

<b>Subject:</b>	<b>Trade Union Recognition Agreement</b>		
<b>Date of Meeting:</b>	<b>30 November 2017</b>		
<b>Report of:</b>	<b>Executive Director Finance &amp; Resources</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Katie Ogden</b>	<b>Tel:</b> 01273 291299
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<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE**

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 Brighton & Hove City Council has, since its inception, granted union recognition to both GMB and Unison on a voluntary basis. This agreement has not, until this time, been formally documented in writing. At the request of the unions an agreement has been drafted and is attached to this report as Appendix 1.

**2. RECOMMENDATIONS:**

- 2.1 That the Committee authorises the Head of Human Resources & Organisational Development to sign the attached voluntary Recognition Agreement on behalf of the council.

**3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 Trade union recognition is a process by which an employer sets out the areas where a union is able to act on behalf of a group of workers for a particular purpose. It can take many forms but is more commonly associated with recognition for representation and consultation purposes, as well as for collective bargaining.
- 3.2 Collective bargaining is defined under S. 178 (1) & S.178 (2) of TULR(C)A, as 'negotiations relating to or connected with' one or more of the following matters;
- a. terms and conditions of employment or the physical conditions in which any workers are required to work;
  - b. engagement or non-engagement, or termination or suspension of employment or the duties of employment of one or more workers;
  - c. allocation of work or the duties of employment as between workers or groups of workers;
  - d. matters of discipline;
  - e. a worker's membership or non-membership of a trade union;
  - f. facilities for officials of trade unions; and
  - g. machinery for negotiation or consultation and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers

in any such negotiation or consultation or in the carrying out of such procedures.

- 3.3 A union securing recognition has statutory consultation rights on issues such as: collective redundancies; business transfers; health and safety matters; and certain changes to workers' pension entitlements. Its local representatives also gain rights to time off at work, paid by the employer when undertaking union duties, unpaid when simply pursuing union activities.
- 3.4 The majority of recognition agreements are reached on a voluntary basis, are not legally binding, and are made as a result of discussions between employers and unions. A union denied recognition by an employer may make an application for statutory recognition to the Conciliation and Arbitration Committee (CAC). Statutory recognition will normally last for a minimum of three years and cannot be ended unilaterally by the employer, even after the end of the period, except through a process of de-recognition. It is legally binding on the parties. However statutory recognition isn't imposed by the CAC where a voluntary agreement exists.
- 3.5 Both GMB and Unison are recognised at a national level by the Local Government Association for collective bargaining on behalf of the local government workforce. Brighton & Hove City Council has recognised GMB and Unison since its creation in 1997 for individual representation, collective consultation and bargaining. This is a voluntary agreement and has not been recorded in writing as a 'Recognition Agreement'. The council does have a written agreement on paid time off for union representatives, known as a 'Facilities Agreement'. This provides details on matters for which the council provides paid and unpaid release for the representatives of its recognised unions. The council also has written terms of reference for its Joint Staff Consultation Forum.
- 3.6 No other union has sought recognition and unless another union acquired significant membership it is unlikely that this would be granted.
- 3.7 The draft Recognition Agreement sets out some general principles including a joint commitment to develop a positive working relationship and work constructively together to find solutions to any problems that arise. The Recognition Agreement is one element of the work being undertaken to re-set the council's relationship with its trade unions, as recommended by the LGA Peer Review.
- 3.8 The benefits of having a written agreement also include the opportunity to provide clarity for all parties regarding its scope, a commitment to confidentiality and to share information at an early stage, as well as a formal review period of every three years and a twelve month notice provision. The agreement is also incorporated into individual employment contracts (see paragraph 6.7 of the draft agreement). The draft covering letter accompanying new contracts of employment contains the following statement;

“As an employer, we recognise that our employees may wish to be members of trade unions and have those unions represent them individually and collectively negotiate on their behalf. To support this, we

have agreed a Trade Union Recognition Agreement with our recognised Trade Unions, GMB and Unison, and keep it regularly under review.”

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 Voluntary recognition of unions within local authorities is widespread and typically reflects the current position at this council. Many have captured the terms within a written collective agreement. The Local Government Association (LGA) have said that it is rare to have a legally binding agreement within the public sector
- 4.2 The unions desire a legally binding agreement in the belief that this would ensure any future employer following a transfer of a service (under TUPE) is required to maintain the existing recognition agreement. An application to the Conciliation and Arbitration Committee (CAC) is inadmissible where no formal request for recognition has been made to the employer and the CAC process is designed to deal only with employers who are unwilling to recognise unions.
- 4.3 The unions therefore wish to have the Recognition Agreement incorporated into individual employment contracts as they believe this will secure recognition by future employers. The council's position is that recognition would depend on the will of any future employer and the nature of the work to be transferred.

#### **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 The content of this report has been discussed with GMB and Unison and the attached draft agreement shared with them

#### **6. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

- 6.1 Some organisations who do not currently recognise trade unions, or who do so voluntarily, may be deterred from bidding to run council services and this may limit competition. In such circumstances bidders may also price in a premium to cover perceived extra costs.

*Finance Officer Consulted: David Kuenssberg*

*Date: 21 November 2017*

##### Legal Implications:

- 6.2 Should either the Council or the recognised Trade Unions seek to terminate the Recognition Agreement as set out at Appendix 1 of the report, a 12 month notice period will be required. Alternatively, the parties are free to agree changes to the agreement by mutual consent.
- 6.3 With a Recognition Agreement in place, the Council would expect Trade Union Recognition to transfer to a new employer where the workforce retains a distinct identity post transfer. There are circumstances where trade union recognition would not transfer to a new employer under TUPE, even with a Recognition Agreement in place that was stated to be legally binding. In particular, Regulation 6(1) of the TUPE Regulations states that Trade Union recognition will not

automatically transfer where the workforce does not retain a distinct identity or management autonomy post transfer. This is the case regardless of how the recognition has come into being (through contractual, voluntary or statutory means). Further, even where there was a retention of identity or autonomy post transfer, a new contractor is able to vary or rescind Trade Union recognition upon giving the requisite notice under the Recognition Agreement.

*Lawyer Consulted: Elizabeth Culbert*

*Date: 21 November 2017*

Equalities Implications:

- 6.4 There are no equalities implications arising from this report.

Sustainability Implications:

- 6.5 There are no direct sustainability implications arising from this report.

Any Other Significant Implications:

- 6.6 The council also consults and collectively bargains with a number of unions representing teaching staff. They too may seek written voluntary Recognition Agreements.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Draft Collective Agreement between Brighton & Hove City Councils and GMB & Unison

### **Documents in Members' Rooms**

1. None.

### **Background Documents**

1. Trade Union and Labour Relations (Consolidation) Act 1992

## APPENDIX 1

### Brighton & Hove City Council Trade Union Recognition Agreement

#### 1 Parties to the Agreement

This Agreement is made on xxxxxxxx between:

Brighton & Hove City Council of Hove Town Hall, Norton Road, Hove, BN3 3BQ

AND GMB of 49 Church Road, Hove, BN3 2BE

AND UNISON of 179 Preston Road, Brighton, BN1 6AG

#### 2 Commencement date

- 2.1 This Agreement commences on xxxxx and supersedes all previous versions of this Agreement.

#### 3 Definitions and Interpretation

- 3.1 Throughout this Agreement:

**The Council** - refers to Brighton & Hove City Council (the Employer)

**Employees** - for the purposes of this Agreement only, employees refers to individuals employed under a contract of employment by the Council or a voluntary-aided school within the City of Brighton & Hove as well as to those individuals engaged by these employers, from time to time, to undertake work assignments on a casual basis. For the avoidance of doubt this excludes:

- any individual employed by, or otherwise engaged to carry out work at an Academy or Free School within the City of Brighton & Hove
- interims, interns and individual(s) undertaking work assignments with the council via an Employment Agency or other limited companies
- consultants and contractors working on behalf of the council
- volunteers
- individuals who are self-employed
- individuals seconded to the council from other organisations who remain contracted employees of the organisation from which they are seconded

**Trade Unions** - refers to the council's recognised Trade Unions, GMB and Unison

**Negotiation** - means engaging in dialogue with a view to reaching agreement

**Consultation** - means engaging in dialogue when proposals are still at a formative stage so that the Council is able to take account of the views of the Trade Unions before decisions are made and implemented.

## **4 Trade Union Recognition**

4.1 The council formally recognises GMB and Unison as the Trade Unions representing Brighton & Hove City Council employees. The facilities for our recognised Trade Unions are set out in the council's Facilities Agreement.

## **5 Employees covered by this Agreement**

5.1 This Agreement covers all employees of Brighton & Hove City whose terms and conditions of employment are governed by the following negotiating bodies:

- National Joint Council for Local Government Services (commonly known as the "Green Book")
- Joint Negotiating Committee for Youth and Community Workers (commonly known as the "Pink Book")
- Joint Negotiating Committee for Chief Officers (commonly known as the "Blue Book")
- any other negotiating body relating to group(s) of employees who have been transferred to the council's employment following a TUPE transfer.

5.2 This Agreement specifically excludes employees whose terms and conditions of employment are governed by the "Conditions of Service for School Teachers in England and Wales" (commonly known as the "Burgundy Book).

## **6. General Principles**

6.1 The Council acknowledges that its employees may wish to join a Trade Union and have that Union represent them in matters relating to their employment.

6.2 The council acknowledges the Trade Unions' responsibility to represent the interests of their members, both on an individual and collective basis.

6.3 The Trade Unions recognise that the council has a responsibility to plan, organise and manage the work of the organisation in order to deliver high quality, cost effective services to all the residents of Brighton and Hove.

6.4 The council and Trade Unions recognise their common interest in furthering the aims and objectives of the council whilst recognising that there may be legitimate interests of both parties that need to be reconciled.

6.5 The council and Trade Unions are committed to developing a positive relationship based on trust, transparency and respect in order that they can work constructively together to jointly analyse problems and find solutions to resolve them.

- 6.6 The council and the Trade Unions recognise the importance of sharing information at the earliest opportunity to facilitate productive consultation and collective bargaining. The council and the Trade Unions undertake not to share further any information expressly provided to them in confidence with a rationale for the confidentiality.
- 6.7 The Council and the Trade Unions accept that the terms of this Agreement are legally binding upon them and will continue indefinitely (subject to paragraph 9 and 10) . They also accept that this Agreement (as amended see paragraph 9 below) is incorporated into employees' individual contracts of employment.

## **7 Scope of this Agreement**

- 7.1 The council undertakes to consult and negotiate with its recognised Trade Unions in accordance with its employment policies and procedures and statutory obligations.

## **8 Relationship between this Agreement and other national collective agreements**

- 8.1 Nothing in this Agreement will affect the collective bargaining rights of the Trade Unions with Local Government Employers at a national level.
- 8.2 Terms and conditions of employment negotiated and agreed between the Employer and Trade Union sides at a national level that apply to the council's employees will be excluded from the scope of this Agreement.
- 8.3 However, this Agreement will apply should the council intend not to adopt, or to vary, any provision(s) incorporated within those collective agreements.

## **9 Variation of this Agreement**

- 9.1 The parties to this Agreement may agree to vary any of the terms within it by mutual agreement at any time. Any such amendments made will be recorded in writing and this document revised accordingly.

## **10 Review of this Agreement**

- 10.1 This Agreement will be formally reviewed every three years by the Parties named in Paragraph 1 of this Agreement.
- 10.2 This Agreement can be reviewed before the scheduled review date in the following circumstances:
- one or more of the Parties to the Agreement submits a written request setting out the reasons for a review or

- another Trade Union seeks recognition for collective bargaining purposes from the Council.

## 11 Termination of this Agreement

11.1 This Agreement can be terminated by any party by giving twelve months notice in writing.

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Alison McManamon  
Head of Human Resources &  
Organisational Development

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Date

Signed for and on behalf of Brighton & Hove City Council

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Mark Turner  
GMB Convenor

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Date

Signed for and on behalf of GMB

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Sue Beatty  
Branch Secretary

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Date

Signed for and on behalf of Unison