



MERTHYR TYDFIL
County Borough Council
Cyngor Bwrdeistref Sirol
MERTHYR TUDFUL

FULL COUNCIL MEETING

5.30 PM WEDNESDAY, 5TH NOVEMBER, 2014

The attached report has been amended by Full Council at the meeting on Wednesday, 5th November 2014. Details of these amendments are outlined in the Full Council Minutes.

Please note that this report will now replace the one previously published.

Anyone requiring information should contact the Democratic Services Department on (01685) 725203 or democratic@merthyr.gov.uk

21. Issuing of a Section 188 Trade Union and Labour Relations (Consolidation) Act 1992 - Letter to Trade Unions

To consider a report of the Chief Executive.

(Pages 1 - 6)

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FULL COUNCIL REPORT

Date Written	17 th October 2014
Report Author	Lisa Jones
Service Area	Human Resources
Exempt/Non Exempt	Non-Exempt
Committee Date	5 th November 2014

To: Mayor, Ladies and Gentlemen

ISSUING OF A SECTION 188 TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

PURPOSE OF THE REPORT:

As part of the Transformational Change agenda, to seek approval from Council the issuing of a Section 188 to trade unions to start a 45 days consultation exercise to identify how to make savings.

1.0 INTRODUCTION AND BACKGROUND

- 1.1 Following the Provisional Revenue Settlement for 2015/16, announced on 8th October 2014, Merthyr Tydfil County Borough Council is currently faced with an indicative budget deficit of £3 million for 2015/16 and a cumulative indicative budget deficit of £13 million for the period 2015/16 to 2017/18.
- 1.2 The budget deficit for 2015/16 is based on the provisional settlement funding reduction of 2.57% with further funding reductions of 3.07% and 3.57% estimated for 2016/17 and 2017/18 respectively.
- 1.3 In addition to this, the Local Government Association have issued information that the National Employers will begin consultation with the trade unions on agreeing a pay award of 2.2% from January 2015 through to March 2016. This includes non-consolidated payments up to SCP 49 in December 2014.

- 1.4 In light of this, the Council is in the process of making very difficult and challenging decisions. The proportion of staff costs to net revenue budget 62%. It is therefore unavoidable that consultation needs to take place in regard to a reduction in employee numbers and employee terms and conditions.
- 1.5 In order to manage this, consultation with the trade unions is imperative so that the options can be investigated. Although the Council would willingly undertake consultation without the issuing of the Section 188, due to the urgent need to make the savings as soon as is feasible, the Council has no choice but to issue the Section 188 immediately. This will not prevent meaningful discussions, and will instead focus the discussions on credible and achievable proposals.

2.0 PROGRESS TO DATE

- 2.1 There have been discussions with the trade unions since November 2013, following the application of a Section 188 letter starting formal consultation with the trade unions. The recognised unions are GMB, Unison and Unite. Unite have chosen not to participate in the consultation process to date although will be re-invited.
- 2.2 A Cabinet report was ratified on 23rd December 2013 with a number of proposed compulsory redundancies identified. A continuous consultation exercise was introduced to manage these redundancies.
- 2.3 Since February 2014, the unions have been in discussion with officers to consider alternative options to redundancy.
- 2.4 Discussions with the unions have also included the reduction of agency worker usage. Whilst there are still a number of agency workers within the workforce the numbers are gradually reducing through service re-design and redeployment of permanent employees. In the longer term the Neighbourhood Services (ASD) model aims to reduce agency workers further through annualised hour contracts.
- 2.5 The Redeployment and Redundancy Policy has also been updated and has resulted in a reduction in the length of time employees are protected if their salary is decreased due to redeployment. It is now a gradual decrease over 1 year (4 months 100%, 4 months 66%, 4 months 33%).
- 2.6 The process of mitigating the number of compulsory redundancies has to date been successful, with only 2 employees affected to date.
- 2.7 In July 2014 a project in connection with the Job Evaluation policy was began, where employees who have responsibility for supervision within their evaluation are re-assessed, and where there is a change, this may affect the grade. This is to ensure that the policy is being applied correctly and fairly with potential savings currently in the process of validation.

3.0 STAFF AFFECTED BY THE SECTION 188 LETTER

- 3.1 All employees whose contracts are under NJC 'green book' terms and conditions are included in the consultation exercise, plus those on JNC Chief Officer and the Chief Executive.
- 3.2 Currently, all 'green book' employees working within schools, and teachers are excluded from the Section 188. It is acknowledged that the green book employees who work within schools would ideally be included in the above proposals for purpose of equality and fairness. However, due to the position of 'ring fenced' budgets within schools, any savings made from changing the terms and conditions of school based staff, would not be attributed to savings from the revenue budget. In addition, agreement would need to be obtained from each Governing Body to implement the changes. For these reasons they are not included in the proposals for this report.
- 3.3 Despite not including school support staff within this report, it is intended to work with schools in realising the changes for school based staff in the interest of equality and fairness to all 'green book' employees.

4.0 METHOD OF ACHIEVING THE CHANGES, AND TIME LINE

- 4.1 It is the intention of the Council union consultation representatives to work with the unions in reviewing all non-employee savings and also proposals that affect employees.
- 4.2 Where there is an identified need to make redundancies, the unions will be fully engaged with during the process.
- 4.3 Where there may be a need to alter terms and conditions, subject to Council ratification, the preferred method of achieving these savings is from the creation of a collective agreement. The recognised collective bargaining group that will need to agree this is GMB, Unison and Unite.
- 4.4 This would require each trade union to ballot their members on the final suite of proposals which would need to result in a 'yes' vote. If this is achieved, the collective agreement would be put in place for a period of 3 years, at which time the agreement would be re-negotiated.
- 4.5 The impact on the workforce is that following the signing of the collective agreement, the changes would be implemented into all the employment contracts of the workforce whose terms and conditions fall within the 'green book'. The changes would then take place on a specified date as agreed within the collective agreement.
- 4.6 It is not the preferred option to impose any changes. However, if any one of the trade unions does not agree to ballot, or the ballot returns a 'no' vote, a collective agreement cannot be implemented. Because the savings would still need to be found the only alternative would be to dismiss and re-engage the workforce.

- 4.7 For purposes of dismissing and re-engaging the workforce on new terms and conditions, it must be treated as redundancy even if it is the intention of the Council to continue to employ the individual in their job. The case *GMB V Man Truck and Bus UK Ltd (2000)* set out the need to issue a Section 188 notice if it is the intention of the employer to change terms and conditions of employment.
- 4.8 For purpose of proposed redundancies, as the numbers of employees affected will be more than 100, the issuing of the Section 188 must take place at least 45 days before the terms and conditions are changed. During the 45 days there must be meaningful consultation with the trade unions in minimising the impact of the changes.
- 4.9 In this context, meaningful consultation means exploring the impact on equality, financial savings, review of all proposals that are in existence, and alternative proposals that would limit the number of staff affected by the changes.
- 4.10 In addition to the Section 188 notice, the Council is under a general duty to assess the discriminatory impact on employees as defined within the Public Sector Equality Duty. Consideration of appropriate steps need to be taken if any characteristic group are negatively affected.
- 4.11 The timetable of consultation proposed is set out in Table A below. The 45 days is the minimum number of days consultation and will take longer if the consultation has not been completed.

Table A: Time table of consultation and change (indicative)

Stage	Days	Start date	End date
Council ratification	1	5 th November 2014	5 th November 2014
Issue of S188 with consultation	45	6 th November 2014	21 st December 2014
Start of individual consultation for compulsory redundancy	unspecified	2 nd January 2015	unspecified
Union ballot (If terms and conditions are changed)	29	22 nd December 2014	19 th January 2015
EITHER Collective agreement signed	7	19 th January 2015	26 th January 2015
OR Dismiss and re-engagement	90	19 th January 2015	13 th April 2015

5.0 DISCLOSING INFORMATION FOR PURPOSE OF COLLECTIVE BARGAINING

- 5.1 The information which employers are obliged to supply the trade unions falls under the duty to disclose for reasons of collective bargaining, section 181 (ACAS Code of Practice). The purpose is to engage in good industrial relations and enable the unions to take an active part in identifying options. It does not specify what data must be shared and enforces no legal obligation, but will be used to test reasonableness.
- 5.2 Enough relevant information must be given to the trade unions so as not to impede their role within the collective bargaining process. The employer is able to protect data that falls under the data protection legislation and data that would cause confidentiality risks.
- 5.3 It is important to recognise that the employer is not expected to assemble data that would entail an unreasonable length of time or resource to create. The trade union should make any request for data in writing.
- 5.4 Trade unions should request information as soon as possible, and request clearly to avoid any protracted gathering of data. The trade unions should coordinate their requests and keep the employer informed of who they are recognising as their representatives involved in the consultation.
- 5.5 The employer should be as open and willing as possible to share relevant data on the proposals. If the union requests cannot be fulfilled, this should be put to the unions in writing, explaining why. The employer should share background information as soon as possible following the start of the consultation process.

6.0 FINANCIAL IMPLICATION(S)

- 6.1 At this stage the financial implications are unknown. The purpose of the Section 188 is to agree how to make appropriate financial savings.

7.0 SINGLE INTEGRATED PLAN AND SUSTAINABILITY IMPACT SUMMARY

- 7.1 A Single Integrated Plan and Sustainability Impact Assessment has been completed. At this time no impact has been identified as there are no proposals to assess.

8.0 EQUALITY IMPACT ASSESSMENT

- 8.1 An Equality Impact Assessment (EqIA) screening form has been prepared for the purpose of this report. It has been found that a full report is not required at this time. The screening form can be accessed on the Council's website/intranet via the 'Equality Impact Assessment' link.

9.0 RECOMMENDATION(S) that

- 9.1 Consultation with the trade unions commence with a view to creating a collective agreement be approved.
- 9.2 The issuing of a Section 188 letter on the 6th November 2014 (so as to legally protect the Council if there is a need to impose the changes on the workforce or make redundancies), be approved.
- 9.3 Delegated authority to the Chief Executive in consultation with the Leader (and in his absence the Deputy Leader) of the Council to consult on and include options that may be raised and agreed with the trade unions be approved.

**GARETH CHAPMAN
CHIEF EXECUTIVE**

BACKGROUND PAPERS		
Title of Document(s)	Document(s) Date	Document Location

Consultation has been undertaken with the Corporate Management Team in respect of each proposal(s) and recommendation(s) set out in this report.