

**19<sup>th</sup> February 2019**

**Re: Letter from Howard Beckett dated 18<sup>th</sup> February 2019 addressed to Labour Councillors**

**BRIEFING FOR ALL COUNCILLORS**

The account of the dispute given in the letter dated 18 February 2019 from Howard Beckett is inaccurate in a number of important respects.

As a reminder of why Unite chose to enter into a dispute:

**Background**

1. In June 2017, the Council proposed to reorganise the Waste service which included the refuse collection and street cleansing.
2. There was extensive consultation with the recognised trade unions; however Unite took industrial action.
3. In August 2017, the then Leader of the Council, Councillor John Clancy, and Howard Beckett reached an agreement that the GR3 Leading Hand post would not be deleted. Notwithstanding this agreement, the Council relied on its proper decision making process taken in June 2017 and then in August 2017 and issued the Leading Hands with notices of redundancy.
4. Unite issued proceedings in the High Court seeking to uphold that agreement. At an interim stage the High Court granted an interim injunction in favour of Unite and the Leading Hands, to maintain the status quo and restrain the dismissals. In granting that interim injunction, the High Court criticised both Unite and the Council.
5. During October and November 2017, and up to the start of the main hearing on 27 November 2017, the Council sought to consult with Unite, Unison and GMB at ACAS with a view to resolving the dispute.
6. On 24 November 2017, following ACAS discussions that did not include GMB, the Council reached agreement with Unite and separately with Unison, which created a new WRCO GR3 role with new duties, and a 5 day working week would be introduced. The GR3 Leading Hand role was to be deleted and overtime working would be lost.
7. The Council agreed (wrongly) to Unite's demands that GMB be excluded from any joint negotiations on resolving the dispute. The Council has not blamed Unite for the 'failure to consult' claims – fault for the exclusion of GMB rests with the Council. In the Cabinet Report 15 January 2019, paragraph 3.6, the Council has conceded that it was wrong at the time to exclude GMB from those discussions with Unite and Unison.
8. Subsequently, the effect of the agreement reached with Unite and separately with Unison, was to bind all refuse workers including the GMB members. GMB members were not included in the consultation that led to the creation of the WRCO in spite of the fact that the terms of that agreement had significant impacts on the terms and conditions of employment of all refuse employees including GMB members.
9. GMB subsequently raised a dispute with the Council and GMB contacted ACAS for early conciliation for 'failure to consult' claims. Early Conciliation is a process (currently being used by Unite itself) which intends to help resolve workplace disputes without the need to go to the Employment Tribunal. Since May 2014, it has been mandatory to go through the ACAS Early Conciliation process before filing a claim in the Employment Tribunal.
10. Discussions at ACAS sought to resolve the complaints and on 24 May 2018, the Council and GMB signed an ACAS collective agreement to settle the 'failure to consult' claims. External legal advice was sought on the validity of these claims. It is usual practice that ACAS COT3 agreements contain confidentiality provisions preventing disclosure.
11. GMB have now agreed with the Council to relax the confidentiality provisions so that it can disclose the reason for the payment and the total value of the payments to their members. The total settlement amounted to £68,465 and was within officer delegations in accordance with the Council's Constitution.
- 12.

## The Current Dispute

13. Unite maintain that the payments to GMB were to reward the GMB employees for not striking in 2017 and that the payments were 'secret payments'.
14. The Council strongly refutes that the payments were for anything other than settling valid Employment Tribunal claims. They were not secret although they were the subject of a confidentiality clause, which is normal in a COT3 and is perfectly proper.
15. There was no obligation on officers to seek the approval of the Council in what was a routine matter relating to threatened Employment Tribunal proceedings and dealt by way of constitutional delegations.
16. Further, there was no reason why officers should have told Unite about the settlement payments, but rumours spread and Howard Beckett seems to have learned about them in around July 2018.
17. On 29 December 2018, following a ballot earlier that month, Unite called industrial action.
18. Certain Unite employees have issued Employment Tribunal claims on the alleged grounds that the Council has not made similar payments to their members on the basis that the Council has both subjected their members to detriment for whistleblowing for trade union activities and has blacklisted them. They have not claimed failure to consult claims.
19. Notwithstanding QC advice that 'BCC is highly likely to successfully defend these claims', the earliest that the Birmingham Employment Tribunal can hear the claim is 3rd February 2020. We are continuing to press for an expedited (earlier) hearing.

## Injunction

20. The Council has received consistent advice from a number of QC's that:
  - a. The current action is unlawful ; and
  - b. There are good prospects of success in obtaining both an interim injunction and final injunction preventing Unite from continuing with the current unlawful industrial action.
21. ACAS talks continued up to the Cabinet decision 12<sup>th</sup> February 2019; Unite have not accepted the Council's invitation to continue these.
22. In addition, Unite have not accepted the Council's reasonable offer to reach a settlement.
23. In the absence of agreement, injunctive proceedings are now critical to prevent Unite from continuing with the current unlawful industrial action.
24. Although the letter dated 18<sup>th</sup> February to members from Mr Beckett criticises the Council for proposing to apply for an injunction, Unite have they chosen to bring injunction proceedings against the Council in an attempt to stop mop-up crews from operating. The High Court dismissed their application for an injunction application on 14 February 2019 and awarded costs to the Council.
25. Separately, Unite have also threatened High Court judicial review proceedings and an injunction against the Council for using contractors to collect waste.
26. In the proposed application for an injunction by the Council, the Council will argue that the industrial action is unlawful as Unite are seeking more favourable treatment for their members than members of the GMB.

## Alleged Parity

27. GMB were not consulted over the November 2017 agreements that had binding contractual effect on their members. GMB members had valid claims for failure to consult that the Council settled. Unite members do not and could not have claims for failure to consult, since they were consulted.

## Resolving the Current Dispute

28. The Council is always open to resolving where there are collective disputes, the proper place is to do this using external mediation and/ACAS conciliation and/or at Binding Arbitration.

29. There are no current ACAS discussions with Unite. Unite did not continue with talks or accept an offer to enter into binding arbitration following the Cabinet decision 15<sup>th</sup> January 2019. Unite have not accepted the Council's invitation, extended on 12<sup>th</sup> February 2019, to continue with talks with a view to resolving the dispute.
30. Employee matters are not matters for Council debate or agreement at a Council meeting; under the relevant legislation and the Council's Constitution, those matters are delegated to the Chief Executive.
31. An offer to Unite to settle the Employment Tribunal litigation on a commercial basis has been made on the basis of £2,000 to 3,000 per each eligible claimant. **That offer is still on the table for acceptance by Unite the Union and will remain on the table until the outcome of the Council's injunction application is known.** The Council has received a letter on 19 February 2019, from Unite, asking if any further progress can be made in respect of the proposals to settle.
32. Howard Beckett in his letter has asked that a payment is made to all the Unite members, irrespective of whether they were an employee of the Council or an agency worker, and irrespective of whether the union member is party to the current Employment Tribunal claim. If the current offer of the Council were extended to the levels sought by Unite that would run the substantial risk of forcing comment from the statutory officers and attracting the attention of the District Auditor.
33. All attempts at mediation and conciliation have thus far proved unsuccessful. The continuing unlawful industrial action can now only be stopped by a court action. However, the longer the Council delays in seeking relief, the greater the risk a court would treat delay as a reason for refusing an interim injunction.
34. Unite and UNISON members do not have a valid claim for parity with GMB members or a valid claim for more favourable treatment compared to GMB members. Any assertion that Unite and UNISON members are entitled to parity payments or more favourable treatment has no legal basis.
35. In the absence of agreement, injunctive proceedings are now critical to prevent Unite from continuing with the current unlawful industrial action.

Dawn Baxendale, Chief Executive and Head of Paid Service

Clive Heaphy, Chief Finance Officer

Kate Charlton, City Solicitor and Monitoring Officer

**END**