

Workforce Matters in Local Authority Service Contracts

On 13th March 2003, the Office of the Deputy Prime Minister issued a statement on Staff Transfers in the Public Sector along with a Code of Practice. The Code referred specifically to workforce matters in public sector service contracts which involve a transfer of staff from the public sector organisation to the service provider, or in which staff originally transferred out from the public sector organisation as a result of an outsourcing are TUPE transferred to a new provider under a retender of a contract. That is, they refer only to those contracts which were previously performed by the public sector organisation, and have been outsourced. Tower Hamlets has embraced this and reviewed its contract letting procedures to ensure full compliance with the requirements under the Code of Practice.

The Code recognises that there is no conflict between good employment practice, value for money and quality of service. On the contrary, quality and good value will not be provided by organisations who do not manage workforce issues well. Service providers who intend to cut costs by driving down the terms and conditions for staff, whether for transferees or for new joiners taken on to work beside them, should therefore not be selected.

The Code requires public sector organisations to apply the principles set out in the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector and the annex to it, A Fair Deal for Staff Pensions. The intention of the Statement is that staff will transfer and that TUPE should apply, and that in circumstances where TUPE does not apply in strict legal terms, the principles of TUPE should be followed and the staff involved should be treated no less favourably than had the Regulations applied. The annex to the Statement requires the terms of a business transfer specifically to protect the pensions of transferees, in that transferring staff should be offered membership of a pension scheme which is broadly comparable to the public service pension scheme which they are leaving.

Where the service provider recruits new staff to work on a public service contract alongside staff transferred from the public sector organisation, it will offer employment on fair and reasonable terms and conditions which are, overall, no less favourable than those of transferred employees. The service provider will also offer reasonable pension arrangements.

As part of its tollgate procurement project assurance process, the Council now checks the applicability of the Code to all major projects. The implications for services and costs will henceforth be monitored on a case-by-case basis.

Whilst the Council has adopted the principles of the Code in its contract letting procedures, no applicable contracts were awarded during the 2007/08 financial year.