

COMMISSIONING SERVICES AND WORKFORCE CHANGE

A Protocol between Cheltenham Borough Council (and its Recognised Trade Unions (UNISON, GMB))

January 2012

1. General principles

- a) This Protocol sets out the general approach which Cheltenham Borough Council (CBC) will follow in respect of the workforce aspects of commissioning. It is a statement of intent rather than a legally binding document.
- b) CBC, its employees and the trade unions (TUs) are committed to providing high quality services that meet the needs of local communities.
- c) CBC recognises that working together with trade unions to involve and engage them, is a vital part of facilitating effective change, protecting the workforce, and fostering positive employee relations, and raising service standards.
- d) CBC will ensure it is aware of the best practice that fosters employee engagement, access to skills and development whilst securing quality outcomes in the provision of public services;
- e) It is accepted that there will be some circumstances that will require transfer of CBC services (and employees engaged in them)) to other service providers/employers to be considered and, where this occurs, CBC recognises that the successful transfer of services should involve the following:
 - i) TUs and employees to be consulted throughout the process;
 - ii) Sufficient and relevant information to be provided in order that consultation can be meaningful;
 - iii) Views emerging from consultation to be taken into account as part of considering the future delivery arrangements for the service;
 - iv) CBC to work in partnership with TUs , from the time of an initial decision to undertake option appraisal for a service through to a final transfer of that service to another service provider.
- f) CBC recognises the value of TU involvement in the workforce aspects of commissioning and wants to ensure that consultation with the TUs is meaningful so that their views can be taken fully into account. CBC will encourage potential new service providers to adopt the same relationship with TUs.
- g) CBC believes that the recruitment and retention of high quality employees to work on delivering its services post any service transfer should be a key feature when assessing service delivery options. In this respect, CBC will require any non-CBC service provider to demonstrate its commitment to these principles in consideration of it being considered as a service provider. Where possible (and subject to employment legislation), such commitment will be included in the formal arrangements between CBC and the new service provider

- h) Any proposed major change (i.e. externalisation) to service delivery will be equality impact assessed (or as legislation requires) including the impact on employees and on equal pay in line with local government's statutory duties.
- i) CBC is committed to the **Principles of Good Employment Practice** in sourcing its service provision. Following the withdrawal of the Code of Practice in Workforce Matters in Public Sector Service Contracts in December 2010, (known as the "two tier code") the most recent guidelines can be found at <http://www.cabinetoffice.gov.uk/resource-library/principles-good-employment-practice> . These are appended to this Protocol.
- j) CBC recognises that taking "mixed economy" approach to how public services are provided has the potential to generate opportunities for innovation, drive efficiency and value for money for the taxpayer.
- k) This Protocol sets out how CBC will involve and consult with the TUs in the key stages of service review, transformation, or commissioning (including any procurement exercise that may be required).
- l) This aProtocol will be reviewed every three years or sooner in light of any statutory or significant business changes.

2. Commissioning services (needs assessment, options appraisal, procurement, contracting and review)

CBC will

- a) Follow the Principles of Good Employment Practice (see attached) or such national guidance as may be updated from time to time and, whilst the Principles are voluntary, CBC will encourage all service providers providing on its behalf to follow the Principles.
- b) Engage with the TUs at the outset of any planned commissioning exercises, including planned commissioning cycle, needs analysis, options appraisal, procurement and contracting, stages.
- c) Ensure that CBC's agreed values, and any principles in service delivery are incorporated as appropriate into the commissioning cycle, and in any planned commissioning exercises.

And specifically, when contracting:

- i) Notify the TUs of the process, any evaluation criteria and scoring mechanism (when published) that will apply in determining the provider / award of contract and invite comment.
- ii) Invite the TUs to attend open days and any open briefings as may be arranged with potential suppliers and offer the same opportunity as suppliers / contractors to comment on issues such as specification and process to be followed in any planned external service provision.
- iii) If the TUs have legitimate concerns about potential providers, to consider carefully any concerns they raise

- iv) Take into account the costs, governance arrangements and risks (e.g. a contracted out as opposed to an in-house service).
- v) Engage with the TUs when it can reasonably foresee that there are likely to be potential employee transfer issues, and work with the TUs regarding any potential transfer of employees, providing the TUs with relevant detailed information.
- vi) Draw the Principles of Good Employment Practice to a contractor/provider's attention, and will expect the service provider/contractor to comply with all statutory instruments relating to the transfer of employees.
- vii) Ensure that where contracts exist for service provision, the contractors are made aware of their responsibility to comply with the general equality and sustainability duties.

3. Access to information

CBC will:

- i) Where any information requested is commercially in confidence, inform the TUs that information is being withheld and the reasons.
- ii) Carefully consider requests from the TUs for relevant information in respect of service provider bids.

4. Workforce issues

General

- i) Employees transferred to a private sector employer do so under TUPE - Transfer of Undertakings (Protection for Employees) Regulations 1996 unless superseded by more recent legislation
- ii) For a transfer of employees to another local authority, it will normally be agreed that the TUPE principles apply unless there is an agreed reason why not, e.g. secondment.
- iii) CBC will comply with its statutory responsibilities under the TUPE Regulations.
- iv) As part of the commitment to fair and reasonable terms and conditions, where a service provider employs new entrants that sit alongside former public sector workers, new entrants should have fair and reasonable pay, terms and conditions.
- v) Service providers should consult with their recognised trade unions on the terms and conditions to be offered to new entrants.

Equalities

- i) CBC will work to ensure that service provider policies and processes are entirely consistent with the responsibilities they

have as employers under the Equality Act 2010, and will delegate relevant legal obligations when suppliers are carrying out public functions.

- ii) CBC expects that suppliers will be able to demonstrate how working practices support their responsibilities as good employers.

Learning and Development

- i) CBC is committed to workforce development and will encourage any of its service providers to make learning and development opportunities available to all transferred employees.
- ii) CBC will encourage all providers to recognise the positive role of union learning representatives (ULRs)
- iii) TUs will ensure that the providers know who the ULR is, and keep this information up to date.
- iv) See also the attached Principles of Good Employment Practice.

TU Recognition and Facilities

- i) In so far as can be lawfully imposed, TU recognition will continue for any group of employees transferred from CBC to the new service provider/employer, and TU representatives will continue to have reasonable access to facilities within the new employers organisation to enable them to carry out their duties effectively (e.g. use of email, internal post, phone).

Dispute resolution

- i) CBC will require service providers delivering public services to have regard to good employee relations practice on dispute resolution. This includes treating employees fairly and ensuring compliance with the law on trade union membership.
- ii) CBC will require service providers to ensure that where there is a dispute, employees are aware of and have access to clear processes for dispute resolution. The involvement of ACAS may be an option when disputes have not been resolved by internal support systems and processes.



PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

A statement of principles that reflect
good employment practice for
Government, Contracting Authorities
and Suppliers

PRINCIPLES OF GOOD EMPLOYMENT PRACTICE FOR GOVERNMENT, CONTRACTING AUTHORITIES AND SUPPLIERS

The Coalition Government has committed to opening up government procurement and reducing costs. It has also set itself the aspiration that 25% of government contracts should be awarded to small and medium-sized businesses.

Government understands that value for money means securing the best mix of quality and effectiveness for the least outlay. This applies to the whole lifetime of goods or services from purchase through to disposal.

In support of its aspirations, Government has developed a statement of principles of good employment practice that will form part of good practice literature and be shared with contracting authorities and suppliers.¹

Government wants:

- employers of all sizes and from all sectors to have the freedom and flexibility to motivate and reward their workforce, to meet business needs.
- public, private, voluntary and community organisations to learn from each other and share best practice in the spirit of continuous improvement.
- employers to be aware of the best practice that fosters employee engagement, access to skills and development whilst securing quality outcomes in the provision of public services;

Six principles

This document is a statement of principles that reflect good employment practice. These principles are supported by Government and are voluntary.

1. Government as a good client

- Through its commissioning, procurement standards and processes, central Government should encourage contracting authorities and suppliers to promote good workforce practices in the delivery of public services. Government will ensure that the workforce practices of the supplier are considered throughout the procurement process, where appropriate.*
- Government will use outcome-based commissioning wherever possible; this is instead of prescribing how services are to be delivered. Using outcome-based commissioning will encourage more innovative approaches to the delivery of public services.*

2. Training and skills

¹ This set of principles is voluntary and sits outside of the formal procurement decision making process, but will be disseminated to suppliers and commissioners

- i. In letting and managing public contracts, the procurement process of contracting organisations will recognise the importance of basic skills such as literacy, numeracy and spoken English where these skills are relevant. These skills are often required in the delivery of public services, and enable the workforce to provide better quality services, particularly those in customer facing roles.*
- ii. Suppliers will be able to demonstrate that staff have appropriate training, qualifications and access to continuing professional development as befits their role; and that staff are supported to develop their skills and grow their experience in line with any future roles that maybe expected of them.*
- iii. Where there is a recognised trade union, suppliers will consult on workforce training and development issues.*

3. A commitment to fair and reasonable terms and conditions

- i. Where a supplier employs new entrants that sit alongside former public sector workers, new entrants should have fair and reasonable pay, terms and conditions. Suppliers should consult with their recognised trade unions on the terms and conditions to be offered to new entrants.*

4. Equality

- i. Contracting organisations will ensure that supplier policies and processes are entirely consistent with the responsibilities they have as employers under the Equality Act 2010. Government will ensure it delegates relevant legal obligations when suppliers are carrying out public functions.*
- ii. Government expects that suppliers will be able to demonstrate how working practices support their responsibilities as good employers.*

5. Dispute resolution

- i. All suppliers delivering public services should have regard to good industrial relations practice on dispute resolution. This includes treating employees fairly and ensuring compliance with the law on trade union membership.*
- ii. Suppliers will ensure that where there is a dispute, employees are aware of and have access to clear processes for dispute resolution. Government expects suppliers to consider the services of ACAS² as an option that is explored when disputes have not been resolved by internal support systems and processes.*
- iii. Where an employee has a right to be represented by a trade union, the employer will work with the employee and recognised trade union representative in resolving any dispute.*

6. Employee engagement

² ACAS is the Advisory, Conciliation and Arbitration Service. ACAS provides free, confidential and impartial advice on a wide range of employment and industrial relations issues

- i. *The themes identified in **Drive for Change**³ place leadership, the design and delivery of service improvements, communications and a framework for staff engagement as vital components in ensuring and enhancing employee engagement.*
- ii. ***The MacLeod Review**⁴ on employee engagement cited evidence of a positive correlation between an engaged workforce and improving performance. Building on the findings of the review, Government will encourage contractors to develop effective staff engagement strategies that enable people to be the best they can be at work.*
- iii. *Government recognises the premise that engagement between employee, employer and a recognised trade union where appropriate can be a key to unlocking productivity and creating a motivated workforce that feels respected, involved, heard, is well led and valued by those they work for and with.*

Review

The impact of these principles on employment practice will be reviewed by the Public Services Forum in January 2012. The Forum will assess how the principles contribute to good employment practices in the delivery of contracted out services.

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³ Drive for Change is a practical tool for staff engagement in service improvement. The Drive for Change initiative was developed and supported by Cabinet Office and the Trades Union Congress and is currently in the process of being refreshed.

⁴The MacLeod Review was commissioned by the Department for Business, Innovation and Skills to take an in-depth look at employee engagement and to report on the potential benefits for organisations and employees.