

MINUTES OF SPECIAL MEETING OF CORPORATE SERVICES COMMITTEE OF DUNGANNON & SOUTH TYRONE BOROUGH COUNCIL HELD ON WEDNESDAY 3 NOVEMBER 2004 IN THE COUNCIL OFFICES, DUNGANNON

- MEMBERS PRESENT:** In the Chair, Councillor Cuddy (Chairman)
- Councillors Badger, Burton, Cavanagh, Currie, Daly, Donnelly, Gildernew, Gillespie, Irwin, McGonnell, McGuigan, McIlwrath, McLarnon, Molloy, Monteith and Morrow
- OFFICERS PRESENT:** Messrs Beattie, McMinn and Mrs Smith
- APOLOGIES:** Councillors Maginnis, Mulligan and Mr Currie

The meeting commenced at 7.30 pm

1 EXPRESSION OF SYMPATHY

Proposed by Councillor Monteith
Seconded by Councillor Molloy and

Resolved That the sympathy of the Council be extended to Councillor McGuigan and ex-Councillor Sutton on the death of Mrs Winifred Daly, mother-in-law and mother respectively.

As a mark of respect all stood for a Minutes silence.

Councillor McGuigan, on behalf of the Daly family, thanked the Council for the words of sympathy.

2 BONUS PAYMENTS

The Chairman stated that non-union employees had requested an opportunity to discuss this matter directly with Councillors. At the last meeting of the Corporate Services Committee it had been agreed that a special meeting of the Corporate Services Committee be held and that three union officials and three non-union representatives be invited to make representation on behalf of the workforce. Any other employee affected by the bonus scheme may attend as observers.

Discussion ensued in relation to the format of the meeting after which it was agreed that members listen to the speakers following which representatives would leave and the matter would be further discussed by members.

The Chairman welcomed the six speakers and 43 members of the workforce. The Chairman invited the speakers to introduce themselves and make their presentation. Spokespersons were Mr Kiddle UCAT, Mr McCreight GMB, Mr Kirk NIPSA, Mr Acheson, Mr Junk and Mr Hadden.

Mr Kiddle welcomed the opportunity of meeting with the Council and stated that some employees were getting bonus and some were not. Some getting 331/3% and others on 25% bonus. Bonus agreed with unions at introduction of bonus schemes was 331/3%. Now new employees getting 25%. Changes should have been through consultation with trade unions. Not aware of any consultation. Attended meeting in 2002 with Chief Executive and NIPSA member. Had been agreed at that meeting that bonus would be paid by Christmas. Situation in limbo since. As far as we are concerned should have been paid.

Mr McCreight stated that what has been created is a two-tier workforce. Groups of workers doing exactly the same job but earning different bonus. There is a straightforward issue of equality. Need for affirmative action programme to address imbalances. Imbalance in terms of new people coming in and imbalance in terms and conditions that they come in on. Would not be possible to sustain argument, Council needs to take affirmative action. Our position is to look for resolution within Council. Resolution would be for Council to harmonise bonus to 331/3%. Also seeking retrospective payments of bonus workers have already earned.

Mr Kirk stated that he agreed with previous two speakers. Unacceptable to have different bonus payments.

Mr Kiddle stated that three or four years ago Council took decision to pay everyone 25%. Before, some were not paid any bonus at all. Auditor has stated illegal to pay bonus so why introduce 25%.

The Chief Executive clarified that the Chief Local Government Auditor (CLGA) has advised that no problem paying bonus provided that properly operated bonus system.

Mr Acheson stated that when he commenced employment he was not paid bonus, now paid 25%. Doing same job as others, but earning less money.

Mr Kiddle stated that all other Councils pay 33 1/3% bonus.

The Chief Executive outlined the present situation. On 22 September 2004 a sub-committee appointed by the Council to consider this particular issue met. Prior to that meeting, sub-committee members held informal meeting with the Chief Local Government Auditor. From an early stage, Council's legal advisors had stated that approval of CLGA and Department of Environment, Local Government Branch, should be secured before making any payment of arrears. That approval was not forthcoming. On 22 September the CLGA was very clear. He advised that on the basis of all the information and papers provided to him and on the basis of legal advice he had from his solicitor there was no basis for making the payments and he would not sanction payment. He also indicated in the event of an employee travelling by way of industrial tribunal that the Council had a responsibility to robustly defend the situation. He further advised that he would be prepared to make available to the Council his legal team to support that situation.

Minutes of that meeting went to Corporate Services Committee on 20 October 2004. On 8 November 2004 the resolution from that meeting, as printed below

'On the advice of the Chief Local Government Auditor at the informal meeting that the Council does not proceed with payment at this stage.'

will go forward to Council for adoption.

Mr Kiddle stated that all Councils come under auspices of CLGA and they paying bonus.

Mr McCreight stated that reading between the lines of what the Chief Executive has stated, Council not adverse to paying bonus. Advice from CLGA is barrier.

It was confirmed that that was the situation. Fight not with this Council, no Councillor in this chamber is opposed to paying this bonus. CLGA made it clear that Council does not have legal cover to pay. If other councils are paying bonus then why does the auditor not authorise this Council to pay. Is CLGA consistent in advice he is giving.

Members felt that important to give clear indication to the workforce and union representatives what the position is. Points raised by unions have not been answered. Council does have money set aside in relation to the payment of arrears. Were these members of workforce

getting 33 1/3% and at the same time, members not getting bonus. Why did that situation change.

The Chief Executive advised that in 1994, requirement by government that a number of Council Services would be put out to CCT (Compulsory Competitive Tendering). Resolution of this Council was that as far as possible retain services in house. On that basis, officers of this Council along with outside support and in consultation with union organisations, in order to sharpen the in house bid, agreement was reached that people employed by the Council at that stage and earning 33 1/3% bonus should not have their terms and conditions of service changed, all new employees coming into service could earn a maximum of 25%. Implemented at this time because of CCT and because danger of services of the Council going to private contractors. In house bid successful and jobs and terms of conditions of workforce at that time protected.

Clear legal advice taken, in relation to people earning 33 1/3% bonus could not change their terms and conditions.

Mr Kiddle understood where Chief Executive was coming from. He was unaware of any written agreement with trade unions to this effect. If consultation fine, if no written agreement only consultation.

Chief Executive stated that five services are covered by bonus schemes. Employees not within these services would not have the opportunity of earning bonus.

Mr Kiddle stated that CCT fully understood. Every other Council in Northern Ireland went through same process, kept services in house and still paying 33 1/3% bonus.

Mr McCreight stated it is clear that the CLGA is the barrier to the Council paying bonus payment. Other issue is equality. Under section 75 review incredible that issue not resolved.

Agreed that minutes following adoption by the Council would be available to all.

Proposed by Councillor Monteith
Seconded by Councillor Gildernew and

Resolved That it be recommended to the Council that come together again in forum such as this if necessary.

The Chairman thanked the representatives for attending. Mr Kiddle on behalf of everyone thanked Council for the opportunity to put the case, following which they left the meeting at 8.20 pm.

Councillors Badger and Irwin left meeting at 8.20 pm

During further discussion the following points were made:

Grave discrepancy, unjustifiable and one the Council cannot stand over. Contend that Council made a mistake in 1994 and that we are presiding over a system that we cannot preside over any longer.

Statement by Union that every Council is paying single rate of bonus needs to be checked. Previously agreed that Head of Human Resources would gather information in relation to payment of bonus and operation of bonus schemes in other councils.

View of CLGA employee applied for job and was paid rate for that job.

Totally indefensible position, Council has bonus scheme that is divisive. Appears two people are doing same job one gets 33 1/3% and other gets 25% regardless of terms and conditions of employees that is wrong.

Chief Executive stated that Council's solicitor in letter dated 9 October 2000 to Head of Human Resources asked the Council to establish the view of the Equality Commission. In letter dated 12 October 2000 from the Equality Commission they state, among other things, 'I would point out that in any particular situation it would ultimately be for a Fair Employment Tribunal or Industrial Tribunal to reach a decision concerning whether or not discrimination had occurred on the basis of the specific facts placed before it'.

Any discrimination that arose was not intentional, was indirect. Number of employees did try to take case, on equal pay, did not have comparator.

Is Chief Executive saying that in 1994 Council resolution to change bonus rate but that that resolution was not available to the Council. These records would be vital in any defence. Chief Executive stated that feeling was that records were not complete.

Trade Union referred to meeting with Council officers in 2002 and agreement to pay bonus arrears before Christmas. The Chief Executive read minutes of meeting held on 21 November 2002 and no undertaken was given in relation to payments. It was noted that in minute Mr Kiddle had stated that on behalf of union members would

be getting legal team from London involved. What has union done for workforce since that meeting.

Equality an issue that has to be addressed.

Any direct correspondence from department and what is its view.

The Chief Executive stated that initially when meetings set up between Council officers, CLGA and Department, these were organised through the Department, believed at that stage that was proper procedure. Department agreeing with auditor.

Councillor Gillespie left at 8.50 pm

Purpose of meeting was to clear up confusion, if felt information put forward by trade union was not correct should have been challenged at meeting. In this respect meeting a failure. Chief Executive stated that following clarification of points put forward by unions if not correct address them back to unions.

Lines of communication have been opened up and no reason why cannot have similar meetings in the future.

Councillor Morrow left at 8.55 pm

Whole issue around defending thing robustly, documents missing, this Council not going to be in position to defend. The Chief Executive stated that there is considerable material which has been shared with sub committee. All information provided to CLGA. Considerable legal advice from CLGA and Council's solicitor.

In response to query in relation to doing away with bonus in favour of flat pay rate, the Chief Executive advised that in 1997 national agreement was reached in relation to single status. Progress on implementation was slow but NIJC and Unions have now agreed framework document and there is requirement now that single status is fully implemented by 2006. Under a pay and grading review all jobs will have to be evaluated. Framework document allows for situation where evaluation of jobs do not equate to flat rate pay plus bonus.

How many employees on 33 1/3% and how many on 25%.

Director of Technical Services advised how bonus is worked and how much time is taken for supervisors in doing weekly calculations. Because of situation in this Council laboriously doing calculation making sure every I dotted and T crossed. Not sure that all other councils doing this.

Way forward is for Unions to take case of their members to industrial tribunal.

Unions have questions to answer in how looking after workforce. Stated a number of years ago would be involving legal team on behalf of workforce, what has happened since.

If someone takes case on grounds of religion and wins, does that allow Council to pay all arrears.

The Chief Executive stated that that was a complex question and situation needs to be managed carefully.

Is there anything stopping this Council as a caring employer making decision from this point in time of increasing those on 25% to 33 1/3% bonus.

In 1974 was there trade union involvement. Chief Executive stated very much involved but our record keeping not good.

From advice of CLGA can do nothing else other than follow procedure committee adopted.

Proposal coming forward on Monday night that we should not pay. Have opportunity on Monday night to change proposal.

The Chief Executive suggested that he discuss with the Head of Human Resources bringing forward proposal that would speed up the process of getting single status implemented as soon as possible. This would mean completing pay and grading review and may need external assistance. If put momentum into this process would do away with bonus.

Proposed by Councillor Monteith
Seconded by Councillor McGuigan and

Resolved That it be recommended to the Council to accept the suggestion of the Chief Executive.

Proposed by Councillor McGonnell
Seconded by Councillor Molloy

That it be recommended to the Council that the Council ask the CLGA to return to the Council to explain to the Council the threats he made in his recent meeting with members of the sub-committee.

The proposal was put to the meeting 10 (ten) members voted in favour and none against.

Proposed by Councillor Currie
Seconded by Councillor Cavanagh and

Resolved That it be recommended to the Council that forthwith investigate implementation of 33 1/3% bonus across the board to all operatives until implementation of single status.

Proposed by Councillor Currie
Seconded by Councillor Cavanagh and

Resolved That it be recommended to the Council that Head of Human Resources investigate practises in other Councils.

Proposed by Councillor Currie
Seconded by Councillor Cavanagh and

Resolved That it be recommended to the Council that affirm that only way forward on back pay appears to be by industrial tribunal.

Proposed by Councillor Monteith
Seconded by Councillor McGuigan

That it be recommended to the Council to invite the Equality Commission in to look at situation in Technical Services and how that sits.

The proposal was put to the meeting, 10 (ten) members voted in favour and 2 (two) against.

DURATION OF MEETING

The meeting was called for 7.30 pm and ended at 9.40 pm.