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6 September 2013

Dear members of the General Functions Committee

I am writing to all members of the GFC in order to advise you that contrary to what has been produced in the officer GFC report there is a serious problem with the TUPE consultation meetings for the DRS.

It is not often I have had to write GFC however because of the impending date of transfer is only 22 days away I feel I have had no choice but to alert you to a serious concern that will undermine the ability of staff to be able to carry out business critical work on behalf the Council and the Joint Venture.

I can confirm that I have escalated my concerns through the Councils internal industrial relations machinery and a meeting date has been set for 17 September.

The issue to which I refer is the use of joint employment contracts for a number of staff who need to carry out non delegable statutory duties or functions.

For the past three years staff and UNISON have been asking how outsourcing DRS would deal with this issue. It has been the view of staff and UNISON that commonsense would mean the secondment model would be the less risky option.

Unfortunately we have been provided a complicated high risk option which most staff agree is most likely to undermine the decision making of officers carrying out non delegable statutory duties or functions. I don't know why senior officers have been determined not to adopt secondment which we know has been used on a number of outsourcing contracts and one which Capita Symonds is recently using in the North Tyneside partnership.

After attending three TUPE tripartite meetings it has become apparent that the Council was unprepared to enter into consultation on joint employment contracts by that I mean they did not have the complete information and even more importantly did not plan for sufficient time to enable meaningful consultation.

You may be aware that in previous TUPE consultations the Council has provided a **minimum** of three months to carry out consultation. In some cases where issues were raised it was extended in order that the process was carried out fairly and treated staff with dignity and respect they deserve.

However for this TUPE consultation the Council have provided **only two months**. The first month was August which has meant many staff have been on leave and it has hampered consultation with staff.

I have to report that DRS staff feel they are being pushed out of the Council without any thought or concern for all the hard work they have done under what have been very stressful four years. The Council has publicly admitted there are **no examples** of any Council using joint employment contracts to deliver non delegable statutory duties or functions. It is therefore all the more surprising that senior managers would gamble on a adopting a high risk approach to the successful and safe delivery of regulatory services.

I want to draw your attention to the GFC report section 4 Risk Management Issue No 3 states:

**“Staff currently carrying out non-delegable statutory functions may choose not to sign the joint employment contract to allow them to carry out these activities post transfer.”**

I can report that following the joint attendance workshops many staff were even **more** confused and concerned about the **credibility** of this as an option to enable staff to carry out their non delegable statutory duties or functions. It is now **six weeks** since these workshops took place and staff have still not seen any answers to the questions they raised.

The presentation included practical examples of how the proposes joint employment contract would work. This presentation was flawed as staff quickly spotted **false assumptions** about decision making. What didn't help was that on each example it said **“ILLUSTRATION ONLY - NOT FACTUALLY CORRECT”**

This led staff to ask if legal advisors Trowers had been asked to give a legal view of something that was factually incorrect.

A number of staff have said ***“All it will take is for a clever lawyer acting on behalf of a business or resident to start to challenge whether the officer made the enforcement decision as a employee of the Council or Capita. If a challenge is successful then joint employment option will no longer be able to be used to carry out non delegable statutory duties or functions, and this would put the Council at risk of not being able to discharge its statutory duties and functions”***

It is UNISON's view that the secondment employment option is a credible and legal alternative which would ensure decisions carried out by officers using non delegable statutory duties and functions are not compromised. We understand the Council view

secondment as a risk which is why we provided a statement to the Council six weeks ago outlining our position on secondment.

At the time of writing to GFC we are only 22 days away from transfer. In a meeting on Wednesday 4 September I was informed that staff and UNISON will only have the full and complete information on **23/24 September** 2013. It will simply not be possible for each member of staff with a joint employment contract to be able to have the time to obtain legal advice from their respective trade unions. The timetable does not allow responses and queries to be addressed.

I am therefore asking GFC to intervene and support genuine collaborative working which would be able resolve this matter by either adopting one of the following options

- Extend the TUPE transfer to 1 November in order to try and reach an agreement on the joint employment contracts, **or**,
- Adopt the secondment employment option instead of joint employment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'JDB' followed by a checkmark.

John Burgess  
Branch Secretary

Enc: Appendix A

CC: UNISON members in DRS

# Appendix A

## **1. Here are the questions UNISON tabled back on 9 August 2013.**

1. What is the precise nature of the joint employment contract – i.e. who will be the employer? What are the terms/duties?

2. What are the precise powers that are to be undertaken by employees who are to be employed jointly by LBB and Capita. By this UNISON means what are the statutory roles, duties and decision-making powers that these job holders will have to perform (for example: planning officers, environmental health inspectors etc.).

3. In addition to the statutory powers in question, UNISON need to know all the jobs that will exercise these powers and what their current and proposed duties are. (please provide job descriptions/role profiles for each post).

4. What are the decisions or functions that will be made and performed pursuant to statutory powers by job holders under joint employment?

5. UNISON needs to know precisely who will be carrying out the powers under the new employment regime; i.e. which posts will perform what statutory functions/powers in the new regime.

6. What is the relationship between the job holder in the new regime and the local authority in relation to the exercise of the statutory powers; (i.e. will they be agents of the LBB?

- Will the LBB exercise ultimate control over the decision-making?
- Will the job-holders make a recommendation that an LBB employee will sanction?
- Will the LBB continue to exercise control over the employees in terms of their statutory functions?
- Will the final decision be left to an LBB employee?
- What degree of supervision will the LBB retain over the decision-making process or job holders?
- What precise role does the job holder retain/lose?
- UNISON requires the details of the precise relationship in respect of each separate statutory power – not a general statement;

7. Are there officers that are named in the relevant statutes that are transferring to the new structure (for example statutory roles like monitoring officer under the LGA

or any other roles that are expressly mentioned in the relevant statutes?) If so, who are they and what statute are they named in?

**\*\*\*Please note UNISON have not had a response to these questions.**

## **2. Below are questions UNISON sent to Barnet Council on 16 August 2013**

### **Further Joint Employment Questions**

1. Clause 1 mentions a Schedule A which will set out our statutory functions. Is this specific to our post? When will we receive this list? What is the process if the list needs changing, either because it is currently incorrect, or when legislation changes in the future? If we provide cover for colleagues, do we need their statutory functions in our list to enable us to continue to do this? Most of our job descriptions include a reference to flexibility and the requirement to carry out other work not specifically listed in our JD. Will we no longer be able to be asked to do this if the other work is statutory and not in our schedule A?
2. Clause 3 mentions all matters of discipline etc will be dealt with jointly when they relate to the performance of our statutory functions. How will this happen? Has a process been documented and agreed? In particular if the two employers disagree, how will it be resolved?
3. Clause 4 states that both employers will need to agree annual leave. Again, what process has been documented and agreed for this, and how will disagreements between the two employers be resolved?
4. Clause 5 mentions employment policies and procedures. Again, what happens if the two employers' policies conflict? If they don't now, what process will be in place to make sure that any changes made by one employer do not conflict with the other?
5. The Barnet measures letter mentions that a joint employee will be managed either by someone who has not transferred from Barnet, or by someone who has transferred, but is also a joint employee in relation to the relevant functions. Does this mean that a manager who is a joint employee will have to have all the statutory functions carried out by members of their team in their schedule A, as well as the ones relevant to their own post?

**\*\*\*Please note UNISON have not had a response to these questions.**

### **3. UNISON position on secondment sent to the Council on 7 August 2013.**

#### **Safe secondment**

If a secondment is going to be used as an alternative to a TUPE transfer (other secondments are not affected), then the following procedure must be followed:

1. Employees must be given the option to transfer to the new employer;
2. Employees must choose of their own free will not to take up the option of transferring to the transferee's employment, but instead to remain in the employment of the transferor; and
3. Employees should enter into a new contract of employment with the transferor through termination of the existing contract of employment by agreement, and substitution of a new contract which permits secondment.

The decision must be taken on an individual basis. Typically each affected member of staff will be sent a bundle of forms, one of which will be a letter refusing to transfer, and one of which will be a new contract (on secondment), be resigning, but they will then be immediately re-employed by virtue of the new secondments contract.

Continuity of employment should be preserved.

Each individual will have the option of transferring or being seconded.

In short Barnet UNISON would welcome the adoption of a secondment model and follow the policy as stated above, urging our members to participate as appropriate.