

PROPOSED TERMS OF SETTLEMENT OF THE REFUSE COLLECTION DISPUTE BETWEEN BCC AND UNITE

WITHOUT PREJUDICE AND SUBJECT TO CONTRACT

	BCC/Unite Agreed position
1	<p>Subject to withdrawal of all litigation and all industrial action and any other proceedings or actions against BCC as set out at item 7 BCC Proposal below:</p> <p>a) BCC to pay each valid Claimant in the Tribunal Proceedings of</p> <p>i. Mr Bs & Others v Birmingham City Council (Case Number 1305153/2018 & 271 Others) and</p> <p>ii. Mr C Bw & Others v Birmingham City Council (Case Number 1300839/2019 & 7 others</p> <p>the sum of £3,000 each in full and final settlement provided that each individual has signed an ACAS COT3 Agreement with the Council. A valid claimant is a Unite member who was an employee of the Council working in the refuse service as at 6th June 2018.</p> <p>b) BCC to make a payment in the sum of £500 in full and final settlement to each UNITE member who was a UNITE member who was an employee of the Council working in the refuse service as at the date of the current ballot (14th December 2018) provided that the individual has signed an ACAS COT3 Agreement with the Council.</p>
2	<p>BCC have already started arranging recruitment fairs – which enable Agency workers to apply for roles assisted by their Trade Union and HR.</p> <p>BCC are seeking to increase the proportion of full time staff to agency workers which is likely to result in more opportunities.</p> <p>In these circumstances, a payment is not appropriate.</p>
3	<p>BCC will pay the figures in paragraphs 1a and 1b “net” of any applicable tax or national insurance contributions (i.e. payment will be grossed up should tax and NI be deemed payable),</p> <p>This is not a pensionable benefit. However, should any employee wish to convert this into a pensionable payment, BCC will agree subject to the deduction of Employers’ pension contributions (at a rate of 16.8%) from the gross sum payable. This is at the discretion of the employee.</p>
4	<p>BCC management is proposing that [REDACTED] grievance will be dealt with through a mediation process and that he will continue to be deployed on his existing round until this grievance is heard.</p> <p>Decisions on individuals are a matter for BCC.</p>

5	Unite will meet all legal costs incurred in all proceedings save for sections 8,9 and 15 below.
6	<p>In consideration of payments above, Unite will immediately withdraw the following: -</p> <ul style="list-style-type: none"> (A) High Court, Queen's Bench Division (under claim number QB2019-00042) against BCC and appended to an Order settling the proceedings in the High Court under Claim Number HQ17X03282 ("the MOU Proceedings"). (B) Mr Bs and other Unite members in the Birmingham Employment Tribunal under Claim Number 1305153/2018 and others (Multiple No 9438) (the "Bs Proceedings"). (C) Mr C Bw & Others v Birmingham City Council (Case Number 1300839/2019 & 7 others (the Bw Proceedings'). (D) Early Conciliation proceedings (ACAS EC Certificates Group MU000407/19/03 and R111412/19/78) (the ACAS EC Annual Leave Proceedings'). (E) Mr A Bn & Others v Birmingham City Council Case Number 1300558/2019 (the Bn Proceedings'). (F) Withdrawal of various other claims outlined in correspondence by Unite including all of the below: <ul style="list-style-type: none"> i) an Action for Judicial Review outlined in Thompson Solicitors letter of 28 January 2019 and subsequent correspondence; ii) an alleged claim for defamation outlined in Thompson Solicitors letter of 18 February 2019; iii) an alleged claim for refusal of leave request outlined in Thompson Solicitors letter of 29 January 2019 and the subject to ACAS early claim conciliation for 355 people notified on 25 February 2019. iv) a new ballot for Industrial Action based on the alleged breached of the MOU. (G) Withdrawal of any other litigation or pre litigation action against the Council as at the date of signing the agreement by Unite. (H) All industrial action will be suspended on signing an agreed Heads of Terms and on final agreement the ballot notice served on 15 February 2019 will be withdrawn.
7	Unite shall discontinue its claim under QB2019-00042 with each party to bear its own costs in those proceedings and BCC agrees to not pursue the Legal Costs Award in favour of BCC determined by the High Court on 14 February 2019 other than the amount already paid .
8	BCC to discontinue its claim under QB2019-006592 with each party to bear its own costs in those proceedings and BCC agrees to pay the Legal Costs Award in favour of Unite determined by the High Court on 1 March 2019.

9	<p>BCC have already started to arrange recruitment fairs – which enable Agency workers to apply for roles assisted by their Trade Union and HR.</p> <p>BCC is seeking to increase the proportion of full time staff to agency workers which is likely to result in more opportunities.</p> <p>For this event only all trade unions will be invited to act as observers in the interviews where their members are impacted.</p>
10	<p>Mop-up crews are not referenced in the MoU.</p> <p>BCC's aim is to complete all collections each day within the rounds of its normal crews.</p> <p>BCC will only use two-person mop-up crews for a further two weeks from the settlement date with each depot being entitled to use one-mop-up crew doing one round per day for the next two weeks.</p> <p>Following the expiry of the two week period, BCC will retain the right to use mop-up crews where it is necessary to clear waste not collected but it will put a WRCO with the mop-up crew. These may be sourced from an agency.</p> <p>All staff, whether BCC or Agency, will be fully trained in health and safety requirements.</p>
11	<p>The commencement date of the MoU is agreed as 24th September 2018.</p> <p>The end date of the MoU therefore is 23rd September 2019. The end date will be extended by the duration of the current industrial action (which began on 29th December 2018). The duration of the Industrial Action is 11 weeks and therefore the end date of the MOU is now agreed as 9th December 2019.</p>
12	<p>This refers to the 'stand-in' and NOT 'acting-up'.</p> <p>A stand-in protocol has already begun the consultation process with the main unions.</p> <p>The Acting director of Neighbourhoods and Cllr Ian Ward will meet local representatives regarding their concerns over WRCO recruitment.</p>
13	<p>In accordance with Clause 12 of the MOU 2017, a Joint Service Improvement Board (JSIB) will be established and membership will include all joint trade unions, GMB, UNISON and UNITE (incorporating UCATT) and the meetings will be chaired by the Cabinet Member BCC.</p> <p>Terms of reference will be agreed by the Board.</p>

	During the period the JSIB is considering future working arrangements and the review of the MOU.
14	<p>Unite agree not to pursue its defamation action but meet their own costs in bringing the action.</p> <p>The following statement be issued by the Council, Unite. It shall be specifically agreed that the parties will not materially defer from the material facts in this statement when making public commentary about the dispute: -</p> <p><i>“BCC, Unite and Unison are pleased to confirm that all industrial action and litigation between the parties (the dispute) have been concluded by way of mutually acceptable settlement terms.</i></p> <p><i>BCC confirms that at no stage in 2017 did either Unite or Unison attempt to prevent the Council from discussing any intended role changes with the GMB. Whilst the Council maintains that any payment made to [GMB] refuse workers, arising from the dispute in 2017, was made in good faith and following internal and external legal advice, the Council accepts that such payments had unintended consequences and is committed to working with all of the unions to ensure that a cohesive and positive working environment exists going forward.</i></p> <p><i>BCC further retracts commentary that was made in a recent Cabinet report wherein it was incorrectly said that Unite had declared a willingness to take industrial action even if a Court declared the action to be unlawful. BCC apologises for this commentary.</i></p> <p><i>All parties are committed to working together to provide a waste service that the people of Birmingham can be proud of and to this end are pleased to announce that the settlement terms have seen the creation of a working group (the Joint Services Improvement Board), to include council officers, trade union representatives and councillors, to ensure future disagreements can be resolved transparently and by discussion.”</i></p>
15	<p>These terms were not defined in the MoU and are added for clarification and the avoidance of doubt.</p> <p>The terms used in paragraph 11 above have the following meaning, for the purpose of this agreement.</p> <p>a. “Waste and Recycling Lorry” means any Open Back or Split Back vehicle currently being used to collect Domestic Waste.</p> <p>b. “Domestic Waste” means both</p> <ul style="list-style-type: none"> (i) waste products designated for recycling, which are collected from or from outside of domestic residences in respect of which the Council has a statutory waste collection function; and (ii) other (residual) waste products placed into black bin bags and/or wheelie bins, which are collected from or from outside of domestic residences in respect of which the Council has a statutory waste collection function. It does not include any of the following (as these terms are commonly used and understood within the Council’s Waste Service): fly-tipped waste, commercial waste, trade waste, or ‘dropped waste’.

	c. A “WRCO” is a grade 3 officer but may include a grade 2 Loader or other employee who, (having had the necessary training) is acting up or standing in to that role on a temporary basis
16	<p>All parties will use best endeavours to seek to resolve any disputes over the implementation of the MoU through mediation within a period of up to 8 weeks overseen by the JSIB.</p> <p>Nothing in this provision shall be interpreted as amending any provisions of existing collective agreements</p>
17	<p>The Heads of Terms/and Agreement will require the prior approval of the Cabinet based on the advice of its Statutory Officers.</p> <p>Prior to any final offer being made, meaningful consultation, (in accordance with the Council’s Consultation Protocol with Recognised Joint Trade Unions), will also need to take place with the other corporate Trades Unions, <u>where the proposals impact on their members</u>.</p> <p>The views of the District Auditor will also be fully considered as part of the approvals process.</p>
18	<p>Parties agree to the establishment of an independent review on future options for delivering the waste service, commissioned by the Council.</p> <p>The independent review will report to the Council but the Joint Services Improvement Board (JSIB) will be consulted on its terms of reference and will continue to be consulted throughout the Review period.</p>
19	Parties agree that these terms are in full and final settlement of all and any claims including those set out in section 6 above and nothing in these Heads of Terms shall be represented or construed as an admission of liability.