

## **Shared Service – Staffing Implications**

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### **Summary**

- 1 This report provides details of the progress made to address the outstanding staffing matters relating to the shared service between CYC and North Yorkshire County Council (NYCC) for internal audit, counter fraud and information governance services.

### **Background**

- 2 The Executive considered the final Business Case for the shared service between City of York Council and North Yorkshire County Council for internal audit, counter fraud and information governance services on 20 January 2009, and gave approval to proceed to the next phase of the project, being the transfer of the relevant services to a company wholly owned by the two councils. It was agreed that the date of this transfer would be 1 April 2009.
- 3 However, at the time that the final Business Case was considered by the Executive a number of staffing related matters remained to be finalised. Unison also raised a number of questions regarding aspects of the proposed change. Members therefore asked for a further report to be brought back on the outstanding staffing issues.

### **Staffing Implications**

#### Section 95 Company / Teckal

- 4 The shared service company has been set up as a Section 95 company under the Local Government Act 2003. Unison questioned whether the two Councils could award the work to the shared service company without the need to undertake a competitive procurement exercise. As set out in the final Business Case, specific case law (including Teckal and Carbotermo SpA) has established that if a local authority wishes to award a contract to supply services, to a company set up by that local authority, then the authority does not need to carry out a competitive tender exercise before awarding such a contract provided that the following (Teckal) principles apply:

- the authority must exercise a similar degree of control over the company to that which it exercises over its own departments;
- the exercise must be 'a power of decisive influence over both the strategic objects and significant decisions of the company';
- the essential part of the company's activities must be carried out on behalf of the controlling authority. Any activities undertaken for bodies other than the controlling authority can be of no more than marginal significance.

The exemption also applies to companies controlled by more than one authority, providing that the principles set out above are complied with.

- 5 It is for each contracting organisation to determine, in accordance with their own procurement rules, whether to award a contract to the company. There is no requirement for a S95 Company to only accept contracts from public bodies or other organisations which have been subject to competition.

Concluding Statement: to demonstrate compliance with the Teckal principles, the provision of services to external customers will be limited to no more than 10% of the shared service company's total activities.

### Equal Pay

- 6 Unison also raised concerns regarding the fact that staff from both Councils would transfer to the shared service company under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) but as a consequence would then be employed on different terms and conditions. Unison considered that this would could create a situation where staff would be entitled to claim unfair treatment under Equal Pay legislation. The Equal Pay Act 1970 prohibits gender discrimination in relation to all contractual terms. It achieves this by implying an 'equality clause' into the contracts of all employees, so as to ensure that none of its terms are less favourable than those of a comparable employee of the opposite sex. Whilst the Act is couched in terms of the complainant being a woman, the Act equally applies to a male and a man is also entitled to bring proceedings under the Act.
- 7 Under regulation 4 of the TUPE regulations the transferee employer is obliged to take over the transferring employee's contract and become bound by the terms and conditions as if he were the original employer. What is more, regulation 4(4) provides that any detrimental changes to these terms and conditions made by the transfer, whether with or without the consent of the employee, will be void. There is every chance therefore that following a TUPE transfer an employer will acquire employees whose contracts are more favourable than those of its existing workforce who are performing work equal to that of the new employees. Such situations are therefore open to potential equal pay claims, but the case of Nelson v Carillion Services Ltd 2003 ICR 1256, CA demonstrates that an employer can rely on TUPE as a genuine material factor defence as the difference in pay was not be tainted by sex.

Concluding statement: case law confirms that the employer will have a potential defence against any possible future equal pay claims.

### Redeployment

- 8 Unison has asked that both Councils grant redeployment rights to staff who do not wish to be employed by the shared service company and/or where their employment is at risk in the future because of either health or redundancy reasons. If in the future, a member of staff's employment with the shared service company was at risk because of either health or redundancy reasons, then the company would work closely with both Councils to mitigate the potential impact and to support that member of staff in finding suitable alternative employment opportunities. Every effort would be made to minimise the potential impact. Anyone that wished to be redeployed as a result of a grievance issue would have access to both Council's internal job bulletins and would be expected to identify and apply for jobs in the normal way.

Concluding statement: both Council's would work closely with the company to mitigate the risk to staff of any possible future health or redundancy situations.

### Individual Staff Consultation

- 9 Individual staff consultation meetings have now been held with all staff regarding the implications of the transfer. The meetings gave staff the opportunity to ask questions and seek clarification about TUPE and the implications of the decision to implement the shared service company.

Concluding Statement: No new issues have arisen from these meetings.

### Pay and Grading Arrangements

- 10 Although staff from both Councils will transfer to the new company under TUPE on their existing terms and conditions of employment, the company will require its own terms and conditions for any new staff employed after 1 April 2009. New job descriptions have therefore been prepared for all the posts within the shared service company and these have been evaluated in accordance with the existing NYCC job evaluation schemes, NJC and HAY. Each post also has an associated competency profile linked to a new competency framework which will be used in the future to identify areas for individual staff development and to determine incremental progression. The resulting job scores have been matched to a new pay and grading structure for the company.

Concluding Statement: at the time of writing, details of the new grades are due to be shared with staff and the unions in the week commencing 1 March 2009.

## Human Resource Policy Framework

11 Work has been ongoing to prepare the company's new HR policy framework. The policy framework is being based on the existing policies used by both Councils, although account is being taken of the relative small size of the new shared service company. The following draft policies have been prepared and circulated to the unions for consideration:

- Recruitment and Selection
- Disciplinary
- Electronic Communications (internet, telephone and e-mail)
- Gifts and Hospitality
- Attendance/Absence Management
- Equalities
- Health and Safety
- Resolving Issues at Work
- Capability
- Declarations of Interest

Concluding statement: Work is ongoing to ensure that the remaining policies and associated guidance are finalised by 31 March 2009. The unions will be consulted on the new policies.

## **Consultation**

12 Staff from both authorities, together with representatives from Unison and the GMB have continued to be kept informed of progress with the development of the shared service. The Project Board has also provided copies of all key documentation, minutes of meetings and information sheets to the staff and union representatives.

## **Options**

13 Not relevant for this report.

## **Analysis**

14 The costs and benefits of implementing a company as the long term structure for the shared service were detailed in the final Business Case which was considered and approved by the Executive on 20 January 2009.

## **Corporate Priorities**

15 This report contributes to the Council's overall aims and priorities by helping to provide strong leadership, and by encouraging improvement in everything we do.

## Implications

16 The implications are;

**Financial** – there are no financial implications to this report.

- **Human Resources (HR)** – HR were involved in the preparation of the final Business Case and Project Implementation Plan. The existing services will be transferred to the new company on 1 April 2009. In accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), all employees assigned to the transferring services will automatically transfer to the new company. From the date of transfer, the terms and conditions of employment, plus any existing collective agreements and relevant company policies relating to terms and conditions of employment, such as maternity and paternity leave, will automatically be taken over by the company as the new employer. In addition, there will also be equality of pensions because the company is being granted admitted body status to the North Yorkshire Pension Fund.

Although staff will transfer to the new company on their existing terms and conditions of employment, the company will require its own terms and conditions for any new staff employed after 1 April 2009. Staff and unions have been fully consulted on the TUPE transfer and the company's proposed staffing arrangements.

- **Equalities** - there are no equalities implications to this report.
- **Legal** – Legal Services were involved in the preparation of the final Business Case and Project Implementation Plan. The legal implications relating to the outstanding staffing issues are contained in the main body of this report.
- **Crime and Disorder** – there are no crime and disorder implications to this report.
- **Information Technology (IT)** – there are no IT implications to this report.
- **Property** – there are no property implications to this report.

## Risk Management Assessment

17 A detailed risk assessment was undertaken as part of the work to prepare the Outline Business Case. The risk assessment included consideration of the risks associated with both the project and the preferred option for the long term structure of the shared service. The Project Board has continued to monitor the identified risks and, where possible has taken mitigating action.

## Recommendation

18 Members are asked to:

- note the progress made to address the remaining staffing implications associated with the shared service.

### Reason

*To ensure that all the outstanding staffing related matters are resolved before the date of transfer to the shared service company.*

## Contact Details

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Report Approved



Date 4/3/09

## Specialist Implications Officers

Patrick Looker - Finance  
Janet Neeve - HR  
Glen McCusker - Legal

**Wards Affected:** Not applicable

All



**For further information please contact the author of the report**

## Background Papers

Final Business Case