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To: Personnel Committee

Date: 23 September 2011

Subject: Policy Update

Classification: **Unrestricted**

SUMMARY: A general policy update focusing on:
1) Relocation Assistance Scheme,
2) Suspension with pay withheld,
3) Facilities Agreement with Trades Unions

INTRODUCTION

This paper provides the Committee with an HR policy update. It contains an update on changes to the Relocation Assistance Scheme. There is also a proposal for a specific change to employment policy to allow the Council to suspend an employee with pay withheld. This clause would be used only in exceptional circumstance and presents a request for the Committee to endorse a recommendation to be taken to a meeting of the full County Council as it involves a major change to terms and conditions of service. The paper also asks the Committee to note, as an information item, the new Facilities Agreement that has been concluded with the Trades Unions.

1. RELOCATION ASSISTANCE SCHEME

BACKGROUND

- 1.1 KCC has had a relocation provision in place for many years. This enables financial assistance for new appointmees enabling them to live closer to their place of work.
- 1.2 The scheme operates at two levels. The standard provision (Scheme A) is managed internally and the enhanced provision (Scheme B) is handled by an external agency and is available to people who are appointed to senior management positions. Although the provisions have not been used extensively over recent years, it is timely to update the scheme in the context of the current economic climate and to ensure its ongoing effectiveness.

1.3 Key changes:

- a) There is increased emphasis that using this provision needs to be based on justification rather than entitlement.
- b) The total value payable under scheme A has been brought into line with the HMRC relocation benefits of £8,000. Previously it was £8,500 of which £500 was taxed.
- c) More managerial discretion has been introduced for the payment of Stamp Duty as the amounts now are considerably more than when the policy was originally established.
- d) The mileage reimbursement was set to the 'equivalent public transport rate', however this is now defunct. Ideally we should standardise on a similar and widely available rate. The casual user rate above 10,000 miles is an option. This is currently 25p per mile and is maintained by the HMRC.

2. EMPLOYMENT POLICY – SUSPENSION WITHOUT PAY IN EXCEPTIONAL CIRCUMSTANCES

BACKGROUND

- 2.1 KCC's Disciplinary Procedure and Performance and Capability both contain provisions allowing for suspension on full pay.
- 2.2 In addition, KCC's Constitution, in Appendix 6, Part, Paragraph 13, (Personnel Management Rules) state that 'all suspended officers shall be on full pay during the investigation of the alleged misconduct, which must be completed no later than two months after the suspension takes effect (subject to any direction by the designated independent person in the case of the Head of Paid Service, Chief Finance Officer or Monitoring Officer).
- 2.3 There are very good reasons for having the general rule that suspension, whenever it is carried out, should be on full pay. Ordinarily if suspension is made without pay there is a risk that it may amount to a breach of the implied contractual term of trust and confidence. This could result in a breach of contract or statutory employment rights claim being brought against KCC.
- 2.4 Suspension is not an assumption of guilt or a disciplinary penalty in itself, but it's possible that an employment tribunal may regard suspension without pay as disciplinary action in itself. Potentially, an employment tribunal may hold that such a course of action may be unfair in all the circumstances in assessing whether an employer has acted in a fair and reasonable way. This could result in a judge finding against KCC in cases of unfair dismissal and, in exceptional cases, it can result in the employee applying for an injunction to lift the suspension. For these reasons, suspension of a member of staff, if made at all, should be on the grounds of full pay

- 2.5 There may be some limited instances, however, where KCC deems suspension without pay to be an appropriate measure. This may be in circumstances where KCC's values and duties as a large public sector organisation or strategic objectives have been significantly breached or disregarded. An example would be cases of serious fraud perpetrated by a KCC employee involving significant losses.
- 2.6 Suspension without pay is an area of law that is currently unclear and is subject to clarification by the appellate Courts. It appears however that an employer that wishes to have a suspension without pay clause in some form, should expressly reserve the right in the terms and conditions of the contract of employment. It may also be regarded as more reasonable to explicitly allow for pay to be withheld pending review rather than absolutely denied during a period of suspension.
- 2.7 It is therefore proposed to implement a suspension with pay withheld clause for exceptional cases. This would allow KCC to 'roll up' any pay during suspension that would otherwise be due to the employee in the period, pending investigation or any subsequent disciplinary action. Should the allegations subsequently be unfounded, or with no case to answer, then the rolled up pay would be paid to the employee as soon as possible. If formal disciplinary action is subsequently taken after investigation, the decision on whether to pay any rolled up pay during suspension would be reviewed at appropriate stages and paid if appropriate. Should the matter result in dismissal, then any rolled up pay during suspension would not be paid.
- 2.8 It would be important to have appropriate safeguards for cases of suspension with pay withheld. It is proposed the following safeguards would apply:
- Each case where suspension is considered requires an assessment of the strength of the initial evidence, pending investigation, of the allegations to try and understand the full circumstances, as far as is available at that time, of the situation.
 - Any proposal to suspend with pay withheld would be required to be risked assessed. This would consider balancing the needs of the individual and the financial hardship it may cause against the proposed reasons for its use. It would also consider alternatives to suspension.
 - Any decision to suspend with pay withheld be taken only by the relevant directorate Corporate Director with the joint authorisation of the Corporate Director of Human Resources and the Managing Director.
 - The employee would be given written notice of the allegations and informed of the intention to consider, or implement, suspension with pay withheld as soon as is practical in the process. The employee will be invited to a meeting where any suspension with pay withheld proposal can be discussed with the employee. Normally, this will be at the suspension meeting itself or as part of an investigation meeting.
 - Regular reviews of the position by the relevant directorate Corporate Director in conjunction with the Corporate Director of Human Resources at least every 28 days, or when new evidence comes to light or reaching a key stage in an internal process, such as submission of an investigation report or decision in a disciplinary hearing.

- 2.9 It is proposed that a new clause be added to new KCC contracts of employment and the 'Blue Book' of terms and conditions of employment accordingly:

KCC may suspend you in the event that it has reason to believe that you may have committed an act of misconduct that is regarded as serious, or alternatively, gross misconduct. Further, KCC may suspend you for any reason relating to your health and safety or that of any other person. Subject to the exception below, suspension will normally be on full pay.

KCC reserves the right to suspend you with pay withheld, pending investigation or alternatively the outcome of a formal disciplinary hearing, if there is strong initial evidence that suggests behaviour significantly breaches or disregards KCC's values and duties as a large public sector organisation or strategic objectives, such as serious fraud involving significant loss of money, may have taken place. Any decision to suspend with pay withheld will only be taken by the relevant Corporate Director and authorised by the Managing Director and Corporate Director of Human Resources. Should the allegations be unfounded, subsequently found to be not as serious as the initial evidence suggests, or result in a sanction less than dismissal, then such pay will be reimbursed.

Any decision to suspend, including suspension with pay withheld, will be kept under review.

- 2.10 It is also proposed that KCC's Constitution, in Appendix 6, Part, Paragraph 13, (Personnel Management Rules) be amended as indicated in italics as follows:

All suspended officers shall, *subject to the exception below*, be on full pay during the investigation of the alleged misconduct, which must be completed no later than two months after the suspension takes effect (subject to any direction by the designated independent person in the case of the Head of Paid Service, Chief Finance Officer or Monitoring Officer).

KCC, exceptionally, may suspend with pay withheld, pending investigation or alternatively the outcome of a formal disciplinary hearing, if there is strong initial evidence that suggests behaviour has significantly breached or disregarded KCC's values and duties as a large public sector organisation or strategic objectives, such as serious fraud involving significant loss of money, may have taken place. Any decision to suspend with pay withheld will only be taken by the relevant Corporate Director and authorised by the Managing Director and Corporate Director of Human Resources. Should the allegations be unfounded, subsequently found to be not as serious

as the initial evidence suggests, or result in a sanction less than dismissal, then such pay will be reimbursed.

Any decision to suspend, including suspension with pay withheld, will be kept under review.

3. FACILITIES AGREEMENT

BACKGROUND

- 3.1 Further to the meeting of the Corporate Consultative Forum of 26 April 2011 between Members and the trade unions, a new Facilities Agreement with the trade unions has now been agreed. The previous agreement was out of date and not fit for purpose and was required to be realigned to the changing needs of the business. A copy of the Facilities Agreement is attached as an appendix.
- 3.2 The purpose of the new Facilities Agreement is to set out a framework for describing the principles of joint working, processes and structures which underpin the achievement of shared goals and objectives. It also outlines how the parties will work together to promote effective working and on the workforce implications of developing and delivering the services KCC provides to the people of Kent. The Facilities Agreement also places appropriate limits on the time off and facilities for trade union representatives and confirms KCC's right to manage as an employer.
- 3.3 Arrangements are subject to review every two years to ensure they meet the needs of all parties. Provision is also made for a review of the Facilities Agreement at any time following discussion at a specifically convened meeting of the Corporate Consultative Forum if required.

4. RECOMMENDATIONS

- a) Personnel Committee is invited to agree the proposed changes to the Relocation Assistance Scheme as outlined above.
- b) Personnel Committee is invited to approve and endorse the changes regarding suspension with pay withheld as indicated in 2.9 and 2.10 above and are invited to recommend the changes to the full County Council.
- c) Personnel Committee notes the Facilities Agreement.

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