

EXCO TOP LINES – WEDNESDAY 18 DECEMBER 2019

Public Solicitors Fees

- Executive Council requested further explanation from the Public Solicitor regarding the fees proposed as to the charges for legal services by his Office.

Background

- The Public Solicitor's Office is currently charging for legal services but no evidence can be found as to whether the fee structure was properly approved and published by notice in the Government Gazette in accordance with section 30 (2) of the Ordinance
- The one change proposed to the current fee structure is to charge 'expatriate workers', businesses and individuals/businesses off Island up to a maximum rate of £150 per hour rather than the current rate of £75 per hour. This will be looked at on a case-by-case basis and appropriately applied
- It is not proposed for the current fees, including no fees being charged to any person requiring legal aid or in any matter for the purposes of a 30-minute first appointment, be changed. Neither is it proposed to change the non-charging to non-St Helena tax payers for Police Station representation and similarly, to St Helena tax payers for:
 - Police Station and criminal court representation
 - Public Children law matters
 - Clinical or Medical Negligence matters
- The proposed fee structure is specifically designed to protect against any negative social impact. Those on a household income of less than £10,000 per annum are not charged fees and this is to ensure that the most vulnerable are provided access to justice and not discouraged from approaching the Public Solicitor
- The proposed increase in fees will contribute to meeting the running costs of the Public Solicitor's Office but will not cover all of the running costs and the Public Solicitors Office will continue to require funding support from St Helena Government
- In response to the proposed fee increase representation had been received from the Equality & Human Rights Commission and a member of the public respectively concerning the impact on the public and the lack of consultation around the proposal
- Members were concerned that there had been no lead-up and publicity to the proposed increase in fees however Members noted that the law required the Public Solicitor only to consult Council and it would be the decision of the Chief Justice to approve the change in fees
- Members agreed that the information provided to them was not clear and they would now seek further clarification from the Public Solicitor particularly relating to:

- Whether the fee structure could move away from being based on household income to individual income. Basing the fees on household income is worrying especially for families
- The proposed increases should be more sophisticated and people and businesses outside of St Helena should be paying full cost recovery for legal services
- Whether anyone has not been able to obtain legal advice due to the current fee structure
- Further definition/clarification is needed on what is meant by 'expatriate worker'
- Whether Lay Advocate services are still free
- Whether any negligence claims should remain free and instead be subjected to a fee structure
- Members acknowledged that the Public Solicitors Office has to become financially stable and this is consistent with the stance SHG is taking to reduce subsidies across the piece
- Members requested this item be brought back to Council to be further explained. Item deferred until this time.

Employment Rights Ordinance – Minimum Wage

- Executive Council approved an increase of 5p in the Minimum Wage to take effect from 1 April 2020. This change will increase the Minimum Wage to £3.18 per hour for all employees having attained the age of 18 years and £2.23 per hour for all young people having attained the age of 16 and 17 years.

Background

- The Minimum Wage was introduced to ensure families on the Island could afford a basic lifestyle and to avoid exploitation of workers
- The Minimum Wage is kept above the poverty line
- The general strategy which was agreed amongst the Employment Rights Committee was to continue to gradually increase the Minimum Wage over time. It was agreed that there will be regular increases which would be consulted on in October/November and commence in April of each year. This was based on the response from businesses who said they would like to see small regular increases rather than sporadic large increases
- The Employment Rights Committee considered three options for changes to the Minimum Wage which would come into effect from 1 April 2020 – a 9p rise (2.9%), a 5p rise (1.6%) or no rise. There was a relatively good response to this proposal, with two face-to-face submissions of feedback, four submissions by email alongside the submissions provided by the employer representatives as part of the Committee. In addition, the Employment Rights Committee met with the Chamber of Commerce during the consultation

- The Chairman of the Employee Rights Committee and the Chief Economist explained that the gradual increase in the Minimum Wage is starting to reach the point where this has more of an impact on businesses and individuals
- One of the most affected businesses are the crèches as most of the staff are on Minimum Wage
- After a decision is made by Executive Council, businesses are given three months' notice to put in place measures to comply with the new Minimum Wage.
- The lower increase of 5p on the Minimum Wage was recommended to strike a balance between increasing the purchasing power of those with the lowest incomes, whilst avoiding adding significant burden on to business, which will cause price rises, particularly affecting families on St Helena
- Members recognised that we need to support the employee but we also need a level of protection for the employer
- There were concerns that some businesses will pass the increases back on to the customer to recover costs as well as some smaller businesses might suffer due to the increase. However it was noted that these changes will not be implemented until April 2020 and hopefully with new upcoming projects there will be a lift in the economy by then
- Members also noted that the increases in the Minimum Wage affects people on the very low end of the scale and we need to fully support these people
- Members supported the 5p increase

Employment Rights Ordinance – Maternity, Paternity and Adoption Leave and the Labour Regulating Authority

- Executive Council approved the Employment Rights Amendment Bill to be printed and presented as Government Business at the next formal meeting of Legislative Council and that Regulations also be developed
- Executive Council accepted a mandate for the introduction of statutory maternity, parental and adoption leave and pay periods
- Executive Council agreed the recommendations in respect to the Labour Regulating Authority
- These changes will come into force on 1 April 2020
- Separate publicity and radio interviews on the increase will be provided by the Employee Rights Committee.

Background

- This amendment to the legislation is long overdue
- Under the Ten Year Plan Goal 'Altogether Better for Children and Young People' SHG has stated that 'we will introduce paid maternity, paternity and adoption leave on the Island'. The assertion sits within the wider intention to encourage the St Helenian population to increase (currently there are more deaths than births) and to ensure that any family considering having or

adopting a child is not at risk of poverty or unemployment as a result of that decision

- From December last year there has been 28 registered births
- Members recognised that the introduction of statutory maternity, paternal and adoption leave and pay will protect parents on St Helena from poverty
- Many employers on St Helena already have their own maternity and paternity leave policy although there is some differentiation between businesses and some business do not offer these types of leave because currently it's not statutory
- Making these types of leave statutory sends a signal that we are moving with the times
- The changes will allow:
 - that an allowance of four weeks adoption leave becomes statutory, of which the four weeks is paid as full pay
 - that the relative allowance is given as normal, if the baby dies or if the baby is stillborn after the 24th week of pregnancy
 - that the full pay allowance for maternity, parental and adoption pay is provided after 26 weeks of service (which is normally deemed to be the probation period) and
 - Parents should have the right to request additional maternity, parental, or adoption leave and the ability to return to work on a part-time basis
 - Requests should be made to the employer at least 28 days in advance of the expected return date in order that the employer can fully consider and plan to implement such requests
 - An allowance of two weeks paternity (parental) leave will become statutory, of which the two weeks is paid as full pay
- As per Chapter II of the Employment Rights Ordinance, it is the duty of the Labour Regulating Authority, amongst other things, to 'promote and protect the rights of employees granted under this Ordinance'. There was concerns as to whether the Labour Regulating Authority (LRA) is able to do a promotion role, as they are also meant to be an impartial arbitrator, for example encouraging people to make claims against their employers may be contrary to their impartiality
- The LRA comprises solely of the Chief Magistrate who deals with any complaints related to the Employee Rights Ordinance. It being one person doesn't always enable the Chief Magistrate to see things from all angles. It is therefore recommended that the LRA is made up of three persons, including the Chief Magistrate. The other two persons should ideally be an employee representative and an employer representative. Members other than the Chief Magistrate will be paid remuneration for their time
- To fulfil the role of promotion, the responsibility would move from the LRA to the Employment Rights Committee.
 - The Employment Rights Committee would be given a small annual budget for promotion
 - A member of the Chamber of Commerce would be invited to join the Committee as an additional member to support promotional activities

- Members of the Committee not employed by SHG or a Legislative Council Member are paid remuneration for their time
- Members gave their approval
- Members also raised concerns that statutory sick and annual leave should be enforced. ERC will undertake awareness raising to encourage anyone who is not being given statutory terms to come forward to the LRA.
- Separate publicity and radio interviews on the changes to maternity, parental and adoption pay will be provided by members of the Employee Rights Committee.

Labour Market Strategy

- Executive Council approved the Labour Market Strategy (2020 – 2035) to take effect from 1 January 2020 so that it can be taken forward for implementation.

Background

- One of the goals necessary to achieve the vision articulated in the SEDP is to 'develop, maintain and attract a skilled workforce across the public and private sectors'
- The previous Labour Market Strategy was published in 2012 and focused heavily on construction and immediate operations of the Airport. Since that time, the Airport has been built and opened and the fibre optic internet cable is on the horizon
- St Helena now faces a new generation of challenges and opportunities that the new Labour Market Strategy seeks to address
- The draft Labour Market Strategy is organised around three key goals: 1) resolving inequities, both real and perceived, in St Helena's Labour Market, 2) increasing the population living and working on St Helena and 3) preparing the workforce to meet the vision laid out in the SEDP
- The success of the policies and programmes proposed in the Labour Market Strategy will be dependent on actions by employers and individuals across the economy as well as elected members and government officials. SHG intends to lead by example by making necessary changes within government departments and influencing change in entities where SHG is a shareholder. For this reason, where possible, the Strategy identifies specific actions SHG plans to take to address a challenge or seize upon an opportunity
- Now approved, the policies and programmes proposed in the Strategy will be implemented. Thereafter, there will be biannual reporting on progress and annual reporting for indicator data
- Efforts to address unemployment and increase skills in key areas will benefit individuals and employers alike
- Programmes and policies that increase employment on-Island and support key sectors are essential to economic development, which will have a positive social impact

- The Economic Development Committee endorsed a final draft of the Labour Market Strategy at its meeting on 28 November
- The Labour Market Strategy is intended to address a wide range of needs for a variety of stakeholders across the Island. Every programme or policy in the final draft Strategy was designed to respond to an issue raised by individuals on-Island
- Key revisions to the original draft addressed the primary issues raised by members of the public during the consultation including: immigration and Saint Status; concerns about whether proposals would benefit those already living and working on St Helena; and assistance for St Helenians returning to the Island to work
- There was a request from caucus that the final draft be taken back out to consultation
- The final draft Strategy was released publicly before it was endorsed by the Economic Development Committee (EDC) in November. The Chair of EDC and Senior Economist reported that the feedback they received on the final draft had been positive
- Members noted and acknowledged that wide consultation had already been given to the document and comments received had been accounted for in the final draft. Members acknowledged that conflicting feedback had been received from the public on several topics and, as a result, there was unlikely to be benefit from further consultation because a balanced view had already been taken
- Members thanked leading officers for a good piece of work that will go some way in supporting our workforce
- The LMS was given Members' full support and sets up the Island for the medium term in terms of labour responsibilities

AOB

- Various consultation activities on Fixed Penalty Notices will take place between 9 and 21 January 2020 and work is well underway to progress this
- Discussions took place around whether the swimming pool should reopen to the public:
 - Swimming Pool has been closed since 1 November
 - Three reasons for the closure: varying PH levels between 7.8 and 8.2, low calcium levels and cloudy water that affects visibility
- Members wanted to have further explanations from the Director of Health and a risk assessment to be undertaken before a decision is made.

ExCo

18 December 2019