

	<b>Safer Stronger Communities Select Committee</b>	<b>Item No</b>	5
<b>Title</b>	<b>HR Update Briefing Paper</b>		
<b>Wards</b>			
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<b>Class</b>		<b>Date</b>	16 January 2020

## 1 Summary and Purpose

- 1.1 This report provides information on issues raised at the previous Safer Stronger Committee that reviewed the Council's employment profile report.

## 2 Recommendation

- 2.1 The Safer Stronger Select Committee are asked to note the contents of the report.

## 3 Policy Context

- 3.1 The Council's Employment Profile connects to all the priorities within the Councils Corporate Strategy 2018-2022 as it relates to the Council workforce who are the main resources that deliver services for the Council. The two Corporate Priority areas that the Employee Profile particularly connect, as we are one of the largest employers in the Borough with 51% of our workforce being residents, are:-

- Open Lewisham – Lewisham will be a place where diversity and cultural heritage is recognised as a strength and is celebrated
- Building an inclusive local economy – Everyone can access high quality job opportunities, with decent pay and security in our thriving and inclusive local economy.

## 4 Information requested

- 4.1 The 2018/2019 employment profile was presented at a previous committee meeting, and following a discussion a range of questions on further information was requested. This paper seeks to provide feedback on these.

The areas asked to report back on were:

- Councils process for resolving employee disputes
- The Council's phased return to work policy
- The relationship between ACAS guidance and legislation
- The numbers of long term agency staff

- The proportion of non-voluntary leavers that are dismissals and the different category of dismissal
- The numbers of staff that take shared parental leave
- Analysis of flexible retirement taken by employees
- Employment profile of Lewisham schools

## 5 Reports

### 5.1 Councils Process for Resolving Disputes

For individual disputes between an employee and a manager there is a grievance procedure in place which is published on our intranet, but we always encourage employees and managers to try to resolve issues informally first, before a formal grievance is raised.

For larger scale disputes then there are a series of escalation routes in place than can be requested by our trade unions to take forward their concerns with the council. (Details in Appendix A)

- Directorate Joint Consultative Committee
- Corporate Joint Council
- Works Council

### 5.2 The Council's Return To Work Policy

The absence management policy was last consulted with our trade unions in January 2017, which included the Return to Work Policy. The extract from the absence policy that covers phased return to work is included below. We are planning to review this policy this year.

#### ***Phased return to work***

*The purpose of a phased return to work is to enable the employee to return from a period of sickness absence to their full contractual hours where their medical condition, as confirmed by Occupational Health, prevents immediate return to normal working arrangements.*

*A phased return to work will not be an automatic right, because it will be subject to:*

- *the service area being able to accommodate the arrangements taking into account the employee's role and service needs*
- *time limits and taking into account any cover requirements*
- *taking into account medical advice received from the Occupational Health Service but the decision to allow a phased return will rest with management*
- *during a period of phased return, any non-working days/ hours, will need to be taken as annual leave, unpaid leave, flexi or TOIL.*

### **5.3 Updating of Council's HR Policies**

The councils HR policies are reviewed as necessary due to a number of reasons, which include.

- Change in legislation.
- Casework that may suggest greater clarity of advice needed
- Request from trade union to review the policy
- Request from senior leaders to review the policy
- Periodic review cycle. A categorisation of periodic review is being installed to ensure that policies that are not reviewed for the above reasons still get periodically reviewed.

An example of policies reviewed / introduced recently include, premature birth leave policy, menopause policy, trans policy. Examples of policies we are currently looking at reviewing are recruitment policy, buying annual leave, loans to support rental deposits, flexible retirement policy.

### **5.4 The Relationship between ACAS Guidance and Legislation**

ACAS' duties are to promote the improvement of industrial relations in particular by exercising its functions in relation to the settlement of trade disputes. ACAS can conciliate in trade disputes. ACAS is empowered to give general advice to employers, workers and their organisations on matters affecting or concerning industrial relations. There is no statutory obligation generally to follow such general advice.

ACAS is not a legislator, but it also has in addition a general statutory power to issue Codes of Practice, subject to the approval of both Houses of Parliament. ACAS has issued Codes of Practice in relation to disciplinary and grievance procedures; disclosure of information; time off for trade union duties; a code of practice on settlement agreements and on flexible working.

A failure to follow the disciplinary code does not itself give rise to automatic liability in any proceedings, nor does it remove jurisdiction to hear a complaint from employment tribunals. Tribunals are however obliged to take the code into account and can adjust any award by up to 25% to take into account a failure to comply with the code. The other codes can also be taken into account by judicial bodies in relation to any dispute and a failure to follow a code may be a relevant factor in a judicial decision.

There is also non statutory general guidance issued by ACAS.

The Council seeks, as a matter of good practice and to improve industrial relations, to comply with the requirements of ACAS Codes and non-statutory guidance as necessary, possible and practicable in the relevant circumstances. The Council has its own policies and procedures which are agreed with the unions and these also seek to be compliant with the Codes and guidance as is relevant.

### **5.5 Number of Long Term Agency Staff**

Use of agency workers is common practice within local government in London and Lewisham's use is typical to establish cover for vacant roles and flexibility to meet changes in service demand. Agency workers form an important part of the Council's workforce plan providing operational flexibility and business continuity across Directorates. Directorate management teams receive regular updates via HR Business Partners about local spend during the financial year. It is important to maintain a balance in the number and job roles covered by agency workers and ensure that this is kept under review within Directorates to ensure that service quality and value for money are achieved.

The council currently has 139 longer term agency workers (two years plus). The council is currently reviewing its long term agency use with a view to move to more permanent employment where practicable. This year so far 38 agency workers have secured employment with the council, the previous year this number of our non-employee workforce converting to employee was 50.

### **5.6 The proportion of non-voluntary leavers that are dismissals and the different category of dismissal**

Year 2018/2019

<b>Leaving Reason</b>	<b>Number</b>
Mutual Agreement	4
Dismissal	9
Retirement-Efficiency	6
Some Other Substantial Reason	1
Death in Service	2

### **5.7 The numbers of staff that take shared parental leave**

<b>Year</b>	<b>Number</b>
2016/17	3
2018/19	5
2017/18	1
2019 to date	1

### **5.8 Analysis of flexible retirement taken by employees**

The Council's flexible retirement scheme came into effect from 1 April 2007.

The Council values the knowledge, skills and experience of all its employees and recognises the benefits that flexible retirement may have for both the employees concerned and the Council as a whole.

There is no right to flexible retirement and each application will be considered on its individual merits in light of service delivery needs, the requirements of the Flexible Retirement policy and legislation, the benefits to the Council of the retirement and the overall cost to the pension fund.

Employees who are granted flexible retirement will be able to receive immediate payment of their pension benefits whilst continuing to work for the Council on reduced hours and/or in a less senior position. Retaining employees in this way allows the transfer of skills and experience to other workers within the section. It may also enable employees who wish to relinquish their current level of responsibility to do so without having to leave the Council's service. The council is currently reviewing its early retirement policy.

Over the last ten year 116 employees have been granted flexible retirement. The average age of the employee when requesting flexible retirement is 60.4 years old.

Year	Staff	SMG	Dir	Exec	CE	Total
2009	13	1				14
2010	15	2				17
2011	4	1	1		1	7
2012	9		2			11
2013	3					3
2014	9	2				11
2015	9					9
2016	17	3	1			21
2017	9	1				10
2018	13					13
<b>Total</b>	<b>101</b>	<b>10</b>	<b>4</b>	<b>0</b>	<b>1</b>	<b>116</b>

### **5.9 Employment profile of Lewisham schools**

An employment analysis of Lewisham schools is contained in Appendix B. The data comes from an Analysis of School Workforce Census (data provided by DfE for all Lewisham schools including Academies) which was carried out in November 2018. The 2019 data is not yet available

## **6. Legal Implications**

- 6.1 The Council is required to comply with employment legislation generally. As noted under the Equality Implications section of this report the Council has statutory equalities obligations.
- 6.2 The Equality Act 2010 (the Act) brings together all previous equality legislation in England, Scotland and Wales. The Act includes a public sector equality duty (the equality duty or the duty), replacing the separate duties relating to race, disability and gender equality. The duty came into force on 6<sup>th</sup> April 2011. The duty covers the following nine protected characteristics: age, disability, gender reassignment,

marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

6.3 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected Characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

6.4 As was the case for the original separate duties, the duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

6.5 The Equality and Human Rights Commission issued guides in January 2011 providing an overview of the new equality duty, including the general equality duty, the specific duties and who they apply to. The guides cover what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guides were based on the then draft specific duties so are no longer fully up-to-date, although regard may still be had to them until the revised guides are produced. The guides do not have legal standing unlike the statutory Code of Practice on the public sector equality duty, the guides can be found at:

<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/new-public-sector-equality-duty-guidance/>

## **7. Specific obligations on local authorities with regard to the provision of information**

7.1 Public authorities have an obligation under the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (the 2017 Regulations) to publish not later than 30 March each year information to show they are complying with the public sector equality duty under section 149 of the Equality Act 2010. This must include information in relation to persons who share a relevant protected characteristic who are its employees and other persons affected by its policies and practices.

7.2 Information should also be published in accordance with the 2017 Regulations, no later than 30 March 2018 and then every four years, on specific and measurable equality objectives.

7.3 Obligations are also set out under the 2017 Regulations to report annually on any gender pay gap.

## **8. Financial Implications**

There are no direct financial implications from noting the contents of this report.



## 6 CORPORATE JOINT COUNCIL

### 6.1 TERMS OF REFERENCE

#### **Main purpose:**

To provide a corporate forum for consultation and negotiation between management and trade union representatives on issues directly affecting staff and services, in order to prevent differences and/or resolve employee relations issues.

#### **Collective Bargaining Machinery:**

The Corporate Joint Council will cover the following staff and services:

- School Teachers.
- Non-teaching staff within the Resources & Regeneration Directorate, Customer Services Directorate, Community Services Directorate, and Children & Young People Directorates, (including support staff in Schools).

#### **Attendance:**

- Executive Director for Resources and Regeneration or nominated representative.
- Corporate Trade Union Secondees
- Senior HR Officer covering schools/non schools as appropriate.
- Other senior officers and/or local trade union representatives for specific topics.

#### **Servicing:**

- Two meetings of the Corporate Joint Council (CJC) will normally be held each year.
- HR will service the meetings.
- An agenda planning meeting will take place in a timely manner prior to the CJC
- The Trade Union Side will elect their own Joint Secretary
- Either Side may make a request for an urgent CJC, through the designated employee relations adviser within HR, in such cases a minimum of ten working days notice will normally be required.
- The meetings shall be chaired by an Executive Director or nominated representative.
- Notes of the meetings will be distributed after each meeting.

#### **Restrictions:**

The CJC shall not consider;

- Any matter relating to an individual employee including terms and conditions, discipline, grievance, promotion or efficiency; except in exceptional circumstances as agreed by the Chair.
- Any matter which is properly the function of any other body within the council.
- Any issue that has not been previously been discussed at the DJCC unless specifically agreed by the Executive Director.

**Links to DJCC's and the Works Council:**

Genuine attempts to discuss and resolve issues at the Directorate JCC must be made by management and relevant trade union representatives locally before going to the Corporate Joint Council. Genuine attempts to discuss and resolve issues at the CJC must be made by management and trade union representatives before going to the Works Council.

**Review:**

The Terms of reference and the functioning of the CJC should be reviewed biannually by HR in conjunction with the relevant trade unions.

## DIRECTORATE JOINT CONSULTATIVE COMMITTEE

### 6.1.1 TERMS OF REFERENCE

#### **Main purpose:**

To provide a regular forum for discussions on policies and strategy directly affecting staff and services within the specific Directorate, in order to prevent differences and to resolve them should they arise.

#### **Attendance:**

- Executive Director or nominated representative.
- HR Business Partner.
- Trade union representatives specific to the directorate as agreed within the directorate.
- Other senior officers and/or local trade union shop stewards may be invited to join the meetings on specific topics.

#### **Servicing:**

- Two Directorate J.C.C.'s will be held each year. □ HR will service the meetings.
- An agenda planning meeting will normally take place two weeks prior to the DJCC meeting.
- The meetings will be chaired by the relevant Executive Director or nominated representative.
- Notes of the meetings will be distributed after each meeting.
- Either Side may make a request for an urgent DJCC through the relevant Executive Director's office. In such cases a minimum of ten working days notice will normally be required.

#### **Restrictions:**

The DJCC shall not consider;

- Any matter relating to an individual employee i.e. discipline, grievance, promotion or efficiency etc;
- Any matter which is properly the function of any other body.

#### **Links to CJC and Works Council**

Genuine attempts to discuss and resolve issues at the Directorate JCC must be made by management and trade union representatives before going to the Corporate Joint Council. Genuine attempts to discuss and resolve issues at the CJC must be made by management and trade union representatives before going to the Works Council.

#### **WORKS COUNCIL**

### **CONSTITUTION AND FUNCTIONS**

#### **1. TITLE**

The Joint Committee shall be called the "Works Council".

## **2. TERMS OF REFERENCE**

- A. The functions of the Works Council shall be;
- I. a forum for consultation and negotiation between the Council and its employees on corporate issues in relation to conditions of service;
  - II. to provide a forum for the discussion and prevention of differences and the resolution of disputes where they arise;
  - III. to establish regular consultation between the local authority and its employees on matters such as personnel policy initiatives;
  - IV. to make recommendations on the application and interpretation of terms and conditions of service of employees;
  - V. to consider any relevant matter referred to it by the Joint Secretary of either Side; and
  - VI. to carry out such other functions as are specifically assigned to it.
- B. The Works Council shall not consider:
- I. any matter concerning an individual employee, e.g. discipline, grievance, promotion or efficiency;
  - II. any matter which is properly the function of any other body, including the governing bodies of locally-managed institutions.
- C. In the event of any matter arising upon which the Works Council cannot agree, the matter may be referred by either side to the appropriate recognised negotiating body, in accordance with the relevant National Scheme of Conditions of Service.
- D. The Works Council may refer any question before it for consideration by, and the advice of, the appropriate negotiating body and shall inform that body of any recommendation of the Works Council which appears to be of more than local interest, always provided that such recommendation shall be approved by the local authority prior to its submission to the provincial body.
- E. The Works Council shall use its best endeavours to ensure that all relevant collective agreements are applied throughout the Council.

## **3. MEMBERSHIP**

- (a) The Employer's Side shall comprise of all members of the Cabinet
- (b) The Union Side shall comprise not more than 17 employees.
- (c) The Council and the constituent trade unions shall both appoint substitute members of the Works Council, any one of whom shall act as a substitute for a full member of the appropriate side in the event of the latter being unable to attend a meeting. A substitute attending a meeting in place of a member shall have the same powers as the member.
- (d) If a member or a substitute member of the Works Council ceases to be a Member of the Council or an employee of the Council, that member shall

cease to be a member of the Works Council. Any such vacancy arising shall be filled by the Employer's Side of the Union Side as appropriate.

**4. CHAIR**

A Chair and a Vice-Chair shall be appointed by the Works Council at its first meeting in each municipal year. The Chair shall be a member of the Employer's Side, the Vice-Chair shall be appointed from the Union Side.

**5. OFFICERS AND ADVISERS**

- (a) Each Side of the Works Council shall appoint a Joint Secretary.
- (b) Each Side may invite advisers to attend meeting of the Works Council. The Joint Secretaries shall notify each other of the advisers they are inviting to each meeting. Persons attending under this provision shall be entitled to speak.

**6 MEETINGS**

- (a) The Works Council shall meet as required. Either Joint Secretary may call a meeting at any time. The Joint Secretaries shall arrange agenda, dates and times of meetings and for the circulation of documents for meetings.
- (b) Items not included on the agenda for a meeting may be considered by the Works Council with the agreement of both Sides.
- (c) A special meeting of the Works Council shall be called within 10 working days at the request of either Joint Secretary.
- (d) The minutes of the Works Council shall be agreed by the Chair and Vice-Chair. Disputes about the minutes shall be resolved through the Joint Secretaries.
- (e) The minutes shall be reported to the Cabinet.

**7. QUORUM**

Three members of the Employer's Side and five members of the Union Side.

**8. PAYMENT TO UNION SIDE AND THEIR ADVISERS**

Members of the Union Side shall receive payment at plain time rate for attendance at Works Council meetings.

**Analysis of School Workforce Census – November 2018**

(data provided by DfE for all Lewisham schools including Academies)

<b>Total workforce:</b>	<b>6,262</b>
of which:	
Teachers	2,476
Teaching Assistants	1,824
Non-classroom based support staff	1,009
Auxiliary staff	953
<b>Male:</b>	<b>1,312 (21.0%)</b>
of which:	
Teachers	651
Teaching Assistants	212
Non-classroom based support staff	203
Auxiliary staff	246
<b>Female:</b>	<b>4,950 (79.0%)</b>
of which:	
Teachers	1,825
Teaching Assistants	1,612
Non-classroom based support staff	806
Auxiliary staff	707
<b>Minority Ethnic Group (ie. non-white British):</b>	<b>2,758 (44.0%)</b>
of which:	
Teachers	990
Teaching Assistants	859
Non-classroom based support staff	452
Auxiliary staff	457
<b>White British:</b>	<b>3,504 (56.0%)</b>
of which:	
Teachers	1,486
Teaching Assistants	965
Non-classroom based support staff	557
Auxiliary staff	496

Data for part-time and full-time analysis and age analysis only available for Teachers

<b>Total number of Teachers:</b>	<b>2,476</b>
<b>Teachers aged 50 and over:</b>	<b>498 (20.1%)</b>
<b>Teachers aged under 50:</b>	<b>1,978 (79.9%)</b>
<b>Teachers working part-time:</b>	<b>525 (21.2%)</b>
<b>Teachers working full-time:</b>	<b>1,951 (78.8%)</b>