

NORTH LINCOLNSHIRE COUNCIL

CORPORATE SERVICES CABINET MEMBER

TUPE PROTOCOL

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To consider and approve proposed changes to the council's TUPE protocol in the light of recent experiences with the letting of contracts for cleaning services to the private sector.

2 BACKGROUND INFORMATION

- 2.1 Any change that could lead to the transfer of employees to external providers must be managed in accordance with the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations (as amended) and The Code of Practice on Workforce Matters in Local Authority Service Contracts.
- 2.2 Amongst other things, TUPE regulations require the existing employer to prepare and share a detail list of the employees likely to transfer, their terms and conditions of service and any outstanding liabilities. Full and meaningful consultation with employees and trade unions is also a requirement. The new employer is required to protect the terms and conditions of transferring employees including the provision of the same or an equivalent pension scheme.
- 2.3 The existing TUPE Protocol was approved in January 2005 and has proved to be adequate on those few occasions when the council has been engaged in the transfer of staff. The transfer of housing was the largest such exercise in recent years and the same principles have been applied more recently to the work done in connection to building schools for the future and the transfer to the council of employees from Connexions Humber.
- 2.4 Problems have been experienced in recent months as three schools re-tendered and outsourced their cleaning functions. In all three cases the Cleaning and Catering division of Neighbourhood and Environmental Services undertook the work. In all three cases the work was awarded to a private contractor.
- 2.5 School governing bodies have delegated authority to determine how certain services are provided to the school. The problems have arisen in the way that the exercises have been carried out. In two cases the council were not informed of the schools intentions until very late in the process, just one week prior to the actual transfer taking place at one school. This left very little time for the appropriate information to be prepared, let alone circulated. One school did inform the council in good time but then appears to have failed to pass on the necessary information to prospective contractors. None of the schools consulted the employees concerned or the trade

unions. None of the schools established that TUPE would apply or sought assurances from prospective contractors that employees would be protected.

- 2.6 The result was an extremely adverse reaction from the trade unions, initially against the council as well as the schools. There were also two employment tribunal applications, not only against the council and the schools but also involving the contractors concerned. In the event, one tribunal application was settled at minimum cost and the other was withdrawn when it became clear that the council had consulted as far as it could with the limited information available.
- 2.7 After the first two cases it became clear that the schools were unaware of TUPE regulations. They were not involving the council in any way and officers were unaware of the situation and not in a position to give appropriate and timely advice. This was addressed this by the circulation of written guidance on TUPE to all schools following consultation with the trade unions.
- 2.8 When the third school continued to disregard TUPE requirements despite the guidance it became clear that further action was required. One of the problems was that all parties considered TUPE to be the responsibility of the council as the employer of the cleaners concerned. However, the council was not kept informed and because of local management of schools, had no direct influence on events.

3 OPTIONS FOR CONSIDERATION

- 3.1 The market testing of services is not in itself a bad thing but it must be done in an appropriate manner having due regard to statutory regulations such as TUPE. To date problems with TUPE have only occurred in schools where governing bodies have delegated authority to re-tender any work undertaken for the school so long as doing so does not exceed the scheme of delegation.
- 3.2 In the absence of executive authority the only way forward is to inform governing bodies of the statutory framework and to encourage them and head teachers to adopt best practice. The attached TUPE Protocol has been written for this purpose. It will be directly applicable to the council and to school governing bodies. It details the requirements of the regulations and encourages managers and head teachers to seek advice and to consult at the earliest opportunity. It also seeks to clarify the relationship between the council and school governing bodies.

4. ANALYSIS OF OPTIONS

- 4.1 The only options available within the context of this report are to approve the attached TUPE Protocol, require changes to be made to it or to reject it. Doing nothing is not an option as the situation may occur again and if performance is not improved, officers of the council will be faced with difficult situation not of their making and the potential of further applications to tribunal.

5 RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

5.1 Financial

There are no financial implications directly associated with this report.

5.2 Staffing

Failure to adhere to the TUPE protocol may lead to litigation but will almost certainly result in the employees who transfer being disadvantaged.

5.3 Property

There are no property implications.

5.4 IT

None.

6 OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 CRIME AND DISORDER, RISK AND OTHER)

6.1 Failure to adhere to TUPE regulations is likely to result in further applications to employment tribunal.

7. OUTCOMES OF CONSULTATION

7.1 The trade unions have been consulted and support the revised TUPE Protocol.

8. RECOMMENDATIONS

8.1 It is recommended that the attached TUPE Protocol be approved and adopted.

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Background Papers used in the preparation of this report: The Code of Practice on Workforce Matters in Local Authority Service Contracts