

Corporate Policy Committee

Date of Meeting: 2 December 2021

Report Title: Notice of Motion “Fire and Re-hire”

Report of: Jane Burns Executive Director of Corporate Services

Report Reference No: CP/58/21-22

Ward(s) Affected: All Wards

1. Executive Summary

1.1 On 20 October 2021, a Notice of Motion was submitted to Council regarding the practice known as “Fire and Re-hire”. The Motion was proposed by Cllr Laura Smith and seconded by Cllr Conor Naismith. This notice included a request that the Council support four actions as noted in the motion. Council referred these matters to the Corporate Policy Committee for consideration. This report provides further information on these issues and includes details of Council’s current employment practices.

1.2 The Notice of Motion requests that consideration is given by the Council to a number of employment-related issues, namely:

- To seek to ensure local residents are protected against the use of ‘fire and re-hire’ and to protect their employment terms and conditions.
- That Cheshire East Council does not use fire and rehire itself as an employer and to prevent its use by council contractors.
- To promote the increasing number of progressive local employers prioritising their employees’ standard of living and wellbeing and best practice.
- To support the TUC campaign for a ‘New Deal for Working People’ (see Appendix 1).

1.3 The Council’s stated priority within the Corporate Plan 2021-25 continues to support and develop our workforce to be confident,

motivated, innovative, resilient, and empowered and for Cheshire East Council to be seen as an employer of choice.

- 1.4 The Corporate Policy Committee on 4 November 2021 unanimously supported the refreshed Workforce Strategy. This is built around 4 themes: delivering our future; living our values and delivering our employee deal; inclusive workforce; and empowering our workforce. The Strategy states that Cheshire East Council wants to be the 'employer of choice', where people want to work. We will continue to value partnership working with our trade union colleagues to maintain positive employee relations.
- 1.5 Section 5 of this report sets out matters relevant to the Notice of Motion for the Committee to consider.

2. Recommendations

- 2.1 To decide whether the Leader of the Council should write to the Prime Minister in support of the principles set out in the Private Members Bill Employment and Trade Union Rights (Dismissal Re-engagement).
- 2.2 To note that the Council does not and would not use wholesale fire and re-hire practices to the detriment of staff terms and conditions.
- 2.3 To note that the Council as an employer, already attains all the standards recommended by the TUC campaign for a "New Deal for Working People".
- 2.4 To consider what steps the Council might wish to take to promote the TUC campaign and best practice employment in the borough.

3. Reasons for Recommendations

- 3.1 In line with the procedure in the Constitution, the Corporate Policy Committee is asked to consider the Notice of Motion referred to it by Council on 20 October 2021.
- 3.2 To inform the Committee that Cheshire East Council as an employer, already attains all the standards recommended by the TUC campaign. The charter is aimed at those employers who aspire to improve their practices in line with the themes contained in the charter.

4. Other Options Considered

- 4.1 Not applicable.

5. Background

Proposed by Councillor L Smith and Seconded by Councillor C Naismith

This Council notes;

- 1 1 in 10 workers have experienced 'fire and rehire' - told to reapply for their jobs on worse pay, terms and conditions or face the sack, with BME workers facing this at twice the rate of white workers, since March 2020 (TUC research, January 2021). A quarter of all workers have experienced a worsening of their terms and conditions – including a cut in their pay - since the pandemic began.
- 2 That while the prime minister has called the practice “unacceptable” he has continually refused to take action to outlaw the practice, raising concerns that he will not intervene in this race to the bottom as an escalating number of employers across all sectors using our weak employment protections employers as they force their staff to accept worse terms and conditions, leaving many having to work longer hours and for lower pay, with what can be devastating consequences for workers and their families.
- 3 Even before the pandemic, 1 in 9 workers – 3.8 million people – were already ‘insecure’, meaning they did not have access to basic rights at work and could be dismissed at will; including those on zero-hour contracts and agency workers.

This Council therefore resolves to:

- *Seek to ensure local residents are protected against such employers and agrees to ask the Leader of the Council to write to the Prime Minister demanding he outlaw fire and rehire and act now to keep his promise to local residents to protect their employment terms and conditions.*
- *Not use fire and rehire itself as an employer and to prevent its use by council contractors, and to ensure the Council has a procurement practice that ensures we are working with contractors that have good employment, trade union, equality and environmental records.*
- *Promote the increasing number of progressive local employers prioritising their employees’ standard of living and their wellbeing, work with our anchor institutions and key partners to bring forward plans to ensure all have best practice employment and to work with recognised trade unions on this.*
- *Support the TUC campaign for a ‘New Deal for Working People’.*

Issues for consideration by the Committee

Council as an Employer of choice

- 5.1 In recognition of the challenges faced by our workforce who have worked tirelessly throughout the pandemic, our priority continues to be supporting and developing our staff to be confident, motivated, innovative, resilient and empowered. This builds upon the positive attitudes, delivery and successes of all of our staff during the unique challenges presented by the pandemic. The pandemic has changed the way in which our staff work, in line with the Covid restrictions and requirements from March 2020, those staff who are able to work from home have been encouraged to do so.
- 5.2 Our recently approved Workforce Strategy which has been developed and informed by the experience of working through the Pandemic now provides the Council with an opportunity to shape the way we work

differently in future. As a good employer the strategy clearly sets out our priorities for the future and reflects our workforce ambitions.

- 5.3 The Workforce Strategy is built around 4 themes: delivering our future; living our values and delivering our employee deal; inclusive workforce; and empowering our workforce. The Strategy states that Cheshire East Council wants to be the 'employer of choice', where people want to work. We will continue to value partnership working with our trade union colleagues to maintain positive employee relations.

"Fire and Re-hire Practices"

- 5.4 *The Council's current HR practice for making changes to employees' terms and conditions of service takes place through consultation and negotiation with the recognised trade unions, with the objective of reaching agreement. This is in line with good practice and current employment law requirements. Recent negotiations and consultation on changes to both NJC and JNC pay structures have led to collective agreements with the trade unions which have enabled the Council to implement changes.*
- 5.5 *Dismissal and re-engagement is a recognised and accepted industrial relations practice to implement change where it is not possible to reach an agreement with the trade unions or workforce, provided extensive consultation has taken place to try and reach agreement. Any decision taken to dismiss and re-engage staff would be seen as a last resort.*
- 5.6 There have been some recent examples of organisations dismissing large numbers of staff and re-engaging them on inferior terms and conditions and pay. The Chartered Institute of Personnel and Development (CIPD) reported this month that a survey of 2,000 employers found that more than 1 in 10 employers who made changes to employee's contracts of employment did so using "fire and re-hire practices". "Whilst the majority 86% did so through negotiation, consultation and voluntary agreement 14% did so through dismissing and rehiring the staff on new terms." As a result, the CIPD has released new guidance for employers.

Current Procurement practices

- 5.7 The Council's current procurement procedures include questions for suppliers relating to employment practices and equalities when tendering for contracts. The Council uses Crown Commercial Service (CCS) guidance to inform Supplier Qualification Questionnaires (SQQ's) when tendering is used by the Council. Generally, local authorities must not deviate from these questions. Please note however, that the Council is reliant on information it receives from third party contractors and has no control over the accuracy of such information. The Council is also limited in the information it may legally request from the contractors and so may not be in possession of all potentially relevant data. The Council

has a Social Value Policy which means that social good is considered when undertaking public procurements.

Cheshire East Council as an Employer

- 5.8 The Council as a major employer in Cheshire East maintains high standards in relation to employment practices with regard to its policies, procedures and track record as a good employer. Our Workforce Strategy clearly outlines the strategic aims as an employer of choice within the community.

TUC “Charter for a New Deal for Working People”

- 5.9 The Charter was introduced by the TUC and seeks to improve workers’ rights in the 21st century. A copy of the Charter is attached at Appendix 1 for reference.

It has 6 themes as follows:

1. Stronger voice at work
2. Better pay, fairer pay
3. Control over when you work
4. Safe, satisfying, and dignified work
5. Public services to be proud of
6. Fair deal for workers around the world.

- 5.10 Whilst the themes are wide and varied, in general Cheshire East Borough Council consider their policies, processes and practices comply with the themes in the Charter. Local Government also has nationally negotiated terms and conditions as well as those that are determined locally, and trade union engagement and recognition have always been part of the employee relations landscape in Local Government.
- 5.11 Informal discussions with other councils in the North West would indicate that they have not yet been approached to sign up to the Charter.

Council as an Employer when compared to TUC Charter themes

- 5.12 In relation to each of the six themes above and their application in Cheshire East Council it can be seen that:
1. Trade unions are recognised and fully engaged with the Council. Employees are free to join a recognised trade union and be represented if required. Nationally negotiated pay and terms and conditions are applied. Any locally determined terms and conditions are agreed with the trade unions. There are many mechanisms available to staff to provide feedback which ensures that employees

feel listened to and this is a key strategic objective in the workforce strategy.

2. "Fair pay for a fair day's work" The Council offers pay enhancements and flexible working arrangements to its employees. The minimum salary for local government staff exceeds the National Living/National Minimum Wage. Equality monitoring is undertaken, and Gender Pay Gap is reported each year with actions agreed to reduce the gap. The Council provides employees with access to the Cheshire Pension Scheme. The Council has fair employment policies and procedures including maternity, parental leave, and flexible working.
3. The Council already offers a wide range of contractual arrangements for its workforce to suit individual needs. From permanent, full time, part time, term time casual, fixed term and agency etc. Council policy is not to use zero hours contracts. Shift patterns are planned, and enhanced rates of pay apply as appropriate. Flexible working options are available for current and prospective employees.
4. The Council has high standards of health and safety practices and risk assessments are in place to protect and support its workforce. This is supported by annual training and development reviews, it also has policies in relation to bullying, victimisation and harassment.
5. The Council is proud of its workforce and the high-quality services it delivers to our community with most services delivered in house.
6. The Council does not have a track record of abusing workers' rights.

It will be a matter for the Committee to decide whether supporting this campaign will help the Council in any way to improve our employment practices as an employer. On balance the Council meets all 6 themes already. Signing up to the Charter may not have a direct impact on our policies and practices. However, it would be a public statement of support, if the Committee decides that is appropriate.

Supporting the private member's bill "Employment and Trade Union Rights (Dismissal Re-engagement)"

- 5.13 The Private Members Bill submitted by Barry Gardiner MP, has not progressed beyond its second reading stage on 22 October 2021 as the Government is awaiting further guidance from ACAS.
- 5.14 ACAS have now published their guidance on changing employment contracts, see link below. <https://www.acas.org.uk/changing-an-employment-contract/employer-responsibilities/acas-support-for-employers>
- 5.15 ACAS advises that fire and rehire is an extreme step that can damage staff morale, trust, productivity and working relations. Tensions can arise if employees feel that they have not had the opportunity to inform decisions around proposals or do not support the changes. If changes are not managed well, employers may lose valued staff or find it difficult to attract new employees due to ensuing reputational damage. There is

also the risk of legal claims or industrial action where there is a recognised trade union.

5.16 ACAS advises that employers should fully consult with the workforce and make every effort to reach agreement on any contract changes. Effective consultation helps build trust as it allows staff to understand the reasons behind the proposed changes and give their views. If both sides are struggling to reach an agreement, the ACAS advice includes tips on how to:

- Keep discussions constructive.
- Explore alternative options to reach a compromise.
- Stay focused on trying to reach consensus.

6. Consultation and Engagement

6.1 Recent examples of major changes to staff pay structures and terms and conditions are referred to in paragraph 5.4 of this report. The examples involved extensive and detailed consultation and negotiation with trade unions and staff which led to agreements being reached.

6.2 If the Committee decide to approach other partners or local employers over promoting good employment practices, considered would need to be given as to what form this could take and by whom.

7. Implications

7.1 Legal

7.1.1 Employers who wish to make detrimental changes to employees' terms and conditions can, in the absence of employees agreeing to those changes, dismiss them and offer to re-engage them on the detrimental terms.

7.1.2 On 8 June 2021, responding to a report published by the conciliation and advisory service ACAS, the government stated that it would not yet legislate to prevent this practice but had requested that ACAS prepare more detailed guidance on how and when dismissal and re-engagement should be used.

7.1.3 Barry Gardiner MP is sponsoring a Private Members Bill, the Employment and Trade Union Rights (Dismissal and Re-engagement) Bill which would discourage the use of fire and rehire practices and grant additional protection to those affected by it. The government opposed the Bill at its second reading on 22 October 2021. The government intends to await the ACAS guidance. That guidance has now been produced and is referred to in paragraphs 5.13-5.16.

7.1.4 In circumstances where agreement cannot be reached on changes to terms and conditions of employment, employers may dismiss and offer re-engagement on the revised terms. This is known as 'dismissal and re-engagement'. Such dismissals will

count as a dismissal in law but can be fair if the employer can show that it had a fair business case for the changes, consent was sought, and that dismissal was a last resort. Employees with less than two years' service have limited protection currently from such action as they would not meet the two years' service requirement for unfair dismissal claims.

- 7.1.5 The Council has a consultation process it must adhere to with the recognised trade unions as referred to in paragraph 5.4 to seek to negotiate and agree any proposed changes to terms and conditions of employment with the trade unions. Dismissal and re-engagement is a legal option for the Council in circumstances where the consultation process had been exhausted but no agreement reached.

7.2 Finance

- 7.2.1 There are no financial implications in this report

7.3 Policy

- 7.3.1 Our priority within the Corporate Plan 2021-25 continues to support and develop our workforce to be confident, motivated, innovative, resilient, and empowered and for Cheshire East Council to be seen as an employer of choice. The Corporate Policy Committee on 4 November 2021 unanimously supported the refreshed Workforce Strategy

7.4 Equality

- 7.4.1 There are no equality implications arising from this report.

7.5 Human Resources

- 7.5.1 The "TUC Charter for a New Deal for Working People" is attached at Appendix 1 to this report.

- 7.5.2 The implications will depend on the approach the Committee wishes to take.

7.6 Risk Management

- 7.6.1 There are no risks identified in this report

7.7 Rural Communities

- 7.7.1 There are no implications for rural communities

7.8 Children and Young People/Cared for Children

- 7.8.1 There are no implications for Children and young/cared for people.

7.9 Public Health

- 7.9.1 There are no implications for public health

7.10 Climate Change

7.10.1 There are no implications for climate change

Access to Information	
Contact Officer:	Sara Barker Head of HR Sara. barker @cheshireeast.gov.uk 01270 686328
Appendices:	Appendix 1 TUC Charter for a new deal for working people
Background Papers:	None