

UNISON Barnet: Future Shape of the Council Programme

September 2008

Briefing No. 3 Employment Charter

Executive summary

The Briefing summarises the three employment models – in-house, secondment and transfer – and how Council staff bear significant risk of changes to terms and conditions, pensions and trade union representation. Barnet already has the third largest number of low pay employees of the London Boroughs. The Briefing sets out a 13-part TUPE Plus framework, a redeployment and retraining policy, emphasizes the importance of effective contract monitoring and staff and trade union involvement in the options appraisal and procurement process.

Recommendations

1. The Employment Charter should form the basis for the development and appraisal of options in the Future Shape of the Council programme. Each option should be assessed to determine the employment impact and the extent to which it fulfils the requirements of the Charter.
2. The Employment Charter should be incorporated into the Council's Corporate Procurement Strategy.

Introduction

The London Borough of Barnet commenced the *Future Shape of the Council* project in May 2008 to review the organisation of the Council, challenges and changing demands on the capacity of the Council. The European Services Strategy Unit (ESSU) has been commissioned by Barnet UNISON to provide research and critical analysis for the Branch in the consultation process. This is the third of a series of Briefings, which will be produced over the next few months.

Employment options

There are basically three employment options or models for the Council:

- *In-house* – staff remain public employees directly managed by the Council or a shared services project jointly governed by several local authorities and public bodies.
- *Secondment* – staff remain council employees on their existing terms and conditions but are managed by a private or voluntary sector provider on a day-to-day basis' usually in a Joint Venture Company (established by the contractor and the council). New staff are generally employed by the authority but there are examples where the JVC may directly employ a proportion of new staff.
- *TUPE transfer* – staff transfer to a new employer to a private or voluntary sector contractor, or to a Joint Venture Company. A 'choices' model is promoted by a

few contractors where staff have the option of secondment or TUPE transfer, although the expectation is that virtually all staff will ultimately transfer to the new employer over the course of the contract.

Risks borne by staff

Council staff are forced to bear major risks when services are privatised. There are four categories of risk - changes to terms and conditions of service; changes to pensions arrangements (not covered by TUPE regulations); changes to staff consultation and representation; and the risk of problems with a secondment agreement. Twenty-five different potential changes to jobs, terms and conditions were classified in employment risk matrix as no risk, low, medium and high (ESSU, 2006).

The in-house/secondment option minimises the risk for staff because there is 'no risk' in nine categories and only a 'low risk' in the remainder. A TUPE transfer, in stark contrast, has 40% of the risks classified as 'high' and a further 40% as 'medium risk'.

Low pay in Barnet

Barnet Council employs about 7,000 teaching and non-teaching staff. Their well-being is at stake. The Council cannot rely on TUPE and contract management policies and legislation which have been demonstrated to be only partially effective.

Low pay is already a key issue in Barnet. With 26,200 low paid workers (employees earning less than the 2006 London living wage of £7.05 per hour), Barnet has the third largest number of low pay employees of the London Boroughs, after Croydon and Bromley with 32,200 and 28,500 respectively (GLA Economics, 2008).

The Council's Equality Scheme revealed: *"76 percent of the council's workforce is female compared to 52 percent of the population. However, only 42 percent of full-time equivalent female employees hold senior grade jobs. 49 percent of Barnet's employees work part-time. Of these, 92 percent are female. Female employees are clustered in low-paid, part-time work"* (Barnet Council, 2007).

1. TUPE

The Best Value Code of Practice on Workforce Matters applies across the public sector. The Code requires that contractors (and sub-contractors) employ new staff working alongside transferred staff on *"fair and reasonable terms and conditions, which are overall no less favourable than those of transferred employees."* Contractors must consult with trade unions to agree the terms and conditions for new starters.

Transferred staff have the right to either the Local Government Pension Scheme (LGPS) or a *"broadly comparable pension"* scheme approved by the Government's Actuary Department (GAD). The Local Government Act 2003 made the Cabinet Office Statement of Practice Staff Transfers in the Public Sector and its Annexe, *A Fair Deal for Staff Pensions*, legally binding.

Contractors are required to offer new staff the option of the Local Government Pension Scheme (LGPS), a good quality pension scheme (either a contracted out final salary based defined benefit scheme or a defined contribution scheme). The employer must match employee contributions up to 6% in a defined contribution scheme or a stakeholder pension scheme. The Code of Practice must be included in the contract between the council and the contractor.

2. In-house/secondment

Retaining in-house employment is the preferred option because it minimises the risks to staff of an erosion of terms and conditions, including pensions. Where a service or function is transferred to another organisation, the Council should consider a secondment option as practiced by a number of local authorities and the NHS.

Transformation should not be at the expense of workers terms and conditions. Wage cuts rebound on the Barnet local economy because they lead to lower spending in shops and services which in turn reduces employment and incomes.

3. TUPE Plus

The limitations of TUPE are widely recognised and this has led to the promotion of TUPE Plus. For example, Newcastle City Council's Corporate Procurement Strategy has TUPE Plus as a basic requirement in service contracts.

TUPE Plus contains the following fair employment policies:

- A guarantee that TUPE will last for the length of contract (the regulations do not specify a time period). This is essential to protect conditions of service, existing redundancy payments and early retirement provisions. Any variation to conditions of service would only be introduced following a collective agreement with the appropriate trade union.
- New starters will be on the same/very similar terms and conditions and the company will not operate a two-tier workforce.
- All TUPE transferred employees and new staff must have the option of remaining within the Local Government Pension Scheme.
- Annual local government pay awards will be implemented in full unless otherwise agreed with the recognised trade unions.
- No restrictions on staff promotion, for example, requiring transferred staff to transfer to the employer's own terms and conditions unless absolutely necessary because of nature of the work.
- 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 contractor will have a workforce development, education and training plan approved by the Council.
- The current job evaluation scheme would be applied for the duration of the contract.
- The current trade union recognition and facilities agreement must be maintained, unless changed by agreement, for the duration of the contract. This should cover new staff who must have equal opportunity to join a recognised trade union.
- The contractor gives an undertaking not to offshore work.
- No restrictions on the employment status of branch trade union officers in the representation of their members.

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- A new employer will be required to provide a check-off facility for the deduction of trade union subscriptions.
 - 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 and reporting process.

4. Employee and trade union involvement in transformation

The government's latest public sector reform report, *Excellence and Fairness: Achieving world class public services*, makes clear that the next stage of public service reform "will involve unlocking the creativity and ambition of public sector workers." It calls for "a more flexible, higher skilled workforce forms the basis of new professionalism" and "raising skills and increasing consistency in the quality of practice across public services" (Cabinet Office, 2008c).

The Joint Statement on access to skills, trade unions and advice in government contracting by the Cabinet Office, CBI, Business Services Association, Trades Union Congress, Association of Chief Executives of Voluntary Organisations and the National Council of Voluntary Organisations states:

"Employee involvement is a key ingredient of successful public service delivery, and it is particularly important that service providers and commissioners engage with employees in order to achieve staff buy-in and high standards of service. Trade unions play a valuable role in the workplace, for example as an established source of help and information to their members, and represent their members' views" (Cabinet Office, 2008a). The Future Shape of the Council programme should ensure that staff and trade union involvement is embedded in the transformation process, the development and appraisal of options, and the procurement process.

5. Redeployment and retraining

The Future Shape of the Council programme should be supported by a retraining and redeployment programme to ensure that staff have the opportunity to increase their skills and participate in the transformation process. Staff who are displaced should be offered redeployment and, if necessary, retraining with protected terms and conditions.

6. Contract monitoring and two-tier workforce

Effective and fully resourced contract management and monitoring is an essential part of public management. The Audit Commission study of strategic partnerships recommended that councils with large or multi-functional contracts/partnerships should expect to invest at least 3% of the annual contract value to resource the client side (Audit Commission, 2008). However, most local authorities opt for 'lean structures' and allocate a much lower percentage, hence the poor record of contract monitoring.

Furthermore, monitoring of the Best Value Code of Practice on Workforce Matters in Local Authority Service Contracts has been minimal by local authorities and trade unions. Organisational and service exemptions and the refusal of some contractors to apply the Code further undermine its effectiveness. It is essential that the Code of Practice, TUPE Plus and other agreements are written into contracts and partnership agreements.

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