

AGENDA ITEM: 8

Page nos. 499 - 510

Meeting	General Functions Committee
Date	16 January 2012
Subject	Human Resources: TUPE Transfer Commitments
Report of	Deputy Chief Executive and Chief Finance Officer
Summary	This report sets out the TUPE Transfer Commitments which forms part of the procurement contract at the point of transfer of staff to a new employer
Officer Contributors	Sarah Murphy-Brookman – Human Resources
Status (public or exempt)	Public
Wards affected	All
Enclosures	Annex 1 - TUPE Transfer Commitments Annex 2 - Paper to CJNCC 13 September 2010
For decision by	General Functions Committee
Function of	Council
Reason for urgency / exemption from call-in (if appropriate)	Not Applicable

Contact for further information: Sarah Murphy-Brookman – Human Resources. Telephone 020 8359 7912

1. RECOMMENDATIONS

- 1.1 The committee is asked to note that as part of the One Barnet programme a set of TUPE transfer commitments exist which will form part of procurement contracts.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 At CJNCC on 16 November 2010 UNISON lodged a Trade Dispute. As a result of the discussion at that meeting the Committee asked the Secretary to the Employer's Side to meet the Trade Unions to seek a way forward.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Corporate Plan sets the vision of Better Services with Less Money and outlines a more efficient organisation that makes best use of people and resources.
- 3.2 The One Barnet Programme is the Council's response to the unprecedented financial challenges that the Council faces. The Future Shape programme as it was previously termed was agreed in October 2009 as Council policy. This policy incorporates three strategic principles: a new relationship with citizens, one-public sector and a relentless drive for efficiency.
- 3.3 The Council through the One Barnet programme has committed to becoming a commissioning organisation, commissioning services with partners with and on behalf of the community, becoming more efficient and meeting the cuts challenge.
- 3.4 The first wave of commissioning projects are:
- Development Regulatory Services
 - New Support and Customer Service Organisation

In addition there are other on –going projects to deliver efficiencies and savings and these include Your Choice; Parking contract; SAP Optimisation and E Recruitment

4. RISK MANAGEMENT ISSUES

- 4.1 To crystallise the full benefits of the One Barnet programme it is vital that employees are engaged with the principles of the programme, as a number of the projects will involve outsourcing employees either to private or public sector partners.
- 4.2 These TUPE transfer commitments are the Council's response to the concerns voiced by employees about the impact of outsourcing upon their Pension and Terms and Conditions.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 These TUPE transfer commitments enhance the statutory protection provided by the TUPE Regulations 2006 and they have been reviewed in an Equalities context - there are no adverse impacts.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability) Staffing Implications

Staffing Implications

- 6.1 These TUPE transfer commitments provided an enhancement to the TUPE regulations 2006 and the 4 key commitments are:

- *all employees in services moving to a new employer will be able to continue their membership of the Local Government Pension Scheme uninterrupted and unchanged*
- *local union recognition will be protected for staff moved to external suppliers*
- *terms and conditions of staff transferred will be protected for the first year after leaving the council's employment*
- *any changes to terms and conditions after that first year will have to be negotiated with the appropriate trade union*

Continued employee membership of LGPS will be achieved through Admitted Body Status, the decision whether it is a closed or open Admitted Body will be considered on a case-by-case basis with advice from the Scheme Actuary.

Where a contractor proposes to change the location from where services are delivered, then the impact upon service users; employees and the Council will be considered and equality impact assessments will be made. Any decision about a proposal to relocate a service will be based on the relevant facts and on a case-by-case basis

The full TUPE transfer commitments protocol is at Annex 1.

Financial Implications

- 6.2 All contractors have been and will be provided with the protocol as part of the procurement process so that financial implications can be taken into account.

ICT Implications

- 6.3 None.

7. LEGAL ISSUES

- 7.1 None

8. CONSTITUTIONAL POWERS

- 8.1 Constitution Part 3 - Responsibility for Functions - Section 2 – Responsibility for Council Functions - General Functions Committee - Staff matters and conditions of service. Restructures which have major implications including changes to contracts of employment and proposals involving major changes in working practices and location of employees must be submitted to General Functions Committee for approval.

9. BACKGROUND INFORMATION

Timeline

9.1 *Extraordinary CJNCC 12 July 2010*

The Committee asked whether the Interim Head of Strategic HR could confirm, by September 2010, the HR policy on TUPE / TUPE Plus with regard to the potential transfer of staff.

9.2 *CJNCC 13 September 2010*

TUPE and TUPE Plus were discussed. A report was submitted to CJNCC – Refer Annex 2. The Committee noted the report and its appendix on the Council's response to the Trade Unions paper titled 'Fair Employment Policies'.

9.3 *CJNCC 16 November 2010*

UNISON formally lodged a Trade Dispute with the London Borough of Barnet on the basis that the designated regulatory services will be transferred to the private sector and that London Borough of Barnet will no longer be their employer. UNISON members believed that a change of identity of the employer to a private sector employer would involve significant worsening of their employment position. In particular UNISON members were concerned that such a change in the identity of the employer would:

- 1) Lead to a diminution in job security in employment with a private sector employer with less opportunities for redeployment in the event of redundancy;
- 2) There would be an increased risk that Terms and Conditions of employment would be reduced for example in the event of restructuring;
- 3) Mean they may no longer be able to participate in the Local Government Pensions Scheme; and
- 4) Mean moving to an employer in whose employment there would not be the same opportunities for career development and advancement.

This was discussed and the Committee asked the Secretary to the Employer's Side to meet the Trade Unions to seek a way forward.

9.4 *23 March 2011*

Department for Communities and Local Government revokes Code of Practice on Workforce Matters in Local Authority Service Contracts.

9.5 June- August 2011

HR opened discussions with UNISON to attempt to resolve the trade dispute. These discussions recognised that the One Barnet Programme is Council policy and that it would not be reversed, but that there may be some areas in the context of TUPE plus where agreement could be reached. UNISON were asked to define TUPE plus and to prioritise the clauses that they would like to see the Council adopt. As a result of these discussions the document at Annex 1 was presented to UNISON on 26 August as a full and final offer. UNISON rejected that offer.

9.6 September 2011

The Council wrote to all staff who are potentially in scope to transfer setting out the TUPE transfer commitments that now form part of Procurement Contracts going forward.

Annex 1 – TUPE Transfer Commitments

Transfer of Employees from the London Borough of Barnet

The London Borough of Barnet [LBB] in support of the delivery of its Corporate Priorities has committed to a programme of Organisational Change, which includes outsourcing some of its activities to commissioned partners. This commissioning process includes a robust procurement process in which workforce matters are included within the award categories.

The process of outsourcing will involve TUPE transfers and LBB will comply with all of its TUPE obligations, plus any other obligations which are extant at that time. LBB has also committed to enhancing the TUPE terms as set out below.

1. Pensions

1.1. The London Borough of Barnet will ensure that employees transferred from the Council to a new employer will be able to continue in membership of the Local Government Pension Scheme [LGPS] by requiring that the new employer obtains Admitted Body Status [ABS] within LGPS. ABS permits employees to participate in LGPS should they choose to do so although they will no longer be employed by the Council.

1.2. The London Borough of Barnet will consider on a case by case basis, in conjunction with the new employer, whether new employees [that is employees of the new provider] employed on work transferred from the Council will have the opportunity to join LGPS. This is a complex matter and there is no underpinning plan as to the proportion of new employees who may or may not become eligible to join LGPS where ABS has been agreed.

2. Terms and Conditions of Employment

2.1. The London Borough of Barnet will require that employees transferred from the Council to a new employer will not have their terms and conditions of employment varied by the new employer until after the first anniversary of the transfer from the Council to the new employer. Any changes to be made after the first anniversary of the transfer to the new employer will be the subject of consultation and negotiation, as appropriate, by the new employer with its recognised trade unions. In practical terms, a new employer will be able to make such changes as necessary to processes and procedures so as to reflect the new organisational structure immediately following transfer.

2.2. The cessation of the Code of Practice on Workforce Matters in Local Authority Service Contracts has removed the requirement on successful contractors to offer terms and conditions of employment to new employees who will work alongside former Council employees which are “no less favourable overall”. However, the attention of contractors is drawn to the requirements arising from equal pay and equal value matters that will need to be considered where this may be envisaged.

- 2.3.** As a general principle, where employees move to an employer that is not a member of the National Joint Council for Local Government Services, then pay awards decided by that body will cease to apply. However, a recent case, Parkwood Leisure Ltd. vs. Alemo-Herron and others, is considering this matter. The London Borough of Barnet will expect future employers to follow the outcome of this case and implement any necessary changes to their arrangements.
- 2.4.** The London Borough of Barnet currently applies GLPC/ Hay job evaluation schemes and will expect new employers, where there is planned to be changes in job gradings, to utilise these methods up to and including the first anniversary of the transfer. Should the new employer plan to change the job evaluation systems applied, this will be subject, as appropriate, to consultation and negotiation with its recognised trade unions.
- 2.5.** The London Borough of Barnet will discuss, on a contract by contract basis, with its recognised trade unions, the plans for relocation of employees and work to identify practicable and cost-effective solutions where these relocations affect current employees.
- 2.6.** Where a former Council employee agrees, after transfer to a new employer, to a change in his or her terms of conditions, for example a promotion, this will be a matter for the individual. However, where collective changes are planned, the London Borough of Barnet expects that the new employer will conduct consultation and negotiation as appropriate with its recognised trade unions.

3. Organisational Culture

- 3.1.** The London Borough of Barnet recognises the importance of a workplace that is safe, free from discrimination and where employees feel able to express their reasonable concerns without fear of recrimination. To support this, the London Borough of Barnet has produced policies that cover, amongst other areas,:-
- Equalities Policy
 - Health and Safety
 - Whistle Blowing
- Where employees are transferred from the London Borough of Barnet, new employers are expected to provide processes that are broadly equivalent to these.
- 3.2.** It is expected that new employers will have available a Workforce Development, Education and Training Plan that will be accessible to the London Borough of Barnet and recognised trade unions.
- 3.3.** The London Borough of Barnet has in place arrangements to provide support to employees experiencing difficulties in their personal or business life, it is expected that the new employer has similar arrangements in place and will be able to demonstrate these to the Council and recognised trade unions.

3.4. Where the London Borough of Barnet has transferred employees to a new employer, the new employer will be provided with the HR policies and procedures applicable to that group of employees that are current at the time of transfer. It is recognised that the new employer may need to make pragmatic changes to reflect its particular organisational structure. Any significant changes in the future will be the subject of consultation or negotiation with the new employer's recognised trade unions, as appropriate, by the new employer.

4. Trade Union and Employee Relations

- 4.1.** The London Borough of Barnet has in place, with recognised trade unions, a Trade Union and Employee Relations Framework. This document sets out a number of processes which govern collective matters at the Council. The Council envisages that the new employer will utilise this Framework whilst dealing with collective matters, subject to pragmatic changes which reflect the organisational structure of the new employer, however, these matters will be a matter for the new employer to discuss.
- 4.2.** The London Borough of Barnet provides a facility for the deduction of trade union subscriptions from salary for which the trade unions pay a fee. It is expected that potential new employers will continue this facility for the requisite fee.
- 4.3.** To ensure that the costs of agreed trade union release time from normal duties do not fall inequitably on one particular employer, a central fund will be created by the Council that employers will be required to contribute to. Employers will be able to access this fund under agreed terms to meet any costs jointly identified, by the Council and the new employer as appropriate.
- 4.4.** It is expected that where reasonable notice is given and access does not cause operational difficulties, then trade union officials may normally be granted access to the premises of the new employer. It is recognised by all parties that this may mean that access to premises may need to be given to people who are not employees and suitable arrangements will need to be made.

15th August 2011

Annex 2 – Paper to CJNCC 13 September 2010

Putting the Community First



AGENDA ITEM: 5.1

Meeting	Corporate Joint Negotiation and Consultation Committee
Date	13 September 2010
Subject	HR Update Report
Report of	Secretary to the Employer's Side
Summary	This report provides an update on matters discussed at the meeting on 12 July 2010.

Officer Contributors	Secretary to the Employer's Side
Status (public or exempt)	Not applicable
Wards affected	Not applicable
Enclosures	None
For decision by	Corporate Joint Negotiation and Consultation Committee
Function of	Council
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

Contact for further information: Jacquie McGeachie, Interim Assistant Director for HR, 020 8359 7952.

1. RECOMMENDATIONS

1.1 That the action taken in respect of issues detailed in the report be noted.

2. RELEVANT PREVIOUS DECISIONS

2.1 This report provides a formal response to the Trade Unions paper titled 'Fair Employment Policies' which was tabled at the meeting on 12 July 2010. The detail is at Appendix 1.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

3.1 All matters contained within this report contribute to the Council's stated aim of developing its staff and becoming an employer of choice in delivering 'Better services for less money' and supporting the delivery of all the corporate priorities.

4. RISK MANAGEMENT ISSUES

4.1 Failure to resolve issues with the Trade Unions may lead to deterioration in industrial relations.

5. EQUALITIES AND DIVERSITY ISSUES

5.1 The Constitution of the Corporate Joint Negotiation and Consultation Committee specifically refers to issues of equality and diversity in terms of monitoring of policies and procedures; and considering equalities and diversity issues which are further reflected in Barnet's Equality Scheme. Equalities and diversity issues are an integral part of the business of this Committee.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

6.1 There are no direct financial implications resulting from this report.

6.2 There are no procurement, performance and value for money, staffing, IT, property or sustainability implications arising from this report.

7. LEGAL ISSUES

7.1 None except those contained in this report.

8. CONSTITUTIONAL POWERS

8.1 Council Procedure Rules Section 3 – Panels and Consultation Bodies – Appendix 1 – Constitution of the Corporate Joint Negotiation and Consultation Committee.

9. BACKGROUND INFORMATION

9.1 This report provides a formal response to the Trade Unions paper titled 'Fair Employment Policies' which was tabled at the meeting on 12 July 2010. The detail is at Appendix 1

10. LIST OF BACKGROUND PAPERS

10.1 None.

Legal – PL
CFO – KB

Appendix 1

The Council's response to the Trade Unions paper titled 'Fair Employment Policies'

1. Introduction

- 1.1 The Council is committed to meeting its TUPE, Code of Practice and Best Value Authorities Staff Transfers (Pensions) Direction obligations. However it should be noted that the Code of Practice and Best Value Authorities Staff Transfers (Pensions) Direction obligations are not statutory requirements and if they were amended or rescinded then the Council would review its practices accordingly.
- 1.2 In the context of One Barnet Programme and possible consequent outsourcing the Trade Unions have submitted a Fair Employment Policies paper. These Fair Employment Policies can loosely be termed TUPE plus. HR has previously discussed these with the TUs; these questions were then tabled at the extraordinary CJNCC on 12 July at which the Council committed to formally responding to the Trade Unions. This annex summarises the Council's policy position.
- 1.3 This policy position has been ratified by Cabinet members

2. Response

- 2.1 The Council's policy position is that it will not provide any enhancement over and above that provided by TUPE Regulations, Code of Practice and Best Value Authorities Staff Transfers (Pensions) Direction. The table below sets out this position however it does also identify instances where it may decide to enhance the standard position.

Fair Employment Policy Statement	Council Response
A guarantee that TUPE will last for the length of the contract	The council will not provide any enhancement over and above that provided by TUPE Regulations and Code of Practice.
New starters will be on the same terms and conditions and the company will not operate a two-tier workforce	The council will not provide any enhancement over and above that provided by the Code of Practice.
All TUPE transferred employees are allowed to remain in, or join the Local Government Pension Scheme (LGPS).	The council will not provide any enhancements over and above that provided by TUPE Regulations, Code of Practice and Best Value Authorities Staff Transfers (Pensions) Direction.
All new starters must have the option of joining the LGPS	The council will not provide any enhancements over and above that provided by TUPE Regulations and Code of Practice. The Council may also choose to offer contractors the opportunity to participate in LGPS via admitted body status for their broader workforce who will work upon the relevant contract but this will not be compulsory and will not form part of the contract.
Annual local government pay awards will be implemented in full	The council will not provide any enhancements over and above that provided by TUPE Regulations and Code of Practice.

No restrictions on staff promotion, for example, requiring transferred staff to transfer to the employer's own terms and conditions	The council will not provide any enhancements over and above that provided by TUPE Regulations and Code of Practice.
The contractor will be committed to Equal Opportunities, Work-life balance, Whistle Blowing and Health and Safety policies at least equivalent to the Council's Employment and Corporate Policies	The council will not commit to provide any enhancements over and above that provided by TUPE Regulations and Code of Practice. Barnet's Standard Procurement Contract will deal with relevant equalities and health and safety issues.
The contractor will have a workforce development, education and training plan approved by the council	The council will not provide any enhancements over and above that provided by TUPE Regulations and Code of Practice. Barnet's Standard Procurement Contract will deal with the relevant aspects of these issues
The current job evaluation scheme would be applied for the duration of the contract	The council will not provide any enhancements over and above that provided by TUPE Regulations and Code of Practice.
The current trade union recognition and facilities agreement must be maintained including collective bargaining for the duration of the contract	The council will not provide any enhancements over and above that provided by TUPE Regulations and Code of Practice.
New starters must have equal opportunity to join a recognised trade union	The council will not provide any enhancements over and above that provided by TUPE Regulations and Code of Practice.
The contractor gives an undertaking not to offshore work and not to transfer jobs outside the borough	The council will not provide any enhancements over and above that provided by TUPE Regulations and Code of Practice.
No restrictions on the employment status of branch trade union officers in the representation of their members	The council will not provide any enhancements over and above that provided by TUPE Regulations and Code of Practice.
A new employer will be required to provide a check-off facility for the deduction of trade union subscriptions	The council will not provide any enhancements over and above that provided by TUPE Regulations and Code of Practice.
Contractors will be required to make a contribution to the council's corporate facilities time budget to ensure transferred employees and new starters will continue to receive support from trade union branches	The council will not provide any enhancements over and above that provided by TUPE Regulations and Code of Practice.
The council must allocate adequate resources to fully and effectively monitor the employment policies and practices of the contractor as an integral part of the performance management of the contractor	The council will not provide any enhancements over and above that provided by TUPE Regulations and Code of Practice.

3. Conclusion

- 3.1 The Council by complying with Code of Practice and Best Value Authorities Staff Transfers (Pensions) Direction already goes beyond what is required under the statutory TUPE Regulations. If the Council were to place further requirements upon contractors then this would have the potential to jeopardise the viability of One Barnet Programme.