

## Workforce Development Team

### 1. Background

The workforce development team have been operating on an interim basis since April 2012 and have been providing a joint service to the 2 local authorities. Since the decision taken that full integration was not an option at this point in time, consideration has to be given to the future of the Joint Workforce Development Team. A business case is being prepared identifying the benefits of a joint service and the HR work stream have been tasked to look at the options available in terms of employment.

In order to do this we have based any decision on the following principles

- All employees employed on the same terms and conditions of employment
- The same policies and procedures applied to all staff
- A host employer with responsibility for all staff

### 2. Options available

There are a number of options available to create a Joint Workforce Development Team to meet the principles set out above. However, our preliminary discussions led to 2 options being deemed feasible and would merit further consideration, those being Secondment and Transfer of Staff (TUPE)

These are considered in more detail below

#### 2.1 Secondment

Secondments tend to be for defined periods of time with the host Authority using their terms and conditions of employment to manage the staff on a day to day basis and where the persons original post remains in the structure. However, the host is not the employer of the staff who are seconded. There is usually a Service Level agreement which details the services to be provided together with any arrangements for staff and finance. This will include details of governance and how issues relating to staff will be dealt with.

It provides some assurance to staff as their employment remains with their existing employer and they are able to access any job opportunities that arise with their employer. It is usual for secondees to be able to request to return to their employer if they wish at any time. However, in this case as the service has been transferred their substantive post will no longer exist so this may lead to redeployment or redundancy.

Employees will have to agree to the secondment so if any staff do not wish to move then redeployment/redundancy issues could also arise.

There is a risk that if the arrangements go on for an extended period then TUPE could apply as demonstrated in the case of Celtec v Astley where the tribunal found that a lengthy secondment was really a TUPE transfer. If this becomes the case then issues could arise regarding consultation etc which could lead to claims from employees as clearly the consultation process for a TUPE transfer have not been followed. These could include claims for automatic unfair dismissal from several employees.

## 2.2 TUPE Transfer

TUPE is the other option, which would involve staff transferring to the host employer. In order to meet the principles set out in section 1 the staff would have to transfer to the host employer on their existing terms and conditions of employment and then the restructure would take place following this. This inevitably will cause concerns for staff as it will not be clear to them the roles, salaries and terms and conditions they will be taking up in the future.

This is a more formalised process compared to secondment and there are clear guidelines on consultation and exchange of information between employers which must be adhered to. If staff object to a TUPE transfer, then the Authority may consider redeployment options, however, if this is not achievable then the employee would in effect be resigning from their position.

## 2.3 Service level Agreement

It is likely that the Service Level Agreement would contain information relating to the respective liabilities of the local authorities in relation to the staff transferred and what arrangements would apply if the service was transferred back to the individual authorities in the future.

The Service Level Agreement could also allow staff to apply for posts in either authority and could confirm that in the event of redundancy that both authorities would look for redeployment opportunities.

## 2.4 Summary

The table below summarises the benefits and constraints of the options available

| Option | Summary  | Pros's   | Cons  |
|--------|--|--|---|
| TUPE   | Staff are transferred from 1 Authority to another and become employees of the new Authority. | <ul style="list-style-type: none"> <li>• Defined process for implementation</li> <li>• Staff are clear about their future employment status</li> </ul> | <ul style="list-style-type: none"> <li>• Any restructure would have to take place post transfer to avoid claims under TUPE</li> <li>• Staff unclear on their future role at the time of transfer</li> </ul> |

|            |  |   |   |
|------------|--|---|---|
| Secondment | Staff are seconded from 1 authority to the other. They are managed on a day to day basis in the new authority. | <ul style="list-style-type: none"> <li>• Staff still have the employment relationship with current employer</li> <li>• Relatively straight forward to implement.</li> <li>• More acceptable to staff</li> </ul> | <ul style="list-style-type: none"> <li>• Staff can refuse to be seconded or ask to return to their employer at any time.</li> <li>• Will be seen as short term rather than a permanent arrangement</li> <li>• The staff remain employees of the seconding organisation and there will have to be consultation over any staff issues which arise.</li> </ul> |
|------------|--|---|---|

### 3. Recruitment Principles

Once the new structure has been confirmed along with the grades and roles of the posts within the structure a process for recruiting staff into these posts will be undertaken. The following recruitment principles would apply

- All posts will be ring fenced to existing members of the workforce development team regardless of whether they are currently on permanent or fixed term contracts.
- Staff will be considered for slotting into roles in the following circumstances
  - Where their current role is broadly similar to the role in the new structure.
    - Where there are sufficient posts in the new structure to accommodate all staff on a similar role without the need for a competitive process
- For newly created roles which do not match existing roles then the post will be advertised to staff in the workforce development team.
- Appointments will be made on a permanent basis.

#### **4. Recommendation**

Both options are feasible in providing the desired outcomes detailed in Section 1. The secondment option exposes the Authority to the greatest risks as there are issues relating to staff who elect not to be seconded and if they decide they wish to leave this arrangement at any time in the future. These, together with the risk of potential claims of TUPE the longer the arrangement is in place leaves the Authority vulnerable. However, it is the option that most staff would favour.

Transferring staff from 1 Authority to another under TUPE provides the safest way forward provided the concerns of staff can be addressed. There will be initial fears particularly as a result of the announcement that the planned integration of Social Services between the 2 Authorities is not going ahead due to financial concerns.