

Item: 3

Human Resources Sub-committee: 30 May 2023.

Consultation Protocol on Workforce and Employment Changes.

Report by Corporate Director for Strategy, Performance and Business Solutions.

1. Purpose of Report

To consider Consultation Protocol on Workforce and Employment Changes.

2. Recommendations

The Sub-committee is invited to note:

2.1.

That a Consultation Protocol on Workforce and Employment Changes, attached as Appendix 1 to this report, has been developed, in consultation with the recognised trade unions, to provide the Council with a consultation framework and set of principles to apply to staffing and employment matters.

2.2.

That the Consultation Protocol on Workforce and Employment Changes applies to consultations with all recognised trade unions, at both a service and corporate level.

It is recommended:

2.3.

That the Consultation Protocol on Workforce and Employment Changes, attached as Appendix 1 to this report, be approved.

3. Background

3.1.

The Council is committed to continually improving its performance, services to its customers and its decision making. Success in this improvement depends on the Council's commitment to professional, timely and meaningful consultation with its employees and recognised trade unions.

3.2.

A protocol has been developed to provide the Council with a consultation framework and set of principles to apply to staffing and employment matters that ensures appropriate levels of transparency and openness. It sets out how the Council will consult with trade unions and what will be consulted on.

3.3.

This protocol will apply to consultations with all recognised trade unions, at both a service and corporate level, and has been developed in consultation with all recognised trade unions.

4. Consultation Protocol

4.1.

The Consultation Protocol on Workforce and Employment Changes (the Protocol), attached as Appendix 1 to this report, provides a protocol for undertaking both informal and formal consultation, describing when it should take place and examples of subjects and matters that are appropriate for consultation.

4.2.

The Protocol provides guidance on the internal processes that are required to ensure successful consultation such as how long to consult for, who should undertake the consultation and the three key steps to be followed. These key steps include the triggering and launch of a consultation, how to respond to feedback and the implementation of any approved proposals.

4.3.

An overview of the consultation process is provided on page 10 of the Protocol which summarises the main steps.

4.4.

Should the Protocol be approved, briefing sessions for managers will be planned as part of the regular in-house training sessions offered by the Human Resource and Organisational Development service.

5. Trade Unions Consultation

The recognised Trade Unions have been consulted in the creation of this protocol and have provided feedback which has been incorporated into the Protocol.

6. Human Resource Implications

The human resource implications are contained within the body of this report.

7. Equality Impact Assessment

An Equality Impact Assessment has been undertaken and is attached as Appendix 2 to this report.

8. Island Communities Impact

As the protocol being developed in terms of this report has been assessed as being unlikely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in Orkney, a full Island Communities Impact Assessment has not been undertaken.

9. Corporate Governance

This report relates to the Council complying with governance and its duties as an employer and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

10. Financial Implications

There are no direct financial implications as a result of this Protocol.

11. Legal Aspects

As an employer, the Council has a duty to consult with staff and recognised trade unions in certain circumstances. The duty may be imposed by statute, because of the duty to act fairly and reasonably, or as a result of a legitimate expectation.

12. Contact Officers

Karen Greaves, Corporate Director for Strategy, Performance and Business Solutions, extension 2202, email: karen.greaves@orkney.gov.uk

Andrew Groundwater, Head of Human Resources and Organisational Development, extension 2253. Email: Andrew.groundwater@orkney.gov.uk

13. Appendices

Appendix 1: Consultation Protocol on Workforce and Employment Changes.

Appendix 2: Equality Impact Assessment.



Consultation Protocol on Workforce and Employment Changes

May 2023

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Introduction

As an organisation that is committed to continually improving its performance, its services to its customers and its decision making, we recognise that our success depends on our commitment to professional, timely and meaningful consultation with our employees and our recognised trade unions.

This protocol has been developed to make sure that the Council has an organisation wide consultation framework and set of principles to apply to staffing and employment matters that ensures appropriate levels of transparency and openness. It sets out in broad terms how the Council will consult and what we will consult on. It applies to consultations with all recognised trade unions at both a Service and Corporate level and has been developed in consultation with all recognised trade unions.

What is Consultation?

Consultation is a two-way dialogue that allows employees and Trade Unions a realistic and timely opportunity to provide views and feedback on proposals that impact them, and to be able to influence decision making by having their views considered as part of any decision-making process.

Consultation involves managers:

- Actively seeking out the views and ideas of employees and trade unions and then taking these views into consideration before decisions are made by Council.
- Providing sufficient information and time to employees and trade unions to enable them to consider the proposals; discuss the proposals and implications with their members or trade union representatives; submit their response with suggested alternatives to any of the proposed changes; and receive feedback on their response including where views are rejected.

On the basis that some decisions are likely to lead to significant changes in the way we organise, deliver and provide services to our customers, there is a legal requirement that consultation in such instances should be carried out “with a view to reaching agreement”. However, consultation does not remove the right of managers to manage – they must still make the final decisions or present final recommendations which may result in not acting on some of the views received where they believe there are sound and practical reasons for not doing so. There may also be circumstances where Unions reserve the right to lodge a formal failure to agree.

When consulting:

- Our communications will be clear, simple and consistent.
- We will be open, honest and factual.
- We will use face-to-face communication as much as possible.
- We will avoid information overload.
- We will listen and act on feedback.
- Our communications will be timely and relevant.

When to consult – informal and formal consultation

Consultation will take place with employees and the Trade unions when:

- They have a legal entitlement to be consulted.
- They can reasonably expect to be consulted because the proposals and policies under consideration would have a significant impact on them.

While it is not possible to provide a comprehensive list of subjects for consultation, the following gives examples of subjects that are appropriate for consultation:

- Reviewing terms and conditions of employment. (*This is a matter for negotiation and agreement, not for consultation.*)
- New ways of working.
- Organisational restructuring (*including job matching and creation or deletion of posts*)
- Reductions in the workforce.
- Staff relocation to an alternative site.
- New shared services with external partners (*excluding shared services covered within IJB*).
- Business transfers.
- Creation of new HR policies or review of existing HR policies.

These issues may often result in the presentation of a business case or report to the Corporate Leadership Team (CLT) and the relevant committee after consultation has been completed that takes into account the feedback received during the consultation.

The Change in Establishment process includes a section where any proposed staffing changes are considered against this protocol to see if they will require consultation prior to being signed off by the relevant Officer.

How long to consult for?

Consultation will normally allow a minimum of two weeks for responses, except where statutory requirements prescribe a set or minimum period that exceeds this (e.g. redundancy consultations, where the Council would follow the minimum requirements set out in law).

By agreement, the consultation timescale may be shorter where there is an urgent business need, or extended in cases where the subject matter is so significant the trade unions, in terms of formulating a full response, would benefit from a longer period to discuss the proposals and implications with their members.

When consulting collectively with all trade unions, or where the matter under consultation affects schools, due regard will be given to school holiday periods that fall within the

consultation period and the consultation period will be adjusted to take account of school holidays.

Any variation to the minimum two week consultation timescale would only apply where there are exceptional circumstances and would be applied in the interests of maintaining effective partnership working and the mutual trust that implies.

Who consults?

An appropriate manager or Senior Officer from the Service concerned will normally lead the consultation process.

For corporate issues affecting all Council employees, the lead officer is likely to be the Head of Human Resources and Organisational Development, or one of his/her representatives. For example, consultation on new or revised HR policies.

Alternatively, it may be a Corporate Director or a Head of Service who has been given a strategic lead on a particular corporate issue.

How to consult

The 3 key steps for effective consultation are as follows:

- Step 1: Triggering consultation.
- Step 2: Responding to feedback.
- Step 3: Implementing the proposals.

Step 1 – Triggering Consultation

The Lead Officer prepares a written consultation document setting out the purpose, the proposals, and any background and issues, to the trade unions with representation rights in the area of service affected. In terms of consultation on new or revised corporate HR policies, this may simply take the form of the policy document itself, with track changes showing revisions if appropriate.

This document should include:

- The reasons for the proposals (i.e. the business case). For example, how the proposals will help to improve service performance and delivery or support corporate objectives, including meeting financial savings targets.
- Financial implications (e.g. how proposals are to be funded).
- The staffing implications (e.g. training, changes to working practices including any new ways of working, impact on size of the workforce).
- Health and safety considerations, including risk management.
- Any initial feedback from staff or recognised trade unions where ‘sounding out’ discussions have taken place (see ‘Notes’ below).
- An outline of any other options that have been considered.
- A request for written views on the proposals with the consultation start and end dates clearly stated that are in accordance with the Timescales laid out in Section 4 of this document. An email or online response route should be provided where this is useful to the staff group in question.
- An outline on how to take forward the proposals being made, after any amendments made following consultation (e.g. reporting to Committee). This could include an indicative timetable.

Step 1 notes

Before commencing the consultation process, it is good practice for managers through team meetings or workshops, to gather some initial thoughts and ideas from recognised trade union representatives and the workforce whose employment is likely to be affected by proposals. This ‘testing of the water’ could include gathering initial feedback from officers in HR, Legal or Finance and other relevant managers in the organisation.

This may extend to Elected Members or external partners if they are likely to be affected by the proposals.

The corporate and Service Trade Union Liaison forum can also be useful forums for this purpose.

This does not however constitute ‘formal’ consultation and count towards the required period for consultation.

If electing to start the process by informing trade unions of the proposals face to face, the proposals should then be provided in writing as quickly as possible thereafter.

The Lead Officer should keep a record of when the consultation process commenced and communication with the trade unions. The consultation period ends upon the expiry of the 14 day period unless a variation has been agreed or where statutory requirements prescribe a set or minimum period that exceeds this.

Step 2 – Responding to feedback

Lead Officer considers and responds to feedback.

This includes:

- Arranging, if necessary, any follow up meetings with the trade unions to respond to the issues raised.
- Responding in writing or by email, including an explanation as to why any comments are not going to be acted upon.
- Carefully tracking and highlighting any changes made, to show the veracity of the consultation (“you said, we did”).

Trade unions and employees (including any absent from the workplace e.g. sickness, maternity) should be given as much advance notice of all meetings as possible, to ensure they are ready to attend and trade unions positioned to advise their members. It is essential that consultation can be demonstrated as being a 2-way process and maintaining an engagement log of when and what communication and information provision has happened with both trade unions and employees is recommended. All requests for information should be acknowledged swiftly and responded to in good time.

Step 3 – Implementing the proposals

The Lead Officer prepares and submits business case or report (where a business case or report is required for implementation purposes).

This includes:

- Seeking approval for proposals from the relevant Corporate Director after completion of consultation period, taking into account all the information gathered, views expressed and feedback received during consultation.
- Summarising in the business case/report trade unions and employees' responses/ reactions to proposals and the reasons why any alternative proposals have been rejected. Where the trade unions disagree with the final proposals and wish to provide written comments, these comments should be appended to the business case as it progresses to the next stage(s).

Step 3 notes

Business cases that include proposals which amend or increase on a permanent basis the agreed establishment will require approval of the Chief Executive through the Change in Establishment Process. Proposals which entail substantial service restructuring or require additional financial resources will require committee approval.

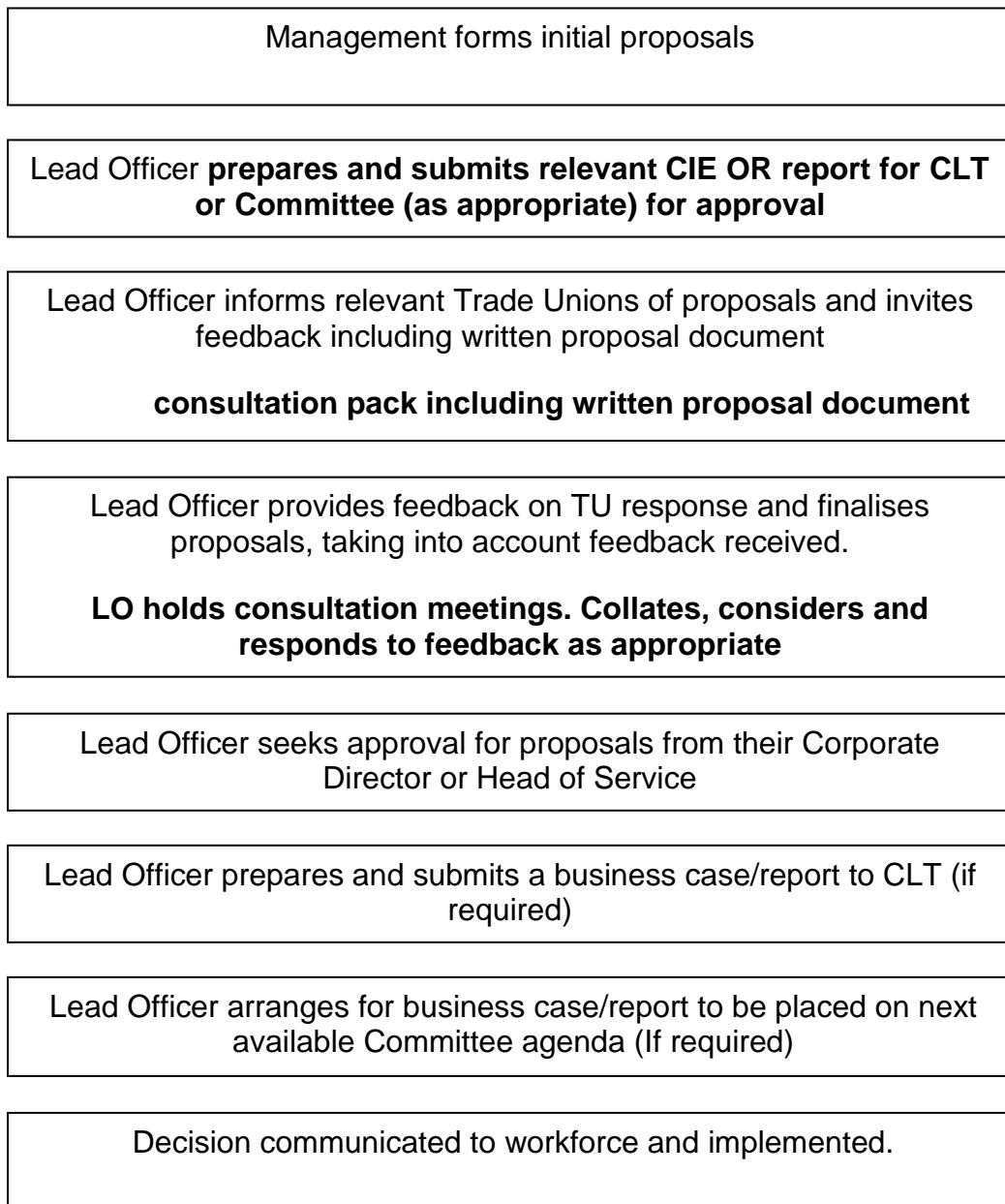
Reports that propose creating a new HR policy, or significant amendments to an existing policy would require committee approval. However, reports that propose 'refinements' to existing policies or changes to operational guidance will be dealt with at CLT level without the need for committee approval.

For local arrangements affecting Teachers (SNCT) conditions of service these need to be agreed by the Orkney Joint Negotiating Committee for Teachers (OJNCT) before they can be presented to either the Education, Leisure and Housing Committee or the Policy and Resources Committee for approval.

When targeting the Committee at which to present the proposals, cognisance will be taken of:

- The time required to consult trade unions and the workforce, which needs to be concluded before a report is prepared for Committee.
- The need to seek agreement of the proposals at OJNCT where they affect SNCT conditions of service.
- The date of the deadline for report submission in the Committee process.

Overview of consultation process





Equality Impact Assessment

The purpose of an Equality Impact Assessment (EqIA) is to improve the work of Orkney Islands Council by making sure it promotes equality and does not discriminate. This assessment records the likely impact of any changes to a function, policy or plan by anticipating the consequences, and making sure that any negative impacts are eliminated or minimised and positive impacts are maximised.

1. Identification of Function, Policy or Plan	
Name of function / policy / plan to be assessed.	Consultation Protocol on Workforce and Employment Changes
Service / service area responsible.	Human Resources and Organisational Development
Name of person carrying out the assessment and contact details.	Andrew Groundwater
Date of assessment.	19.05.2023
Is the function / policy / plan new or existing? (Please indicate also if the service is to be deleted, reduced or changed significantly).	New

2. Initial Screening	
What are the intended outcomes of the function / policy / plan?	To provide an organisation wide consultation framework and set of principles to apply to staffing and employment matters that ensures appropriate levels of transparency and openness.
Is the function / policy / plan strategically important?	Not in itself but may be referred to as part of strategic changes within the organisation
State who is, or may be affected by this function / policy / plan, and how.	Council employees and Trade Unions
How have stakeholders been involved in the development of this function / policy / plan?	Yes, Trade Unions as employee representatives have been fully involved in the creation of the protocol.

<p>Is there any existing data and / or research relating to equalities issues in this policy area? Please summarise.</p> <p>E.g. consultations, national surveys, performance data, complaints, service user feedback, academic / consultants' reports, benchmarking (see equalities resources on OIC information portal).</p>	<p>No but consultation protocol or guidance are common place in other similar employers.</p>
<p>Is there any existing evidence relating to socio-economic disadvantage and inequalities of outcome in this policy area? Please summarise.</p> <p>E.g. For people living in poverty or for people of low income. See The Fairer Scotland Duty Guidance for Public Bodies for further information.</p>	<p>No</p>
<p>Could the function / policy have a differential impact on any of the following equality areas?</p>	<p>(Please provide any evidence – positive impacts / benefits, negative impacts and reasons).</p>
<p>1. Race: this includes ethnic or national groups, colour and nationality.</p>	<p>No</p>
<p>2. Sex: a man or a woman.</p>	<p>Around 70% of the Council workforce are female, so statistically the new protocol is more likely to be applied in situations where female employees are being impacted by proposed changes.</p>
<p>3. Sexual Orientation: whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.</p>	<p>No</p>
<p>4. Gender Reassignment: the process of transitioning from one gender to another.</p>	<p>No</p>
<p>5. Pregnancy and maternity.</p>	<p>No</p>
<p>6. Age: people of different ages.</p>	<p>No</p>
<p>7. Religion or beliefs or none (atheists).</p>	<p>No</p>

8. Caring responsibilities.	No
9. Care experienced.	No
10. Marriage and Civil Partnerships.	No
11. Disability: people with disabilities (whether registered or not).	No
12. Socio-economic disadvantage.	No

3. Impact Assessment

Does the analysis above identify any differential impacts which need to be addressed?	No
How could you minimise or remove any potential negative impacts?	N/A
Do you have enough information to make a judgement? If no, what information do you require?	Yes – no further information required.

4. Conclusions and Planned Action

Is further work required?	No.
What action is to be taken?	N/A
Who will undertake it?	N/A
When will it be done?	N/A
How will it be monitored? (e.g. through service plans).	N/A

Signature:



Date: 19.05.2023

Name: ANDREW GROUNDWATER

Please sign and date this form, keep one copy and send a copy to HR and Performance. A Word version should also be emailed to HR and Performance at hrsupport@orkney.gov.uk