

GR No: 53/09

**COUNCIL OF MINISTERS REPORT
ON THE
INDEPENDENT REVIEW OF THE WHITLEY COUNCIL 2009**



Isle of Man
Government

Reillys Ellan Vannin

November 2009

Price Band C: £2.50

"To the Hon Noel Q Cringle, President of Tynwald, and the Hon Council and Keys in Tynwald assembled."

The Isle of Man Whitley Council for Public Sector Manual Workers was established by Tynwald in 1971 as a joint negotiating forum for collective bargaining of pay and conditions. As at September 2008 a total of 2,515 individuals in the Isle of Man were employed on Whitley Council terms and conditions, by a total of 27 different organisations.

At the March 2009 sitting of Tynwald, the following Motion was agreed:

"Tynwald supports the proposal by the Council of Ministers to appoint, as a matter of urgency, a suitably qualified independent person to carry out, on behalf of the Council of Ministers, a full review of the Constitution of the Whitley Council, its governance and administration including the appropriateness of the facilities available to both sides of Whitley Council and that the Council of Ministers consult with both sides of Whitley Council regarding the terms of reference for such review and subsequently report to Tynwald on the outcome of the review by no later than October 2009."

Dr Lynette Harris, Professor of Human Resource Management and Professional Practice, University of Nottingham, was appointed to conduct the Review in May 2009. A copy of the Terms of Reference is attached at Appendix 1.

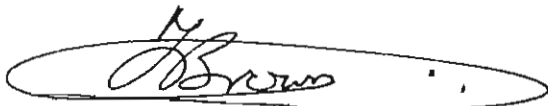
At the October 2009 sitting of Tynwald, the Chief Minister advised that Council would report on the outcome of the Review at the December 2009 sitting.

The Review Report produced by Dr Harris dated 2nd November 2009, is attached at Appendix 2.

Council of Ministers has considered Dr Harris's report entitled "Independent Review of The Whitley Council".

Council of Ministers recommend to Tynwald that:

- (i) Dr Harris's report ("Independent Review of the Whitley Council") be referred to Whitley Council for consideration of the recommendations contained therein and report back to Council of Ministers by April 2010;
- (ii) Council of Ministers report back to Tynwald on the outcome of Whitley Council's considerations and any actions arising by June 2010.

A handwritten signature in black ink, appearing to read 'J A Brown', enclosed within a hand-drawn oval border.

Hon J A Brown MHK
Chief Minister

1 INTRODUCTION

The constitution of Whitley Council for the Isle of Man Public Service (Manual Workers) was approved by resolution of Tynwald on 19 May 1971. Since 1971 there were amendments in 1988, 1989, and 1995.

2 CONSTITUTION

The major change to the constitution was in 1989, when it was in effect re-written having regard to prevailing circumstances, organisation designations etc at that time. Given that the constitution is now 14 years old, an independent review is required to ensure that the organisation continues to meet the needs and requirements of the twenty-first century.

3 AUTHORITY

The Review is established by the Council of Ministers, with the approval of Tynwald in March 2009, and is managed by the Chief Secretary's Office.

4 REMIT

To undertake a full review of the constitution of Whitley Council, its structures, procedures, governance and administration. The review should include how the Council operates in practice, the appropriateness of the facilities available to both sides of the Council, and how it gives effect to decisions which impact on all those employers and employees within its scope.

5 METHODOLOGY

An understanding will be required of the Island's constitutional position and relevant employment legislation together with background to the Whitley Council for the Isle of Man Public Service and the changing structure of the Public Service since the Council's inception.

The review process should include:

- Consultation with appropriate members of both sides of Whitley Council;
- Consultation with ex-officio members including the Chief Secretary, Secretaries of both sides, and other advisers deemed appropriate;
- Consultation with organisations and individuals represented by both sides of Whitley Council, including local authorities and Tynwald Members;
- Review of appropriate documentation, including agendas, minutes and correspondence;
- Consideration of best practice from other jurisdictions;
- Consideration of the adequacy of the existing support and administration mechanisms for both employer and employee sides of the Council.

6 OUTPUTS

Outputs from the research should include a full detailed report to the Council of Ministers, detailing conclusions about each element of the study and identifying any critical factors in supporting the conclusion reached through the findings and make recommendations to Council.

**INDEPENDENT REVIEW OF THE
WHITLEY COUNCIL**

PROFESSOR LYNETTE HARRIS

2 November 2009

An Independent Review of the Whitley Council for the Isle of Man Public Service (Manual Workers)

EXECUTIVE SUMMARY

1. This report presents the findings and recommendations from an independent review requested by Tynwald in March 2009 of the constitution, structures, procedures, governance and administration of the Whitley Council for the Isle of Man Public Service (Manual Workers). The consultation and research for the review was conducted over a period of four months from June to September 2009.
2. The findings from the review process suggest that retaining a joint forum for collective bargaining offers more benefits than the alternative of decentralised bargaining as a means of determining the pay and terms of conditions of manual workers and craftsmen employed in the Isle of Man's Government Departments and Local Authorities. Yet discussions with the employer side members of Whitley Council, its non voting officers, organisations represented by the Council and Tynwald members revealed that the vast majority felt changes needed to be made to collective bargaining arrangements which had their last major review in 1989. Whilst the intention was to obtain the views of all concerned, regrettably this report does not include any input from the Employee Side whose formal position throughout the review was regrettably one of non participation in the process.
3. Although Whitley Councils in the UK have ceased to operate as a result of change initiatives such as single status agreements in local government and the Agenda for Change in the NHS, their principles of encouraging consistency and transparency continue to shape collective bargaining in the public sector. The review's findings, however, do illustrate the disadvantage of Whitley principles which have the potential to create rigidity and can reduce the engagement of line management through a dominance of the rule book. These are both important issues at a time when the public sector is facing the dual challenge of maximising the performance of services at the same time as cost reduction.
4. A key aim of the recommendations contained in this report is to promote an approach to the joint determination of pay and other terms of employment that is supportive of the high levels of employee engagement and co-operation vital to the delivery of efficient and effective public services. With this in mind changes are proposed to the membership of the Council to achieve a greater balance between the two sides, to increase the level of input from the employing organisations and to address the way in which its business is conducted. This was widely reported to be adversarial rather than placing the emphasis on joint problem solving and, wherever possible, consensus seeking. As an approach to collective bargaining the present approach was viewed as detrimental to the promotion of a positive industrial relations climate which is seen to be an essential function of the Council, especially in the employment context of the Isle of Man.
5. The present constitution has no provisions concerning the term of office, re-election or the retirement of Council members or of non voting members when they are no longer a member or employee of the appointing body.

These are routine features of similar public sector collective bargaining arrangements and it is recommended that such provisions are included in the constitution. Without these requirements there is little scope for new members to join the Council. Whilst the Council has benefited from stability and experience in its membership, especially it would appear on the employee side, the downside is the lack of opportunity to regularly introduce fresh thinking and new approaches or to adjust the Council's membership to reflect changes in the profile of the workforce it represents.

6. There is a concern that, having established a good raft of terms and conditions and pay for Whitley Council employees, the Council has been going beyond its remit by involving itself in organisational issues which would be better resolved at the level of the organisation. This has led to the conclusion that the Council's constitution requires clarification about when differences between employers and employees in Government departments and local authorities should be referred to the Council for settlement and by whom. It is suggested that a distinction is required in the constitution between differences that remain unresolved after local procedures have been exhausted when either party should be able to refer the matter to the Council for 'the settlement' of the difference and circumstances where both parties agree to seek the assistance of the Council in the process of trying to resolve a workplace difference.
7. Concerns about the operation of the Whitley Council Grading Appeal Panel, which contributed to the decision to have an independent review, were found to be well founded based on the research evidence. This has led to a recommendation that the activities of the Grading Appeal Panel (GAP) are temporarily suspended (with arrangements to protect the interests of any employee who lodges an appeal) to review what needs to be done to provide access to dedicated job evaluation expertise and more rigour in the appeal panel's processes. Areas have been identified for attention but, as a number of these may be impacted upon by the recommended changes concerning the Whitley Council, there is an issue of the sequencing of any changes to be taken into account. As a result, care has been taken not to be overly prescriptive about changes to the GAP. There are other issues relating to the Grading Appeal Panel's operation which, arguably, go beyond the scope of this review. For example, the issue of access to specialist job evaluation expertise and 'equal value' considerations under equal pay legislation.
8. To establish what is required in terms of administrative and other support to the Council, it is recommended that this is the subject of an internal assessment of what may be required in the future, taking into account any changes to the constitution and the retirement of the Employers' side secretary who has also been one of the Joint Secretaries and provided a very high standard of support to the Council over many years.
9. It has been proposed that consideration is given to the role of the chair of the Council alternating between the two sides or to consider appointing an independent non voting Chair for a period of time. The rationale for either option is that it would help to mark a change from the present status quo and create a momentum for moving things forward which is also the reason for suggesting a change of name for the Council. Having established that members of the Council receive no training as a group regarding their roles and responsibilities, it is concluded that some dedicated joint training and

development for all the members of the panel and for the induction of new members would help to support the principle of partnership working.

10. Lastly, it is recognised that the implementation of some of the recommendations contained in this report would be assisted by support from an independent third party. It is suggested that this is organised through the Manx Industrial Relations Office if it was decided this would be helpful to the parties concerned.

Acknowledgements

I should like to thank everyone who contributed to the review for their time, valued input and courtesy throughout.



Lynette Harris
Professor of Human Resource Management and Professional Practice

2 November 2009

An Independent Review of the Whitley Council for the Isle of Man Public Service (Manual Workers)

A. INTRODUCTION

1. A Whitley Council was established for the Isle of Man Public Service Manual Workers in 1971. Its constitution was approved by a resolution of Tynwald on 19 May 1971 with subsequent amendments in 1988, 1989, and 1995. Since the last major review of its constitution in 1989, there have been significant changes in the working environment, for example the introduction of a statutory minimum wage, the growth in other individual employment rights and the impact of new technologies on the organisation of work. These have implications for the focus and content of collective bargaining arrangements agreed some 14 years ago and contributed to the Council of Ministers' decision to request an independent review of the Isle of Man's Whitley Council. This was approved by Tynwald in March 2009 and I was appointed to undertake the review in May 2009 with the following terms of reference.

The terms of reference

2. The terms of reference provided were for :

'A full review of the constitution of Whitley Council, its structures, procedures, governance and administration. The review should include how the Council operates in practice, the appropriateness of the facilities available to both sides of the Council, and how it gives effect to decisions which impact on all those employers and employees within its scope.'

3. The requested output from the view was a report to the Council of Ministers, detailing conclusions about each element of the study and the critical factors that have informed these and providing recommendations. As a result this report has been structured into the following sections:

- A. Introduction
- B. The collective bargaining context
- C. Whitley Council in the Isle of Man
- D. The Review and Consultation Process
- E. Findings
- F. Considerations and Conclusions
- G. Recommendations

4. The consultation process for the review, detailed in section c) was outlined in the terms of reference. This was to include consultation with members of both sides of Whitley Council but in April 2009, before the commencement of the review process, the Employees' side of the Council formally advised the Chief Minister of its decision not to participate in the proposed review. This has continued to be the position of the Employees' side throughout the review despite efforts to gain their views. As a result, the conclusions and recommendations contained in this report have not been informed by inputs from the Employees' side.

B. The Collective Bargaining Context

Joint regulation

5. Joint regulation through Whitley Councils has a long history in the UK. They were introduced at different stages for public sector groups of employees as a result of a review of collective bargaining and joint consultation in 1917 which proposed a consensual approach to determining pay and conditions of service through centralised collective bargaining supported by formal consultative meetings.
6. Rates of pay are still negotiated nationally for public sector employees but there is considerable local flexibility in their application and in job gradings as a result of decentralised collective bargaining and major change initiatives. For example, the NHS Agenda for Change led to the end of centrally determined Whitley Council pay, terms and conditions and grades for NHS staff. In local government single status agreements have meant that, whilst there are national pay scales for manual employees, there is variation in their application as well as in the terms and conditions of employment and gradings of jobs in different authorities.
7. Whilst Whitley Councils have ceased to operate, their principles have been a dominant influence on and continue to shape collective bargaining and employee relations in the public services (Farnham et al., 2003). Furthermore, despite the general decline in joint regulation of pay and terms and conditions of employment reported in the last Workplace Employment Relations Survey (Kersley et al., 2006), it continues to be the method of pay determination for the vast majority of the UK's public sector workforce.

The growth in employment law

8. A significant change which has impacted on the type of joint workplace regulation provided by Whitley Councils, and one that has accelerated since 1999, has been the growth in individual statutory rights such as a minimum wage, working hours, annual leave and consultation requirements as well as anti-discrimination legislation. Isle of Man employment legislation enacted in recent years will have similarly impacted into areas traditionally regulated through collective bargaining.

The public sector performance agenda

9. In the past 20 years the UK public sector has experienced significant and ongoing change as a result of a political agenda for continuous improvement in the delivery and efficiency of its services with the application of performance measurement processes across the sector. The evidence from the UK government's 2009 Macleod Report 'Engaging for Success' (Macleod and Clarke, 2009) reveals the vital part employee engagement plays in the delivery of high quality organisational performance in both public and private sector organisations at a time when the economic reality for public services is the end of many years of growth and expansion. It also identifies the critical role of leaders and managers in creating an environment where employee engagement will grow and contribute to high quality services in tougher economic times, a conclusion that was similarly reported in a Scottish

Executive Social Research report specifically on public sector engagement in 2007. Such findings have shaped the conclusions and recommendations provided in this report.

C. The Whitley Council in the Isle of Man

10. The Whitley Council in the Isle of Man has been the forum for collective bargaining for public sector manual and craft workers since it came into effect on 1st of March 1972. The Council's constitution, provided for the review, is attached as Appendix 1. In terms of its scope, the terms and conditions of employment set out in the Council's current memorandum of agreement apply to all manual and craft workers in the service of government departments and Isle of Man local authorities with the exception of those employed by the Manx Electricity Authority, the Post Office and the Omnibus section of the Transport Division of the Department of Tourism and Leisure.
11. Under the present constitution there are fifteen Council members of whom five represent the Employers' side and ten the Employees' side. The members of the Employers' side are the Chairman who is a member of Tynwald, two other members of Tynwald, a representative appointed by the Douglas Corporation and a representative appointed by the Isle of Man Municipal Association. The members of Tynwald who serve on the Council are elected by Tynwald on the recommendation of the Executive Council .
12. Members of the Employees' side are representatives of employees from government or local authorities. Seven of them are to be appointed by the T&GWU, two of whom must be registered as tradesmen with the Building Trades Council. Two representatives are appointed by the Electrical Electronic Telecommunication and Plumbing Union, one of whom shall be registered as a tradesman with the Building Trades Council and one a representative from the Manx Democratic Workers' Union sub section of the Electrical and Engineering Staff Association. There is also a representative from a Trade Union recognised by the Isle of Man Trades Council who is appointed by the workforce of Douglas Corporation and other Local Authorities.
13. The Employers' side is complemented by non voting officers. Under its constitution these are an official from the Personnel Office to act as its Secretary; the Chief Financial Officer or nominated representative; the Chief Secretary or nominated representative; an official to act as adviser to the Douglas Corporation representative and an officer from the Personnel Office to keep an accurate record of the meeting and prepare the minutes. The Employees' side is also complemented by a person appointed to act as its Secretary and a person to keep an accurate record of the meeting. The Secretaries of the Employers' side and the Employees' side act as Joint Secretaries of the Council.
14. The Council's constitution states that its function shall be to secure the largest possible measure of joint consideration and determination of wages, hours and working conditions of the workers within its scope. A matter cannot be regarded as carried unless approved of by a majority of the members present on each side of the council or committee and a procedure is set out in paragraph 20 of its constitution for circumstances where there is a failure to agree between the two sides of the Council through negotiation.

15. Under its constitution the Council can appoint a disputes committee when differences between employers and employees are referred to it that fall within its scope. The Council is also able to appoint other committees for special purposes with equal numbers of representatives from each side of the Council, one such example is the Grading Appeal Panel (GAP) whose constitution is set out in Appendix 15 of the current memorandum of agreement. This is the subject of further discussion in the report.
16. Clause 21 of the constitution states that it can be amended by agreement between the two sides after notice of amendment has been circulated to all members of the Council not less than fourteen days before the meeting and any amendments have to be approved by Tynwald.
17. Upon the advice of the Attorney General, in 1992 the Employees' side of the Council registered as a trade union and the Employers' side registered as an employers association so they could enjoy the immunities granted by the 1991 Trades Union Act. As the Whitley Council is a joint forum established for collective bargaining purposes for a workforce consisting of both union and non union members from different trade unions and employers, there are potential issues in defining the Employees side as a Trade Union or the Employers' side as an Employers' Association. It is understood that in 1995 the 1991 Act was amended so that its immunities could be extended to bodies that fell outside the definition of a trade union or employers' association.

D. The Review and Consultation Process

- 18 The review was conducted over a period of four months from June to September 2009. In accordance with the terms of reference, the experiences and views of those involved with the workings of the Whitley Council as members of the Council, or as organisations or individuals represented by the Whitley Council or as Tynwald members were explored through a series of interviews. In circumstances where it was not possible to organise a meeting, discussions were conducted by telephone. In addition, the views of ex-officio members of the Council and other advisers were explored as deemed appropriate. Unfortunately, for the reason already stated, the reviewer was unable to meet with the Employees' side of the Council or the Employees' side Chair or Secretary despite a written invitation (see Appendix 2) to meet at any time during the review process if there was a change in the position of the Employees' side.
- 19 Notwithstanding the lack of input from the Employees' side, efforts were made to obtain contributions to the review from as wide a sample as possible. As part of the initial consultation process, letters (see Appendix 3) were sent to Tynwald members with experience of the Council inviting views on its operation and to the employers with employees on Whitley Council conditions that it had not been possible to meet. A number of them chose to contact the reviewer either by telephone discussion or by email. To preserve the confidentiality of individuals who elected to contact the reviewer names have not been provided in a summary of the consultation process provided in Appendix 4. In total, discussions took place with 30 individuals using the methods described.

- 20 The information gathered from these discussions was supplemented by desk research which examined the workings of the Council through the documentation that was made available which included agendas, minutes and correspondence. There was also a consideration of the administrative support provided to the Council by the Personnel Office and of other similar public sector collective bargaining arrangements.
- 21 A draft report was provided for the end of September 2009 which was circulated for comment to all the parties approached as part of the initial consultation for the review as set out in sections 18 and 19 . This included the Employees' side in case they had changed their position regarding participation. Formal responses were requested by the 30th October 2009, and, where appropriate, these have been addressed in the final report.

E. Findings

- 22 It is not possible to provide the detail of all the views provided about the Council's operations and decision making but those issues and concerns most frequently reported are summarised below. For the sake of clarity these have been categorised into themes but it is recognised that many of these are interrelated and overlapping.

Employer representation

- 23 Employers with members of their work force employed on Whitley Council conditions of employment felt that they were distanced from and had insufficient input into the Council's decision making. As a result, their concern was that decisions could be taken without sufficient consideration of operational realities and constraints

The remit of the Council

- 24 It was identified that collective bargaining over the years had resulted in favourable terms and conditions of employment for Whitley Council employees, for example, compared to Nurses or UK manual workers in local government. Having improved the terms of employment for those under its jurisdiction, it was felt that the Council was becoming involved in matters which should be resolved at the level of the workplace to avoid by passing local management. The view of representatives from the employing organisations was that only after internal organisational procedures had failed to resolve a difference should the Whitley Council be involved at the request of the parties.

Line management and the rule book

- 25 One consequence of Whitley Council regulation, exacerbated by instances where employees referred matters directly to the Council for resolution rather than seeking a workplace solution, was that it impacted on the level of involvement and perceived responsibilities of line managers for the employment relationship. The result was management by a rule book provided by a third party which eroded a focus on the quality of employee and line management relationships within the workplace.

Issues of representation

- 26 The present bargaining arrangements are seen as significantly weighted in favour of the Employees' side both in terms of their representation on the Council and continuity of experience. This is partly explained by the fact that three of the five members on the Employer side are Tynwald appointments who are likely to have a shorter term of office on the Council than the Employee members. Furthermore, it was observed that, as well as the interests of the employers they represent, Tynwald representatives face political considerations in reaching Council decisions. It was reported that no joint training had been received by members of the Council, although this may be provided by the Unions for Employees' side representatives, or formal training for any new members

Term of office and retirement provisions

- 27 At present there is no reference in the constitution, as provided for in comparable joint collective bargaining arrangements, to the term of office for the Chair and Vice Chair or the members on either side of the Council. There is also no clause regarding retirement when members of either side of the Council or non voting officers are no longer in the employment of the appointing authorities specified in the constitution.

Voting arrangements

- 28 There was some identified confusion regarding voting practice within the Council and what was required by the constitution. This states that a resolution can only be carried if approved by the majority of the members present on each side of the Council or committee, as the case may be. The constitution further requires that voting on the Council or its other committees shall be through an individual show of hands with either the Chairman or in his absence the Vice Chairman (the Employees' side Vice Chairman in the absence of the Chairman) having the casting vote. In practice, it was explained that an individual show of hands did not take place although resolutions operated on the vote of each side. There were some particular issues regarding voting in the Grading Appeal Panel which are considered below.

The Grading Appeal Panel

- 29 Issues of voting, representation and expertise were all found to be in need of clarification and attention in the operation of the Council's Grading Appeal Panel. The reported approach seemed to be more akin to traditional collective bargaining than a joint systematic evaluation of a job's grade against the job evaluation scheme's (JES) factors. It was also noted that recorded decisions of the Appeal Panel did not automatically provide the rationale for or the detail of the appeal panel's decision against the provisions of the job evaluation scheme.
- 30 It was reported that officers in an employing authority or government department were likely to be only intermittently required to undertake job evaluation. For example, this could be once in three years with the result that there was insufficient opportunity to build up specialist knowledge and skills or to put these into practice.

- 31 There was a widely shared view that the present grading appeal arrangements were insufficiently robust and that this was leading to grading appeal decisions that could erode pay differentials with jobs that carried more responsibilities and create grade drift which ultimately would destroy the scheme. Examples were provided where problems had occurred following decisions of the Grading Appeal Panel to illustrate the concerns about its processes, constitution and the expertise of the appeal panel in terms of its knowledge of job content across the range of posts included in the job evaluation scheme. It was pointed out that these were critical factors as the decisions made by the GAP are binding under its constitution.

The conduct of Council business

- 32 The most widely articulated issue that emerged from individuals who had been involved with the workings of the Council at first hand was that its business was conducted in an adversarial manner which, in their opinion, was not conducive to working in partnership or the promotion of a positive employee relations climate. The proceedings were variously described as 'highly confrontational', reminiscent of 'industrial relations in the 1970's', 'bullying', 'time consuming and not productive'. This proved to be the overwhelming concern of those consulted rather than actual constitution of the Council although the view of nearly all those consulted was that changes needed to be made to provide more balanced decision making.

Centralised collective bargaining

- 33 Despite criticisms of the manner in which Council business was conducted, the majority felt a forum for jointly regulating the pay and terms and conditions of employment of manual workers and craftsmen employed in the Manx public sector was required even if its main purpose was to provide fairness and consistency, wherever possible, in terms and conditions of employment. A couple of instances were mentioned where it had been identified by an employing authority that it would be more logical for a particular job to be included into the pay structures of the service area for reasons of relativities and consistency rather than fall under the remit of the Whitley Council, for example, teaching assistants. It is recognised that in defining the scope of any bargaining arrangements, job roles will occur where it is unclear which bargaining unit would be the most appropriate and these have to be examined with reference to the particular circumstances in each case.

Support facilities

- 34 Administrative support to both sides of the Council is provided by The Personnel Office. This includes the provision of agendas, minute taking, applying salary increases, correspondence, photocopying, as well as the organising and supporting meetings of the Council and its committees. A breakdown of activities and roles was provided by the Personnel Office during the review process based on days spent on Council business over a period of three months. This revealed that routine support to the Council supplied by The Personnel Office can amount to some 121 man days per three months; 104 days of this time being provided by the Chief Officer's Division of The Personnel Office. The Chief Officer acts as Secretary for the Employers' side and as one of the Joint Secretaries.

35 The same figures indicated that most of the 104 days are taken up with administration (46 days per quarter) and case work for the employing departments and authorities (39 days per quarter). Under the Council's constitution, Joint Secretaries are expected to provide assistance and to undertake research on behalf of the Council. It has to be taken into account that The Personnel Office undertakes the role of communicating any changes in pay or other terms and conditions stemming from Council decisions which involves updating the memorandum of agreement.

F. Conclusions and Considerations

36 Based on the outcomes of the review process, I have concluded that a centralised joint forum for collective bargaining has more advantages than fragmented bargaining would offer to both employers and employees as a means of determining the pay and conditions of employment for manual workers and craftsmen employed in the IoM's Government Departments and Local Authorities. It is, however, acknowledged that whilst Whitley principles promote consistency and transparency, their disadvantage is their potential for rigidity and the erosion of line management involvement and engagement in the employment relationship. The result can be an over emphasis on policing the rule book at the cost of developing the partnership working seen as a vital component of co-operative employer-union relationships (Oxenbridge and Brown, 2004). In what is increasingly a 24/7 society, it is further recognised that flexibility in working arrangements is an important consideration in the delivery of services which meet the needs of the public.

37 The views of participants during the review process, the documentation provided, the collective bargaining arrangements of other groups of public sector workers outside the Isle of Man and the changing context for public service delivery have all contributed to my conclusion that changes are required to the present Whitley Council for the Isle of Man Public Service (Manual Workers) both in terms of its constitution and the way in which its business is conducted. A key aim of the recommended changes is to encourage an approach to the joint determination of pay and other terms and conditions of employment that supports high levels of employee engagement and partnership working in the delivery of efficient and effective public services. The following considerations have particularly informed my recommendations:

38 I am persuaded that there needs to be more representation from employers on the Council to ensure that they can make a direct input about operational issues to inform the Council's decision making. This would also help to address the shorter periods Tynwald representatives tend to spend on the Council compared to Employee representatives. A factor that was identified as contributing to the reported imbalance in experience between the two sides of the Council and the perception that collective bargaining in the Council is weighted in favour of the Employees' side is reinforced by the current greater number of employee representatives than employer representatives. As a result, it is concluded that the number of members on each side should be the same but that the overall number of Council members should be reduced to help streamline its proceedings.

39 Whilst establishing the budget for public sector pay is a matter for Tynwald, it is accepted that there could be potential conflicts for politicians who are

required to serve as Employer representatives on the Council but who also have a wider role in serving the interests of their electorate.

- 40 The absence of any provision specifying the term of office for members of the Council has provided stability and experience through continuity of service. The disadvantage is that this reduces the opportunity for new members to be appointed to the Council which would have the benefit of contributing new ideas and approaches to the collective bargaining process. It is of concern that the lack of such a provision reduces the ability of the Council to reflect the diversity of the workforce it represents, for example, the gender balance.
- 41 Having looked at the Council's functions as set out in its constitution, it is concluded that these are generally similar to those of other Joint Negotiating Councils and National Joint Councils established to co-determine terms of employment for a specified group of employees. One significant difference, however, compared with many contemporary public sector collective bargaining agreements is the absence of any mention in the functions of the Isle of Man's Whitley Council constitution to its role in promoting effective industrial relations or joint co-operation. These are important aspects of the Council's role which should be referred to in its functions.
- 42 The constitution provides for the settlement of differences between Government departments and local authorities as may be referred to the Council but it does not address at what stage this can occur. Furthermore, it is not specified whether a referral is to be made by both parties or can be undertaken unilaterally by either of the parties in dispute. Best practice would be for this to occur when the parties have failed to resolve a matter through their local procedures to avoid what can be viewed as 'meddling' by an external body. It is held that a distinction should be made in the constitution between differences that have not be resolved after local procedures have been exhausted which either party can refer the matter to the Council for 'the settlement' of a difference and situations where both parties agree to seek the assistance of the Council as part of the process of trying to resolve a workplace difference.
- 43 A key recommendation of the Gibbons Review of dispute resolution in the UK (Gibbons, 2008) was that conflicts should be resolved, wherever possible, at the level of the workplace. This has informed my recommendations on the referral of differences to the Council as has the growing evidence from recent research reports that the relationship between employees and their line managers is the most critical factor in achieving employee engagement and high performance (Purcell and Hutchinson (2009); Macleod and Clarke, 2009). Such evidence raises wider organisational issues about how line management capability is being developed but this is a matter which goes beyond the scope of this review.
- 44 It has been taken into account that a factor in the commissioning of the review was concern about the operation of the Whitley Council Grading Appeal Panel appointed under section 8. of its constitution. Having examined the procedures for this panel, its written decisions, minutes and other documentation related to its operation as well a number of Grading Appeal Panel arrangements, including those established for local government employees under single status arrangements, I have concluded that this is an area which requires urgent attention. Notwithstanding, it is difficult to make specific recommendations about its composition and procedures at this point

in time as a number of the report's recommendations concerning the Council itself could have implications for the composition of the Grading Appeal Panel.

- 45 In addition, there are aspects of the Grading Appeal Panel's operation which are, arguably, beyond the remit for this review; for example, the matter of job evaluation expertise. I have tried to address this by recommending a review of the operation of the Grading Appeal Panel but, as part of that recommendation, have suggested particular issues for attention. In my view, there is a need for a dedicated job evaluation specialist to provide advice to the Grading Appeal Panel when considering job grading appeals but also to undertake job analysis against the factors of the job evaluation scheme in the stages prior to an appeal. Apart from promoting fairness through consistency, ensuring transparent and thorough factor analysis is very important to ensure equal pay for work 'evaluated as equal' in accordance with the provisions of the Isle of Man's Employment (Sex Discrimination) Act 2002.
- 46 It is difficult to comment on the appropriateness of the facilities provided to the Council, partly because this has only been examined from one perspective but also because it is a matter for government to decide the amount of resources that can be dedicated to its support. It emerged from the review that the support facilities for the Council are provided by the Isle of Man Government Personnel Office and predominantly by its Chief Officer who acts as the Employers' side Secretary and one of the Council's two Joint Secretaries.
- 47 The review revealed that the Council has been provided with high quality dedicated support over a period of many years most particularly from the Chief Officer for Personnel. With the imminent retirement of this post holder, which it is understood will involve a retirement from both these roles, it is an opportune time to assess the level of support required and how this is best provided as a very substantial level of knowledge and understanding about the operation of the Council will disappear with the retirement of this Chief Officer.

G. Recommendations

- 48 It is recommended that:
- 1) A centralised joint forum consisting of employee and employer representatives reflecting Whitley principles continues as the means of determining pay and other terms of employment for the manual workers and craftsmen employed in the Isle of Man's Government Departments and Local Authorities. To emphasise its role in promoting effective industrial relations and joint co-operation, this should be identified as part of its functions in its constitution. Furthermore, to reinforce this, a change of name is proposed; alternative names could be the Joint Negotiating Council (JNC) or the Joint Negotiating forum (JNF) for the Isle of Man Public Service (Manual Workers).
 - 2) The membership of the Council is amended to have equal numbers of members on the Employers side and the Employees' side. It is proposed that this becomes 6, if possible, but no more than 7 members on each side. It is further recommended that on the Employers' side 4 of these are members (increasing to 5 in the event of 7 representatives) appointed by the employing organisations who have employees under the remit of the Council and two

members are elected by Tynwald. In the absence of consultation, it is not possible to make any recommendations concerning the Employees' side representation other than this should be equal to that of the Employers' side in terms of its number of members. Representation on both sides of the Council should strive to reflect the composition of its workforce.

- 3) To encourage the introduction of new members on to the Council, a provision is included in the Council's constitution that all its members will be appointed for a limited term of office after which they will have to retire but will be eligible for re-election for one further term of office. Three years is suggested as an appropriate term of office. Furthermore, a provision is included stating that members of the Council cease to act as representatives once they have ceased to be a member or employee of the appointing body, a provision that should also apply to ex officio members of the Council. In addition, corrections should be made to the constitution as may be required to accurately reflect the current situation, for example, replacing the reference to the Executive Council in Section 4 (a) and 4 (b) with the Council of Ministers and updating the appointing unions in Section 5.
- 4) Consideration is given to the role of Chair of the Council alternating each year between the two sides of the Council with the role of Vice Chair being held by the side that does not hold the position of Chair that year. An alternative option would be to consider appointing an independent chair of the Council, with no voting rights, for a period of three years and a maximum of two terms with the specific remit of ensuring the effective and proper conduct of business.
- 5) The functions of the Council are amended to clarify that the internal procedures of the employing organisations should be exhausted before any unresolved differences can be referred by either of the parties involved to the Council for settlement. In circumstances where, in the process of trying to resolve a difference, the parties decide that the matter should be referred to Council, such a referral to be jointly agreed by the parties involved.
- 6) The present voting arrangements provided in the Council's constitution (section 15) should be followed in all its decision making with no resolution being regarded as carried unless there has been a show of hands among all the representatives present at the meeting of the Council to demonstrate whether or not the majority on each side is in favour.
- 7) The quorum of the Council will need to be reviewed in the light of any adoption of recommendation 2 regarding the numbers of members and representation. It is proposed that this is amended to four voting members on each side but the issue of representation will need to be taken into account.
- 8) Two meetings of the Council are scheduled for each year with other meetings being organised only if required with the Chairman and Vice Chairman each year jointly preparing an annual report on the work of the Council for Tynwald. In the case of an Independent Chair being appointed, preparing this report would be one of the responsibilities of that role with inputs from the Employer and Employee sides of the Council.
- 9) Council members are provided with joint training which has input about the Council's constitution, its purpose, their responsibilities and partnership working; it proposed that such training should be extended to all ex officio

members as well. Furthermore, it is recommended that all new Council members should receive an induction programme covering the same content upon their appointment.

- 10) A review of the supporting facilities provided to the Council is undertaken in the light of any changes to its operation and the retirement of the Chief Officer for Personnel who has acted as both a Joint Secretary and the Employers' side Secretary. Particular attention to be paid during this review to the reduction of paperwork as well the amount of case work and administration stemming from the activities of the Council.
- 11) The constitution and procedures of the Grading Appeal Panel is the subject of an immediate review with its activities being temporarily suspended for a period of four months during the period of the review to allow time for this to be completed. To avoid detriment to any individual, any regrading appeal submitted during the period of suspension of its activities to be considered when a Grading Appeal Panel is operational once more. The backdating of any regrading should be implemented from the date that would have applied if there had been no interruption in the Panel's operations. It is further recommended that such a review addresses;
 - a) the stages that lead up to any grading appeal being considered by the Grading Appeal Panel,
 - b) the size of the grading panel reducing, for example to three members consisting of an independent chair, an employer and an employee representative,
 - c) whether members of the grading panel should be restricted to members of the Council or be drawn from a small pool of employer and employee representatives and independent chairs employed by the Isle of Man's Government Departments and Local Authorities who have been fully trained and receive training updates in the application of the job evaluation scheme.
 - d) the feasibility of providing access to a job evaluation officer to undertake any job analysis and to provide specialist advice to the Grading Appeal Panel.
 - e) the rationale, detail and recording of all Grading Appeal Panel decisions against the job evaluation scheme factors as well as how these decisions are best communicated to those involved.
- 12) Consideration is given to the appointment of an external independent third party through the offices of the Manx Industrial Relations Service, to be agreed by both sides of the Council, with the purpose of assisting the Council in developing an approach to the conduct of its business which will encourage joint problem solving and, wherever possible, consensus seeking.

L.H. 2.11.2009

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WHITLEY COUNCIL CONSTITUTION

THIS DOCUMENT IS AN UNSIGNED CONSOLIDATED VERSION OF THE CONSTITUTION OF THE WHITLEY COUNCIL FOR THE ISLE OF MAN PUBLIC SERVICE (MANUAL WORKERS) INCORPORATING ALL AMENDMENTS AGREED SINCE IT WAS SIGNED ON THE 3RD FEBRUARY 1989

Title

1. The Council shall be known as the Whitley Council for the Isle of Man Public Service (Manual Workers) [hereinafter referred to as "the Council"].

Scope

2. The functions of the Council as specified in Clause 7 hereof shall relate to all manual workers and craftsmen in the employment of Government Departments and Local Authorities with the following exceptions:-

- (a) Manx Electricity Authority
- (b) Isle of Man Post Office Authority
- (c) Health Service Division of Department of Health and Social Security (ie those employed under the terms and conditions of the Whitley Council for the Health Services)
- (d) Omnibus Section of the Transport Division of the Department of Tourism and Transport.

Membership

3. The Council shall consist of fifteen members of whom five shall be appointed to represent Government Departments and Local Authorities (hereinafter referred to as the Employers' Side) and ten shall be appointed to represent manual workers and craftsmen employed by such Departments and Authorities (hereinafter referred to as the Employees' Side).

4. The members of the Employers' Side shall be:-

- (a) a Chairman who shall be a member of Tynwald, elected by Tynwald on the recommendation of Executive Council;
- (b) two members of Tynwald, elected by Tynwald on the recommendation of Executive Council, at least one whom shall be a member of Executive Council;
- (c) one representative appointed by the Douglas Corporation;
- (d) one representative appointed by the Isle of Man Municipal Association.

Where a person referred to in paragraph (a) or (b) above ceases to be a member of Tynwald, he shall continue to be a member of the Employers' Side until his successor is appointed. [Paragraph inserted by Government Circular 14/95].

The Employers' Side representation shall be complemented by the following non-voting officers:-

- (i) an official from the Personnel Office appointed by the Employers' Side to act as its Secretary and to furnish any assistance and carry out research duties on its behalf;
- (ii) the Chief Financial Officer or a representative nominated by him;
- (iii) the Chief Secretary or a representative nominated by him (who may be the Secretary of the Employers' Side);
- (iv) an official to act as adviser to the Douglas Corporation representative on the Employers' Side;
- (v) an officer from the Personnel Office whose responsibility it will be to keep an accurate record of the meeting and prepare the minutes.

5. The members of the Employees' Side shall be:-

- (a) seven representatives of Government Departments appointed by the Transport and General Workers' Union, two of whom shall be registered as tradesmen with the Building Trades Council;
- (b) two representatives of Government Departments or Local Authorities appointed by the Electrical Electronic Telecommunication and Plumbing Union, of whom one shall be registered as a tradesman with the Building Trades Council and one shall be a representative of the Manx Democratic Workers' Union sub section of the Electrical and Engineering Staff Association;
- (c) one representative, being a member of a Trade Union recognised by the Isle of Man Trades Council, appointed by the workforce of Douglas Corporation and other Local Authorities.

The Employees' Side representation shall be complemented by the following non-voting officers:-

- (i) a person appointed by the Employees' Side to act as its Secretary and to furnish any assistance and carry out research duties on its behalf. If that person is unable to attend any meeting of the Council for any reason the Employees' Side may appoint another person to attend in his or her stead.

- (ii) a person appointed by the Employees' Side whose responsibility it will be to keep an accurate record of the meeting for the information of the Employees' Side.

6. Except in the case of the members elected by Tynwald, representatives on either Side may be varied at will by the appointing authority, by whom also casual vacancies may be filled. Any such variations in its membership of one Side must be notified to the Secretary of the other Side prior to the next meeting of the Council.

FUNCTIONS

7. The functions of the Council shall be to secure the largest possible measure of joint consideration and determination of the wages, hours and working conditions of the workers within its scope.

It shall be permissible for the Council to take any action that falls within the scope of the foregoing general definition. Amongst the more specific objects are the consideration of the following matters:-

- (a) Provision of machinery for the regular consideration of wages, hours and working conditions;
- (b) Measures for securing recognition by all Government Departments and Local Authorities and their employees of agreements relating to wages, hours and working conditions;
- (c) Settlement of such differences between Government Departments and Local Authorities and their employees as may be referred to the Council, and the establishment of machinery, where it does not exist, with the object of preventing disputes and securing the speedy settlement of such differences. The Council shall appoint for such purposes a Disputes Committee consisting of an equal number of representatives of each Side.

CONDUCT OF BUSINESS

Committees

8. The Council may appoint from its own members such standing or sectional committees as may be considered necessary. The Council shall also have the power to appoint other committees for special purposes. All such committees shall consist of an equal number of representatives from each side of the Council. The Council may delegate special powers to any such committee and, subject thereto, the reports of all committees shall be submitted to the Council for approval. Such approval may be given with or without modification.

Co-opted Members

9. The Council may appoint on any committee, or allow any committee to co-opt, such persons of special knowledge, not being members of the Council, as may

serve the special purposes of the Council, provided that persons thus appointed or co-opted shall serve only in a consultative capacity.

The Council may also allow a committee to invite the attendance of any persons whose special knowledge would be of assistance but such person shall not have the power to vote.

Chairman and Vice-Chairman

10. The Chairman of the Council shall be the member of Tynwald elected by Tynwald as Chairman of the Employers' Side and the Vice-Chairman of the Council shall be the person appointed by the Employees' Side as its Chairman. The Chairman, or in his absence the Vice-Chairman, shall preside at all meetings of the Council and shall have a vote but not a casting vote. The Chairman and Vice-Chairman shall be ex-officio members of all committees referred to in Clause 8 of this Constitution.

Officers

11. The Secretary of the Employers' Side and the Secretary of the Employees' Side shall be the joint Secretaries of the Council.

Meetings

12. The Ordinary meetings of the Council shall be held not less than once a quarter. Other meetings shall be arranged at the request of the Chairman of either Side on reasonable cause being shown.

Agenda

13. The Agenda shall be agreed between the joint Secretaries and circulated not less than seven days before the meeting. Business not on the Agenda shall only be taken by permission of the Chairman and Vice-Chairman.

Special Meetings

14. The Chairman shall call a special meeting of the Council if so requested by a requisition signed by four members of the either Side of the Council. The requisition and also the notice summoning the meeting shall state the nature of the business proposed to be transacted and no other matter shall be discussed. The meeting shall take place within fourteen days after the receipt of the requisition or request by the Chairman.

Voting

15. The voting on the Council and on all committees shall be by show of hands or otherwise as the Council or committee, as the case may be, shall determine. No resolution shall be regarded as carried unless it has been approved by a majority of the members present on each Side of the Council or committee, as the case may be.

Quorum

16. The quorum of the Council shall be seven members divided as to three voting members of the Employers' Side and four voting members from the Employees' Side. In the absence of a quorum the Chairman shall vacate the chair and the business then under consideration shall be the first business to be discussed either at the next ordinary meeting or at a further special meeting to be held within 14 days after the date fixed for the first special meeting, as the case may be.

The quorum of any committee of the Council shall, subject to any directions given by Council, be determined by such committee.

FINANCE

17. Each Side shall be responsible for its own expenses, and common expenses shall be borne equally from Employers' and Employees' Side funds. Attendance at meetings of the Council or of any of its committees by employees' representatives during working hours shall be treated as special leave with pay.

DECISIONS

18. The decisions of the Council shall be arrived at by agreement between the two Sides, shall be signed by the Chairman and Vice-Chairman and thereupon shall be operative.

REPORTS

19. The Chief Minister may, from time to time, call for a report of the decisions of the Council for the information of Executive Council.

FAILURE TO REACH AGREEMENT

20. Where agreement between the two Sides of the Council cannot be reached by negotiation the following provisions shall apply:-

- (a) it shall be open to either Side to refer the matter in dispute to an independent person, acceptable to both Sides, who may:-
 - (i) seek to bring about a settlement by way of conciliation or mediation; or
 - (ii) by joint agreement of the two Sides of the Council, refer the matter to independent arbitration.
- (b) Where independent arbitration has been jointly agreed the independent person may seek a list of appropriate persons to act as arbitrator from the Industrial Relations Officer but any arbitrator so appointed must be acceptable to both Sides of the Council.

- (c) **If considered appropriate, either the arbitrator or the independent person may appoint one or more independent assessors to provide technical or specialist advice to the arbitrator. Either Side of the Council may suggest such an appointment, but any assessor(s) so appointed must be acceptable to both Sides of the Council.**
- (d) **Both Sides of the Council shall endeavour to agree terms of reference in respect of any matters in dispute. Where they cannot agree terms of reference, each shall prepare a statement containing a description of the issues it alleges are in dispute and its submission in respect of those issues. These statements taken together will constitute the terms of reference for the arbitration.**
- (e) **The decision of the arbitrator shall be binding on both Sides of the Council.**

[This Clause inserted by Government Circular 35/95].

AMENDMENT OF THE CONSTITUTION

21. This constitution may be amended by agreement between the two Sides after notice of amendment has been circulated to all members of the Council not less than fourteen days before the meeting.

All amendments to the Constitution shall only take effect on being approved by Tynwald.

INTERPRETATION

22. Where the context so admits, the Interpretation Act, 1976, shall apply to the foregoing provisions.

CITATION

23. This Constitution may be cited as the Whitley Council of the Isle of Man Public Service (Manual Workers) Constitution 1989.

COMMENCEMENT

24. This Constitution shall come into effect on being approved by Tynwald.

THIS CONSOLIDATED VERSION INCORPORATES AMENDMENTS TO THE CONSTITUTION UP TO THE 31ST DECEMBER 1995

APPENDIX 2

To the Employee Side Chair

780 Wollaton Road
Nottingham,
NG8 2AP

27.6.2009

Dear Mr Kelly

Last Monday, 22nd June, I had a telephone conversation with Mr Moffatt to enquire whether there was any possibility that the Employee Side of Whitley Council for the Isle of Man Public Service might be willing to meet with me when I am next due to visit the Isle of Man on the 13 and 14th July 2009. The purpose of this visit is to further the review that is being undertaken of the present Whitley Council arrangements at the request of the Council of Ministers.

I am aware that the Employee Side of the Council has informed the Office of the Council of Ministers in writing that it will not be engaging in the review but I was hopeful that it might be possible to meet with you to provide an opportunity for you to advise me personally of the reasons for this decision. These would then be included in the final report. If you decide at any stage that it would be useful to meet, please get in touch with Sian Christian in the Chief Minister's Office who will make the arrangements. Sian can be contacted by email at sian.christian@csso.gov.im or by telephone on (01624) 686266.

As it so important that, if possible, the review presents the position of both parties to the Council, I would be happy to make a further visit specifically to meet with you and other members of the Employee Side before preparing my report. I will send you a copy of the draft report so that you can make comment on it should you change your position regarding engagement in the review. My understanding from the Employee Side Joint Secretary is that such correspondence should be sent to you via the Employing Authority's Personnel Office but please let me know if you wish me to use another address.

Yours sincerely

L. Harris

Professor of HRM

CHIEF SECRETARY'S OFFICE

Oik yn Ard-scrudeyr

**1. COUNCIL OF MINISTERS
DIVISION**

Government Office
Douglas
Isle of Man
IM1 3ET
Telephone

7th July 2009

Ms L Bampton
Clerk to Peel and Western District Housing Committee
Peel Town Comissioners
Town Hall, Derby Road
PEEL

Dear Ms Bampton

As you will probably be aware a review is currently being undertaken of the present Whitley Council arrangements at the request of the Council of Ministers. To try and get as wide a range of views as possible, Professor Harris, who is undertaking the independent review, has asked for employers with staff employed on Whitley Council Terms and Conditions who it has not been possible to meet to have the opportunity to provide their views on the present arrangements.

If you do wish to provide some comments to inform this review please can you send these to lynette.harris@ntu.ac.uk or advise me if you feel there would be value in a phone call with the appointed independent reviewer.

Yours sincerely

Sian Christian
Policy and Research Officer

Consultation for the 2009 Whitley Council Review

Interviews and meetings were held on 16th and 17th of June and the 10th, 13th and 14th of July 2009 with the following:

The Whitley Council

The Employers' side Chair

Employers' side Members of the Whitley Council (telephone discussions took place with members not able to attend)

The previous Employers' side Chair

The Employers' side Secretary and Joint Secretary of the Council

Ex officio members of the Council – Chief Secretary, Treasury Member, the Douglas Corporation adviser (telephone interview)

Representatives of the following employers with Whitley Council employees

Department of Health and Social Security

Department of Transport (including Works division)

Department of Agriculture, Fisheries and Forestry

Department of Tourism and Leisure

Department of Education (telephone and correspondence)

Department of Home Affairs (correspondence)

Government House (Correspondence)

Government

The Chief Minister

(Plus the Tynwald members mentioned)

Government Officers

Director of Performance and Delivery

Policy and Research Officer

(plus ex officio members of Whitley Council already mentioned)

Manx Industrial Relations Service

The Industrial Relations Officer

Response to the individual letters

In addition to the above, there was correspondence or telephone contact with 3 Tynwald members as well as 3 managers from the employing organisations who raised issues on behalf of their employees during the period of the review in response to the individual letters that were sent out as part of the consultation process.