

REPORT TO BUSINESS SERVICES COMMITTEE – 22 APRIL 2021

ESTABLISHMENT OF A CONCILIATION SUB-COMMITTEE

1 Reason for Report / Summary

- 1.1 This report requests that Business Services Committee consider and approve the establishment of a Sub-Committee, to be known as the Conciliation Sub-Committee to provide a conciliation, mediation or arbitration function aimed at any areas of dispute or non agreement between the Council and its recognised trade unions.

2 Recommendations

The Committee is recommended to:

- 2.1 Agree to establish a Sub-Committee to be known as the Conciliation Sub-Committee with the Terms of Reference outlined in Appendix 1; and**
- 2.2 Agree the membership of the Sub-Committee as outlined at section 4.1 of this report.**

3 Purpose and Decision Making Route

- 3.1 At its meeting on 19 January 2006 Full Council agreed to establish a Conciliation Committee to provide a conciliation, mediation or arbitration function aimed at resolving areas of disagreement between the Council and its recognised trade unions. The Council's Trade Union Recognition, Consultation and Negotiation Policy had previously been agreed by the Policy and Resources Committee on 3 April 2004. The Policy confirmed the commitment of the Council to supporting the principle of resolving employee relations issues by agreement and negotiation however recognised that there may be occasions where a formal mechanism would be required where the parties had failed to reach agreement. The purpose of the Conciliation Committee was to provide that mechanism and it was therefore incorporated into the Council's Scheme of Delegation.
- 3.2 Up until now there has been no requirement to call upon the Conciliation Sub-Committee. Accordingly, when Full Council agreed the current Scheme of Governance in November 2016 the Conciliation Sub-Committee was not included with the List of Committee Powers at Part 2A of the Scheme and was effectively dis-established as a result. The Committee is however still mentioned in the Council's Trade Union Recognition, Consultation and Negotiation Policy as a key stage in the negotiation process.

- 3.3 There is now a requirement to call upon the Conciliation Committee due to a disagreement having arisen between the Council and its trade unions. Attempts to resolve the issue through other agreed channels have failed.
- 3.4 Since 2006 there have been significant changes to the Council's decision making structure, with the implementation of the new Scheme of Governance in January 2017. Business Services Committee now has the specific remit for Human Resources and Organisational Development, which is reflected in its role as the parent Committee to the Employee Joint Consultative Committee. It would therefore be appropriate for the Conciliation Committee to similarly form a sub-committee of Business Services Committee in the new structure.

4 Discussion

- 4.1 It is proposed that the Conciliation Sub-Committee be an eight member group with the addition of two trade union representatives. The Policy indicates that the elected member representatives on such a Conciliation Sub-Committee should be "Group Leaders" however this is unachievable in the current times. Group Leaders can be used as a consultative grouping but would be inappropriate for the formal decision making group of a Sub-Committee as political proportionality cannot be achieved. This policy pre-dates the current definition of a group and a Group Leader. Attention will be given to amending this policy going forward so as to bring it up to date and in line with good governance. The eight Elected Members will therefore be appointed in line with the political proportionality agreed by Full Council on 24 September 2020, being five Administration, two Partnership and one Amalgamated Small Groups and Individuals. Training will be made available for Members of the Sub-Committee in advance of the first meeting.
- 4.2 An issue would only be referred to the Conciliation Sub-Committee when there has been a genuine attempt by both sides to negotiate a settlement and all other possible avenues have been explored. The process to be followed in relation to when a matter will be referred to the Conciliation Sub-Committee is as detailed in the Trade Union Recognition, Consultation and Negotiation Policy. Referral to this Committee would not be used as a means of bypassing the agreed negotiating framework. The Sub-Committee will meet as and when required but it is not anticipated that this will be on a regular basis, as has been evidenced by the fact that this is the first time it has been called upon since established in 2006.

5 Council Priorities, Implications and Risk

- 5.1 This report supports the key principle which underpins the delivery of the Six Strategic Priorities, namely having the right people, in the right place, at the right time.
- 5.2 The table below shows whether risks and implications apply if the recommendations are agreed.

| Subject | Yes | No | N/A |
|--|-----|----|-----|
| Financial | | X | |
| Staffing | X | | |
| Equalities | | | X |
| Fairer Scotland Duty | | | X |
| Town Centre First | | | X |
| Sustainability | | | X |
| Children and Young People's Rights and Wellbeing | | | X |

- 5.3 An equality impact assessment is not required because the operation of the Conciliation Committee would apply equally across all protected groups and the proposal does not therefore have a differential impact on any of the protected characteristics.
- 5.4 There are staffing implications in supporting the Committee but it is considered that these can be met from existing resources. The setting up of the Committee will provide a further internal method of setting employee relation disputes amicably.
- 5.5 The following Risks have been identified as relevant to this matter on a Corporate Level:

ACCCORP003 – Workforce (attracting and retaining the right skills; performance; culture; reward package; industrial relations)

ACCCORP004 - Business and organisational change (including: ensuring governance structures support change; and, managing the pace of change)

6 Scheme of Governance

- 6.1 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and are satisfied that the report complies with the Scheme of Governance and relevant legislation.
- 6.2 Business Services Committee is able to consider and take a decision on this matter in terms of Section C.1.1f and C.3.2 of the List of Committee Powers in Part 2A of the Scheme of Governance as the matter relates to the establishment of a Sub-Committee to deal with matters which fall within the remit of Human Resources and Organisational Development.

Ritchie Johnson, Director of Business Services

Report prepared by Ruth O'Hare, Acting Legal Service Manager (Governance)
Date 15 April 2021

List of Appendices

Appendix 1 – Terms of Reference

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Terms of Reference – Conciliation Sub-Committee

1 Purpose

- 1.1 The purpose of the Sub-Committee is to provide a conciliation, mediation or arbitration function aimed any areas of dispute or non agreement between the Council and its recognized trade unions, where all other attempts at resolution have failed.

2 Remit

- 2.1 The following functions are delegated to this Sub-Committee:-

- (a) to provide a conciliation, mediation or arbitration function aimed at resolving any areas of dispute/non-agreement between the authority and its recognised trade unions, where other agreed channels have failed to resolve the issue.

- (b) to consider and resolve, where necessary, disputes affecting teaching and/or non-teaching staff, in relation to:-

- Terms and conditions of employment (excluding pay negotiations which will be conducted separately).
- Legislation affecting the council's employees.
- Organisational change.
- Personnel Policy Procedures (not individual cases).
- Grading, duties and the organisation of work (not individual cases).
- Facilities for Trade Union Representatives.
- Health, safety and welfare.
- Arrangements for consultation.
- Housing.
- Indemnification procedures.
- Other allowances.

3 Membership

- 3.1 The composition of the Committee shall be:-

(1) The Council representatives, which shall be comprised of Eight Elected Members, comprising of five Administration, two Partnership and one Amalgamated Small Groups and Individuals; and

(2) Two members from representative trade unions, or the nominee of any of them.

For disputes involving teaching staff, the Chair of Education and Children's Services Committee shall be a member of the Sub-Committee and shall be included within the political proportionality calculation for that purpose.

- 3.2 Council representatives shall be appointed by the Council. Representatives of the recognised trade unions shall, where the dispute relates to non-teaching staff, comprise representatives from the Educational Institute of Scotland (EIS) and/or the Scottish Secondary Teachers' Association (SSTA) or, where the dispute relates to teaching staff, shall be drawn from UNISON and/or the General Municipal and Boilermakers' Union (GMB). Any casual vacancy occurring in the membership of the Committee shall be filled by the appropriate appointing body at the earliest possible date after the vacancy has occurred.

4 Meetings

- 4.1 The Chair of the Committee shall be appointed by members of the Committee and, where appropriate, shall have a casting vote.
- 4.2 Two Council members and one employee representative shall constitute a quorum.
- 4.3 The Director of Business Services or his representative shall act as Clerk to the Committee and shall be responsible for recording the proceedings.
- 4.4 Each party to the dispute shall be entitled to invite any officer or member of their respective trade union or member or official of the Council to attend any meeting of the Committee. Any such officer, member or official may be invited to participate in the discussion but shall not have the right to vote.
- 4.5 Any party to the dispute shall be entitled to submit written papers for consideration, or call witnesses to give evidence, at any hearing, under the terms specified by the Clerk to the Committee.
- 4.6 The following procedures shall be adopted by the Committee at appropriate hearings of disputes:-
- (a) The representative(s) of a recognised trade union shall put the case for the employees' side, in the presence of the authority's representative(s);
 - (b) The authority's representative(s) shall be entitled to ask questions of the representative(s) of the employees' side and of any witnesses called by the employees' side;
 - (c) The authority's representative(s) shall be entitled to put the authority's case, in the presence of the representative(s) of the employees' side;
 - (d) The representative(s) of the employees' side shall have the opportunity to ask questions of the authority's representative(s) and of any witnesses called by the authority;

- (e) The Conciliation Committee shall be entitled to ask questions of either side or of any witnesses;
- (f) The authority's representative(s) and, thereafter, the representative(s) of the employees' side shall have the opportunity to sum up each case, introducing no new material;
- (g) Both parties to the dispute shall withdraw from the hearing;
- (h) The Conciliation Committee, together with any officer(s) appointed to assist the Committee, shall deliberate in private after which, if practicable, it shall announce its decision to both parties at the conclusion of the meeting. In any event, the decision shall be confirmed in writing to each side within 10 days.