

Barnet UNISON response to close of consultation regarding the S188 Notification on the Vacating of Apthorp Care Centre



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EXECUTIVE SUMMARY

Barnet UNISON was presented with a consultation over the vacating of Apthorp Care Centre 20th August 2021. However, significant and usual documentation associated with such a consultation – particularly one with such damaging consequences – were absent and the consultation has effectively been one primarily concerned with managing the redundancies rather than questioning the rationale for them. We believe this goes against the legislation underpinning statutory consultation on redundancies and was expressed in an email from us to the employer 7th September 2021:

“I think that it is important that I set out our expectation in relation to this section 188 consultation.

Section 188(2) TULRCA states that, for consultation to be meaningful and genuine, employers must enter into it **“with a view to reaching agreement with the appropriate representatives”**.

What is not clear to staff and the trade unions is what are the employer consulting upon?

*It appears from the limited information provided that the consultation is not about the **decision** to make our members redundant but simply a paper exercise to secure alternative employment for the 93 staff at risk of redundancy.*

This is not consultation.”

We believe that as a result the risk is high that there will be **unfair dismissal claims** based on a failure to consult.

This is one of 3 areas with which we were and are extremely unhappy. The 3 areas concern:

- Failure to consult
- Treatment of staff
- The Apthorp building

We have been appalled at how staff have been treated. Notwithstanding the measures we have been able to negotiate for our members:

- 45-day consultation – further extended by 3 weeks
- Annual Leave – full years AL recognised – any unused leave to be paid
- Average weekly As & When payments [factored over a period of 22 weeks] to be paid in addition to weekly contracted hours for redundancy and notice payments
- Redeployment – extended to include all Barnet Group vacancies and vacant posts currently covered by agency staff [Your Choice Care, Your Choice Barnet, Barnet Homes]
- Redeployees to receive a ‘good will’ payment of £200 once settled in new post
- Ex-Employees who have been made redundant to be eligible to work for The Barnet Group again after their notice period has expired

an emerging theme has been the disregard and lack of positive involvement of staff in using their knowledge to facilitate the best outcomes possible for the residents. This has contributed to staff feeling even less valued.

Staff were not involved in a team effort to consider what needed to be put in place to facilitate seamless moves for residents. Nor were they involved in risk assessments around keeping residents safe once building works were underway.

More shocking were practices such as getting staff to attend their individual consultation meeting on their day off and not having the breakdown of figures presented to the individuals in an accurate way, or even presenting any breakdown at all. On top of all other stresses this meant staff were having to (albeit through their union) chase up the information which should have been there once these discussions were taking place.

Throughout the negotiation it emerged that the decision to vacate Apthorp had been taken by Barnet Council with no consultation with any other stakeholder other than Your Choice Barnet (YCB). The rationale for this has been stated over and over but the information underpinning this decision **has been withheld**. This has limited the trade union engagement to one of simply **negotiating the redundancies** rather than **avoiding** them. Consequently we have unanswered questions and we dispute the view that this discussion is not relevant to the trade unions.

The decisions around Apthorp directly affect the staff who are trade union members. Furthermore there is the potential for a significant knock-on effect in terms of the budget. As a result Barnet UNISON has been **denied the opportunity** to consider alternatives which may have ended up being less costly both on a financial and a humane level than the only option presented.

RECOMMENDATIONS

1. The Barnet Group retains all staff that do not want to take redundancy until Apthorp reopens in the near future.
2. Apthorp remains open for any residents who want to remain during the refurbishment. They will be supported by staff.
3. Your Choice Barnet should seek answers and provide them to Barnet UNISON regarding the outstanding questions relating to Apthorp Care Centre:
 - 3.1. What is the reason for the building workers on this property?
 - 3.2. Are you re-opening Apthorp as a:
 - a) Residential & day care setting
 - b) Nursing, Residential, day care setting
 - c) Extra care and day care setting
 - d) A mixture of all the above
 - e) Selling it off to the private sector
 - f) Selling it off to a property developer for housing?
 - 3.3. Why is Barnet Council spending money on a property it does not own?
4. All outstanding queries relating to redundancy payments and redeployment opportunities are resolved in the spirit of the consultation undertaken so far. We note there are a couple of staff members for whom there has yet to be thorough engagement due to long term sickness or other reasons for absence from their usual place of work.
5. Lessons are learnt about how to treat care staff more humanely in case an exercise like this happens again.

BACKGROUND

With just a couple of days' notice staff were invited to an emergency meeting at the Apthorp Care Centre due to take place 20th August 2021. No reason was given for the meeting. Just 2 hours before the meeting was due to commence the trade unions were advised by the Senior Management of Your Choice Barnet and The Barnet Group that it was regarding the proposed "vacating" of Apthorp and that consequently all staff were at risk of redundancy.

At the meeting trade unions and staff were advised this decision had been made the day before with London Borough of Barnet as the conclusion had been reached that the works to the building to make it safe and fit for purpose were so extensive and disruptive that the residents would not be able to remain in the building safely. What was particularly shocking was that in the last month Barnet UNISON and staff had been raising questions as to the plans for Apthorp given that its occupancy level was so low. Assurances were given that although the future was not definite there were no imminent plans for closure and there was no need for staff to be concerned in the next few months.

To consult or not to consult... Was that the question?

All trade unions immediately raised concerns regarding the manner in which staff and trade unions had been informed and the lack of consultation. It remains the view of Barnet UNISON that there should have been a joint consultation about whether Apthorp needs to be vacated and then a consultation as to how this decision would be implemented. Instead staff were consulted on a decision which had already been made.

The "consultation" regarding statutory redundancies therefore began with

- no document explaining the basis of the consultation;
- no structure chart;
- no accompanying documentation justifying the decision made which the trade unions may have wished to challenge;
- no statutory notice of redundancy to trade unions;
- no Equality Impact Assessment;
- no timeline for key activities to be completed during the consultation and after consultation
- no job descriptions of affected posts

...in short none of the usual documentation we are used to seeing at the beginning of any restructure proposal.

Only after the staff were informed via a meeting and a letter, were the trade unions issued with a Section 188 notification (23rd August). It took 2 weeks (half of the initially stated consultation period) for a consultation document to be issued to the trade unions 3rd September 2021. However, this documentation mainly restated the letter issued to staff and offered no substantial additional information with which the trade unions could properly engage.

The following extract from an email from Barnet UNISON to The Barnet Group 16th September 2021 highlights the difficulties the trade unions have been facing with respect to this consultation:

"As stated last week in our consultation meeting 8.9.21 we do not understand your response.

LBB has decided to 'vacate Apthorp'. Indeed, this is in progress and the first residents are moving out. It appears the section 188 consultation is a fait accompli.

I refer you to the letter we received from Julie Riley 20.9.21 which stated, '**Barnet Council and Your Choice Barnet** have taken the decision to vacate Apthorp Care Home by 31 October 2021'. This implies a **joint decision** has been made.

HR1 notice at question 8 'Closure of Business' response is 'No. **Local Authority** have asked us to vacate it.' This implies it was an **LBB decision**.

The document we received from you as an attachment to an email 26.8.21 states:

*'Ultimately the decision to vacate the residents sits with **LBB** as YCB is managing the service under a "caretaker" arrangement, however, the recommendation was a **joint one between LBB and YCB...**'*

This implies it was an **LBB decision but YCB was strongly advocating** and partaking in this decision.

The consultation document which came to the trade unions 3.9.21 stated: '**The Council and Your Choice Barnet have taken the decision** to vacate Apthorp Care Home by 31 October 2011...' This implies it was a **joint decision**.

7th September Tim Mulvenna sends us an email which states: 'As you know **the decision to close Apthorp was not ours..**' This implies it was **LBB alone** which made the decision.

Your email seems to invite us to engage in a consultation about options for a service for which a decision has already been made and is being implemented.

We did request a structure chart for Apthorp and job roles 9.9.21 and the building survey. These are still outstanding.

We have also asked for 2 documents referenced on the DPR which are inaccessible to us (and remain so despite our discussion yesterday). As YCB has issued the S188 notice it is for YCB to provide that documentation.

In light of our opening comment what does this mean as this is taking place?:

'The current proposal is to transfer residents to a number of alternative homes and provide care using those homes' existing staff. However, I would like to assure you that no decision has been made in this regard and any other alternatives are open for consultation. We will welcome any suggestions which you or our staff may have and will give due consideration to any comments put forward during the consultation process.'

We do not believe genuine consultation is taking place."

This extracted confirmation and the final stated position that the Associated Employer, London Borough of Barnet had made the decision which YCB was then implementing.

It is worth noting that London Borough of Barnet consulted with no stakeholder other than possibly YCB in reaching its decision. There was certainly **no staff or service user engagement**.

Our doubts that the statutory 45 days consultation would be sufficient to cover the most basic questions were proved correct as in the end the consultation was extended by 2 weeks and then another 1 week.

Treatment of Staff

The Equalities Impact Assessment reveals that the overwhelming majority of the staff affected are women (86%). Of those who have stated their ethnicity (41%) the largest group are Black (16%) and 81% are earning no more than the London Living Wage and the overwhelming majority of the staff are over the age of 40 (around 80%).

Following the announcement of the vacating of Apthorp there was **no senior officer presence** in the building of note for a further 2 weeks. Staff were handed letters which they were then told they could use in discussions with residents about the situation.

Shocked and distressed staff were offered no detailed discussion and no involvement in developing a strategy for assisting residents with the difficulty of leaving their home.

The context for this cannot be overstated. Care home staff develop relationships with the people they provide care for and also with family members with whom they come into contact. Residents come to know care home staff as part of their own family even though the contact is professional and boundaried; these are the people the residents see day in day out. However, during the COVID pandemic it quickly became clear that staff became even closer to the residents as family members were not allowed to visit. For the best part of 18 months these staff were effectively their family.

The COVID experience and literally surviving the experience was traumatic for the staff as every day they carried a fear of what this disease could do to them or their loved ones if they caught it. They were anxious about passing the disease to residents and also becoming infected by residents. They also cared for residents who succumbed to the disease. At the start of the pandemic they did not even have the correct quantities of PPE and there were certainly no vaccines. Nonetheless for not even the value of the London Living Wage at the time, they came to work day in day out. **They were heroes** and they were part of the reason we stood on our doorsteps every Thursday at 8pm for weeks to show our gratitude.

We all trusted them to do this work and they did it.

In return they were told out of the blue that they were at risk of redundancy. They received notices to attend 1-to-1 sessions to consult them on their risk of redundancy letter **on their day off!** When they did attend their session, the information given on which they needed to make an informed decision was frequently inaccurate and took weeks to clarify. Members highlighted it was generally not presented in the format of a letter setting out how the figures for redundancy etc had been arrived at but was written down at the meeting on a piece of paper. This contributed to them feeling less than valued and respected.

When they became upset at seeing residents leave the building, they were effectively told this was not helpful. However, this anticipated risk was never factored into the process – something which, if there had been proper consultation, might have been better planned for!

We know of one colleague who attended the assessment for the resident for whom she was keyworker on her day off because no one had thought it important enough to check she would be on shift at such a critical time.

Staff had to deal with family members and residents who had not been officially told and looked to them for information. Yet the guidance they had for managing this was almost non-existent.

Building work was being done in the immediate vicinity of residents and although risk assessments had been done, these were not shared with staff members who consequently felt undermined in their ability to assert safe working practices around the people they were caring for.

It was as if, having decided the building was to be disposed of and the staff with it, **their “professionalism” and “heroism” became irrelevant.** This was not the sign of a workforce being treated with the respect and the dignity they deserved.

We cannot help but believe that the gender, race, age profile and economic status of the workforce has been a factor in the way they have been treated throughout this process. They have been treated from start to finish as if their expertise really carries no substantial weight at all. They did not need to be involved in discussions around the need to vacate the building and they did not really need to be involved in how to best achieve this. **They simply needed to be told when and where to go.**

Barnet UNISON has been appalled at the way in which the staff have been treated throughout this process.

Apthorp Care Centre – the building

On its own research Barnet UNISON discovered that the care centre is **owned by Catalyst**. It was one of 3 “state of the art” care homes built by Catalyst as part of the deal they had with Barnet Council in return for valuable land on which to build its own housing. In less than 20 years since being built this state of the art care home, we are told, has become too hazardous to house any residents and needs immediate radical repair works.

Catalyst was paid around **£10million by Barnet Council** some 10 years ago following court action *against* Barnet Council.

We are shocked and appalled at the lack of accountability in the handling of this situation which has led to the lives of residents being put at risk due to the trauma of being moved; and the lives of the 93 staff members being thrown up in the air after being cited as heroes! More than 100 people are having their lives trampled because:

- No one was accountable to ensure this building was properly maintained and was fit for purpose
- The interests of the private sector trump the lives of the residents and staff and indeed, as has been demonstrated in the treatment of staff and residents, their lives as human beings count for very little.

We are still unclear what the future of Apthorp actually is.

On 22nd September we asked the following questions:

- “1. What is reason for the building workers on this property?
2. Are you re-opening Apthorp as a:

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- g) Residential & day care setting
 - h) Nursing, Residential, day care setting
 - i) Extra care and day care setting
 - j) A mixture of all the above
 - k) Selling it off to the private sector
 - l) Selling it off to a property developer for housing?

3. Why is Barnet Council spending money on a property they don't own?"

We have **never received a response to these questions.**

Significant building works and repairs are being undertaken. An estate agent has been round to value the property, which we have been told was instructed by Catalyst. It is our understanding that Barnet Council is paying for the repairs on a building it does not own, on a building which appears to fall catastrophically short of the contracted understanding of what was supposed to be provided.

For a time, Fremantle Trust was entrusted to care for the building and provide services but who was checking on whether they were fulfilling their obligations? What penalties were in the contract for failure to do so?

Barnet UNISON has consistently argued against outsourcing and one of our arguments is that **when the contract fails, the contractor inevitably walks away leaving Council Tax Payers to foot the bill** – a bill they may as well have paid to ensure the service was delivered properly in the first place directly by the Council!

Barnet UNISON believes this is a scandalous misuse of Council Tax Payers' money and is a sorry vindication of how right we are to oppose outsourcing.

In the final week of extended consultation Barnet UNISON has received a report regarding the works being undertaken from Barnet Council. We will take this up with the Council but it has come extremely late in the consultation and given that most residents have now been moved is likely to be a question of dealing with something after the "horse has bolted".

Appendices:

To be supplied.