes that all people have the right to be treated with dignity and respect. It will strive to ensure all employees are able to work in an environment that respects the rights of each individual employee and where colleagues treat each other with dignity and respect.

3.3 The Council is committed to providing a working environment that is free from discrimination, harassment or victimisation because of gender identity.

3.4 This policy is intended to assist the Council to put this commitment into practice and to help the Council, transgender people and other employees to handle any practical issues that may arise.

## 4. Terminology

4.1 Definitions and terminology regarding transgender people are evolving. Individuals will self identify and how they choose to describe themselves should be respected by their managers and colleagues. Rather than assume it is best to ask someone the way that they wish to be addressed.

4.2 Using inappropriate language and terminology can cause offence and distress and undermines the Council's efforts to create an inclusive workplace for transgender people.

4.3 The Council recognises that gender identity and sexual orientation are not interchangeable terms. Transgender people can be bisexual, gay, heterosexual or lesbian and so employees should not assume that a transgender colleague has a particular sexual orientation

## 5. The law

### **The Equality Act 2010**

5.1 Gender reassignment is one of the nine protected characteristics covered by the Equality Act 2010. The Act protects a person from discrimination, harassment and victimisation if they are "proposing to undergo, are undergoing, or have undergone a process (or part of a process) of gender reassignment". There is no requirement for the person to be under medical supervision as gender reassignment is considered to be a personal rather than a medical process. Under the Act, a person who takes time off work for gender reassignment must not be treated less favourably in respect of employment decisions, for example by being denied access to training or promotion opportunities.

5.2 The Act also protects anyone who is perceived to have the characteristic of gender reassignment or is associated with someone who has the protected characteristic of gender reassignment, such as an individual's partner or a friend.

5.3 An employee who treats a colleague less favourably because of gender reassignment, for example by refusing to work with or for them, may be held personally legally liable for discrimination.

### **The Gender Recognition Act 2004**

5.4 The Gender Recognition Act 2004 allows transsexual people to apply for a gender recognition certificate (GRC), which will give them legal recognition in their acquired gender and enables them to obtain a new birth certificate. The Act safeguards the privacy of an individual with a GRC by defining information relating to the gender recognition process as "protected information" and, except "in certain specific circumstances" (for example, for the purpose of preventing or investigating crime), it is a criminal offence to disclose such information without the individual's consent.

5.5 An application for a GRC will be made to the Gender Recognition Panel (part of HM Courts and Tribunal Service). Individuals are required to provide a medical diagnosis of gender dysphoria and evidence that they have lived in their acquired gender for two or more years and intend to do so permanently.

5.6 Transgender people are not required to apply for a GRC and many choose not to for various reasons. For example, someone may choose not to apply because they are in an existing civil partnership and would need to dissolve this or convert it to a marriage, as the law prohibits civil partnerships between people of the opposite sex. An individual should never be asked if they have a GRC and to do so could be considered harassment.

More information on applying for a GRC can be found on the GOV.UK website.

## **6. How the Council supports transgender employees**

6.1 The Council recognises that transgender job applicants and employees are not required to inform the organisation of their gender status or gender history. The gender in which an individual chooses to present **should** always be acknowledged and respected.

6.2 To promote a workplace that is inclusive of transgender people, the Council adopts the following approach.

## **7. Recruitment**

7.1 The Council wishes to attract applicants from as wide a talent pool as possible and the recruitment process is designed to be inclusive of transgender applicants. Job advertisements should make clear that opportunities are open to all suitably qualified applicants. If this statement makes explicit reference to not discriminating on particular grounds, those grounds should include gender reassignment. Where an application form is used, this should not include a question about previous names.

7.2 Managers should not ask questions about an applicant's gender identity or gender history. If an individual chooses to mention this during the interview, they should be informed that the organisation supports transgender employees and assured that the disclosure will have no bearing on the outcome of the interview and will not be revealed outside the interview room.

7.3 The requirement to provide proof of identity to confirm the right to work in the UK can be particularly sensitive for a transgender applicant whose identification documentation may be in their previous names. The organisation will always ensure that an applicant is made aware of the full range of permissible identification documents and that the process of checking is handled sensitively and with respect for privacy of the individual.

7.4 Where an individual's documentation reveals their previous name and thereby their gender history, this information will be kept confidential and stored securely with the permission of the individual and in accordance with the requirements of data protection legislation. The same approach will apply where an applicant is required to present qualification certificates before a job offer is confirmed and the certificates are in the applicant's previous name.

## **8. Employment**

8.1 An employee who is transitioning may wish to be redeployed on a temporary or permanent basis. This may be because: the individual is in a public-facing role and wishes to avoid having to answer questions from the public about gender status; or the role involves particular tasks, for example heavy lifting, that will be difficult to undertake if undergoing a particular type of treatment. Requests to be redeployed will be discussed with the employee and, where possible, the Council will seek to accommodate the employee's wishes.

8.2 A manager should not put pressure on an individual to change jobs or make assumptions about their capability or wishes.

8.3 An employee's gender history or status will not have a bearing on any employment decisions or access to benefits, except where permitted by law. For example, an individual who has transitioned but does not have a GRC may be required to disclose their gender history for pension purposes. In such circumstances, the Council will treat such information

as sensitive data and it will be handled in line with the requirements of data protection legislation. In such circumstances, the employee's written consent will be obtained before disclosing their gender history and status.

## 9. Names and pronouns

9.1 The Council will take all necessary steps to ensure that an individual's change of name is respected. The Council is aware that a failure to change pronouns and names on records in respect of a transgender employee could constitute direct discrimination.

9.2 A GRC is not required to enable a transgender person to change their name and the Council will never ask an individual if they have a GRC to verify a name change, as to ask such a question would be inappropriate and could be considered harassment.

9.3 Consistently addressing a transgender employee by their previous name and/or an inappropriate pronoun may be regarded as harassment and will be dealt with under the Council's [Responding to Bullying and Harassment Policy](#).

## 10. Employee records, data handling and confidentiality

10.1 Records such as systems that contain names, titles and other personal identifiers such as photographs on the Council's website and intranet should be changed by the time the individual presents at work with their new identity. The Council will work with the employee to agree when this will be done and to ensure that nothing is omitted.

10.2 The disclosure of information by employees/job applicants is voluntary and any information disclosed will be treated in confidence, stored securely and used only to provide statistics for monitoring purposes.

10.3 All records that include details of an employee's gender history will be destroyed in a secure manner, unless there is a specific reason for retaining them. Where other people in the Council need to be aware of the employee's transition to make a change to a particular record, the Council will obtain the employee's consent, and restrict the information to those who need to know.

10.4 Where there is a need to retain documentation that shows someone's gender history, this information will be stored confidentially in line with the requirements of data protection legislation. The information will be held electronically and individuals who have access to it will be made aware that breaches of confidentiality could be unlawful and result in disciplinary action.

10.5 Care will be taken to ensure that any search of the Council's records by others will not inadvertently reveal an employee's gender history.

10.6 It is an individual's decision whether or not to reveal their gender status and history to the people they work with and the Council will respect their right to privacy. For example, if someone is recruited into a team managed by a transgender employee, they must not be informed about the manager's gender history. The right to privacy will apply regardless of whether or not the individual has a GRC.

10.7 Where an employee discloses information about their gender history or status (verbally or in writing), this will be treated as confidential. This includes any information provided to the line manager or HR. Such information will not be shared with others,



unless there is a specific reason and then not without the written consent of the individual concerned. Disclosure of the gender history of someone with a GRC without their specific permission would normally be a criminal offence.

10.8 Information relating to an employee's gender status or history will not be disclosed to a third party without the individual's consent, for example when responding to a reference request.

## 11. Communication

11.1 The Council will work with the employee to agree what information needs to be conveyed to work colleagues and when the information should be conveyed. While the whole workforce may not need to know about the employee's transition, people who work closely with the individual will normally need to know to ensure that a good working relationship is maintained.

11.2 The employee may wish to tell colleagues about their transition or may prefer if this is done by someone else on their behalf. The Council will encourage the individual to do what is best for them and, if the employee is not ready to tell anyone at the early stages, the Council will respect the employee's wishes. The employee is entitled to privacy and the Council will seek to protect them from intrusive enquiries.

11.3 Where an employee has a public or client-facing role, the Council will discuss with the individual what third parties need to know and how this should be handled.

11.4 The Council will be mindful of possible media interest and establish a protocol for handling media interest to ensure that:

- a transgender employee is not left to deal with this; and
- their colleagues understand the importance of not compromising the individual's right to privacy.

## 12. Bullying and harassment

12.1 The Council is committed to ensuring a working environment for employees that is free from harassment, intimidation, bullying and victimisation. Behaviour that contravenes this may result in action being taken under the Council's [Disciplinary Procedure](#).

12.2 Examples of harassment against transgender people include:

- verbal abuse such as name-calling, threats, derogatory remarks or belittling comments about transgender people;
- asking an individual if they have a GRC;
- jokes and banter about someone's gender identity or transgender people generally;
- refusing to use the pronoun appropriate to someone's acquired gender (for example, calling a trans woman "he") or calling the person by the name they had before they transitioned;
- threatening behaviour or physical abuse;

- intrusive questioning about someone's gender identity or transition;
- excluding a transgender colleague from conversations or from social events;
- refusing to work with someone because they have transitioned; and
- displaying or circulating transphobic images and literature.

12.3 All employees are made aware of the Council's [responding to bullying and harassment policy](#) and the procedures in place for handling complaints of bullying and harassment.

12.4 Any complaints of bullying and harassment are taken seriously and dealt with promptly.

### **13. Single sex toilet facilities**

13.1 The Council will support a transgender employee's right to use the toilets and facilities appropriate to the gender that they identify with. In some cases, the individual may wish to use a single-occupancy toilet **where available** during their transition, but they must not be pressurised to do so and this should not be seen as a long-term solution. A transgender person should not be expected to use an accessible toilet unless they have a disability.

13.2 The Council will agree with the employee when they wish to start using the facilities appropriate to their acquired gender and how this should be communicated to colleagues. Any concerns raised by others will be dealt with promptly and sensitively and harassment of the individual will not be tolerated.

### **14. Dress codes**

14.1 The Council will agree with the employee what flexibility in the Council's dress code may be permitted to accommodate the process of transition or where a gender-specific mode of dress would be uncomfortable for the individual.

14.2 If a transgender employee is required to wear a uniform, the Council will ensure that arrangements have been made to provide them with a uniform appropriate to their gender. The uniform will be available from the point at which the individual presents in their new gender status.

### **15. Training on transgender issues**

15.1 Information on transgender issues is an integral part of the Council's equality training for its employees. The aim is to help our employees to understand what is and is not acceptable behaviour and to differentiate myth from reality, thereby minimising the potential for conflict arising from misunderstandings.

### **16. Supporting an employee who is transitioning**

16.1 The Council will be supportive of an employee who has made the decision to transition.

16.2 The Council acknowledges that the transition process and the time it takes will be unique to each individual and that it is not always a linear process.

16.3 Transitioning is a major decision and the individual may have taken years to come to this point. They may fear rejection or ridicule by their work colleagues. It is therefore vital that the Council supports the individual so that they can continue to work without fear of discrimination and harassment and that colleagues are helped to understand the process.

16.4 Once the Council has been made aware by an employee that they will be starting, or have started, the process of transitioning, an appropriate point of contact will be agreed with the employee. That person will work with the employee to develop a confidential action plan to manage the individual's transition at work. Guidance on creating an action plan can be found at the end of this document.

16.5 The plan will consider what steps to take before, during and after the employee's transition. No action will be taken without the employee's consent.

16.6 It is important to develop a plan that is bespoke to the individual employee. Some of the key issues to address are likely to include:

- when and how an individual will present at work in their new gender status;
- handling a request by the employee to change their job temporarily during the transition process or to move to a new role permanently;
- the point at which colleagues, especially any direct reports, will be informed and how this will be done;
- if and how third parties, such as clients, should be informed;
- how absence from work for reasons associated with transitioning (for example, for medical appointments and/or medical treatment) will be handled;
- arrangements for changing the individual's name on their personnel records, email, security badges etc;
- confidentiality; and
- dress codes and/or uniforms.

16.7 Transitioning is a process that takes time, and, to help both parties, regular review meetings will be arranged to manage the process. This will ensure that the right support is in place, and enable the plan to be amended as things change. Effective support for someone who is transitioning requires dialogue, agreed action and respect.

## **17. Roles and Responsibilities**

17.1 The overall responsibility for the Transgender Policy within WBC rests with the Chief Executive.

17.2 The responsibility for day-to-day management of the Transgender Policy throughout West Berkshire Council rests with the Head of Human Resources. Human Resources is also responsible for maintaining this Policy, and for providing advice and guidance on their implementation.

17.3 All managers are directly responsible for implementing this Policy and any sub policies and procedures within their service areas, and for the adherence of their staff and others (2.1.2).

17.4 All those detailed at 2.1.1 and 2.1.2 have an individual responsibility to adhere to this Policy and any relevant Standards and/or Procedures.

## **18. Failure to comply with WBC Transgender Policy**

18.1 This document provides staff and others with essential information regarding transgender equality and sets out conditions to be followed. It is the responsibility of all to whom this Policy document applies to adhere to these conditions. Failure to do so may result in:

- withdrawal of access to relevant services
- informal disciplinary processes
- formal disciplinary action (in accordance with the Council's Disciplinary Procedure)

18.2 Additionally if, after internal investigation, a criminal offence is suspected (for example under Gender Recognition Act ), the Council may contact the police or other appropriate enforcement authority to investigate whether a criminal offence has been committed.

## **19. Review**

19.1 This policy will be reviewed to respond to any changes and at least every 3 years.

19.2 The Service responsible for reviewing and maintaining this Policy is Human Resources.

## Appendix One: Transgender Action Plan

This action plan outlines the key actions/considerations to be taken to ensure that an employee's transition at work goes as smoothly as possible and their presentation at work in their new identity as stress free as possible.

The action plan should be shaped by the employee as much as possible and be sufficiently fluid to take account of changing circumstances and preferences. There should be agreement on the confidentiality of the plan and who will have access to it.

Where other people in the Council will be responsible for taking action identified in the plan, it is crucial that the need for confidentiality and data protection are understood.

The name of who will do what and by when should be recorded for each action.

Further advice can be sought from Human Resources.

### **Name of the employee's main contact at work during their transition:**

Consider who will be the employee's main point of contact during their transition, this may well be their line manager, however, in some circumstances they may prefer it to be someone else.

### **Issues to be considered:**

Does the employee wish to remain in their current role or to be redeployed (where possible) or their duties modified during the period of their transition? (Note: the employee must not be pressurised to change jobs or move from a public facing role).

### **Communicating the transition:**

Discuss and agree the method and content of the communication. Adapt the approach as necessary for:

- Colleagues and/or direct reports
- Other employees, and
- Relevant third parties

Note: deciding on who is told, what they are told and when must be led by the employee, with support of their main contact/manager. The employee should not be pressurised into taking responsibility for informing people.

Consider:

- Who needs to know about the employee's transition and why?
- When should those who need to know be told?
- How should they be told (individually, at a team meeting, by email from the employee?)
- Does the employee want to tell those who need to know, or be present for all or part of the time when they are told?
- What information do they need to be told (e.g. about transitioning, names and pronouns, use of toilets?)

- How can the employee's immediate work colleagues and/or direct reports support the employee?
- How will questions be handled? (e.g. about temporary redeployment, the use of toilets)
- Is there likely to be media interest? If so how will this be handled? The employee should not be expected to deal with any press intrusion.

## **Changing employee records**

### **It is important that the employee is addressed by their chosen name and the correct pronoun and prefix**

Records containing the employee's name, prefix or information that could reveal their previous identity needs to be amended by the time the employee presents in their new identity. Examples of what records to change include:

- Staff pass and id badge
- Email address
- IT document systems
- Personnel records (electronic and paper files)
- Phone directory entry
- Intranet, website, MyView
- Openscape
- Benefits schemes such as the pension scheme, car lease scheme, parking permit
- Voicemail
- Union membership

NOTE: Some historical documents with the employee's previous name and gender may need to be retained – for more information see the section on 'confidentiality below

### **Confidentiality:**

Consider whether there are any records that need to be retained that include or indicate the employee's gender history. Information must be treated as sensitive and kept in accordance with data protection legislation.

Be careful to ensure that historical documents that contain references to the employee's previous name /gender can only be accessed only by a limited number of specified individuals. This could include historical documents relating to the employee's attendance on training courses, maternity or paternity leave, grievances, disciplinaries etc. Contact HR for advice.

Consider the steps that need to be taken to ensure appropriate confidentiality and who will ensure this.

### **Pensions and benefits:**

Ensure that any implications in respect of pensions and benefits are discussed with the employee.

**Dress codes:**

Where the employee wears a uniform for work consider whether they will need a new one when they transition and ensure it will be available in good time for when they first present at work in their new gender.

**Absence:**

To avoid potential discrimination, time off for treatment associated with the employee's transition should be excluded from the trigger points for action under the Council's management of sickness absence procedure.

Ensure that absences due to transitioning are not treated less favourably than any other absence.

The amount of time off required will depend upon the nature and extent of the treatment that the employee is undergoing. For example the employee may have hormone therapy for a number of years prior to surgery, need to have a number of operations, may decide not to have surgery or take breaks from their treatment. Treatment should NOT be viewed as cosmetic or elective.

Discuss in advance how much time off might be required for treatment and plan for absences, but allow flexibility as it will depend upon the type of treatment and availability. Remember not all those who transition will have medical intervention.

**Ongoing support:**

Discuss and agree how often progress meetings should be held, but be prepared to be flexible about this according to the employee's wishes.

**Return to work following transition**

Does the employee wish to be away for an agreed period (e.g. on annual leave) and present in their new identity on their return?

What date will the employee present for work in their new identity?

## Glossary

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Terminology around gender identity is complex and constantly evolving. ACAS have produced a useful guide for employers available via this [link](#).

Some key terms are summarised here:

- **Acquired gender:** Used in the Gender Recognition Act 2004 to describe a person's gender after transitioning. As this is a legal term, many people now prefer to use the term "affirmed" gender.
- **Assigned gender:** The gender assigned to someone at birth, based on their physical characteristics.
- **Cross dresser:** Someone who chooses to wear clothes not conventionally associated with their assigned gender. "Cross dresser" is now used in preference to the term "transvestite", which is considered to be outdated and can cause offence. Cross dressers are generally comfortable with their assigned gender and do not intend to transition.
- **Gender dysphoria:** A recognised medical condition where the individual experiences severe discomfort and anxiety because their gender identity does not align with their biological sex.
- **Gender expression:** How someone manifests their gender identity in society, for example through their appearance and behaviour.
- **Gender identity:** A person's internal perception of their gender, their sense of self. For transgender people, their gender identity does not match the gender they were assigned at birth.
- **Gender reassignment (or transitioning):** The process where an individual changes their expressed gender to live fully in the gender with which they identify. For example, a person who was born female decides to take steps to live the rest of their life as a man. Gender reassignment does not require medical treatment and is a protected characteristic under the Equality Act 2010.
- **Intersex:** An intersex person is born with ambiguous genitalia and/or sex chromosomal variations, making it difficult to classify their biological sex. There are many different intersex conditions. An intersex person may self identify as a man or a woman or neither.
- **Non-binary:** An inclusive term to describe people whose gender identity is "fluid" and not exclusively male or female. A non-binary person may identify as neither male nor female or may feel that they embody elements of both genders, or that they are something different. The terms intersex and non-binary are not interchangeable.
- **Transgender (or trans):** An umbrella term describing the diverse range of people whose gender identity or gender expression differs from the gender they were



assigned at birth. The term can encompass individuals who are transsexual, cross dressers or non-binary.

- **Transsexual:** A transsexual person has the protected characteristic of gender reassignment and is defined in the Equality Act 2010 as someone who is "proposing to undergo, is undergoing or has undergone gender reassignment". Gender reassignment is a protected characteristic under the Act. It is not necessary for a transsexual person to have to be under medical supervision to be protected in law from discrimination.
- **Transphobia:** A fear of or a dislike of transgender people. It is based on prejudice and misunderstanding and can involve verbal abuse, physical violence and other forms of harassment

## Other Relevant Documentation

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[The Equality in Employment Policy](#)

[The Responding to Bullying and Harassment Policy](#)

[The Disciplinary Procedure](#)

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## Implementing the 2019 pay award - Summary Report

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<b>Committee considering report:</b>	Personnel Committee
<b>Date of Committee:</b>	05 September 2018
<b>Portfolio Member:</b>	Councillor Dominic Boeck
<b>Date Portfolio Member agreed report:</b>	01 August 2018
<b>Report Author:</b>	Robert O'Reilly
<b>Forward Plan Ref:</b>	TBC

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### 1. Purpose of the Report

- 1.1 To explain the changes to the National Joint Committee (NJC) pay spine which take effect on 1<sup>st</sup> April 2019 and how this will affect the Council. To recommend changes to the current pay policy of the Council to facilitate the implementation of the 2019 pay award on the new pay spine.

### 2. Recommendation(s)

- 2.1 There are two options available to local authorities in implementing the pay award on the new spine. These are explained below. It is recommended that option A (“assimilate first”) is implemented in West Berkshire Council.
- 2.2 The Council ‘shadows’ the NJC pay award for all its employees (except teachers) with the exception of the position of Chief Executive where it shadows the national pay award for Chief Executives. It is recommended that this anomaly is ended and from 1<sup>st</sup> April 2009 all employees, including the Chief Executive, receive the same pay award which shadows the NJC pay award.
- 2.3 The Council increased the hourly pay rate for its lowest paid employees on 1<sup>st</sup> October 2015 by introducing the “West Berkshire Living Wage Supplement” for corporate employees. This is a non-contractual, discretionary payment to top up the hourly rate of the lowest spinal column points. The 2018 and 2019 pay awards have addressed the same issue and is recommended that the ‘West Berkshire Living Wage Supplement’ is frozen at its current rate from 1<sup>st</sup> October 2018 to avoid unplanned changes to wage differentials in future; and to recognise that schools have not signed up to the “West Berkshire Living Wage Supplement” which has created an equal pay risk.

### 3. Implications

- 3.1 **Financial:** The 2019 NJC pay award is factored into the MTFs.
- 3.2 **Policy:** The Council’s Pay Policy will be changed.
- 3.3 **Personnel:** None

3.4 **Legal:** None

3.5 **Risk Management:** None

3.6 **Property:** None

3.7 **Other:** None

**4. Other options considered**

4.1 None.

## Executive Summary

### 5. Introduction / Background

- 5.1 The Council shadows the National Joint Committee (NJC) pay award each year. In 2018 a two year deal was agreed at national level. This awarded 2% to most employees on 1<sup>st</sup> April 2018 with significantly higher increase for the lower grades. The details of the 2018 pay award are shown at Appendix D.
- 5.2 The second year of the two year deal is more complicated because the existing pay spine is shortened from 49 spinal points to 43 points. It is therefore necessary to assimilate employees on lower grades from their existing spinal points to the new spinal points on 1<sup>st</sup> April 2019. There are two options set out by the NJC guidance on how to do this:
- (1) Option A is to firstly assimilate employees to the new spinal point column and then allow employees who are not already at the top of their grade on the new spine to move up (“increment”) one point on the new spinal point column.
  - (2) Option B is to allow employees who are not already at the top of their grade to move up (“increment”) one point on the ‘old’ spinal point column and then to assimilate them to the new spinal point column.
- 5.1 The NJC guidance states that each local authority must decide which option to take. Finance have modelled the two options and recommend Option A as the slightly less expensive way to implement the 2019 pay award for corporate and school employees. If Option A is approved by the Personnel Committee it will also be applied to support staff in all maintained schools.
- 5.2 The NJC has three levels of negotiation for local government employees under the scope of this report (excluding teachers, Soulbury and craft workers). The three levels are employees, chief officers and chief executives. WBC is not a ‘Green Book’ employer and is not bound by the NJC pay awards. However it ‘shadows’ the NJC pay award (with a procedure in place to allow divergence if that was deemed in the best interests of the Council).
- 5.3 From the start of the unitary authority all employees including chief officers have been paid the general NJC pay award for all employees. However, this has not applied to the Chief Executive, where the Council ‘shadows’ the chief executives’ pay award. This can lead to pay awards at different times. Both negotiating bodies have awarded a 2% pay award for 1<sup>st</sup> April 2019 so this is an opportune time to end this anomaly. This would mean that all employees including the Chief Executive would be affected by the same main NJC pay award, when the annual NJC pay award is ‘shadowed’ by WBC. This make no difference to the CX’s pay increase in April 2019 as both negotiating committees have agreed a 2% increase as part of a two year deal. The proposed change may make a difference in April 2020 but whether to the advantage or disadvantage of the Chief Executive will be unknown until 2020 when negotiations at national level are completed.
- 5.4 In October 2015 the Council introduced the “West Berkshire Living Wage Supplement”. This is based on the hourly rate set by Foundation Living Wage (a national charity) which increases every 1<sup>st</sup> November. The national pay award and

the implementation of the new pay spine on 1<sup>st</sup> April 2019 will increase the hourly rates of lower grade posts by more than 2% and the issue of differentials between supervised and supervisors will be important. The 'West Berkshire Living Wage Supplement' has not been implemented in schools and currently only affects 15 employees in corporate positions. The supplement is non-contractual and is awarded at the discretion of the Council. When the pay award is implemented on 1<sup>st</sup> April 2019 and differentials are set it is not helpful to have a possible further increase in pay for some employees on 1<sup>st</sup> November 2019 that is impossible to predict. It is therefore sensible to freeze the 'West Berkshire Living Wage Supplement' at its current rate from 1<sup>st</sup> October 2019. This change will recognise that schools have not signed up to the "West Berkshire Living Wage Supplement" which has created an equal pay risk for the Council.

## 6. Proposals

- 6.1 There are two options available to local authorities in implementing the pay award on the new spine. These are explained above. It is recommended that option A ("assimilate first") is implemented in West Berkshire Council.
- 6.2 The Council 'shadows' the NJC pay award for all its employees (except teachers) with the exception of the position of Chief Executive where it shadows the national pay award for chief executives. It is recommended that this anomaly is ended and from 1<sup>st</sup> April 2009 all employees, including the Chief Executive, receive the same pay award which shadows the main NJC pay award.
- 6.3 The Council wished to increase pay rates for its lowest paid employees in 2015 and introduced the "West Berkshire Living Wage Supplement". This is a non-contractual, discretionary payment to top up the hourly rate of the lowest spinal column points. The 2018 and 2019 pay awards have addressed the same issue and is recommended that the 'West Berkshire Living Wage Supplement' is frozen from 1<sup>st</sup> October 2019 to avoid unplanned changes to wage differentials in future; and end an equal pay risk because schools do not pay the supplement.

## 7. Conclusion

- 7.1 The Personnel Committee is asked to approve the recommendations in this report regarding the implementation of the 2019 pay award.

## 8. Appendices

- 8.1 Appendix A – Data Protection Impact Assessment
- 8.2 Appendix B – Equalities Impact Assessment
- 8.3 Appendix C – Supporting Information
- 8.4 Appendix D – Unison leaflet explaining the two pay spines
- 8.5 Appendix E – Unison comments

## Appendix A

### Data Protection Impact Assessment – Stage One

The General Data Protection Regulations require a Data Protection Impact Assessment (DPIA) for certain projects that have a significant impact on the rights of data subjects.

Should you require additional guidance in completing this assessment, please refer to the Information Management Officer via [dp@westberks.gov.uk](mailto:dp@westberks.gov.uk)

Directorate:	Resources
Service:	HR
Team:	n/a
Lead Officer:	Robert O'Reilly
Title of Project/System:	2019 pay award
Date of Assessment:	16/07/18

**Do you need to do a Data Protection Impact Assessment (DPIA)?**

	Yes	No
<p><b>Will you be processing SENSITIVE or “special category” personal data?</b></p> <p>Note – sensitive personal data is described as “<i>data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation</i>”</p>	<input type="checkbox"/>	<b>x</b>
<p><b>Will you be processing data on a large scale?</b></p> <p>Note – Large scale might apply to the number of individuals affected OR the volume of data you are processing OR both</p>	<input type="checkbox"/>	<b>x</b>
<p><b>Will your project or system have a “social media” dimension?</b></p> <p>Note – will it have an interactive element which allows users to communicate directly with one another?</p>	<input type="checkbox"/>	<b>x</b>
<p><b>Will any decisions be automated?</b></p> <p>Note – does your system or process involve circumstances where an individual’s input is “scored” or assessed without intervention/review/checking by a human being? Will there be any “profiling” of data subjects?</p>	<input type="checkbox"/>	<b>x</b>
<p><b>Will your project/system involve CCTV or monitoring of an area accessible to the public?</b></p>	<input type="checkbox"/>	<b>x</b>
<p><b>Will you be using the data you collect to match or cross-reference against another existing set of data?</b></p>	<input type="checkbox"/>	<b>x</b>
<p><b>Will you be using any novel, or technologically advanced systems or processes?</b></p> <p>Note – this could include biometrics, “internet of things” connectivity or anything that is currently not widely utilised</p>	<input type="checkbox"/>	<b>x</b> <input type="checkbox"/>

**If you answer “Yes” to any of the above, you will probably need to complete [Data Protection Impact Assessment - Stage Two](#). If you are unsure, please consult with the Information Management Officer before proceeding.**



## Appendix B

### Equality Impact Assessment - Stage One

We need to ensure that our strategies, policies, functions and services, current and proposed have given due regard to equality and diversity as set out in the Public Sector Equality Duty (Section 149 of the Equality Act), which states:

- “(1) A public authority must, in the exercise of its functions, have due regard to the need to:**
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;**
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; This includes the need to:**
    - (i) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;**
    - (ii) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;**
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, with due regard, in particular, to the need to be aware that compliance with the duties in this section may involve treating some persons more favourably than others.**
- (2) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.**
- (3) Compliance with the duties in this section may involve treating some persons more favourably than others.”**

The following list of questions may help to establish whether the decision is relevant to equality:

- Does the decision affect service users, employees or the wider community?
- (The relevance of a decision to equality depends not just on the number of those affected but on the significance of the impact on them)
- Is it likely to affect people with particular protected characteristics differently?
- Is it a major policy, or a major change to an existing policy, significantly affecting how functions are delivered?
- Will the decision have a significant impact on how other organisations operate in terms of equality?
- Does the decision relate to functions that engagement has identified as being important to people with particular protected characteristics?
- Does the decision relate to an area with known inequalities?
- Does the decision relate to any equality objectives that have been set by the council?

Please complete the following questions to determine whether a full Stage Two, Equality Impact Assessment is required.

<b>What is the proposed decision that you are asking the Executive to make:</b>	To implement the 2019 pay award To freeze the Living Wage Supplement at £8.75 per hour from 1 <sup>st</sup> October 2019 To move the CX post onto the main NJC pay award from 01/04/19 (2% increase)
<b>Summary of relevant legislation:</b>	n/a
<b>Does the proposed decision conflict with any of the Council's key strategy priorities?</b>	no
<b>Name of assessor:</b>	Robert O'Reilly
<b>Date of assessment:</b>	16/07/18

<b>Is this a:</b>		<b>Is this:</b>	
<b>Policy</b>	<b>Yes</b>	<b>New or proposed</b>	<b>No</b>
<b>Strategy</b>	<b>No</b>	<b>Already exists and is being reviewed</b>	<b>Yes</b>
<b>Function</b>	<b>No</b>	<b>Is changing</b>	<b>Yes</b>
<b>Service</b>	<b>No</b>		

<b>1 What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?</b>	
<b>Aims:</b>	To provide certainty for the future regarding pay awards.
<b>Objectives:</b>	To have all employees on the same NJC pay award to be shadowed by the Council
<b>Outcomes:</b>	All employees are treated in the same way
<b>Benefits:</b>	Avoid problems with differentials at lower grades and avoid an equal pay risk from school support staff.

<b>2 Note which groups may be affected by the proposed decision. Consider how they may be affected, whether it is positively or negatively and what sources of information have been used to determine this.</b>		
(Please demonstrate consideration of all strands – Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation.)		
<b>Group Affected</b>	<b>What might be the effect?</b>	<b>Information to support this</b>
Age	n/a	

Disability	n/a	
Gender Reassignment	n/a	
Marriage and Civil Partnership	n/a	
Pregnancy and Maternity	n/a	
Race	n/a	
Religion or Belief	n/a	
Sex	n/a	
Sexual Orientation	n/a	
<b>Further Comments relating to the item:</b>		
nonw		

<b>3 Result</b>	
<b>Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?</b>	<b>No</b>
Please provide an explanation for your answer: n/a	
<b>Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?</b>	<b>No</b>
Please provide an explanation for your answer: n/a	

If your answers to question 2 have identified potential adverse impacts and you have answered 'yes' to either of the sections at question 3, or you are unsure about the impact, then you should carry out a Stage Two Equality Impact Assessment.

If a Stage Two Equality Impact Assessment is required, before proceeding you should discuss the scope of the Assessment with service managers in your area. You will also need to refer to the [Equality Impact Assessment guidance and Stage Two template](#).

<b>4 Identify next steps as appropriate:</b>	
<b>Stage Two required</b>	no
<b>Owner of Stage Two assessment:</b>	
<b>Timescale for Stage Two assessment:</b>	

Name: Robert O'Reilly

Date: 16/07/18

Please now forward this completed form to Rachel Craggs, Principal Policy Officer (Equality and Diversity) ([rachel.craggs@westberks.gov.uk](mailto:rachel.craggs@westberks.gov.uk)), for publication on the WBC website.

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# Implementing the 2019 Pay Award– Supporting Information

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## 1. Introduction/Background

- 1.1 The NJC two year pay agreement for 2018 and 2019 includes the introduction of a new pay spine on 1 April 2019 that is based on the following:
- (1) A bottom rate of £9.00 per hour (£17,364) on new Spinal Column Point (SCP) 1 (equivalent to old SCPs 6 & 7)
  - (2) ‘Pairing off’ old SCPs 6-17 incl. to create new SCPs 1-6 incl.
  - (3) Equal steps of 2.0% between each new SCPs 1 to 22 incl. (equivalent to old SCPs 6-28 incl.).
  - (4) By creating equal steps between these pay points, new SCPs 10, 13, 16, 18 and 21 are generated to which no old SCPs will assimilate.
  - (5) On new SCPs 23 and above (equivalent to old SCPs 29 and above), 2.0% increase on 2018 rate.
- 1.2 The NJC agreement is silent on the approach to be taken with regard to the chronology of assimilation and increments when moving to the new pay spine on 1 April 2019. There are two options: assimilate first and then increment (Option A) or increment first and then assimilate (Option B).
- 1.1 The two potential approaches produce different outcomes at some pay points – Finance has modelled the costs of the two approaches (Option A and Option B) and Option A is slightly less expensive for corporate and school employees.
- 1.2 Either of the approaches is acceptable but the Council must use the same approach for the entire workforce covered by the agreement including support staff in schools.
- 1.3 The two pay spines for 2018 and 2019 are set out at Appendix D to illustrate the issue.

## 2. The “West Berkshire Living Wage Supplement”

- 2.1 The two year pay deal anticipates the increase in the national living wage (NLW) to £9 per hour by 2020 as set out in government policy. This is a good opportunity to review the current “West Berkshire Living Wage Supplement” which was introduced in 2015. The current pay deal addresses the same issue of low pay grades by ‘bottom loading’ the percentage pay increase. The need for the supplement has therefore diminished.
- 2.2 The amount paid under the “West Berkshire Council Living Wage Supplement” varies depending on the spinal column point of the employee and takes relevant

employees up to £8.75 per hour. The supplement increases when the Living Wage Foundation increases the Living Wage hourly rate each November.

- 2.3 The “West Berkshire Living Wage Supplement” is a discretionary payment made by the Council to relevant employees. It does not form part of the employees' contract of employment and can be withdrawn or frozen by the Personnel Committee.
- 2.4 The cost of the supplement is absorbed by the relevant services. 15 employees are currently receiving the supplement to increase their hourly rate to £8.75 (excluding three employees who have remained on Berkshire County Council terms who would be paid above £8.75 per hour if they come onto WBC terms). All of the 15 will be paid £9 per hour or more on 1<sup>st</sup> April 2019. Of the 15 employees nine currently receive an extra 1p per hour; one receives 7p; four receive 13p; and one receives 20p per hour because of the supplement.
- 2.5 Schools which are not maintained by West Berkshire Council are free to pay whatever rates of pay they wish to support staff (e.g. academies, aided schools, foundation schools). However, schools which are maintained by WBC must use the Council's pay and grading structure to pay their support staff.
- 2.6 Schools have more employees paid on spinal column point 10 or below (Grade A or B) than the corporate services. In autumn 2015 schools were commended to join the Council in paying the “West Berkshire Living Wage Supplement”. However, none did so, which has created a potential equal pay problem for the Council because employees on the same grade in maintained schools are currently being paid less than employees on the same grade in corporate positions.
- 2.7 The “West Berkshire Living Wage Supplement” is a non-contractual supplement that would have been paid at the discretion of the governing body (GB) as part of the school's pay policy. However, individual governing bodies decided, in light of budget pressures, that their schools could not afford to implement the supplement.
- 2.8 If the proposal to freeze the supplement is approved, the 15 affected employees currently paid the “West Berkshire Living Wage Supplement” will continue to receive £8.75 per hour until the 31<sup>st</sup> March 2019 and on 1<sup>st</sup> April 2019 ten of them will receive £9.36 per hour and five will receive £9.18 per hour.

### **3. Changing the NJC pay body for the post of Chief Executive**

- 3.1 The NJC has three levels of negotiation for local government employees under the scope of this report (excluding teachers, Soulbury and craft workers). The three levels are employees, chief officers and chief executives. WBC is not a ‘Green Book’ employer and is not bound by the NJC pay awards. However it shadows the NJC pay award (with a procedure in place to allow divergence if that was deemed in the best interests of the Council).
- 3.2 From the start of the unitary authority all employees, including chief officers, have been paid the general NJC pay award for all employees. However, this has not applied to the Chief Executive where the Council shadows the chief executives’ pay award. This leads to pay awards being agreed at different times. Both negotiating bodies have awarded a 2% pay award for 1<sup>st</sup> April 2019 so this is an opportune time to end this anomaly. This would mean that all employees including the Chief Executive would be affected by the same main NJC pay award, when the annual

NJC pay award is ‘shadowed’ by WBC. This makes no difference to the Chief Executive’s pay increase in 2019 as both negotiating bodies have agreed a 2% increase as part of a two year deal. The proposed change may make a difference in 2020 but whether to the advantage or disadvantage of the Chief Executive will be unknown until 2020 when negotiations at national level are completed.

#### 4. Proposals

- 4.1 There are two options available to local authorities in implementing the pay award on the new spine. It is recommended that option A is implemented in West Berkshire Council – assimilate first, then increment if necessary.
- 4.2 The Council ‘shadows’ the NJC pay award for all relevant employees with the exception of the position of Chief Executive, where it shadows the national pay award for chief executives. It is recommended that this anomaly is ended and from 1<sup>st</sup> April 2009 all employees, including the Chief Executive, receive the same pay award which shadows the main NJC pay award (this will be 2% on 1<sup>st</sup> April 2019).
- 4.3 The Council wished to increase pay rates for its lowest paid employees in October 2015 and introduced the “West Berkshire Living Wage Supplement”. This is a non-contractual, discretionary payment to top up the hourly rate of the lowest spinal column points. The 2018 and 2019 pay awards have addressed the same issue and is recommended that the “West Berkshire Living Wage Supplement” is frozen from 1<sup>st</sup> October 2019 to avoid unplanned changes to wage differentials in future; and to reduce the equal pay risk caused by the fact that all WBC maintained schools decided not to implement the supplement for their support staff.

#### 5. Conclusion

- 5.1 The proposals in this report will produce the least expensive way for corporate and school support employees to be assimilated to the new pay spine in April 2019. They will also end possible different timescales for the implementation of the Chief Executive’s pay award from 2020 as this post will be treated under the same main NJC pay award as other employees (the award for 2019 has already been agreed as 2%). They will reduce complications from differentials between supervised and supervisors being overturned on 1<sup>st</sup> November each year when the foundation living wage increase is announced; and end the emerging equal pay risk caused by maintained schools deciding not to implement the “West Berkshire Living Wage Supplement”.

#### 6. Consultation

- 6.1 This report has been subject to consultation with the unions before it goes to the Personnel Committee. Unison’s comments are attached to this report.

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**Background Papers:** n/a

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**Wards affected:** n/a

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**Strategic Aims and Priorities Supported:**

The proposals will help achieve the following Council Strategy aim:

- BEC – Better educated communities**  
 **SLE – A stronger local economy**  
 **P&S – Protect and support those who need it**
-

- 
- HQL – Maintain a high quality of life within our communities**
  - MEC – Become an even more effective Council**

The proposals contained in this report will help to achieve the following Council Strategy priority(ies):

- BEC1 – Improve educational attainment**
  - BEC2 – Close the educational attainment gap**
  - SLE1 – Enable the completion of more affordable housing**
  - SLE2 – Deliver or enable key infrastructure improvements in relation to roads, rail, flood prevention, regeneration and the digital economy**
  - P&S1 – Good at safeguarding children and vulnerable adults**
  - HQL1 – Support communities to do more to help themselves**
  - MEC1 – Become an even more effective Council**
- 

**Officer details:**

Name: Robert O'Reilly  
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Tel No: 2358  
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Your new NJC pay award covers the period April 2018 – March 2020. You will see there are two different pay spines for 2018 and 2019.

On 1 April 2019 you will transfer to a new NJC pay spine with new scale points 1-43. UNISON is working with your employer to translate your local pay and grading structures onto the new pay spine.

Read across to see how you will assimilate from your old scale point to your new scale point.

SCP	1 Apr 18	Equivalent hourly rate*	SCP	1 Apr 19	Equivalent hourly rate*
6	£16,394	£8.50	1	£17,364	£9.00
7	£16,495	£8.55			
8	£16,626	£8.62	2	£17,711	£9.18
9	£16,755	£8.68			
10	£16,863	£8.74	3	£18,065	£9.36
11	£17,007	£8.82			
12	£17,173	£8.90	4	£18,426	£9.55
13	£17,391	£9.01			
14	£17,681	£9.16	5	£18,795	£9.74
15	£17,972	£9.32			
16	£18,319	£9.50	6	£19,171	£9.94
17	£18,672	£9.68			
18	£18,870	£9.78	7	£19,554	£10.14
19	£19,446	£10.08	8	£19,945	£10.34
20	£19,819	£10.27	9	£20,344	£10.54
			10	£20,751	£10.76**
21	£20,541	£10.65	11	£21,166	£10.97
22	£21,074	£10.92	12	£21,589	£11.19
			13	£22,021	£11.41**
23	£21,693	£11.24	14	£22,462	£11.64
24	£22,401	£11.61	15	£22,911	£11.88
			16	£23,369	£12.11**
25	£23,111	£11.98	17	£23,836	£12.35
			18	£24,313	£12.60**
26	£23,866	£12.37	19	£24,799	£12.85
27	£24,657	£12.78	20	£25,295	£13.11
			21	£25,801	£13.37**
28	£25,463	£13.20	22	£26,317	£13.64
29	£26,470	£13.72	23	£26,999	£13.99
30	£27,358	£14.18	24	£27,905	£14.46
31	£28,221	£14.63	25	£28,785	£14.92
32	£29,055	£15.06	26	£29,636	£15.36
33	£29,909	£15.50	27	£30,507	£15.81
34	£30,756	£15.94	28	£31,371	£16.26
35	£31,401	£16.28	29	£32,029	£16.60
36	£32,233	£16.71	30	£32,878	£17.04
37	£33,136	£17.18	31	£33,799	£17.52
38	£34,106	£17.68	32	£34,788	£18.03
39	£35,229	£18.26	33	£35,934	£18.63
40	£36,153	£18.74	34	£36,876	£19.11
41	£37,107	£19.23	35	£37,849	£19.62
42	£38,052	£19.72	36	£38,813	£20.12
43	£39,002	£20.22	37	£39,782	£20.62
44	£39,961	£20.71	38	£40,760	£21.13
45	£40,858	£21.18	39	£41,675	£21.60
46	£41,846	£21.69	40	£42,683	£22.12
47	£42,806	£22.19	41	£43,662	£22.63
48	£43,757	£22.68	42	£44,632	£23.13
49	£44,697	£23.17	43	£45,591	£23.63

\*Hourly rate calculated by dividing annual salary by 52.143 weeks (which is 365 days divided by 7) and then divided by 37 hours (the standard working week in the National Agreement 'Green Book')  
 \*\*No assimilation from old pay spine.

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Just a quick note to say that the branch has registered their view (in a democratic vote) to formally oppose the linking of CEO cost of living increases with the NJC award.

The feeling is that negotiated cost of living increases for rank and file staff salaries are not conducive to comparison with cost of living increases for the CEO/senior managers who are much better remunerated to start with. It is for this reason I suggest that there are already separate negotiations. The reason for introducing harmonisation is entirely unclear as a result.

The inevitable exponential disparity in the pay ratio, the fact that UNISON members subsidise negotiations, and the existence of separate negotiating channels for CEOs to influence their award are also considerations in reaching this decision, as mentioned before.

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