

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Finance and Resources	<b>DATE</b>	17 June 2010
<b>CORPORATE DIRECTOR</b>	Stewart Carruth		
<b>TITLE OF REPORT</b>	Employment Costs		
<b>REPORT NUMBER</b>	CG/10/128		

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### 1. PURPOSE OF REPORT

This report outlines the outcomes of a period of consultation with Trades Unions and the wider workforce since the 2010/11 Budget Speech indicated a requirement to save £4.5 million from employment costs.

### 2. RECOMMENDATION(S)

It is recommended that the Committee approves:

- i) that given the abnormal financial pressures facing the Council, the increment that was due to be paid from 1 April 2010 to relevant staff employed under the SJC for Local Government Employees, is deferred until 1 April 2011; and
- ii) that Officers enter into further discussions with Trades Unions with a view to reviewing employment costs, including conditions of service, for all employment groups.

### 3. FINANCIAL IMPLICATIONS

The focus of the consultation was on the saving of £4.5 million of employment costs identified in the budget process for the financial year 2010/11 and the deferral of the increment which would achieve this saving in full.

The Committee will be only too well aware of the difficult financial situation facing the Council. Over the past two years a great deal of progress has been made in steering the Council to a sound financial position. However, financial pressures over which the Council has no control, but are within the public sector generally, are signaling a difficult period ahead.

A recent exercise undertaken to assess the financial future of the Council based on Scottish Government estimates showed that over the next four years there will be a reduction in grant funding of £41 million, which represents 12.8% of the Council's budget. When viewed against the cost pressures that the Council is facing, which are estimated over the period to be in the region of £50 million, the total indicative impact on the Council is over £95 million.

This profile is based on a particular scenario; if these reductions are under-estimated and the cost pressures remain the same, a 20% reduction in income equates to over £65 million over the 4 year period, and the indicative impact on the Council is almost £120 million.

The election of the new UK Government and the declared squeeze on public spending of £6 billion in 2010/11, with further savings to reduce the budget deficit in future years, will only compound what is a bleak financial outlook. Consequently, the employment costs issue must be viewed in the wider financial context of the Council.

The financial position of the Council directly relates to the ability of each Service to deliver their services within the financial budget that has been set. In 2010/11 it will be no different and what can influence a Service's ability to operate within budget is the extent to which there were ongoing cost pressures from the previous year, as well as those it faces during the year.

The last estimates for 2009/10 showed that underlying cost pressures were presenting challenges for Services, and this had been exacerbated by the weather and the economic climate. Underlying need for Social Care services and specialist Education services meant that additional costs were incurred. The knock-on impact of these pressures will be felt in 2010/11; for example, there is a longer term nature to these services, which results in commitments to costs stretching from one year to the next, making the delivery of in-year savings even more challenging.

At the end of 2009/10 the Council will increase its reserves and balances, but only because of the one-off receipt of income and through a favourable movement in debt interest repayments. Add to this Consent to Borrow for what are revenue costs (Equal Pay settlements) from the Scottish Government and it is clear that with the emerging information on the future financial position, there remains a great deal for Services to achieve in order to balance the budget for 2010/11.

The unknown total value of Equal Pay liabilities, as a result of appeals, remains a risk that the Council must manage. Whilst funding has been set aside for this, until settlement is concluded for all outstanding cases, then the situation remains subject to change and access to retained reserves and balances may be necessary. Retaining healthy reserves to cover these future 'unknowns' is vital for the Council to operate on a year to year basis with the confidence that budgets will not have to be reviewed during the year.

#### **4. SERVICE & COMMUNITY IMPACT**

If the Committee resolves to defer the 2010 increment the Trades Unions have indicated that they will advise their members to legally challenge the decision.

## **5. OTHER IMPLICATIONS**

This issue depends on a legal interpretation of the increment clause within the employment contract.

This states “Your salary will normally increase by 1 incremental point every year on 1 April until you reach the maximum for the grade. You will receive your first incremental increase next 1 April or the day following completion of 6 months’ service in post; whichever is later. This increase will be subject to the provisions of any local salary progression scheme in place and provided you are not already at the top of the grade or personally preserved on a fixed point.”

Legal advice received indicates the use of the word “normally” suggests there may be occasional circumstances when incremental progression can be withheld. It is suggested that it may be arguable that the Council can withhold incremental progression in abnormal circumstances. However, employees have a legitimate expectation that they will receive incremental progression and the circumstances in which progression is withheld may amount to a breach of the duty of trust and confidence.

It has not been possible to secure collective agreement following consultation, as Trades Unions are opposed to the proposal. The Council may decide to withhold the incremental progression unilaterally. In doing so, the legal advice is that the Council would have to specify a reasonable basis for withholding (ensuring it is not arbitrary or capricious).

It is considered that the Council’s financial position is such that it may be a reasonable basis for withholding the increment. The Council had to find in the region of £30 million worth of service savings during the 2010/11 budget exercise and over £25 million was identified from Service budgets, including the reduction/closure of some front line services and deleting posts which resulted in a staff reduction exercise during 2009/10. Part of the remaining savings were identified as coming from employment costs and, following consultation, it was viewed that the withholding of the increment is the most appropriate way forward as it is specific and will realise the full value of the saving required.

## **REPORT**

The costs of employing staff and the availability of financial resources is inextricably linked for every employer. With the potential reductions in funding, detailed in the ‘Financial Implications’ of this report, over the next 4 years for the public sector generally, it is inevitable that the size of the workforce will have to reduce significantly.

All public sector organisations will be required to critically examine all areas and aspects where employment has a cost and see if this represents value for money or is absolutely necessary. It is a reasonable proposition to look at the costs of all aspects of employment, including the Conditions of Service.

The exercise in managing employment costs requires each and every individual element of the Conditions of Service to be evaluated and determined and these individual costs to be considered against their value to the employee/employer and financial affordability. It is recognised that some elements of service conditions are

provided by statutory regulation (e.g. Pensions), national provisions (e.g. Sickness Provisions) or local conditions (e.g. Allowances). Therefore, it must be recognised that for some elements there is no employer discretion to change the current provision.

This approach is likely to lead the Council, as an employer, to change its current Conditions of Service and it would appear prudent to seek to introduce a locally harmonised set of Conditions of Service for Local Government Employees (Red Book), Craft Workers and Chief Officials. Given Teachers have their own nationally determined Conditions of Service, via the SNCT, it is recognised these remain separate.

### **Increment deferral**

To date, work has been undertaken on assessing this proposal. This includes conducting consultation with Trades Unions and the wider workforce. Legal soundings have been taken on this proposed way forward and this is considered below in the 'Risk Assessment' section.

### **Risk Assessment of deferring the Increment**

The decision as to whether to proceed with the incremental deferral will require to be informed by a thorough appraisal of the legal arguments and an assessment of the Council's chances of defending what are certain to be a significant number of employment tribunal applications – not just at local tribunal but possibly at Employment Appeal Tribunal and, potentially, the Court of Session.

The legal analysis to date has focused on the conditional contractual clause that relates to incremental progression. The issue revolves around how the legal process will interpret the first two sentences of the clause (i.e. "Your salary will normally increase by 1 incremental point ..." and "You will receive your first incremental increase next 1 April..."). The type of challenge which the Council can expect would be breach of contract and/or unlawful deduction from wages. If claims are brought to the Employment Tribunal the Council has a chance of successfully defending the increment deferral but there is also the possibility it could lose, either at this stage in legal proceedings, or following appeal to a higher court.

There is, of course, every possibility that the legal process will take several months (possibly in excess of twelve) and cognisance would have to be taken of the ongoing disenchantment and disengagement that this might promote within the workforce. In addition, an unsuccessful defence of our position – particularly at national level would undoubtedly result in a degree of reputational damage for the Council.

In addition, if the Council's position was not upheld at Employment Tribunal or beyond, then a budget gap of £4.5 million would be created.

### **The Future of Incremental Progression**

The proposed recommendation to defer the payment of increments only deals with the 2010/11 savings and the interpretation of the clause in the employment contract, which may permit this course of action, is unlikely to be sufficient justification next

year. Therefore, with the current contractual provisions, the increment will apply from 1 April 2011 with the cost being £4.5 million, unless:

- i) agreement is reached with Trades Unions via collective agreement to amend this provision; OR
- ii) there is a change to the wording of the contract to allow increments to be applied on the basis of performance, which would require a termination and re-engagement of all affected employees, assuming agreement with Trades Unions could not be reached. This would be a massive exercise (similar to that of introducing the new EP&M contracts) which would require a statutory notification to Department of Business, Industry and Skills (HR1) and a 90 days statutory consultation period with the workforce following notification of Trades Unions under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992. Following statutory consultation, if there was no agreement and there were sound business reasons for the required change, notice to terminate the contracts of all staff (maximum 12 weeks) and offer the option of re-engagement on the revised contractual provisions could begin.

## **Other Proposals**

Within the Budget Speech, Officers were requested to look at new ways of working, giving employees flexibility on working hours wherever possible, assessing pay awards, as well as considering the increment issue.

New ways of working is an incremental process and is developing in the Council. It is assisted by ever developing technological solutions. Indeed, some of the technological solutions quickly become dated by new and improved products and options being made available. There are now a number of staff (and increasing) with home, remote and satellite working arrangements and capability; evidence for this is the corporate touchdown areas across a number of the Council's main administrative centres.

Within Housing and Environment the use of hand held portable technology that was introduced as an integral part of the Craft Agreement, has seen a huge rise in efficiency in Housing Repairs.

The move to new ways of working must be predicated on improved outcomes for service users and service delivery.

As part of a letter consulting staff on the employment costs issues, every affected employee was offered the opportunity to volunteer to reduce or change their hours of work. The take up of this offer was limited with under 30 requests for reduced hours working being received. Indeed, some of these requests could not be supported for service delivery reasons. Therefore, the savings associated with this initiative was modest with around only £25,000 estimated being saved.

In examining pay awards these are normally negotiated and agreed nationally. These have always been incorporated into the contract of employment for the respective negotiating body. The Director's agreed not to take the 2.5% award they were entitled to in 2010. In addition, the appointment of all new Heads of Service did not include this pay award.

Therefore, there appears little scope for the Council not to apply pay awards that are nationally determined. It should be noted that the purpose of deferring the increment is to seek to ensure that the workforce do not suffer a reduction in their current pay.

### **Other Terms and Conditions**

As part of the consultation process discussions were around employment costs generally and the point was raised that in order to work within the reduced financial commitments, all such issues would need to be considered. There are national and local conditions where their cost/benefit to the Council requires to be examined. Other than recognising that some conditions are there due to statutory obligations/provisions (e.g. Pensions), there are no conditions that should be excluded from any such review.

### **Consultation Feedback**

The consultation process was undertaken with the Trades Unions where regular meetings were held on Wednesday afternoons between representatives of the Unions and Human Resources. The first meeting took place on 24 February 2010.

All staff were sent a letter by their own Service in early March 2010. Feedback could be made through their service manager or directly to the special e-mail address set up to receive comments on this issue.

Detailed below is an analysis of the feedback.

### **Trade Union Consultation**

The discussions commenced on Wednesday, 24 February 2010, with representatives from UNISON, GMB, UNITE and UCATT. There were 8 separate meetings.

At the meeting responses were given to two key questions raised by the Trades Unions:

#### **Are the proposals discriminatory?**

The Council undertook an Equalities and Human Rights Impact Assessment based on the proposal to defer the increment. This was tabled at the meeting on 10 March 2010 and showed that of the total number of employees (8,962) on EP&M contracts that could be affected by the proposal, 72% were female and 28% male. The number of staff who were due to receive an increment was 6,555 and the gender split was 75% female to 25% male. This demonstrates that the proposals have no disparate impact and it is the Council's contention that the proposals are proportionate to the workforce.

#### **Are the proposals legal, does it not breach the contract of employment?**

It was explained that legal advice was obtained from the Council's legal advisers, Brodies LLP. This indicated the wording of the contract allowed the increment to be paid in "normal" circumstances. Given the degree of difficulty in achieving and sustaining a balanced budget, the circumstances were far from normal, so it is the Council's contention that there is a contractual provision enabling the non-payment

of the increment. The Council sought to reach agreement on the proposal but if this was not possible it set out its intention to consult the workforce and Trades Unions.

The Trades Unions disagreed with this interpretation of the contract. They were of the view that the second sentence of the paragraph which states “You will receive your first incremental increase next 1 April...” is an unqualified commitment to pay the increment. The Trades Unions have suggested that this is a breach of contract and/or unlawful deduction.

The Trades Unions were reluctant to offer any suggestions for alternative savings. They have a view that they have fought hard over many years to achieve a reasonable set of Conditions of Service and they do not want to be accused of working to reduce these.

The point was made that unless savings in employment costs were made that the security of employment for many could not be guaranteed.

### **Staff Consultation**

During the 3 calendar weeks from 3 March to 26 March 2010 an e-mail address [employmentcosts@aberdeencity.gov.uk](mailto:employmentcosts@aberdeencity.gov.uk) was available for the workforce to make comment, observation or ask questions. There were 312 e-mails received. Many responses were received from individuals making constructive comment, raising concerns, others making suggestions and asking questions. There were a few from groups of staff who had worked together to make their point. Responses to the proposal were negative, over 99% did not agree with the proposal to defer the increment. Many indicated that they appreciated the financial problems faced by the Council but believed the deferral of the increment was not the way to deal with the issue.

In addition, staff were sent a letter detailing the proposal to defer the increment and given the opportunity to respond via the e-mail address or raise/discuss the matter with their Line/Service Manager. Line/Service Managers were issued with a briefing pack which included a form to record the issues and these were collated by the Service Operational Support Managers who, at the end of the exercise, forwarded these to the Human Resources and Organisational Development Service.

There were numerous suggestions for making savings by staff and these suggestions have been circulated to Directors for consideration and reporting back.

## **6. REPORT AUTHOR DETAILS**

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## **7. BACKGROUND PAPERS**

Budget Speech 2010/11