

BRECKLAND COUNCIL

Report, on behalf of the Director of Corporate Resources

Local Joint Consultative Committee 17th March 2011

General Purposes Committee 30 March 2011

TUPE OF LOCAL STERIA TEAM IN TO BRECKLAND COUNCIL

1. Purpose of Report

1.1 This report outlines for the Corporate Management Team, the current situation with regards to the TUPE of the seven staff working locally on the Steria ICT contract. This report is for information and to ask for direction/approval to continue with the process of consultation and the taking of "measures".

2. Recommendations

It is recommended that the LJCC recommends to General Purposes that :

2.1 The negotiations with the seven Steria staff and the move of staff on to Breckland Council terms and conditions, be approved

Note: In preparing this report, due regard has been made to equality of opportunity, human rights, prevention of crime and disorder, environmental and risk management considerations as appropriate. Relevant officers have been consulted in relation to any legal, financial or human resources implications and comments received are reflected in the report.

3. Information, Issues and Options

3.1 Information

3.1.1 Transfer of Undertakings (Protection of Employment) Regulations 2006 means that in situations where TUPE applies, the transferee (Breckland) inherits the contracts of employment of the person employed by the transferor (Steria) immediately before the transfer takes place.

3.1.2 The project would involve Breckland taking back in house the ICT contract, and with it, the Steria staff who are assigned to that undertaking. The seven staff work exclusively on the Breckland contract and therefore we do not propose to argue that any of them should not transfer back across to us. Steria have confirmed that there are no additional staff that they consider should be on the TUPE list coming to Breckland.

3.1.3 We believe that TUPE applies to this situation. Under the 2006 extended definition as long as service activities cease to be carried out by a person (the transferor) and are taken up by the a new person (the transferee), and, prior to the changeover, there was an organised grouping of employees with the principal purpose of carrying out those activities on behalf of the client, there will be a transfer.

3.1.4 The transferring staff do not have a recognised union or staff representative body and therefore we have had to consult with staff to appoint an elected staff representative with which to consult with regarding the TUPE and any measures (changes to terms and conditions).

3.1.5 The project has already received approval through the Audit Committee on the 26th August 2010, Cabinet on the 7th September and Full Council on the 23rd September.

3.2.0 Issues

3.2.1 The group of staff employed by Steria have been through several TUPE transfers

already and there are three divisions amongst the group with different sets of terms and conditions. Some harmonisation has taken place for these staff already under Steria, and further harmonisation is required for equality and practical management.

- 3.2.2 There is an argument to put the staff on to the Breckland terms and conditions. After the initial cost of salary, the next cost to the employer is the percentage payment towards the Local Government Pension Scheme. As you are aware, pension rights are excluded from the TUPE legislation, but there is a code of practice that states that the pension must be broadly comparable. Five of the seven staff are already in the Steria defined benefit pension scheme.
- 3.2.3 It is detailed in Regulation 4 (2) of the Local Government Pension Scheme (Administration) Regulations 2008 that a person may be a member of the LGPS if they are an employee of a district council. The authority has no choice about the provision of the LGPS to authority employees. It is down to the individual whether they choose to opt out or not.
- 3.2.4 A comparison of the Breckland and three relevant sets of Steria term and conditions has been completed. This was a huge exercise with over 100 pages of data. (A summary can be found in appendix A). The baskets of policies are comparable and on the whole will not incur additional expense, as some of the Steria policies are more generous than the Breckland ones. (Please see detail in the attached appendix B).
- 3.2.5 However, caution must be applied as staff may wish to revert back to original policies. (see 4.1.1 case law).
- 3.2.6 The seven Steria staff currently have access to a flexible benefits system that offers benefits (at varying levels for each individual) for which the staff can choose to sacrifice a portion of their salary. This would currently include private health insurance for example. We can not replicate this system, the cost would be prohibitive. It could also be argued that we would not want to offer private health insurance to staff due to the ongoing ramifications if we ever needed to end employment due to ill-health.
- 3.2.7 Employee relations the Steria staff would be moving in to a team of existing Breckland staff and they would naturally be comparing terms and conditions.

3.3.0 Options

- 3.3.1 Approve the move of Steria staff on to the Breckland terms and conditions as detailed in Appendix A
- 3.3.2 Do not approve the move of Steria staff on the Breckland terms and conditions

3.4.0 Reasons for Recommendation(s)

- 3.4.1 To ensure that the staff are given a fair transfer in to Breckland and do not have to suffer a denigration of their employment rights.
- 3.4.2 To avoid the selective choosing of the best policies which would increase the overall cost.

4. Risk and Financial Implications

4.1 Risk

- 4.1.1 There is risk attached to changing terms and conditions after a TUPE transfer, however the advantages are such that many HR practitioners still undertake it. The main case law on this is Daddy's Dance Hall, and Credit Suisse. Many of the legal challenges have been brought by highly disgruntled employees, in instances where a serious compensation package has not been offered to help lessen the change. Challenge may also be brought by an employee if they were dismissed for some other reason, they may then put in an opportunistic claim for breach of contract and

argue that a transfer related variation in terms and conditions during his or her employment was void. There is a low likelihood in this case, with small numbers involved, and the comparable value of the total package of terms and conditions.

4.1.2 The risk of not harmonising is that the costs will increase, there may be challenges from the existing Breckland staff in the IT team.

4.2.0 Financial

4.2.1 If we choose not to align the terms and conditions then the changes to the SAP system particularly on the issue of mileage rates would come with a cost. There may be development costs for the system that are calculated on the complexity of the changes. This is approximately £600 per half day plus VAT. A new subgroup and the terms and conditions would have to be coded in to the system. The changes to the system have initial financial outlay and ongoing implications particularly at times of upgrades etc.

4.2.2 We would have to have an agreement with the elected staff representative and the individuals concerned around the detail in appendix A.

5. Legal Implications

5.1 Please see risk section.

6. Other Implications

- a) Equalities: n/a
- b) Section 17, Crime & Disorder Act 1998: n/a
- c) Section 40, Natural Environment & Rural Communities Act 2006: n/a
- d) Human Resources: n/a
- e) Human Rights: n/a
- f) Other: [e.g. Children's Act 2004] n/a

7. Alignment to Council Priorities

7.1 The matter raised in this report falls within the following Council priorities:

- A prosperous place to live and work

8. Ward/Community Affected

8.1 N/A

Background Papers

None

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Key Decision Status (Executive Decisions only):

This is not a key decision.