



**To: Chief Executives in England, Wales and N Ireland  
(additional copies for HR Director and Finance Director)  
Members of the National Employers' Side  
Regional Directors**

17 September 2013

Dear Chief Executive,

### **Supporting Local Initiatives on Changes to 'Green Book' Terms and Conditions**

You will recall that when making their formal pay offer to the unions on 24 April the Employers expressed their disappointment that the unions were not prepared to discuss even the most minor elements of reform to some terms and conditions as part of last year's pay negotiations. Accordingly, the Employers informed the unions that in the absence of a significant change in their position we would concentrate our efforts on assisting councils in whatever way possible to achieve reform locally and that future national negotiations would therefore focus solely on the issue of pay.

Now that the pay award for 2013/14 has been agreed, the Employers are moving ahead with their plans to consult councils on the future shape of national bargaining. The attached draft discussion paper is intended as a first stage in setting out our thinking. However, the Employers are not suggesting that councils are required or indeed should make any or all of the changes proposed, but if councils do decide that they wish to achieve local reform then we will support and assist them in whatever way we can.

The Employers' Side consists of twelve elected members; nine are nominated by the LGA political groups; one from the Welsh LGA; one from the Northern Ireland LGA and one from the National Association of Local Councils (although this seat is currently vacant).

The draft discussion paper has been endorsed by colleagues in the WLGA, NILGA and the nine English regional employer organisations but for the sake of brevity only the LGA and / or 'the Employers' are referred to explicitly.

Yours faithfully,

**Sarah Messenger  
Head of Workforce**



### **Foreword to the draft document**

This document is being developed by the National Employers as part of a major effort to provide advice and support to councils as they pursue local changes to aspects of the *National Agreement on Pay and Conditions of Service* ('Green Book') that have previously been regarded as national business only. This document sets out in more detail the scene around the failure to make progress at a national level (as described in the [Employer circular](#) dated 24 April 2013); describes the considerable existing flexibility in the Green Book; sets out National Employer advice on ideas for change that might be pursued and outlines the support that the LGA can provide or is planning to provide to councils.

***This is a draft document and we would very much like to hear your views on it.***

Please let us know especially if there are other things that you would like to see the LGA do in support of councils. With very tight resources we need to make judgements about how much support we can provide but this makes it doubly important to get our support offer right. Naturally, we would also be pleased to receive any thoughts about changes that can be achieved through local agreement, as opposed to imposition.

When published, this document will include various annexes covering our existing advice on how to make changes without agreement, research on local changes and advice on developing pay progression systems.

**Please send any comments to:** [harry.honnor@local.gov.uk](mailto:harry.honnor@local.gov.uk)



## 1. Introduction

- 1.1 The National Employers have signalled that they do not believe that meaningful changes to core terms and conditions of service in local government can be achieved through national negotiations for the foreseeable future. This is regrettable because everyone has an interest in fair, agreed approaches to the basic employment package that reflect the reality of 21<sup>st</sup> century workplaces, the changing expectations of employers and employees and that deliver value for money for residents.
- 1.2 The challenges facing the sector are well-documented and immense. Decisions made in recent years have had a significant impact on our workforce, from job losses to pay freezes, redesigned services to social enterprises. Many councils have reached those decisions in full consultation and often in agreement with their trade unions and continue to value the input and scrutiny of their trade union reps. However, there is ongoing frustration that nationally the unions refuse to discuss certain aspects of the employment package with the National Employers and have issued a similar edict to their local representatives. The Employers believe this cannot continue; we want to work with the unions to ensure we have a fair, relevant offer for our employees but the challenges facing the sector are profound and terms and conditions of employment must be considered within the context of a wider dialogue about the benefits and rewards of working within local government.
- 1.3 National negotiations can only succeed if both Sides are willing to engage in constructive dialogue and shift their positions as necessary to reach agreement. If the unions are willing to do this we remain ready to talk to them.
- 1.4 The National Employers believe strongly that it is always best to allow appropriate time and space to reach agreement rather than call a halt to discussions and seek to impose changes too soon. Local changes do not require agreement because employers do have the ability to dismiss employees and re-engage them if collective or individual agreement cannot be reached, but we consider that to be an option of last resort and most councils would prefer to avoid doing this if possible. On behalf of the National Employers, the LGA sees its main responsibility from now on, in the absence of constructive national dialogue about reform to terms and conditions, as being to help councils to achieve any necessary changes locally. Our activity here will complement that already undertaken by the regional employer organisations.
- 1.5 The National Employers will continue to work with the unions in areas where joint working has been important and successful such as job evaluation and public health and social work developments. There is still scope to prepare joint national guidance on key topics which will be helpful in delivering local change programmes. Similarly, if there are legislative changes to address, eg maternity,



we will continue to work with the unions nationally to update the Green Book if required.

- 1.6 It is very important to be clear exactly what is meant by the National Employers' view that making changes to certain terms and conditions is now best done locally. Councils have of course long been able to make changes to the terms and conditions set out in Part 3 of the Green Book; the focus is on the elements of the Green Book set out in Part 2, which are currently regarded as "core" elements subject only to national negotiation. For many the most significant item on this list is the sickness absence scheme.
- 1.7 This document summarises the existing flexibility available through the Green Book, outlines National Employer recommendations on future local negotiations and discusses how to go about making changes. The LGA will continue to develop and offer advice and support; updated documents will be issued as necessary.
- 1.8 It should be noted that the LGA is giving consideration to reducing the number of separate pay bargaining groups at national level and the views of authorities will be sought to inform decisions on this. However, we would advise that when at local level proposals are being put forward by the employer to change conditions of service that affect these different groups and not just 'Green Book' employees that the unions representing these groups should be included in the negotiations / consultation. We are aware of cases where a failure to do this has resulted in legal challenges.

## **2. Summary of Existing Flexibility in Green Book Arrangements**

- 2.1 Under the current Green Book agreement, many key aspects of terms and conditions are in fact already either developed locally or can be changed on an entirely local basis. This is true especially of Part 3, which was always intended as a set of provisional arrangements pending local agreements. A fresh impetus was given to this in 2004 with the National Agreement requiring local pay reviews to be completed by 2007; however, though ultimately successful in most areas, this initiative was heavily delayed by the historic complications over equal pay. There are also some key aspects of Part 2 of the Green Book which have always enabled local discretion, mainly because of what the agreement *does not say*.

*This flexibility includes:*

### **Grading Structures**

The Green Book says only that councils need to use the national spinal column and ensure that pay structures are fair and equitable. The development of grades and pay bands is entirely a local matter.



The use of job evaluation is not an actual requirement, although in practice it is extremely risky to avoid it because it would ultimately be used by employment tribunals in judging disputes. The voluntary NJC JE Scheme has been recently [reviewed](#) to ensure it can deal with modern jobs and hierarchies but councils are free to choose their own schemes.

All national grades were abolished in 1997 and grade positioning plus the use of any market supplements are entirely local matters.

### **Pay Progression**

The Green Book says nothing at all about incremental pay progression and other systems. Councils are entirely free to design pay progression systems. Around 20% have removed automatic increments and moved to some form of Performance Related Pay; others have introduced temporary progression freezes to cope with budget tightening.

The Chancellor used the 2013 Budget to announce that parts of the direct civil service workforce which still have automatic incremental progression will need to find ways to move towards systems based on contribution. This has in fact been a longstanding recommendation from the LGA but needs, in our view, to be set in the context of wider strategic reform of reward structures and the use of “[total reward](#)” systems. The LGA has [standing advice](#) on these issues and has produced a set of recommended characteristics for evolving pay progression systems.

### **Additions to Basic Pay**

All additions to basic pay, such as overtime and unsocial hours payments, are open to local negotiation and in practice the majority of councils have introduced variations; such additions now account for 5% or less of actual earnings in most councils

### **Car Allowances**

The Green Book requires the payment of car allowances for business use and does include a scheme which can be – and often is – varied by local agreement. Well over half of councils have introduced local schemes based mainly on the HMRC figures that allow payments that can be made without attracting taxation.

### **Annual Leave**

The Green Book provides a national minimum entitlement which is quite low in comparison with many sectors but 3 days above the minimum statutory requirements. Councils are free to decide their own leave policy above this and there are many variations.

## **3. Part 3 of the Green Book**

- 3.1 As mentioned, councils have of course been involved in making local changes to Part 3 terms and conditions for many years during the introduction of single status.



The pace of change accelerated as a result of recent budget restrictions. The LGA has monitored local changes in recent years.

- 3.2 We stress again that the issues in Part 3 such as unsocial-hours payments have always been a matter for local discussion and agreement. It will be important in seeking further agreements to ensure that equalities impacts are fully assessed and it is good practice to keep systems under review.
- 3.3 The LGA will conduct regular national research, working with the regional employer organisations, on local changes to terms and conditions and use this as the basis of advice and support.

#### **4. Part 4 of the Green Book**

- 4.1 The Green Book contains a number of other elements which will continue to operate. The Implementation Agreement 2004 on local pay reviews, for example, will remain fully in force and councils should not seek to move away from their responsibilities to carry out regular equal pay audits. Part 4 of the Green Book includes all the various advice and guidance produced over the years, most notably the national job evaluation scheme. All of the guidance will remain in place and in fact the National Employers feel that it is more important than ever to make good use of it; local negotiations may well fare better if conducted according to agreed joint advice.
- 4.2 Although little has been achieved on core terms and conditions at a national level in recent years, discussions around advice and guidance on job evaluation, social work careers and the public health transition have been very positive and productive and provides a valuable backdrop for local negotiations. Guidance around the NJC JE scheme has been revised by agreement and this is very important in developing local pay structures. The National Employers will continue to engage constructively on issues such as these.

#### **5. LGA Advice on Future Local Negotiations**

- 5.1 The core (Part 2) aspects of the Green Book that have been regarded as national provisions are: the length of the basic working week; the sick pay scheme; maternity scheme and minimum annual leave. Although uncommon, it has always been possible to vary even these provisions by local agreement but they have been regarded as key national standards and the unions can be expected to maintain that position.
- 5.2 As things stand, the Part 2 elements of the Green Book will remain incorporated into individual contracts unless councils take action to change this. We have prepared some observations on recommended courses of action should individual councils choose to begin the process of making changes locally.



- 5.3 The failure to achieve agreed changes nationally can be seen in large part as a result of the fact that the only bargaining chips potentially available to the National Employers are limited pay increases and some **improvements** in national terms and conditions. The National Employers cannot impose changes to contracts. Even at local level though it is always necessary to seek to agree changes to contracts as a first step, as the only other valid legal option (dismissal and re-engagement) requires negotiation with a view to reaching agreement if claims of unfair dismissal and protective awards are to be avoided, or at least successfully defended.
- 5.4 The detail of processes to change contracts is discussed in the LGA guide. The remainder of this section examines what approaches to changing terms and conditions might become the basis of an agreement *as part of a balanced package* rather than focusing on changes to a single aspect of terms and conditions such as sick pay or car allowances.
- 5.5 Working individually or in partnerships, councils will need to ask themselves two basic questions in planning for change:
- What do we want to achieve?
  - How are we going to do it?
- 5.6 Most of the considerations set out here are about what councils might want to achieve; answering the second question will require a very frank local assessment about what is realistic. In the end, the outcome will take one of four forms:
- agreeing an alternative package
  - dropping the idea entirely due to resistance from employees and / or unions
  - [reaching agreement with individual employees](#)
  - imposing change through dismissal and re-engagement
- 5.7 How far and fast to pursue ideas will in the end be a matter for political judgement and decision-making.
- 5.8 In making these political decisions, some councils will be in a position where they are seeking to reduce some locally set conditions which are above the Green Book minimums. Councils will form their own views and will wish to take account of recruitment issues and local market conditions. However, it is true to say that on the whole our minimum conditions are comparable with standards across the public sector and are certainly not higher.
- 5.9 It is important therefore to begin by identifying clearly which terms and conditions it is most important to seek to change locally. If a council can show that some existing national conditions could remain unaltered then this may provide part of a



negotiable package. Whatever the final circumstances of implementation, attempts to get as close as possible to an agreement will be helpful.

- 5.10 It quickly becomes important to think about the detail of the core terms and conditions so that the change process remains coherent. We have the following observations on the core items:

**Basic Working Week (Part 2 Para 6.1)**

Changes to the basic working week have complex effects on measuring hourly rates for continuing national pay negotiations and also some potentially unfortunate consequences for employee engagement. Councils will need to think carefully about changes to the basic working week that result in a reduction in the hourly rate. Distorting hourly rates can have knock-on effects in relation to minimum wage compliance and potential local policies on the living wage etc. This would allow for a reduction in hours balanced by a commensurate reduction in pay e.g. 37 to 36 with pay rates then based on 36 / 37.

**Maternity (and Maternity Support Leave) (Part 2 Para 11)**

We have not detected any strong pressure for changes to the maternity leave scheme locally. However, a number of councils have recognised the growing and diverse caring responsibilities of their workforce and may wish to look at maternity policies in this wider context. In any event, maternity and parental leave issues are expected to become a subject of national discussions again, following the Government's plans to change the statutory framework for maternity / parental leave in April 2015 (see [Advisory Bulletin 599](#)) in which case it would make sense to make any changes at national level once only.

**Annual Leave (Part 2 Para 7)**

Entitlements above the Green Book minimum have always been a local matter and the majority of councils have introduced their own detailed schemes. Interest in reforming annual leave will be highest in councils that currently offer significantly more than the minimum. However we do not detect an appetite in the sector for going below the minimum, given that there are some cogent arguments that employee welfare is enhanced by a reasonable leave entitlement.

**Sick Pay (Part 2 Para 10)**

It is important that any proposals on changes to sick pay should be evidence-based, so councils should carry out an analysis of their sickness absence records to assess where the real problems lie. It is often the case that assertions are made about persistent absence problems leading to heavy costs which aren't really backed-up by evidence. When the LGA took a look at this issue a few years ago, it became clear that in many cases the problem area is not persistent short-term absence or problematic long-term absence but staff who are away for a few weeks. Quite often a tipping-point can be reached where it becomes less and less likely that people will return to work. This requires strong and sympathetic line-



management and procedures to encourage return-to-work or to manage people fairly out of the organisation.

A local analysis may of course show that the problem is around high levels of short-term absence. This issue has probably been of most interest to those thinking about sick pay recently. A number of councils have removed payments for the first two or three days of absence and in many cases this has indeed saved money and sent a clear message. That said, there is also evidence from the private sector that one or two days of absence can quickly become four or five because there is no incentive to return to work. Councils should remember that there are two drivers at work here: one is of course to save money but the other is to reduce actual levels of absence. Consequently, councils will want to look at improving absence levels through more effective management as well as changing conditions to deal with costs that way.

The LGA's comprehensive guidance on this subject, '[The Prevention and Management of Sickness Absence](#)', has just been updated.

Anything that is done will need to be balanced with a clear package around wellness and employee well-being, preferably as part of a total reward approach on which the LGA has already issued guidance.

### **Car Allowances (Part 2 Para 12 and Part 3 Para 6)**

The current scheme remains in force but will essentially wither on the vine because the current rates will not be updated from their 2010 levels. We note that around half of councils have already moved to HMRC rates. It should be noted that HMRC rates are bound to increase over time as there will always be pressure from the private sector to maintain the tax-efficiency of perks, whereas our focus as employers is on reasonable use of vehicles for the job. This means also that it is important to focus on sustainable use of transport and we will pursue the idea of national guidance on this issue with the unions. Much of the focus in local changes has in fact been on reducing the number of essential users covered by the scheme and councils that have not yet achieved changes may well want to focus on the scope of their schemes every bit as much as the payment formula.

### **Other Elements of Part 2**

The other subjects covered in Part 2 are all important of course and often refer to statutory obligations, so councils will want to think carefully about the consequences of any proposed changes. It is not the intention of the National Employers to signal that councils should abandon their obligations to have suitable local policies around equality, official conduct, training and health and safety (**Paras 1 to 4**).

The basic flexible provisions around pay and grading in **Para 5** have been discussed earlier.



The National Employers do not advocate changing **Paras 8 and 9** on part-time and temporary employees as these are a matter of fairness and in many cases a legal necessity.

**Para 13** on reimbursement sets out the basic principles that should underpin local schemes and many councils will already be re-examining the policies introduced as part of single status.

**Para 14** covers Continuous Service. The use of the Modification Order (which applies to redundancy payments) in relation to contractual benefits under **Para 14** is a purely 'voluntary' matter agreed by the NJC. There would be nothing, legally speaking, to stop an authority from agreeing to change this (for contractual benefits only), but it could have recruitment implications as employees like to be able to take their service with them. The ability to transfer with continuous service can be very important as public services are reformed and the issue is being discussed with Government departments.

**Para 15** on notice periods is affected by Regulations.

Grievance and disciplinary procedures (**Paras 16 and 17**) must be clear and fair but are already locally managed.

**Para 18** covers trade union facility time which has been the subject of recent ministerial comment. The National Employers believe that councils should make suitable local arrangements but that reasonable facilities are important. There is considerable value in coherent and timely trade union input in dealing with significant organisational change and when terms and conditions are being re-negotiated. The challenge is to be transparent about any arrangements that are in place and confident that they are proportionate and effective in managing change and engaging the workforce.

## **6. LGA Advice and Support for Councils**

6.1 The LGA has provided advice and support to councils for many years and we have always worked collaboratively with the regional employer organisations who have significant experience of supporting councils to achieve reform locally. This will continue but in the absence of national negotiations on terms and conditions we are refocusing our combined knowledge, expertise and experience in helping councils make the right decisions for them.

6.2 We believe that we can offer:

- A wide range of knowledge and intelligence about developments in our own and other employment sectors
- Advice on change management



- Specific tactical advice on industrial relations issues
- Online advice and rapid data sharing
- Access to up-to-date pay benchmarking data through the e-paycheck service developed by a partnership of regional bodies and now fully supported by the LGA
- Direct access to good practice advice and support on employment law and technical issues, such as workforce planning, employee engagement and spans of management control
- Specialist support on job evaluation and the development of pay and reward systems

6.3 We are revising and re-configuring our offer around support for local change and will say more about this in due course. Our aim is to be able to provide as much direct assistance to councils as we can sometimes on an individual basis. However we do not have the capacity to help everyone at the same time, although we do want to find ways to visit more councils to have discussions with HR teams.

6.4 We will also be consolidating our capacity to provide more bespoke support on key workforce issues on a chargeable basis. Where appropriate and in the interests of the sector we would aim to provide bespoke support in partnership with the regional employers' organisations. One key ambition is to provide our support package on a good value basis to avoid the need for excessive spending on consultants from outside the sector.