

**FINAL**

**Birmingham City Council**

**PUBLIC Report** to Leader, Cabinet Member Clean Streets, Waste and Recycling and Chief Executive



12 April 2019

**Subject:** Waste Management – Industrial Action Update

**Report of:** Chief Finance Officer and City Solicitor and Acting Director Neighbourhoods

**Relevant Cabinet Member:** Councillor Ian Ward, Leader of the Council  
Councillor Brett O'Reilly, Cabinet Member, Clean Streets, Waste and Recycling

**Relevant O &S Chair(s):** Councillor Penny Holbrook Chair of Housing and Neighbourhoods O&S Committee

**Report author:** Clive Heaphy, Chief Finance Officer  
Kate Charlton, City Solicitor and Monitoring Officer  
Rob James, Acting Director Neighbourhoods

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
<del>Is this a key decision?</del>	<input type="checkbox"/> <del>Yes</del>	<input type="checkbox"/> <del>No</del>
<del>If relevant, add Forward Plan Reference:</del>		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**1 Executive Summary**

- 1.1 On 15<sup>th</sup> March 2019 Cabinet approved proposals to bring the litigation and industrial action in the refuse service issued by both Unite the Union and UNISON against the Council to an end as soon as possible.
- 1.2 Cabinet also delegated to the Leader, the Cabinet Member Clean Streets Waste and Recycling and the Chief Executive or the Chief Finance Officer and

City Solicitor ( acting jointly as the delegate of the Chief Executive), to conclude respective agreements with Unite, UNISON and the Council.

- 1.3 The agreement to settle needs to be concluded as soon as possible in order to mitigate any resumption of industrial action and/or litigation against the Council.
- 1.4 This report deals with the delegation approved by Cabinet to conclude agreements to settle between Unite the Union and the Council.
- 1.5 At the date of writing this report, UNISON have not agreed a settlement position with the Council and so a further report will follow if and when this position changes.

## **2 Recommendations**

The Leader, the Cabinet Member and the Chief Executive are asked to: -

- 2.1 Note the contents of this Report.
- 2.2 Note and approve the Agreement between Unite the Union and the Council at Appendix 1 of this report.
- 2.3 Delegate to the Chief Executive, acting as Head of Paid Service or her nominated deputy ( as authorised by the Cabinet Report 15<sup>th</sup> March 2019 clause 2.6) authority to conclude by way of signature the agreement at Appendix 1 of this report between the Council and Unite the Union.

## **3 Background**

- 3.1 On 15<sup>th</sup> March 2019 Cabinet approved the Heads of Terms agreed at ACAS between both Unite the Union (Appendix 2) and UNISON.
- 3.2 Since 15<sup>th</sup> March 2019 'without prejudice' discussions between the respective legal teams and the Unions has taken place with a view to finalising an agreement acceptable for each party. Those discussions have resulted in recommended agreements between the Council and each Union. At the time of writing this report only the Council and Unite the Union have agreed a final form agreement.
- 3.3 The recommended agreement between the Council and Unite the Union is attached at Appendix 1.

### Summary of Settlement Terms

- 3.4 The settlement terms are in accordance with the respective Heads of Terms and are summarised as follows:
  - a) In full and final settlement of all the known and threatened litigation and industrial action against the Council.
  - b) Unite the Union will ensure all industrial action will cease with immediate effect on signing the agreement.

- c) Each union member (as identified by the respective union) will be required to enter into a COT agreement with the Council in order to receive a payment as set out in the respective union settlement agreement.
- d) Only eligible claimants will be entitled to receive a payment which will depend on their union membership at specified dates and provided they were employed in the refuse service and provided that they have not already received a payment as a GMB member made by BCC pursuant to a COT3 agreed with the GMB and dated 24 May 2018 or as a Unite/UNISON member pursuant to the settlement agreement entered into with Unite/UNISON.
- e) The Council will not make more than one offer of say £500 to any eligible employee; for example an individual who is a Unite and also a UNISON member and who is offered £500 by virtue of UNISON membership.
- f) The Council will make payments to eligible Unite members in the April payroll.
- g) The number of eligible claimants has not been determined as at the date of this Report and so it has been agreed, by way of side letter that issues of eligibility will be dealt with on a case by case basis.
- h) Unite have asked that the Council settle with Unite members who have been missed from the litigation schedules and anticipate these to amount to a 'handful' of claimants. By way of a side letter, it has been agreed that parties deal with claimant's entitlement on a case by case basis and a payment may be made subject to meeting the necessary eligibility criteria.
- i) The Council does not have governance approval for making payments to non eligible claimants.

## **4 Consultation**

- 4.1 The Leader, Councillor Ian Ward and Councillor O'Reilly Cabinet Member Clean Streets Waste and Recycling have been briefed on the matters set out in this report.

## **5 Risk Management**

- 5.1 There are significant environmental, financial, operational and reputational risks associated with industrial action and the litigation issued against the Council. The risks of not mitigating the industrial action and the issued litigation against the Council have been discussed in detail in previous Cabinet reports as detailed in the background documentation (paragraph 13).
- 5.2 There are contagion risks, and other litigation risks associated with settlement of the litigation and industrial action with each union. These have been

discussed in detail in previous Cabinet reports as detailed in the background documentation (paragraph 13).

## **6 Compliance Issues:**

- 6.1 These proposals support the City Council priority of being a great city to live in by keeping the streets free from unnecessary domestic waste and meeting its statutory responsibilities.

## **7 Legal implications**

- 7.1 It should be noted that there are no confidentiality provisions in the agreement to settle with Unite the Union or the individual COT3 agreements with eligible employees (as defined in the settlement agreements). This does mean that both the union and the union member can share the details of the settlement agreement/payment with third parties. However the Council will need to be aware of obligations arising under the Data Protection Act 1998 which would preclude the Council from publishing details of individual names and individual payments made to union employees who are also employees of the Council.
- 7.2 There is a risk that certain eligible employees (as defined in the settlement agreements) may decide not to enter into a COT3 agreement with the Council and instead proceed with the tribunal litigation issued against the Council by Unite the Union. In this event, these employees could not be supported by their union as the settlement agreement between the Council and the union requires the union to withdraw all support and funding from such individual.

## **8.0 Financial implications.**

The settlement costs were set out in detail in the Public Cabinet Report 15<sup>th</sup> March 2019 and by way of reminder are set out below.

### **8.1 Cost of Settlements with Unite and Unison**

1. The cost of the proposed settlement with Unite and Unison is shown at table 1 below and is estimated at £1.783m.
2. The cost for each union is broken into 2 elements: a part payable to each valid claimant (a valid claimant is set out in the offer) in order to settle litigation and a part to settle all other disputes, litigation, industrial action and claims.
3. The cost of settling Unite claims is £1.673m. This will involve settling around 280 valid litigation claims (the final number may be marginally lower) and the cost of settling all other action for around 355 members (which includes the 280 litigants)
4. For Unison, with only 19 members, the cost of £110,000 is clearly much lower but again, divides into the two elements

5. Unlike GMB claims which were punitive payments free of tax and national insurance, in order to pay a net amount to individuals in Unison and Unite, BCC will need to 'gross up' payments and meet the cost of employers' national insurance.

Table 1 Cost of the proposed settlement with Unite and Unison

Cost of Proposed Refuse Collection dispute settlement	UNITE		UNISON	
	Cost per person £	Cost per person £	Cost per person £	Cost per person £
Gross Payment to the individual	£4,411.76	£735.29	£4,411.76	£735.29
Basic Rate Tax 20.0%	-£882.35	-£147.06	-£882.35	-£147.06
Employees National Insurance 12.0%	-£529.41	-£88.24	-£529.41	-£88.24
Net Payment to the individual*	£3,000.00	£500.00	£3,000.00	£500.00
Add Employers National Insurance 11.8%	£520.59	£86.76	£520.59	£86.76
Cost to BCC (Payment not pensionable)	<b>£4,932.35</b>	<b>£822.06</b>	<b>£4,932.35</b>	<b>£822.06</b>
Claimants	280	355	19	19
	<b>£1,381,100</b>	<b>£291,900</b>	<b>£93,800</b>	<b>£15,700</b>
	<b>Total Unite</b>	<b>£1,673,000</b>	<b>Total Unison</b>	<b>£109,500</b>
	<b>Total Cost</b>	<b>£1,782,500</b>		

6. The cost to BCC in respect of circa 299 valid Unite and Unison litigants receiving a net £3,000 is £4,932.35 assuming that the individual is a basic rate taxpayer with no complex tax circumstances. Similarly, the cost to BCC of 374 valid Unite and Unison members receiving a net £500 is £822.06 using similar assumptions. All efforts will be made to structure the arrangement in a manner which meets HMRC rules for a tax treatment similar to those made to GMB although this cannot be guaranteed.
7. The payment is assumed not to be pensionable. However, should an individual wish to make this payment pensionable, they could choose to do so through a 16.8% reduction in the gross payment to meet the Employer's Pension liability at no net cost to the Council. The employee would, in such circumstances, meet their own Employee pension deductions.
8. It is not planned to make payments to non-Union members as this payment settles litigation and disputes and is not a compensation payment of any sort.

## 9.0 Human Resources Implications

- 9.1 The Council has demonstrated its commitment to bringing the industrial action to resolution on behalf of the citizens of Birmingham, utilising the services of ACAS to assist.

- 9.2 The Council remains committed to ensuring that lawful industrial action is able to progress unimpeded and also to maintaining employee relations.
- 9.3 Trade union meetings will continue, led by officers in the waste management service with the local joint trade unions on local matters, and with the council wide trade unions, led by the HR Director on a council wide basis.
- 9.4 The Joint Service Improvement Board (JSIB) will reconvene to discuss and monitor progress and the implementation of any proposed changes. The JSIB increases the level of employee engagement to help minimise any future risk of dispute.
- 9.5 Efforts to improve performance and deliver change, however minor, in the refuse collection service of the future could be thwarted by further industrial action, which may become an impediment to delivering a value for money service. The expectation being a payment reward and reversed managerial decision in return for clean streets for our citizens.

## **10 Director of HR**

- 10.1. BCC will need to consult with the collective trade unions on any council wide proposed amendments to current council policy or protocols, to ensure that there has been meaningful consultation with each trade union representing employees across the Council.
- 10.2 Trade Union consultation is taking place on a local level for the waste management service, and on a corporate level for any council wide proposals. TU meetings with both local and council wide trade unions will continue to discuss matters as outlined in this report.
- 10.3 Such proposed payments (as laid out in this report), could make future service transformation more difficult and may lead to future industrial action, which could also impact on delivery of efficiency savings across the Council.

## **11. Public Sector Equality Duty**

- 11.1 The requirements of the Council's Equality Policy and the Equality Act 2010 policy will be specifically considered as part of the implementation of this decision.

## **12 Appendices**

- 12.1 Appendix 1 - Settlement Agreement - BCC and Unite the Union
- 12.2 Appendix 2 - Heads of Terms UNITE

## **13. Background Documents**

- 1. Cabinet Report (Public) 15th January 2019
- 2. Cabinet Report (Private) 15<sup>th</sup> January 2019

3. Waste Contingency Plan- updated (January 2019)
4. Cabinet Report (Public) 12 February 2019
5. Cabinet Report (Private) 12 February 2019
6. Waste Management- Industrial Call In by the Co-ordinating O&S Committee 20<sup>th</sup> February 2019
7. Cabinet Report (Public) 8<sup>th</sup> March 2019
8. Cabinet Report (Private) 8<sup>th</sup> March 2019
9. Cabinet Report (Public) 15<sup>th</sup> March 2019
10. Cabinet Report (Private) 15<sup>th</sup> March 2019