

Cabinet – 19 October 2005

Recognition of continuous service for transferred staff

Portfolio:	Councillor Zahid Ali, Communities and partnerships
Service Area:	Human Resources
Ward(s)	All
Forward Plan:	No

Summary of report

This report outlines the position regarding continuous employment service for staff who transfer or voluntarily join certain organisations undertaking functions on behalf of Walsall Council and proposes that the Council commits to a West Midlands protocol of recognising service with these organisations for certain service related employment benefits.

Many local authorities either have transferred or will be transferring staff into other organisations via TUPE as a result of partnerships or outsourcing of services. In recent times Walsall has transferred staff to SERCO and Walsall Housing Group. If the Council approves the Putting the Citizen First strategic partnership, further staff will transfer to the companies who will be operating this contract on behalf of Walsall Council.

Where a new organisation is created specifically for the purpose of delivering the service (such as a Housing Trust) the law allows the new organisation to be classed as an “associated employer” under the Redundancy Payments Modification Order. This guarantees recognition of continuous service rights for staff who voluntarily move to and from local authorities into the service of the new employer and allows staff to retain benefits accrued from service related employment benefits including annual leave, sick pay and maternity leave pay. However, where staff simply transfer into the direct employment of another organisation that already exists and has other work outside of Local Government, then the associated employer status does not apply. Staff who transfer to such an organisation under TUPE will also lose their continuity of employment rights if they return to Local Government more than five years after they transfer.

This will create problems on a number of levels :-

- Staff will lose continuity of service rights through no fault of their own
- Councils could lose potential applications for jobs from outsourced staff who will be reluctant to forgo TUPE protected continuous service by returning to local government.

This would be made worse in Strategic Partnerships where transferred staff will work in teams alongside directly employed council staff and the natural movement of employees between jobs across the team may be inhibited by the continuous service barrier.

Recognising the difficulties that this could create, the Council has asked, through West Midlands Employers Organisation, that a “West Midlands Protocol” be adopted whereby West Midlands councils agree to recognise service gained in these outsourced employers as continuous for the purposes of annual leave, sick pay and maternity leave pay. Each council has therefore been asked to sign up to the protocol. By signing up to the protocol, Walsall Council would benefit from a greater number of applicants for jobs not only from employees within Fujitsu, Vertex and United Utilities and SERCO, but also staff working in similar positions elsewhere within the West Midlands LGA region.

Recommendation

To endorse the proposal that the Council commits to the West Midlands Protocol and recommends its approval by the Council.

Resource and legal considerations

There will be a small cost associated with recognising continuous service through increased annual leave, sick pay and maternity pay provisions. However, this will be outweighed by reduced recruitment costs and benefits of the Council being able to attract a wider field of applicants for jobs.

Citizen impact

Excellent services to citizens can only be delivered if the Council employs high calibre staff. By adopting this protocol, the pool of applicants for jobs will be maximised.

Community safety

None directly related to this report.

Environmental impact

None directly related to this report.

Performance and risk management issues

The recruitment and retention of key staff within the Council and the Strategic Partnership will contribute towards improved performance.

Equality implications

This proposal will contribute to the Council being able to attract applications for jobs from potentially a wider pool than at present.

Consultation

Trades Unions have been consulted on this proposal at the Council's Putting the Citizen First JNCC meeting on 13 July 2005 and have given their support. The proposal has been discussed with officers from the West Midlands Employers' Organisation and also heads of Human Resources in the West Midlands LGA region.

Vision

The recruitment and retention of key staff across the Council will contribute to all the Council's visions and pledges.

Background papers

- The Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999
- NJC for Local Government Services Circular 1/03 – Continuous Service Provisions
- Report to West Midlands Strategic Authorities Group May 2005

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Signed:



Executive Director: J Morris

Date: 6 October 2005

Signed:



Portfolio Holder: Councillor Z Ali

Date: 6 October 2005