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| Title of Report: | Recognising Continuous Service with Academy Schools |
| Report to be considered by: | Personnel |
| Date of Meeting: | 28 th May 2014 |
| Forward Plan Ref: | PC2774 |

Purpose of Report: To propose a reversal of the current policy of the Council not to recognise continuous service with academy schools for the purpose of occupational benefits.

Recommended Action: Personnel Committee is recommended to change the policy to allow recognition of service in academy schools for occupational benefits.

Reason for decision to be taken: To respond to the views of the trade unions and head teachers who wish to see the policy reversed. This paper is returning to Management Board with further information on the financial implications and views from head teachers.

Other options considered: to leave the policy unchanged

Key background documentation: None

The proposals will also help achieve the following Council Strategy principle:

CSP8 - Doing what's important well

The proposals contained in this report will help to achieve the above Council Strategy priorities and principles by:

Ensuring that schools continue to be able to recruit staff from both maintained and academy schools without the perceived barrier of losing some employment benefits based on continuous service.

| Portfolio Member Details | |
|---|--|
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| Date Portfolio Member agreed report: | 2 nd April 2014 |

| Contact Officer Details | |
|-------------------------|--------------------------|
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Implications

| | |
|---------------------------|--|
| Policy: | n/a |
| Financial: | There are no direct financial implications for the Council arising from the proposed change in policy. There may be some small financial implications for individual schools as a result of certain individuals qualifying for the right to maternity or adoption pay who would otherwise have had to wait until they had achieved a year in employment, or for a longer period of paid sick leave due to increased service being taken into account. These costs will be met from schools' delegated budgets. The implications are discussed further in paragraph 5 of the main report. |
| Personnel: | this report proposes a change to an HR policy |
| Legal/Procurement: | none |
| Property: | none |
| Risk Management: | none |

| Is this item relevant to equality? | Please tick relevant boxes | Yes | No |
|--|----------------------------|--------------------------|-------------------------------------|
| Does the policy affect service users, employees or the wider community and: | | | |
| • Is it likely to affect people with particular protected characteristics differently? | | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| • Is it a major policy, significantly affecting how functions are delivered? | | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| • Will the policy have a significant impact on how other organisations operate in terms of equality? | | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| • Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics? | | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| • Does the policy relate to an area with known inequalities? | | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Outcome (Where one or more 'Yes' boxes are ticked, the item is relevant to equality) | | | |
| Relevant to equality - Complete an EIA available at www.westberks.gov.uk/eia | | | <input type="checkbox"/> |
| Not relevant to equality | | | <input checked="" type="checkbox"/> |

| Is this item subject to call-in? | Yes: <input checked="" type="checkbox"/> | No: <input type="checkbox"/> |
|---|--|------------------------------|
| If not subject to call-in please put a cross in the appropriate box: | | |
| The item is due to be referred to Council for final approval | | <input type="checkbox"/> |
| Delays in implementation could have serious financial implications for the Council | | <input type="checkbox"/> |
| Delays in implementation could compromise the Council's position | | <input type="checkbox"/> |
| Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months | | <input type="checkbox"/> |
| Item is Urgent Key Decision | | <input type="checkbox"/> |
| Report is to note only | | <input type="checkbox"/> |

Executive Summary

1. Introduction

- 1.1 In 2011 Personnel Committee approved a policy that the Council would not recognise continuous service in academy schools for the purpose of calculating entitlement to occupational benefits such as sick pay, maternity/paternity/adoption pay and leave, and annual leave.
- 1.2 The trade unions asked for a review of this policy on the basis that they believed that WBC was out of step with neighbouring authorities in its policy, and that it was a barrier to recruitment into our maintained schools.
- 1.3 Research shows that neighbouring authorities take a mixed approach with some recognising academy service and some not. Head teachers on EMAB support a policy of recognising academy service.

2. Proposals

- 2.1 It is proposed that the Council reverses its policy to allow the recognition of continuous service with academy schools in calculating entitlement to occupational benefits such as sick pay, maternity/paternity/adoption leave and pay and enhanced annual leave.

3. Equalities Impact Assessment Outcomes

- 3.1 This item is not relevant to equality.

4. Conclusion

- 4.1 Adopting a policy that allows for the recognition of continuous service in academy schools for the purpose of entitlement to occupational benefits will enable schools and the authority to remain competitive in the market for school teaching and support staff, with no direct financial impact on the Council and minimal financial impact on schools' delegated budgets.

Executive Report

1. Introduction

- 1.1 Staff who transfer to the employment of an academy as a result of a change in the school's status during their employment have protected employment rights under TUPE. Therefore, when schools convert to academy status, teachers and support staff retain their current contractual rights. This TUPE protection is lost if the employee subsequently voluntarily transfers to local authority employment (in a maintained school or directly with the Council).
- 1.2 It is important to note that continuous service for the purpose of calculating a redundancy payment is preserved under the 'Modification Order', as academies are covered by these regulations. The Council therefore has no discretion in this particular matter. In addition, entitlements to statutory maternity, paternity, adoption and sickness pay based on service with the current employer cannot be preserved between different employers. The Council therefore has no discretion over these entitlements.
- 1.3 Academy employment is not service in local government for the purpose of entitlements to occupational schemes for sick pay, annual leave and maternity/adoption pay and leave. However, the Council has the discretion to choose to recognise academy service for this purpose when new employees transfer directly from academies.
- 1.4 Maintained schools in the local authority are required to adopt the terms and conditions of employment that are in place for directly employed staff. The Council, therefore, needs to have a clear policy on whether or not it will recognise employment service with academies for occupational scheme benefits so that prospective employees in academies can be fully informed about the implications of transferring into a West Berkshire Council school, or to direct employment with the Council.

2. Current policy in WBC

- 2.1 In December 2011 Personnel Committee approved a policy as follows:
 - (1) Service with academy schools will not be counted for the purpose of continuous service for employment rights, or entitlement to WBC occupational benefits (such as sick pay, annual leave and maternity/adoption benefits for support employees) which are dependent on continuous local government service.
 - (2) Where an employee transfers, without a break, from another local authority which has recognised previous continuous service with an academy for occupational benefits, the date of continuous service will be the date on which that authority deemed continuous service to start.
- 2.2 Because of the differences in teachers' conditions of service and support employees' conditions of service, the impact of this policy is thus;

| Entitlement | Teachers | Support staff |
|--------------------------------------|--|---|
| Occupational sick pay entitlement | Based on cumulative service as a teacher in a LA maintained school | Based on continuous service from date of this appointment to WBC* |
| Annual leave entitlement | n/a | Based on continuous service from date of this appointment to WBC* |
| Occupational maternity leave and pay | Based on continuous service from date of this appointment to WBC | Based on continuous service from date of this appointment to WBC* |

2.3 Support employees who voluntarily transfer to WBC or one of its schools from employment in an academy to which they were transferred under TUPE, without a break between employments, will have all previous continuous service recognised for the purposes of calculation of entitlements to annual leave, occupational maternity leave/pay and occupational sick pay. This is subject to the return to service being within five years of the original transfer.

3. Request to review policy and consultation

3.1 In August 2013 the trade unions requested that Personnel Committee review the policy for the following reasons;

- (1) They believe that neighbouring authorities have chosen to recognise academy school service and we are therefore out of step with them.
- (2) The policy is preventing schools from recruiting the best people who are put off by the fact that they will not have their service recognised for certain occupational benefits.

3.2 When the policy was originally approved, other local authorities appeared to also be choosing not to recognise continuous academy service. Research with neighbouring authorities in October 2013 reveals that four out of five of the other Berkshires have chosen not to recognise academy service. Hampshire CC does recognise it. Thus we are not out of line at the moment, but nor would be out of line with neighbouring authorities if we chose to reverse the policy.

3.3 We also anticipated that academies would start to move away from national conditions of service and that it would be harder to justify recognising service that was on different terms and conditions. In fact, academies have been slow to implement local conditions of service and none within West Berkshire appear to have done so.

3.4 Consultation with head teachers at the Education Management Advisory Board (EMAB) in November 2013 indicated strong support for a policy that enabled schools to recognise academy service. They perceived it as important when recruiting to remove this potential barrier. Whilst there is, as yet, no quantifiable evidence that the current policy is a barrier to recruitment, it is the professional opinion of the head teachers in the consultative group that there is enough anecdotal evidence that the policy influences decisions that academy school staff make about returning to work in maintained schools in WBC.

4. Proposal

- 4.1 It is proposed that the Council reverses its policy to allow the recognition of continuous service with academy schools in calculating entitlement to occupational benefits such as sick pay, maternity/adoption leave and pay and enhanced annual leave.
- 4.2 Recognising continuous service with academies would have the following impact:

| Entitlement | Teachers | Support staff |
|--------------------------------------|---|--|
| Occupational sick pay entitlement | Based on cumulative service as a teacher in LA maintained schools and any academy employment that is continuous with this service | Based on continuous service from date of appointment to local government and/or academy employment |
| Annual leave entitlement | n/a | Based on continuous service from date of appointment to local government and/or academy employment |
| Occupational maternity leave and pay | Based on continuous service from date of appointment to local government and/or academy employment | Based on continuous service from date of appointment to local government and/or academy employment |

- 4.3 There are two options for recognition of academy service:
- (1) Recognise service in WB academies only; or
 - (2) Recognise all academy service.
- 4.4 Option (2) above is the preferred option. It is simpler to administer and preserves all the benefits to recruitment that this policy is seeking to achieve if the school is considering applicants currently working in other local authority areas. Limiting recognition to just academies lying within the West Berkshire boundaries would be complicated when trying to calculate continuous service dates.

5. Impact

- 5.1 Changing the policy will have limited financial impact. Any impact that it does have will be on the delegated budgets of maintained schools. Schools will have to manage the financial impact on an individual basis. They are prepared to do this for the perceived benefits of removing a barrier to recruitment.
- 5.2 As set out clearly above, there is no impact on the redundancy rights of school staff; these are already protected in law by the Redundancy Payments Modification Order, which covers both maintained schools and academy schools. There is likewise no impact on pension entitlements as academy schools are covered by the Local Government Pension Scheme and the Teachers' Pension Scheme.

- 5.3 Annual leave - support staff would have the period of service working in an academy school counted towards their entitlement to annual leave. WBC employees have their initial entitlement to leave increased (by an additional week) after 5 continuous years' service. Counting academy service would bring forward the date of attaining this additional leave entitlement. Teachers would be unaffected as they have no annual leave entitlement.
- 5.4 Sick pay – support staff would have the period of service working in an academy school counted towards their continuous service entitlement to sick pay. From the first day of employment, WBC employees are entitled to one month on full pay if they are sick. This entitlement increases for each completed year of continuous employment, up to a maximum of six months full pay and six months half pay after 5 years. With the average number of days off sick well below the month's full pay entitlement, this policy will have negligible effect on the sick pay bill. It will only affect employees who are unlucky enough to require more than a month off sick in a year.
- 5.5 Sick pay – teachers would have the period of service working in an academy school counted towards their cumulative entitlement to sick pay. Teachers' entitlement is based on cumulative service in maintained schools, and full entitlement is reached after 4 completed years' service. Academy service will therefore add to this cumulative entitlement only for teachers who have previously obtained less than four years' cumulative service before starting at the academy. The potential financial impact will therefore be even less than for support staff.
- 5.6 Maternity/adoption pay – all employees have statutory entitlements to maternity and adoption leave from day one. Occupational entitlements to pay (six weeks on 90% pay and a further 12 weeks at 50% pay) are gained after one year's continuous service. Including continuous academy service in this calculation would mean that the date of entitlement would be brought forward. After one year in the new employment, this advantage would have been superseded. The only staff affected by this change would be those who became pregnant or adopted within a year of transferring to the new employment.
- 6. Conclusion**
- 6.1 Adopting a policy that allows for the recognition of continuous service in academy schools for the purpose of entitlement to occupational benefits will enable schools and the authority to remain competitive in the market for school teaching and support staff.
- 6.2 The cost implications are minimal and will be borne by the schools' delegated budgets.

Appendices

There are no Appendices to this report.

Consultees

Local Stakeholders: n/a

Officers Consulted: EMAB (head teachers)

Trade Union: Unison, GMB, NASUWT, NUT, ASCL, NAHT