

# LOCAL GOVERNMENT SERVICE GROUP ADVICE AND GUIDANCE – DEFENDING NJC PAY AND CONDITIONS AGAINST ‘REDUCING WORKFORCE COSTS’

## ‘Reducing Workforce Costs’

In June 2010, the Local Government Employers (LGE) issued the ‘Reducing Workforce Costs’ document to councils, encouraging them to by-pass the sector-wide collective NJC agreement - the Green Book - and reduce pay and conditions locally. This was done without discussion or consultation with UNISON or the other trade unions. A branch circular (LG/36/2010) was issued detailing the issues covered by the document. This guidance is designed to assist branches in resisting attacks to pay and conditions and handling negotiations. It reflects the position of UNISON’s NJC Committee and the NJC Trade Union Side which includes GMB and UNITE.

## NJC employees – the poor relations

Many NJC conditions within the Green Book are less favourable than those existing elsewhere in the public sector, especially sick leave, annual leave and maternity rights. Pay is also lower than for other equivalent groups. A pay freeze was imposed this year without the £250 for the low paid promised by the Chancellor. NJC workers have also had below inflation pay increases in five of the last seven years! 67% of NJC employees now earn less than the government’s ‘low pay’ threshold of £21,000.

However, this has not prevented the Local Government Employers (LGE) from attacking even these basic minimums through ‘Reducing Workforce Costs.’

We are becoming increasingly aware of local authority employers either formally proposing, considering - or even in some cases - issuing, dismissal (Section 188) notices to employees to unilaterally impose changes to workers terms and conditions on the basis that they will save jobs. Notices are being issued without examining the alternatives with UNISON. This disrespect for our members and the work they do will only store up trouble for councils and services in the long term.

## Are the cuts necessary?

Some councils do not need to be making the attacks they are making. For them, this is just an opportunity to reduce the workforce and cut pay and conditions in line with Coalition ideology. **It is therefore very important that branches get to grips with their councils’ finances and budgets before entering negotiations.** If you do this, you will not only be able to challenge cuts, you will be able to make suggestions about other ways in which savings can be made and services made more efficient. The Local Government Service Group has produced guides to understanding council finance in England and Wales which you can order (See Appendix 2). We are also running training courses for activists and paid officials to help you with this important work. Make sure you take advantage of it!

## Say ‘No’ to bargain basement pay and conditions!

These *are* tough times and the impact of the Comprehensive Spending Review will increase pressure at a local level. We know our members’ priority is to maintain job

security and they may be thinking that they would rather cut their hours, pay or conditions than lose their jobs. But we need to get into workplaces and let members know that most of these attacks won't protect jobs and will make working life worse in the long term. If we allow NJC conditions to be whittled away, we will be allowing bargain basement conditions to set the standard not just for local government, but the whole of the public sector.

### **What cuts are branches facing?**

Below is a list of cuts either being considered or imposed by employers:

- Pay cuts
- Pay freezes
- Frozen increments
- Spot salaries instead of incremental scales
- Cuts to overtime and unsocial hours payments
- Cuts to annual leave
- Cuts to sick leave ( e.g. First 3 days no pay and reductions to overall paid sick leave)
- Cuts to car allowances
- Cuts to redundancy payments
- Reduced working weeks
- Reductions in part time hours

This is on top of redundancies in many councils. The Local Government Service Group has already produced a Redundancy Tool Kit which you can order and use if facing redundancies in your council (see Appendix 2).

### **Equality Issues**

Previous wholesale changes to service delivery like Compulsory Competitive Tendering (CCT) have had very severe impacts on particular groups of workers. The Equal Opportunities Commission showed that women suffered disproportionate changes to pay and conditions under CCT. As a trade union, we need to ensure that any negotiations or contractual changes do not impact disproportionately on particular groups of workers, such as women, black or disabled members and breach equality legislation. Employers should be ensuring that this doesn't happen through equality impact assessments required by the Public Sector Equality Duties.

Any proposal to change implemented Single Status pay and grading structures, contractual entitlements or pay related conditions must be referred to Legal Services and the Service Group by your Regional Organiser for an equality impact assessment. This is to ensure that proposals do not unpick equal pay proofed pay structures and agreements, affect transitional arrangements or impact on equal pay claims we are running. Removal of services and jobs or attacks on the Green Book could be in breach of primary equality legislation in the Equality Act too. The Local Government Service Group has produced a guide to equality impact assessments and is running training for activists and paid officials. Make sure that your branch uses the guide and takes part in the training (see Appendix 2).

## **Our Objectives**

The UNISON NJC Committee and the NJC Trade Union Side have discussed the approach to be taken by all three unions to the employers' attacks and have agreed a joint way forward. It was agreed that it is imperative to protect Part 2 NJC terms and conditions and that the three NJC unions will jointly work at local level to resist changes. It was also felt that branches are in the best position at local level to balance negotiating priorities, effective resistance and jobs and that the three unions should not agree to change Part 2 conditions at NJC level. It was also agreed that support would be given to ensure disputes are lodged and publicised.

Our objectives in negotiations are to:-

- Protect members' jobs, terms and conditions and pay
- Maintain quality services to the public
- Prevent the employers undermining NJC bargaining structures
- Protect Green Book Part 2 terms and conditions – including sick pay, annual leave, continuous service and maternity rights
- Protect Part 3 conditions
- Involve members and make sure they have a say
- Talk to, recruit and retain members

## **Changes Imposed by an Employer – Keep them short-term and reviewable!**

The worst scenario for members is when employers impose changes to contracts through dismissal and re-engagement using Section 188 notices. (See Appendix 1 for more detailed information on variation to contracts and S188 notices.)

We want to avoid this, so we will need to be pragmatic and whilst pursuing resistance to any proposals, branches may ultimately want or have to negotiate with employers in order to reduce the impact on members and try to maintain jobs and services.

- **If you can't stop your employer making changes, then try to negotiate only short term reductions in pay or conditions, with clauses to ensure that**

**they are reviewed at least annually – and improved when financial pressure is off**

### **KEY STEPS TO TAKE WHEN NEGOTIATING**

Below are some clear steps you should take to assess your employer's proposals and consider what action to take at local level:

- Get copies of the Green Book and make sure you know what's in it! (Available on council websites or contact the Local Government Service Group)
- Get the full details of any proposals and the level of alleged savings by your employer and analyse that information carefully. **Remember! Not all councils need to make the cuts they are proposing**
- Let your Regional Organiser know immediately about the proposals
- Are the proposals across the whole workforce or are just certain groups affected?
- Find out whether the proposals have been considered or agreed by Councillors and if not, let your councillors know what's happening
- Seek help to examine your council's accounts and budgets to see whether any or what level of cuts are justified. Will these proposals really help the council deliver savings or better services in the long run?
- Get engaged with your employer over the wider context of change and the council's strategy. What are their plans for transformation or restructuring across the council? Does UNISON have better ideas?
- What alternatives can UNISON put forward? You can get specialist help to look at them through the Local Government Service Group
- Find out what – if any - alternatives have been explored by the Council
- Will your employer pilot the changes to assess the consequences and impact?
- Check on the use and cost of consultants and agency staff and seek to reduce them as a starting point for cost savings
- Is your employer prepared to enter into a no compulsory redundancies agreement as the starting point for negotiations?
- Ensure any proposals have been or are fully equality impact assessed by your employer and check to see if you agree with their assessment. You can order and use the Local Government Service Group's 'Equality Impact Assessing Guide to Cuts, Jobs, Pay and Conditions'

## **Time needed to consult members and negotiate**

Branches will need to make clear to employers that we will want to inform and consult our members carefully over any initial or final proposals before we can sign any collective agreement involving changes to members' contracts.

You need to make clear to your employer that you will need adequate facility time to do this properly. Ask for more facility time if necessary.

## **Involve and Engage Members and Organise!**

It is vital that branches ensure that all activists and representatives are briefed on your employer's proposals. Set up a branch organising team to ensure information is passed onto members from the negotiators. Include branch equality officers. Use the information you have on your membership to identify key groups or areas that will need additional resources and support, such as small or more remote workplaces like schools. Above all, use activists to make as much face-to-face contact with members and non-members as possible. Try to:

- Ensure all members are talked to directly by stewards at every stage of the process
- Hold workplace meetings
- Get the message out to members about the proposals and why we are resisting changes, and what the local arguments are for protecting terms and conditions
- Ask members to get involved in cascading information or become workplace contacts if they are not prepared to become stewards
- Keep members updated by word of mouth, your branch internet site and telephone trees

## **Recruit**

- Recruit non-members! We need to continue to grow our density and our bargaining strength. The more members we have the stronger we will be in protecting terms and conditions and jobs. There has never been a better time to recruit
- When talking to members ask them to talk to one colleague or friend about what the union is doing and follow this up with a recruitment 'call'

## **KEY ARGUMENTS TO USE TO RESIST CHANGES TO PAY AND CONDITIONS**

### **Members covered by the NJC already have the worst terms and conditions in the public sector**

- NJC workers already have the worst terms and conditions in the public sector. Reducing terms and conditions is unjustifiable and will make local government an unattractive employer

- With increased joint working across public sector employers, this disparity will become more and more obvious. It is imperative we protect NJC conditions to ensure that a new 'bargain basement' standard is not set for local government and the whole of the public sector
- Many councils still have problems recruiting staff. Attacks to pay and conditions will make this worse

The following are just two examples which show the disparity between NJC and NHS employees' conditions:

**Leave:** NHS workers get 27 days basic leave entitlement, increasing to 29 after 5 years and 33 days after 10 years **compared to** NJC leave entitlement of 21 days plus an extra 4 days after 5 years service

**Maternity pay and parental rights:** NHS workers get 8 weeks full pay (less Statutory Maternity Pay (SMP) or Statutory Maternity Allowance (SMA) and 18 weeks half pay, with a qualifying period of 52 weeks **compared to** NJC maternity pay of currently 6 weeks full pay (less SMP or SMA) and 12 weeks half pay, with a qualifying period of 52 weeks. Maternity Support leave and Parental Leave are also less advantageous than offered in the NHS.

## **Part 2 Conditions are not up for grabs!**

Part 2 conditions are core, UK- wide conditions and should not be re-negotiated at a local level. The Green Book states that they are "Key national provisions which are for application by all local authorities to all employees covered by the NJC. They are basic provisions which constitute a standard throughout the UK".

The NJC Trade Union Side Joint Secretaries have issued branches with guidance on our joint approach, which is attached. The Trade Union Side letter makes it very clear that Part 2 issues are not to be subject to negotiation locally. If your employer persists, then a local dispute should be registered and branches are asked to make use of the NJC disputes machinery, which is detailed later in this document.

Many employers are insisting that cuts to terms and conditions will save jobs but are continuing to make redundancies and have not considered the consequences of those cuts on their workforce or service delivery. The Local Government Employers have wanted to cut Green Book Part 2 conditions for the last four years and the current financial context has given them a golden opportunity to use the fear of job losses to drive that change. UNISON and the other NJC unions tried to make an NJC-wide 'redundancy avoidance agreement' with the LGE, but they refused.

## **Changes to Pay**

Councils' attacks or proposals on pay vary from pay freezes, pay cuts, frozen increments, introducing spot salaries through to reductions to performance related pay increases.

The basic rate of NJC pay is now just above the adult National Minimum Wage (NMW) - £6.30 pence, compared to £5.93. NJC workers have also suffered an imposed pay

freeze this year without the Chancellor's promised compensation of £250 for those earning below £21,000 or equivalent and below inflation increases in five of the last seven years! The impact of positive pay and grading changes for some workers will be eroded by employers' proposals.

NJC basic pay levels are still below comparative workers in NHS, Police, Higher Education and Probation too, as the table below shows:

<b>Lowest NJC Pay Points Compared to Police, HE, Probation and NHS Employees</b>				
<b>Local Government (Apr 09)</b>	<b>Police Staff (Sept 10)</b>	<b>Higher Education (August 10)</b>	<b>Probation (April 10)</b>	<b>NHS (April 10)</b>
12,145	14,529	13,203	14,182	13,653
12,312	14,913	13,552	14,325	14,008
12,488	15,345	13,911	14,464	14,364
12,786	15,774	14,226	14,604	14,779
13,189	16,164	14,608	14,752	15,194

### **Pay freezes or reductions in pay**

Is your employer seeking to freeze pay or reduce pay for everyone? While we would want to oppose all attempts to cut pay, some employers have suggested pay freezes or cuts for certain groups of workers only, rather than for all employees. While this might seem a 'better' option than a cut for everyone, it could give rise to discrimination if the groups selected are predominantly women, black or low paid, part-time workers.

Careful consideration should be given to how pension provision and salary sacrifice schemes pegged to salary levels will be affected by any cut in pay.

If a council cuts wages overall, but maintains a bonus scheme, enhanced overtime rates or performance related pay (PRP), this could be discriminatory if those receiving the enhanced rates are predominately men or white, compared to the overall workforce.

Also check the impact on NJC pay on the lowest scale point. It is only a few pence above the adult National Minimum Wage of £5.93 pence. Local authorities that cut wages at the bottom of the pay scale face the risk of falling below the Minimum Wage.

### **Frozen Increments/spot salaries**

Incremental progression is an important part of the local government pay structure. Justifiable increments reward experience and increased competence.

Proposals to freeze increments or remove them could raise equality issues as men and women doing work of equal value may be at different points on the pay spine.

Approximately 65% of councils have now implemented Single Status through collective agreements or imposition. In some agreements, women need to progress through one or two increments to achieve their job evaluated – and equal - pay rate. Freezing or temporarily ceasing to award annual increments is therefore likely to prevent or delay the narrowing of the gender pay gap, restricting progress towards achieving equal pay for work of equal value.

It is also likely that proportionately more women than men will be beneficiaries of increments as more men are likely to have reached the top of the grade because women are more likely to have had breaks for childbirth or caring.

### **What do we want?**

- Branches need to try and protect current pay and future pay levels by resisting these changes
- Equal pay and broader equality principles need to be built in to all pay structures and reflected in any changes
- Pay freezes or cuts should be temporary only and subject to review as soon as possible – but at least within a year
- Part-time workers – more than half the NJC workforce – could be particularly vulnerable to pay cuts. The Part Time Workers regulations might be breached if this happens – along with sex discrimination laws

### **Cuts in hours**

Some employers are proposing to cut working hours as an alternative way of reducing pay. This may be preferable to a direct pay cut for some members if there seems to be no alternative to a pay reduction.

Many NJC workers in local government already work over and above the hours they are paid for in order to deliver quality services. Our 'Time For A Change' survey in 2008, in which over 3500 members responded, showed that ***almost a third – 31% of those surveyed – worked extra hours without pay or time-off-in-lieu***. 4% of all staff worked between six and 10 hours each week without receiving paid overtime or time-off-in-lieu while 3% worked over 10 hours on average each week. The occupations most likely to work unpaid overtime were managers, teaching/classroom assistants, care workers, general professionals and social workers.

Some employers may think it easier to reduce part time workers' hours than full-time workers' – a tactic frequently used under CCT and one which should be avoided! A reduction in hours for those working part-time and not full timers could be sex discriminatory due to the high proportion of women working part-time. Similarly, a proposal to make a reduction in working hours below an operational grade and not above it or for some within an occupational group and not others, could be discriminatory if most of those workers are part-time, women or black. Part-time workers have the same statutory employment rights as any other employee. Workers are protected from discrimination on the grounds of their part-time status



through the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and potentially the anti-discrimination provisions of the Equality Act.

In addition, fewer part-time jobs are available in higher-level occupations, meaning that many highly-qualified women are forced into lower-level, part-time jobs, representing a waste of skills and experience. Therefore any change of the kind described above will exacerbate an already negative situation. Such a requirement could put women at a disadvantage because they are more likely to combine paid work with caring responsibilities and work non-standard hours. The employer may have indirectly discriminated against the woman because of her sex unless the requirement can be objectively justified.

A reduction in hours which would result in part-time workers falling below the Lower Earnings Limit for National Insurance purposes should also be avoided.

A requirement for part-time workers to work full time may constitute indirect sex discrimination. However, this situation is unlikely in the current climate with the emphasis upon reducing working time and reducing costs.

### **What do we want?**

- Members may prefer a reduction in hours than having to work the same hours on reduced pay. If you are forced to negotiate a change, make sure you find out what members want first!
- Insist that your employer addresses the extra work members are having to take on because of redundancies and the levels of unpaid overtime – you could carry out your own branch survey!
- Try to ensure that members stay above the Lower Earnings Limit if possible
- Look at the impact on pensions and other benefits before agreeing to anything

### **Sick Leave**

Some employers are proposing to cut the first 3 days of sick pay and reduce the overall number of months of paid sick leave. Across the public sector - Police Staff, Probation, NHS Agenda for Change - sick leave agreements are almost identical to the current NJC conditions which say:

"During 1st year of service 1 month's full pay and, after 4 months' service, 2 months' half pay. During 2nd year of service 2 months' full pay and 2 months' half pay. During 3rd year of service 4 months' full pay and 4 months' half pay 2. During 4th and 5th year of service 5 months' full pay and 5 months' half pay. After 5 years' service 6 months' full pay and 6 months' half pay"

We can see no justification for reducing the NJC sick pay scheme or linking the first 3 days non-payment with the statutory sick pay scheme. The impact of reducing the amount of paid sick leave or not paying for the first three days of sick leave may have a greater impact on women and those with disabilities. Women who have caring responsibilities often have more short term illnesses as a result of their children's

illnesses. Pregnant women may also require more sickness leave. People with disabilities may need to have more sickness leave as a result of their disability or may have short term illnesses related to their disability.

### **Public sector workers have fewer 'sickies'**

In March 2010, the TUC produced *The Truth About Sickness Absence* report which smashed the myth that public servants are always on the lookout for an excuse to pull a 'sickie'. It also questioned Government claims that there are easy savings to be had from cracking down on absence in the public sector. It found that public sector workers are more likely than private sector colleagues to work when too ill to do so and less likely than private sector staff to take a 'sickie' - a short period off sick. While public sector workers take longer periods off work on absence, many work in stressful and dangerous jobs that can cause injury. Private sector workers are much more likely to work for employers who are quick to sack people with genuine health problems, rather than help them return to work.

A TUC poll found that:

- Within the previous month, more than one in five public sector workers had been to work when they were really too ill to do so (21%).
- A further 41% (compared to 36% of private sector workers) had gone into work while poorly when they should have stayed off sick within the last year
- Only 11% of public sector workers have never been to work when they were too ill to go.
- One in three public sector workers said that their reason for going into work when unwell was 'people depend on the job I do and I didn't want to let them down' (33%).
- Others were concerned about the impact their absence would have on colleagues: 'I didn't want to give my colleagues extra work' (18% of public sector workers compared with 12% of private sector workers said this was the case).

The regular CBI/AXA absence surveys also back this up and reveal that public sector staff are less likely to take absences of one or a few days - 'sickies' - than private sector workers. The majority of short-term absence is in the private sector. 69% of private sector, but only around 50% of public sector absence, is short-term. They say that:

'Absence rates have been falling over time in the public and private sectors. It is a myth that there are big, quick and easy savings from new policies that assume that sickness absence is mostly skiving.

'Of course positive sickness absence policies are important in the public and private sectors. But there is most to gain from tackling the causes of absence, particularly stress, and helping people return to work.

'Employers who use the carrot approach of engaging with their workforce in a positive way will reap the benefits, while those who use the stick approach will find it backfires on them.'

## **What do we want?**

- We need to maintain NJC sick leave and pay for all workers. It is a standard public sector condition which should not be eroded
- An equality impact assessment of any proposed changes
- Sickness absence management is poor in local government and could be improved
- Stress is a common reason for absence and needs to be tackled
- Adequate staffing levels to help avoid injuries related to lifting

## **Annual leave**

Some authorities are looking to reduce locally improved annual leave entitlements. In 2008 our 'Time For A Change' survey showed the average annual leave in councils was 22.2 days with the highest level being 31 days and the lowest 20 days. Branches should also be aware that in the NHS workers get 27 days basic leave entitlement, increasing to 29 after 5 years and 33 days after 10 years **compared to** NJC leave entitlement of 21 days plus an extra 4 days after 5 years service.

Annual leave the statutory minimum is 28 days for those working 5 days a week, pro rata for part time workers, including 8 days for Bank and public holidays. This means that basic annual leave for NJC employees is only 1 day more than the statutory entitlement. We have submitted claims to the LGE for improvements to annual leave.

## **What do we want?**

- Maintain current levels of annual leave, even if they are above the basic NJC level
- Use arguments about regular unpaid overtime to boost your case
- Ensure that annual leave is equality proofed and not linked unjustifiably to grade

## **Cuts to Car Allowances**

The employers have been trying to get rid of the NJC formula and agreement since 2005. Of the 300 branches who responded to our pay and conditions survey in 2008, 75% said that their local authority used the Green Book terms and conditions to calculate car allowances. Only 6% reported that their local authority used the HMRC rate of 40 pence a mile to calculate car allowances. 19% of branches said their local authority used some other method of calculating the allowances. Since then, a number of councils have moved to the HMRC rate.

In 2005, the UNISON NJC Committee commissioned a report from Emmerson Hill Associates on the impact of authorities moving from NJC to HMRC rates for car allowances. It found that the impact depends on the individual mileage, however the current AMAP rates (Approved Mileage Allowance Payments) only start to reasonably compensate car users when they cover 10,000 miles per annum on business. The

researcher contacted a number of local government branches whose authorities had changes car allowances from NJC to HMRC rates. He found that members felt they were subsidising their employer and were aggrieved that no compensation had been given to cushion the loss of the lump sum payment.

### **What do we want?**

- Although we believe that current rates are fair, the current scheme is often not applied fairly – with those required to use their cars to carry out their jobs - such as home care workers or outreach workers in rural councils – often not paid the essential user allowance. This could be a discrimination issue and if negotiating changes to car allowances, branches should ensure that any new agreement is equality proofed
- Branches should seek compensation for loss of lump sum payments
- Broader alternatives should be explored, such as a travel allowance which can be paid for all types of transport (public transport/bikes/motorbikes) and which doesn't come up against the same taxation issues as the standard car allowance. Further guidance can be obtained from the Local Government Service Group.

### **Cuts to overtime and additional hours payments**

Some employers may propose cuts or removal of unsocial hours payments, including weekend enhancements, night working, Saturday and Sunday overtime working, weekday overtime working, evening working, shift working and public and statutory holiday working. This has already happened in some Single Status agreements, but usually where members have gained through job evaluation.

Proposals to change working arrangements and/or any payments listed in part 3.2.3 to 3.2.5 of the Green Book can only be valid if they can be shown to be required to deliver improved services (not cost cutting). Detrimental changes to premium payments could impact on service provision with fewer people willing to work unsocial hours and may lead to increased agency work and costs. If the changes impact more on one group of workers than another, this may represent discrimination.

### **What do we want?**

- Try to ensure some recognition of unsocial hours working – particularly at nights and weekends
- Don't agree to cuts in unsocial hours allowances for part-time workers such as home carers or residential care workers if full-time overtime rates and other unsocial hours allowances are left untouched. This could amount to sex discrimination if most of the part-time workers are women or black

### **Use of Interns, Volunteers and Apprentices**

A growing trend is for employers to try and avoid employing people and paying them. Use of interns or volunteers is identified in the 'Reducing Workforce Costs' document as a cost-saving idea. While UNISON encourages genuine apprenticeships, it is also

becoming clear that apprentices not on genuine apprenticeship schemes are being used to plug the gaps of skilled and qualified employees in order to cut costs.

UNISON opposes the use of interns or volunteers to replace paid staff, for fairness, security and performance reasons. It is becoming increasingly clear that interns or volunteers are often working under conditions imposed by an employer ( but not necessarily in writing) and should therefore be considered 'workers' for National Minimum Wage purposes. If they are a 'worker' they are entitled to be paid at least the NMW (unless a specific exemption applies). A 'worker' is someone who works under a contract of employment or other kind of contract (express or implied) whereby they undertake to do work personally for someone else and they are genuinely not self employed. The key elements in establishing whether someone is a 'worker' include:

- Whether there is an obligation on the individual to perform the work and an obligation on the employer to provide work
- Whether the individual is rewarded for the work by money or benefits

Branches should establish how many apprenticeships there are in your council and their terms and conditions. The LGE have got no data on the use of apprentices across local authorities, but we must ensure that they are not used for substitution for permanent employees at local level.

### **What do we want?**

- Paid employees should not be replaced by interns or volunteers
- Any intern or volunteer performing work according to terms and hours laid down by your council could well be a 'worker' and eligible for at least the NMW. This should be agreed with the council
- Negotiate genuine apprenticeships which do not impact on qualified and skilled posts

### **THE DISPUTES PROCESS**

Branches should invoke their local disputes procedure and the NJC disputes procedure if employers propose cuts to Part 2 conditions, refuse to negotiate or if there is a failure to agree. The Green Book constitution sets out the role of the NJC to settle differences over interpretation or application of the agreement and to resolve disputes where there is a failure to agree at local or provincial level. Therefore if there is a local industrial dispute, the two sides can agree to refer it to provincial and national level for the NJC to assist in resolving it.

The NJC will not normally have the power to impose a particular resolution of a dispute unless both sides agree to it, but in matters of interpretation of the national agreement their decision is final. However, this role in settling differences in interpretation or application does not override the specific procedure set out in Part 1 of the Green Book for dealing with local failures to agree Part 3 changes set out below. This provides a procedure for ultimate referral to ACAS if so recommended by the Provincial Council or NJC Joint Secretaries. The Green Book says:

"The NJC has a strong commitment to joint negotiation and consultation at all levels, and to this end encourages employees to join and remain in recognised unions. Co-operation between employers, employees and unions will help ensure the successful delivery of services. Local authorities are therefore encouraged to provide facilities to allow trade unions to organise effectively for individuals and collective representation.

In addition to this, the Green Book consists of:

## **PART 2**

**Key national provisions, which are for application by all local authorities to all employees covered by the NJC.** They are basic provisions which constitute a standard throughout the UK.

## **PART 3**

Other national provisions which may be modified by local negotiation. The party proposing change must state in writing what changes are sought and why and the parties must then seek to reach agreement, normally within three months. Where agreement is not possible, either party may refer the failure to agree to the provincial joint secretaries (or other mutually agreed persons) for conciliation. If the provincial conciliation is unsuccessful, the provincial secretaries may recommend further procedures for resolution of the difference, including external conciliation, mediation or binding ACAS arbitration. The above procedures should if possible be completed normally within a further three months."

### **Industrial action**

Industrial action remains an option when faced with an employer who decides to impose contractual change. This scenario will generally fall within the definition of a 'Trade Dispute' given that it concerns a dispute as to terms and conditions of employment. It is vital therefore that early advice is sought from your Regional Organiser before considering industrial action. Branches need to ensure rigorous updates to RMS are conducted throughout the negotiating process in order to be in the best possible position if it is necessary to take industrial action

## **Appendix 1: Variations to Contract**

A contract of employment is a legally binding agreement between an employer and an employee setting out the rights and obligations of both parties. During the course of the employment relationship either party may wish to change some of the terms. However, variations to the contract cannot be made without the agreement of both sides.

The contract of employment can contain four types of term:

- **Express** – either oral or written
- **Implied** – e.g. due to custom and practice, necessity or conduct of the parties
- **Incorporated** – from other sources e.g. collective agreements
- **Statutory** – e.g. the sex equality clause from the Equalities Act 2010.

There are two ways an employer can to legitimately vary a contract of employment:

1. By agreement between the employer and the employee
2. By agreement between the employer and the employee's trade union – where the term is part of a collective agreement incorporated into the contract in such a way as to allow for future variations e.g. '...as varied or amended from time to time'. In this case, changes negotiated and agreed will automatically become part of the individual's contract. A collective agreement can be incorporated by custom and practice

Employers must consult affected employees and the union. This consultation should be as early as possible to allow for a meaningful dialogue. The proposed changes and the reasons for them must be fully explained by the employer. They must give sufficient information to the union to understand the full implications of the changes and in particular, the effect it will have on pay. Merely giving employees notice of the proposed changes may not be sufficient to vary the contract lawfully.

Imposition of terms and conditions by employers, where local agreement is required, is therefore a breach of contract. Imposing changes in this way is a risky employment practice because if employees are not taken to have agreed, they may resign and claim constructive dismissal if the breach is fundamental, or they may refuse to work under the new arrangements which means the employer may have to consider dismissal. Alternatively, employees could continue working but object to the changes and claim damages for breach of contract or unlawful deduction of wages.

**Branches should therefore seek immediate advice from their Regional Organiser if an employer tries to impose such changes. Branches should not advise members to resign or refuse to work under new arrangements until they have received advice from their Regional Organiser.**

In order to combat any arguments relating to implied acceptance, there are a number of steps, which the union and members must take. First, the branch should write to members advising them of the employer's action and ask the member to submit a letter to the employer to help preserve their legal rights. It is vital that the branch and region keep records of the letters and method by which this was distributed to members. Model letters are being developed and will be issued shortly. This is an ideal opportunity to engage with non-members too and get them to join the union.

### **If the employer goes ahead, can members claim Constructive or Unfair Dismissal?**

Constructive dismissal requires members to regard the employers' breach as a fundamental one, which entitles the member to treat the contract as terminated. Only members who have at least 12 months service will be eligible to bring claims, others will not have the right to complain to a Tribunal or receive a remedy. A lot will depend on the length of time that apparent negotiations have been ongoing and the steps taken by the employer to try and agree the changes to the contract before taking the decision to dismiss and re engage. In some contracts, employers expressly reserve the right to amend terms unilaterally. In exceptional cases, taking this action may not amount to a breach of the implied term of trust and confidence, which means that the variation could be regarded as valid. However, much will depend on the contract clause and the specific circumstances surrounding the change.

Close consideration of these issues will affect the potential merits of any constructive unfair dismissal cases but will vary in each case. Timely legal advice must therefore always be sought in relation to the particular set of circumstances, so that members can be properly informed about their options and the possible outcomes.

### **Section 188 Notices**

#### **What are they?**

If 20 or more employees are to be dismissed from one establishment then an employer has to carry out collective consultation under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 as the dismissals will constitute redundancies for this purpose. Therefore, the employer must:

- Inform and consult with the trade union if one is recognised for the class of employee affected, otherwise consult elected representatives
- Begin the consultation in good time and at least 30 days before the first dismissal takes effect. If 100 or more dismissals are proposed, consultation must start at least 90 days before the first dismissal takes effect. Consultation must be completed before notification of dismissal is given.
- Notify the Secretary of State of the dismissals according to the above timescales and before notice of dismissal is given.

Dismissals by the employer on this scale are likely to have a consultation requirement. Failure by the employer to consult, leads to potential awards of up to 90 days pay for each employee. The consultation duty imposed kicks in only after the proposal to dismiss has



been put forward by the employer. The duty to consult is therefore in addition to any negotiations that may have taken place previously and must, in fact, follow the employer's notification of its intention to implement a contract by way of dismissal and re engagement.

The threat of seeking protective awards through the Courts for failures in relation to collective consultation may be the most effective block on imposition. The consultation requirement imposes an obligation on the employer to consult over ways of avoiding redundancies, ways of reducing the number of employees, and also ways of mitigating the consequences of the dismissals. It may therefore be tactically advantageous for the union to engage the employer in the consultation process with a view to achieving at the very least, a delay and at best, an alternative solution to mass dismissals.

## **Appendix 2: Useful materials**

- Finance guides for England and Wales
- EQIA guide
- Redundancy Guide

Council Finance – Wales – A guide for negotiators  
<http://www.unison.org.uk/acrobat/19092.pdf>

Council Finance – England – A guide for negotiators  
<http://www.unison.org.uk/acrobat/19091.pdf>

Redundancy Pack  
<http://www.unison.org.uk/acrobat/18420.pdf>

Guide to Equality Impact Assessments (EIAs)  
<http://www.unison.org.uk/localgov/servicechanges.asp>

Branches can order copies of the guides by emailing [stockorders@unison.co.uk](mailto:stockorders@unison.co.uk)