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8 September 2011

Dear Colleagues

RE: The UNISON response to the Chief Executive's letter to all staff on the Council Offer

As promised please find a fuller response to the email sent by the Chief Executive with regards the '**Council offer**' for those members of staff currently taking industrial action.

"Over the past few months, the council has been in discussions with Unison and other unions with the intention of developing a 'TUPE Plus' proposal.

The detail of this proposal will be added to any major contracts for services outsourced from the council in the next few years, above and beyond the council's legal obligations under TUPE regulations.

The council presented its final proposals to UNISON and GMB at the end of August. However, the action of calling a strike on 13 September by UNISON confirms this offer has not been accepted. This package of measures is a substantial package of enhancements over and above the protection provided by TUPE and I am disappointed that UNISON was not even prepared to put it forward to its members so they could decide whether it met staff concerns."

Part of this response is factually **incorrect**.

What the email fails to report is that the '**Offer**' was **embargoed**, meaning we **could not share** or formally **consult** with our members. It was agreed in the meeting that until the Council responded to our comments the report was **still embargoed**.

I can confirm that we received an '**Offer**' and that I attended a meeting on the **26 August 2011** with **HR officers** only and no other senior officers of the Council.

I will now formally respond to the report.

A meeting took place on Friday 26 August. At that meeting the above report was discussed. It is true that we did reject the offer on a number of grounds which I will now explain in more detail. However, before I do, I need to report that in the same meeting we were asked what would constitute as a credible '**Offer**' to put to our members.

In response to this request we made the **following** comments:

Pension Scheme:

We welcomed the news that the Council were going to make the following recommendations to the Pension Fund Committee on 1 September 2011

2.1 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 [LPGS] 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.

2.2 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 who were not transferred from the London Borough of Barnet] 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."

We disagreed on the issue as to whether the Pension Scheme was **open** or **closed**. We made the point that in previous outsourcing the Pension Schemes were **always closed** and as staff leave the numbers paying into the Pension Scheme **diminishes**.

We have always made it clear in our TUPE PLUS proposal that Pension Scheme must be **open** to new starters.

UNISON members have now seen UNISON commissioned Actuaries report on the impact of outsourcing of services. A **closed** Pension Scheme is '*a clear a present danger*' to the future viability of the Pension Scheme.

Pensions what is up for negotiation?

It is important to understand that the future viability of the Pension Scheme is already at risk with the government's proposals to devalue our Pension Scheme by

- Increasing our contributions by 50%
- Working longer before you can retire
- receive a smaller pension

Our Actuaries report has **added** mass outsourcing to the above changes and has exposed **serious risks** to the **future viability** to the Pension Fund and ultimately to staff and Barnet residents who may have to pick up the bill. Therefore for the Council to suggest that the option to transfer or not to transfer the pensions to a private sector contractor is simply **not credible**.

What happened at the Pension Fund Committee?

I have repeatedly asked the Council to make an **unequivocal** statement about Pensions in order to reduce some of the anxiety staff are enduring as a consequence of the One Barnet programme.

In June this year the Council published this [report](#) which went to Budget and Performance Overview and Scrutiny Committee 21 June 2011.

"A paper will be going to the September Pensions Fund Committee on the position of the procurement Projects within the One Barnet Project, **requesting approval** for an '**in principle**' decision on the corporate approach to managing the **pension implications**. **Individual projects** will still need to present their individual specifications to the Pension Committee."

I attended this meeting to listen to the above presentation. I fully expected to hear the Council **recommend** that the continued practice of outsourced services being given

access to the Pension Scheme would continue. Instead the Council made a decision to **withdraw** the presentation thus **delaying** the decision until **7 December 2011**.

Members can now see in the '**Council Offer**' on Pensions. I fail to understand what **benefit** to staff was gained by **refusing** to present the **Council Offer**' Pension recommendations to the Committee.

The officer reported to the Committee that discussions were still taking place with UNISON. I took that to mean that a **final offer** was going to be made. Clearly that **never** happened.

TUPE protection for up to 12 months

It is important that members understand about **TUPE**, in particular what it **does** and **more** importantly what it **does not** deliver.

At the August meeting we made the following point that any private sector contractor **would have to disclose** in the **TUPE consultation** any '**measures**' i.e. any proposed changes terms & conditions in the first 12 months. It is therefore disingenuous to claim that 12 months protection is a sufficient offer for staff being transferred out of the council. It is all the more relevant when you consider that staff are all too aware that it is **their terms & conditions** which will be sacrificed to make the savings for the **One Barnet savings**.

In the countless number of TUPE meetings I have had with staff over the **last three** years, members have always understood that the first real changes would be **after** the first year.

In response to their offer we said that **one year protection** was **unacceptable**. They pushed for a figure we suggested a **minimum of 5 years** protection but even that may not be enough for our members.

Location:

Location has in the **last 9 months** become a massive issue for members facing privatisation. At one stage the Council were at great pains to state there would **no exporting** jobs out of Barnet and **no off-shoring** of services **outside** the UK. That all changed several months ago, suddenly the Council no longer cared where the service were being run from.

Our members working in a number of the services fully understand that the contractor would look to make **accommodation savings** by moving out of the borough. If that was the case our members **would not** be facing cuts to pay **but redundancy**. In today's economic climate how can anyone be confident they will find another job?

We **recommended** that the **revised offer** should include a **contractual commitment** that services will continue to be delivered services from **within Barnet**. As you can see that was **omitted** from the **Council Offer**' presented to staff.

As for the two remaining bullet points in the email.

- "local union recognition will be protected for staff moved to external suppliers"

This has been in place for other outsourced services and has never been enough to protect members from horrendous attacks to Terms & Conditions.

- "any changes to terms and conditions after that first year will have to be negotiated with the appropriate trade union."

This has been in place for other outsourced services and has never been enough to protect members from horrendous attacks to Terms & Conditions.

TUPE Plus

For **TUPE Plus** to be meaningful it has to be legally binding. It is not good enough to have an agreement which cannot be enforced. To illustrate my point I will provide an example of what I mean. This is a copy of an email I sent to the Council on behalf of former council workers delivering services to Barnet residents.

"Dear XXXXX

I note in a recent Council publication it says the following:

"Barnet Council is a major employer in the borough and many members of staff are both an employee and a resident. The council values fair employment practices and expects any partner to continue this concept, including managing the transition of employees into a new model fairly and sensitively."

I want to bring to your attention an appalling story of what is happening to low paid home care workers delivering services commissioned by Barnet Council for Barnet residents. As you are aware, Barnet Council outsourced their Home Care workers by TUPE to Housing 21 (H21) 9 years ago. The staff [many of whom have NVQ level 2/3] retained their Council Terms & Conditions.

This is now under threat as we are advised that H21 and Barnet Council have agreed TUPE ceased June 2011 with the consequent cutting of worker's T's & C's.

- Their LGPS membership promised, but a cut in real terms due to reduced contributions.
- The cuts to pay mean their wages drop down to £8.14 per hour [with the extra 50p for NVQ] but still below the London Living Wage level of £8.30p per hour.
- Their annual leave will be cut up to 11 days p.a.
- Deletion of Occupational Sick, pay down to statutory minimum. [Even Fremantle retained 3 months OSP for their staff]
- Reduction in mileage rate from 39.99p down to just 28p per mile.

I am asking you to intervene and use your discretion to maintain the ex-Barnet Council workers current T's & C's.

It is UNISON view that the impact of these cuts will have an impact on the vulnerable service users who currently benefit from the experienced and well trained staff who deliver their Enablement programmes. In addition to Barnet's 5 year Enablement contract, many service users are choosing to remain with H21 through using their Direct Payments to retain a trusted and familiar worker.

I am concerned that the rationale given for these attacks is that these are terms & conditions for Home Care workers in the private sector. I do not understand how these employment practices can be deemed fair or safe and I do not accept that the drive to bring down terms & conditions services helps to create a safe and trained work force in social care.

There have been many exposes of Home care agencies failing to deliver a safe and reliable service to residents across the UK, though thankfully not yet in Barnet.

I look forward to your prompt response.

Needless to say I have **not** had a response.

For **TUPE Plus** to work, the contractor would have to know they would face financial penalties if they tried to impose the above on TUPE transferred staff.

I want to make it perfectly clear that UNISON said that we would **not** be able to **accept** or **reject** an offer. It would be for the membership to **decide** once a **final** offer was made.

We also made it clear that when we consult with our members we would **temporarily suspend** industrial action.

It is important to understand that we are in a Trades Dispute and the rules of engagement are becoming polarised. This is to be expected. However UNISON has never left the negotiating table, we are still there waiting to have a **meaningful discussion**.

Best wishes



John Burgess
Branch Secretary.

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