



## **Local Government Act 1972**

**I Hereby Give You Notice** that an **Extraordinary Meeting** of the **Durham County Council** will be held in the **Council Chamber, County Hall, Durham** on **Monday 16 May 2016 at 10.00 am.** to transact the following business:-

1. To receive any declarations of interest from Members
2. Review of the Corporate Management Team - Report of Chief Executive (Pages 1 - 10)
3. Teaching Assistants - Review of Terms and Conditions - Joint Report of Corporate Director, Resources and Corporate Director, Children and Adults Services (Pages 11 - 16)

**And** pursuant to the provisions of the above-named act, **I Hereby Summon You** to attend the said meeting

Dated this 6th day of May 2016

A handwritten signature in black ink, appearing to read "Colette Longbottom", written in a cursive style.

Colette Longbottom  
Head of Legal and Democratic Services

**To: All Members of the County Council**

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**County Council**

**16 May 2016**

**Review of the Corporate  
Management Team**



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**Report of Terry Collins, Chief Executive  
Councillor Simon Henig, Leader of Durham County Council**

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**Purpose of the Report**

- 1 To advise Council of the proposals by the Chief Executive for a new structure for the Corporate Management Team

**Background**

- 2 Following taking up the post of Chief Executive in February 2016, Terry Collins has been consulting with current members of the Corporate Management Team on an appropriate structure for the team going forwards.
- 3 He has also considered new developments, including the retirements of Don McLure, the Corporate Director of Resources, and Anna Lynch, the Director of Public Health. The Chief Executive's appointment from within the Corporate Management Team also created a vacancy in the structure for the Corporate Director of Neighbourhood Services which was filled on an interim basis. In a more recent development, the Corporate Director for Children and Adults Services, Rachael Shimmin, has been offered the post of Chief Executive of Buckinghamshire County Council.
- 4 At the time of the circulation of the Agenda for this meeting, he is engaged in consultation with Members, and will be presenting to Council Members either before or at the meeting, a proposed new structure for the Corporate Management Team which he can recommend for Council approval.

**Recommendation and reasons**

- 5 Council will be asked to consider the recommendation of the Chief Executive for a new Corporate Management Team.

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**Contact: Colette Longbottom Tel: 03000 269732**

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## **Appendix 1: Implications**

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**Finance** – will be provided where relevant in the report to be submitted to Council

**Staffing** – will be provided where relevant in the report to be submitted to Council

**Risk** – will be provided where relevant in the report to be submitted to Council

**Equality and Diversity / Public Sector Equality Duty** - will be provided where relevant in the report to be submitted to Council

**Accommodation** – will be provided where relevant in the report to be submitted to Council

**Crime and Disorder** - will be provided where relevant in the report to be submitted to Council

**Human Rights** – will be provided where relevant in the report to be submitted to Council

**Procurement** – will be provided where relevant in the report to be submitted to Council

**Legal Implications** - will be provided where relevant in the report to be submitted to Council

# County Council

16 May 2016



## Proposal for changes to Durham County Council's Service Groupings, and Restructure of the Corporate Management Team

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### Report of Terry Collins, Chief Executive Officer

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#### Purpose of the Report

1. To propose a change to the existing Service Groupings within the Council, and seek approval to initiate a restructure exercise of the existing Corporate Management Team (CMT).
2. To seek approval to undertake a recruitment exercise through the Chief Officer Appointments Committee (COAC) to any vacant posts remaining following the restructure process.

#### Background

3. In August 2008 following a consultation exercise, a Service Grouping and CMT structure was agreed by the Council which identified five Corporate Director posts and an Assistant Chief Executive. The structure of CMT posts has remained relatively stable since that time, with the only changes being:
  - The merging of Children and Young People's Services with the Adult, Wellbeing and Health Service, creating the Children and Adults Service (CAS) in 2012
  - The addition of Public Health functions to the authority in 2013 with the requirement for the Council to have a Director of Public Health
  - The internal appointment of Terry Collins to the post of Chief Executive Officer with effect from 1 February 2016.
  - The post of Corporate Director Neighbourhood Services is filled on an interim basis.
4. The current Service Groupings are summarised below and a structure chart is shown at Appendix 2:
  - Terry Collins Chief Executive Officer
  - Lorraine O Donnell Assistant Chief Executive Officer
  - Don McLure Corporate Director Resources (retiring 31 May 2016)
  - Oliver Sherratt Interim Corporate Director Neighbourhood Services
  - Rachael Shimmin Corporate Director Children and Adults Services (leaving summer 2016)
  - Ian Thompson Corporate Director Regeneration and Economic Development.

## Drivers for Change

5. There are a number of external drivers which will continue to exert pressure on the Council for the foreseeable future, for example the local government austerity measures have posed unprecedented financial and other challenges for the Chief Executive Officer (CEO) and Corporate Management Team (CMT) since the scope and scale of savings to be achieved were identified in 2010. The expectation is that this will continue until at least 2020/21.
6. A further important external driver for change is the national government agenda with regards to devolution. At the time of preparing this report the full impact is yet to be clear and is pending a Cabinet decision on 11 May 2016 and the NECA Leadership Board meeting on 17 May. However it is clear that the potential change in dynamics for the region will have a significant impact both financially and politically. The Council will need to work with the new regional arrangements whether it is included or not part of the new mayoral authority as this will have implications on our services.
7. Whilst the Council has achieved significant success the senior management team structure hasn't significantly changed since the new unitary arrangements commenced in January 2009, with the exception of the merging of Children's and Adult Services in 2012. This was initiated as a result of the intention of the Corporate Director of Children's Services to retire. In addition the Council incorporated Public Health Services in 2013 as a result of changes to the NHS more widely. It is therefore an opportune time to review and refresh what we do focusing on the delivery of our priorities and taking into consideration the financial resources that we will have available in the future.
8. CMT is at the forefront of leading and managing change, setting priorities and implementing the strategic vision in line with the Council's policies and priorities which ensures that the community of County Durham receive the best possible services. In addition members of CMT are responsible for leading and managing a complex variety of services, a number of which operate under statutory and regulatory frameworks. It is therefore vital that CMT continue to work collectively and corporately to deliver the strategic vision for the Council.
9. In light of the significant pressures and opportunities outlined above and having been in the post of Chief Executive since 1 February 2016, I have reflected on current and future challenges and developed proposals for shaping the new CMT and organisational structure to take the Council forward, in order to keep the Council at the forefront of providing the best possible services for the people we serve.
10. It is proposed that this review will start with the restructure and appointment of CMT. The revised CMT will then consider any further changes to the Head of Service structures and beyond.

## **Proposal for the new Service Groupings for the Council and Restructure of CMT**

11. The proposed new Service Grouping arrangements and structure for CMT is outlined at Appendix 3 and is summarised below (Remuneration for Corporate Directors remains at the current salary level and the Director of Transformation and Partnership salary level is consistent with that of the current Assistant Chief Executive):
- Chief Executive Officer
  - Corporate Director of Regeneration and Local Services
  - Corporate Director of Children and Young People's Services
  - Corporate Director of Adult and Health Services
  - Corporate Director of Resources
  - Director of Transformation and Partnerships.
12. Whilst the nature of Service Groupings and jobs are changed, this proposal in relation to the CMT is cost neutral to the Council with the splitting of the existing Corporate Director of Children and Adults Services into two posts and the merging of the Corporate Directors Regeneration and Economic Development and Neighbourhoods posts. The proposed realignment of services and the potential to unitise certain services currently provided across Service Groupings will present an opportunity for both enhanced service delivery and the achievement of significant budgetary savings.

The main features of the restructure proposal are as follows:

- (i) Realignment of the functions currently within Neighbourhood Service Grouping to other areas of the new structure and, as a result, the post of Corporate Director Neighbourhood Services would be deleted.
- (ii) The new post of Corporate Director of Regeneration and Local Services will retain the functionality of the current Regeneration and Economic Development Service. In addition, those functions currently aligned within Direct Services, Culture and Sport and Technical Services within Neighbourhoods, would be added to the remit to create this new Service Grouping. This would have the significant benefit of many of the place shaping services – planning, regeneration, highways, transport, leisure and local environment being co-ordinated under one Service Grouping.
- (iii) Whilst Culture and Sport functions will move into the new Regeneration and Local Services Grouping, it will be important to recognise the synergies between the work of the Director Public Health in relation to the sport agenda, and having regard to this important link, it is proposed to create a dotted reporting line from the Head of Culture and Sport Service into the Director of Public Health. The Director of Public Health post will include Environmental Health and Consumer Protection Services and has therefore been retitled to reflect this change. The new title is Director Public Health and Community Protection (the proposed remuneration for this post is consistent with the current salary level).

- (iv) The current configuration of CAS has been reviewed to recognise the scale, significant risk, complexity, statutory requirements and the different policy directions for children and adults services which are inherent across these services. The proposal therefore is to split the service into two with a Corporate Director Adult and Health Services and a Corporate Director Children and Young People's Services. Within the current functionality, the portfolio of Director of Public Health and Community Protection will report into the new post of Corporate Director Adult and Health Services. It is intended that there will still be a strong link between the two new service groupings although the new arrangements will strengthen and further improve delivery and performance.
- (v) The portfolio of the Corporate Director Resources post remains unchanged for the purpose of the ongoing recruitment exercise to fill this post. However the functionality associated with this post will be reviewed as part of the restructure exercise. In recognition of the need for clear financial management, the statutory requirement to have a suitably qualified Section 151 officer will be discharged by this Corporate Director.
- (vi) The post of Assistant Chief Executive will be removed from the structure however a new post of Director of Transformation and Partnerships will be created which will be responsible for leading a coordinated approach to the significant modernisation and change agenda facing the Council. In order to deliver this in a coordinated manner, the post holder will be responsible for strategic planning and will be required to work closely with all Corporate Directors and Heads of Service across the entire organisation. This work will include responsibility for the development and implementation of a digital policy, organisational development strategy and plans, production of a revised Durham Future Managers programme, delivery of modern ways of working, specific service reviews, a review and delivery of unitisation opportunities in addition to strategically leading our work on Office Accommodation Strategy, and taking a leading co-ordination role with external working and Council Partners and Community Engagement and working within the new regional arrangements. The current functionality of the Assistant Chief Executive Service Grouping would transfer to the Director of Transformation and Partnerships until a service and/or unitisation review is completed.

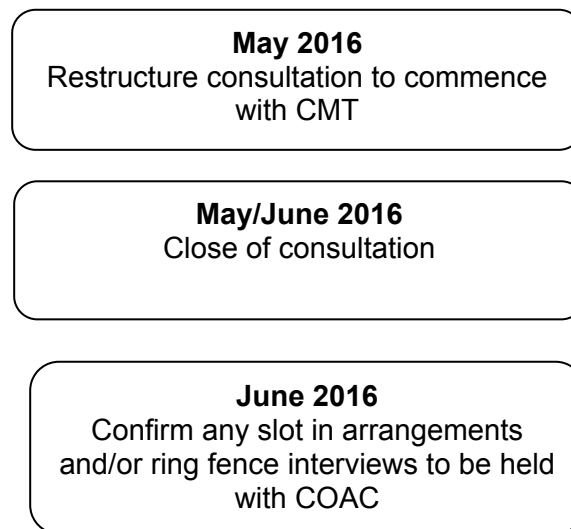
## **Next Steps**

13. It is not envisaged that these proposals would create a redundancy situation, the expectation being that this could be completed as a 'restructure consultation exercise'. Should the recommendations from this report be agreed, a consultation exercise will commence as soon as possible with the affected members of CMT and Trade Unions.



14. To ensure business continuity, the COAC has approved internal interim appointments for the Corporate Director Resources and Director of Public Health positions, pending an external recruitment exercise.
15. Following consultation, if any of the posts within the CMT structure remain vacant then it is proposed that a report be prepared for the COAC which will recommend the filling of the post(s) by completing an external recruitment exercise together with any required interim arrangements.

### **Timeline for the Proposed Restructure**



### **Recommendations**

16. That the Council approve the proposed restructure for CMT in order for consultation to commence as soon as possible.
17. That the Council approve the revised portfolio for the Director of Public Health and that this role be retitled Director of Public Health and Community Protection.
18. That Council approve the proposal to undertake an external recruitment exercise through the COAC to any vacant posts remaining following the restructure activity.

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**Terry Collins**  
**Chief Executive Officer**

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## **Appendix 1: Implications**

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**Finance** – The proposed CMT structure would be cost neutral by deleting the Assistant Chief Executive, Corporate Director Children and Adults Services and Corporate Director Neighbourhood Services posts and creating three new posts on salary levels consistent with current arrangements. It is anticipated that significant savings will be realised following a review of the remaining structure, which will be planned once the new Corporate Management Team is in place.

**Staffing** – As outlined in the report

**Risk** - none

**Equality and Diversity / Public Sector Equality Duty** - the proposed restructure process complies with Equalities legislation

**Accommodation** - none

**Crime and Disorder** - none

**Human Rights** - none

**Consultation** – A consultation exercise will be required with Trade Unions and those employees potentially affected

**Procurement** - none

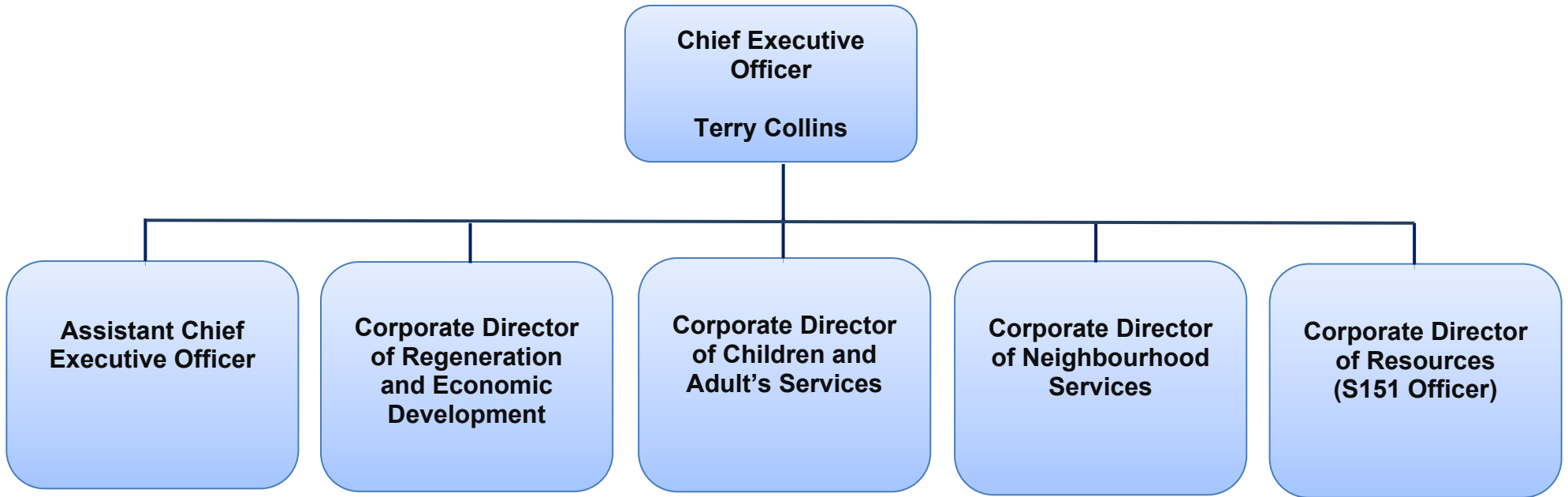
**Disability Issues** - none

**Legal Implications** - none

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**Appendix 2 – Current Structure of CMT**

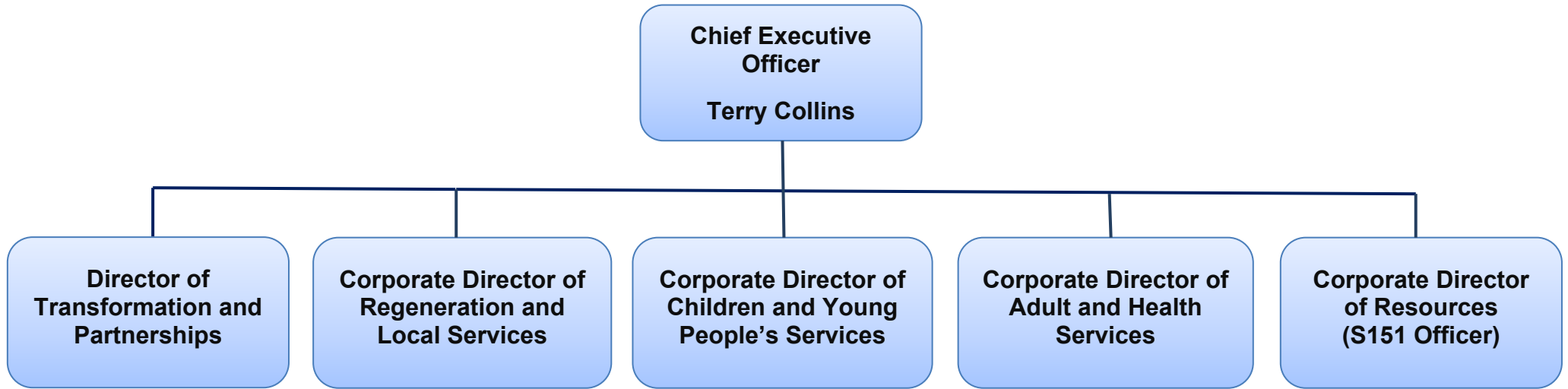
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**Appendix 3 – Proposed Structure of CMT**

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**County Council**

**16 May 2016**

**Teaching Assistants – Review of Terms and Conditions**



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**Report of Corporate Management Team**

**Joint Report of Don McLure, Corporate Director Resources and Rachael Shimmin, Corporate Director Children and Adults Services  
Councillor Jane Brown, Cabinet Portfolio Holder for Corporate Services**

**Councillor Ossie Johnson, Cabinet Portfolio Holder for Children and Adult Services**

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**Purpose of the Report**

- 1 To invite Council to agree to the proposed arrangements to implement the changes to Teaching Assistants terms and conditions in order to reduce the risk of equal pay challenges to the Council.

**Background**

- 2 In 2004 Durham County Council (DCC) extended a national Collective Agreement applicable specifically to Nursery Nurses' roles at that time, to incorporate a much wider group of school based employees, classed as Teaching Assistants. This put in place arrangements whereby this group of workers are paid for 37 hours per week but are only required to work 32.5 hours. They are also paid as if working 52 weeks per year (whole time) when they actually work school term times only.
- 3 Although the Council undertook a job evaluation/single status exercise that was implemented with effect from 1 October 2012, the working hours for Teaching Assistants were not reviewed as part of the negotiated single status changes at that time. This was because it was the jobs' size and jobs' content that were being evaluated as part of the job evaluation/single status exercise and not the hours worked element of the contract.
- 4 Since the implementation of single status in October 2012, some working practice changes were made to the way some Teaching Assistants were deployed within some schools. During the implementation process, it was also identified that within the group of Teaching Assistants, some were being deployed to work 37 hours per week, and alongside this had variations around their whole time / term time status. This created a risk of equal pay challenge from within the teaching assistant group, where jobs had been evaluated the same but that working hours and annual leave arrangements were different on a localised level in some schools.

- 5 Taking a risk based approach to the above, the Council proposed as part of a follow-up phase of change to single status, to develop proposals for change to bring all of the Teaching Assistants' working practices in line with how other school support staff were employed and to pay them only for the hours that they actually work and on a term time only basis.

### **Proposed Changes to Terms and Conditions – Consultation to Date**

- 6 Consultation with Trade Unions, Head Teachers and Teaching Assistants proposing to vary the working practices as outline above, commenced in October 2015, with the view of reaching a collective agreement to implement the changes outlined in paragraph five. The payment of a compensatory lump sum (equivalent to one year's loss of pay by moving to a term-time contract) was included in this proposal. Additionally, Head Teachers were asked to offer Teaching Assistants 37 hours per week contracts to minimise the reduction in salary of those Teaching Assistants working 32.5 hours a week. The majority of Head Teachers have confirmed that they can provide 37 hours per week contracts.
- 7 As no agreement was reached, the proposal was then varied in a second round of consultation that began in February 2016. The revised proposal was to implement the change over a three year period and phase-in the one year's loss of pay compensation payment accordingly.
- 8 Through the consultation period, independent legal advice was also taken. This advice was very clear and confirmed that the Council does have an equal pay risk with regard to the existing terms and conditions of Teaching Assistants. The Council were also advised that the fairest and most defensible legal position would be to apply a pro rata arrangement to Teaching Assistants i.e. salary based on 37 hours per week / term time only from as soon as possible.
- 9 It was also confirmed that the risk of equal pay claims lies not solely with the Teaching Assistants core group, but also across wider schools based employees as well as other Council employees.
- 10 In line with feedback from the consultation process, consideration was also given to phasing in any proposed changes by only applying them to new recruits and waiting for natural turnover to resolve the discriminatory practice. However, the legal advice was very clear that in doing so, the risk would continue to apply for a very significant number of years, and therefore very strongly advised against this. Additionally, it was confirmed that the longer the period of time taken to fully implement the changes using protection arrangements, would make any equal pay claims more difficult to defend and the risk would continue until the time when full implementation was achieved.
- 11 There are approximately 2,700 Teaching Assistants affected by the proposed changes to terms and conditions.

## Current Position

- 12 The annual cost of the current terms and conditions, which are met from schools' delegated budgets, is around £8 million. This includes the cost of paying Teaching Assistants for 37 hours when they are only working 32.5 hours plus the cost of paying them for whole time when they are only working term time. In the first year of the proposed change to term-time salaries, the cost of compensation would broadly equal the reduction in salary. Thereafter, there would be an annual saving to school budgets estimated to be in the region of £3 million. There will be no financial implications for the Council's General Fund Revenue Budget.
- 13 The financial risk of losing equal pay claims is difficult to quantify but would be substantial if the current arrangement remain and would be a risk to both schools and the Council.
- 14 Trade Unions have highlighted during the process that they are receiving enquiries from other school based employees as well as wider Council employees indicating that they will submit equal pay claims if Teaching Assistants continue to receive their current enhanced terms and conditions.
- 15 Despite every effort being made to reach a collective agreement to implement the changes, this has not yet been achieved, nor would it appear likely to be achieved based on the strength of feeling from the consultation process. Therefore, in order to make the necessary changes, the last resort option of dismissal and re-engagement must unfortunately be considered by the Council.
- 16 The process for dismissal and re-engagement would include;
  - Issuing a Section 188 notice and entering into formal redundancy consultation (45 days minimum) with Teaching Assistants and Trade Unions;
  - Serving notice to terminate existing contracts (maximum 12 weeks) and offering re-engagement on the new terms;
  - Offering employees a right of appeal against their dismissal.
- 17 A dismissal and re-engagement process is not without risk. There may be some Teaching Assistants who refuse the offer of re-engagement on new terms and conditions. If so, and they subsequently make claims to an employment tribunal on the grounds of constructive or unfair dismissal, these will be judged upon in terms of the reasonableness of the decision in business terms and the process followed with regard to the dismissal.
- 18 The Head of Paid Service, the Section 151 Officer and the Monitoring Officer for the Council advise that the risks of not making the changes to the Terms and Conditions of Teaching Assistants will highly likely result in challenge with regard to the Council acting unlawfully and without financial probity. Should any challenge result in a judicial review, court costs would be significant.

- 19 Additionally, the Council's Constitution makes it clear that all decisions of the Council will be made in accordance with due regard to equalities legislation. In terms of equalities, the Council has received clear, independent advice with regard to the risk of equal pay claims. Again such claims would be of significant cost to the Council.

### **Proposed Next Steps**

- 20 It is proposed that the Council agrees to undertake a dismissal and re-engagement process. This would involve commencing a formal statutory consultation exercise with Trade Unions and Teaching Assistants, at the end of which, notice would be issued to terminate existing contracts and new contracts would be offered on the proposed revised terms and conditions.
- 21 The dismissal and re-engagement process should commence on 23 May 2016. This would mean the changes to terms and conditions could be implemented in January 2017. Additionally, it is proposed that one year's compensatory payment should continue to apply.
- 22 Trade Unions have been clear that should the Council move to the dismiss and re-engage process, they would undertake a formal ballot of their members within the Teaching Assistant group to determine whether industrial action, including strike action should be taken.
- 23 Appeals against any dismissals would form part of the process. Given the anticipated high volume of appeals expected and the need for a central process to take place, a dedicated officer would be engaged to lead on the work involved in the appeals process.
- 24 Should Council agree to move forward with the process outlined in this report, this would be developed in consultation with Trade Unions.

### **Recommendations**

- 25 That the Council agrees to the termination and re-engagement of Teaching Assistants on the revised terms and conditions as outlined in this report.
- 26 That authority be delegated to a dedicated panel of officers to hear all appeals associated with this process.

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**Contact: Joanne Kemp/Caroline O'Neill Tel: 03000 265856/03000 268982**

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## Appendix 1: Implications

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**Finance** – The savings from moving staff to term time salaries and the cost of compensation payments will come from school budgets. In the first year the cost of compensation would broadly equal the reduction in salary. Thereafter, there would be an annual saving to school budgets estimated to be in the region of £3 million.

There will be no financial implications for the Council's General Fund Revenue Budget.

**Staffing** – Proposed changes to terms and conditions of employment for a large group of staff and the associated risks as highlighted in the report.

**Risk** – As outlined in the report.

**Equality and Diversity / Public Sector Equality Duty** – Equal pay risk as outlined in the report.

**Accommodation** - None

**Crime and Disorder** - None

**Human Rights** - None

**Consultation** – Formal consultation would be required with trade unions and employees with regard to a dismissal and re-engagement process.

**Procurement** - None

**Disability Issues** - None

**Legal Implications** – The Council has equal pay obligations and the current arrangements expose the council to the risk of equal pay claims that would have no realistic defence. Continuing such arrangements in this knowledge knowingly exposes the council to expensive claims that it will ultimately lose and would be an inappropriate approach to the council's fiduciary obligation to protect the public purse.

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