

**BRISTOL CITY COUNCIL  
HUMAN RESOURCES COMMITTEE**

**24<sup>TH</sup> JULY 2008**

**Title: TUPE terms - Open & Closed Pension Provisions**

**Ward: City Wide**

**Report of: Robert Britton (Head of Human Resources)**

**Officer presenting report: Tom Wallen (pensions officer)**

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**1. Report Summary**

This report outlines the pension arrangement options associated with outsourcing.

The report specifically concerns the pension protections afforded to individuals when a local authority service transfers to an outside provider (company), involving the Transfer of Undertakings Protection of Employment (TUPE) transfer of staff. The company has options regarding the way in which it provides pension arrangements to the employees who are transferring and the purpose of this report is to outline the implications of this when the new employer provides pension protection through continued access to the Local Government Pension Scheme (LGPS) by becoming an 'admission body' of the LGPS.

When the new employer becomes an 'admission body' an agreement is signed outlining how they will meet their pension liabilities.

Therefore this report concerns the arrangements which can be specified when non-teaching staff transfer out to a "transferee admission body" of the Local Government Pension Scheme. The issues in relation to 'admission agreements' which are outlined in this report do not apply when teacher's transfer to another employer or when non-teaching staff transfer to other organisations such as foundation schools

**2. Recommendation**

The committee's views regarding the "options" set-out in paragraph 5 below are requested.

### **3. Policy**

Bristol City Council is required to adhere to the legislation governing TUPE transfers and the pension protection associated with outsourcing arrangements.

By virtue of directions issued under section 101 of the Local Government Act 2003, contracting authorities are required to ensure the pension rights for their transferring staff are the same as, broadly comparable to, or better than, those rights received as an employee of the authority.

### **4. Consultation**

#### **(a) Internal**

(ongoing)

#### **(b) External**

N/A

### **5. Background and Assessment**

- 5.1 The scope of the Transfer of Undertakings (Protection of Employment) Regulations has widened over recent years and in practice now covers almost all situations where a city council service is out-sourced, brought back in house, externalised, where a former city council contract comes up for renewal and in some cases where an employee is seconded to undertake a service.

These transfers must comply with the provisions of the above Regulations which stipulates what consultation must be carried out, the effect of the transfer upon terms and conditions of transferred employees and the transfer of liabilities under the transfer.

There is an additional requirement that all city council TUPE exercises are carried out in line with the Code of Practice on Workforce Matters. This means that:

- City council transferring employees' pensions will be protected requiring the Contractor (new employer) to offer access to LGPS or an alternative good quality occupational pension scheme which is certified as 'broadly comparable'. (Conversely, we must offer a pension scheme to staff transferring in which is 'broadly comparable' with their current scheme);

- Where a contractor (new employer) recruits new staff to work on the contract it must offer them employment on fair and reasonable terms and conditions, overall no less favourable than those of the city council transferred employees. (Conversely where the city council are receiving staff, the transferred staff should be offered terms & conditions no less favourable than their current terms & conditions).

The new employer specifies whether they are going to provide pension benefits through access to the Local Government Pension Scheme (LGPS), or by offering access to a broadly comparable pension scheme. However, if the contractor wishes to provide the pension benefits through the LGPS there are a number of details which need to be specified in the “admission agreement” which facilitates this. The admission agreement is signed by the new employer, the pension fund administrators and Bristol City Council in order to establish the new employer as an “admitted body” so that these employees have continued access to the LGPS.

**The purpose of this report is to explain the options which are available when the relevant pension protection is provided through access to the Local Government Pension Scheme, by the new employer.**

- 5.2 The admission body arrangements – which in their current form date from 2003 – distinguish between community admission bodies (those traditionally allowed to participate in the LGPS), and transferee admission bodies (contractors) whose participation in the LGPS is the subject of this report. The employees of Admission Bodies are treated as if they were employed by a scheme employer, although their employer’s participation in the LGPS is contractual, not statutory.
- 5.3 Admission Bodies are subject to the standard scheme employer requirements in relation to their employees in the LGPS and to certain additional provisions intended to deal with particular issues likely to arise from their different status. Among these are the normal liability to pay employers’ contributions based on actuarial valuations, the specific requirement for a terminal valuation with the potential to have to pay an exit charge to meet any capitalized deficit, and the important statutory requirement for a risk assessment to be carried out. A bond or guarantee can be given to protect the fund, and so taxpayers, in the event of commercial failure during the course of the contract.

The admission agreement specifies the liabilities that the new employer will meet in relation to the pension costs. Bristol City

Council also instructs the contractor of the value of liabilities any bond should cover, based upon the risk assessment report from the Pension Fund's actuary (this is like an insurance policy). If the bond is of insufficient value to meet the outstanding liabilities in these circumstances Bristol City Council would be responsible for any residual liability (as the outsourcing employer).

The manager in charge of the outsourcing arrangement is responsible for informing the new employer of the level of bond that Bristol City Council require - once they have reviewed the actuary's risk assessment report.

#### 5.4 Initial liabilities

The employers contribution rate is determined by the actuary based upon the details of the staff transferring over to the new contractor, but is typically assessed on the assumption that pension fund liabilities are fully funded at the outset of the agreement. This means that, irrespective Bristol City Council's actual funding level for it's overall liabilities, the contribution rate of the new employer is assessed as if the pension liabilities were 100% funded at the time of the transfer. (See appendix 1 for a full explanation of this assumption).

Although this approach is standard practice it is not a requirement to adopt this method and there are alternative funding options available. A number of the basic options available are outlined below.

#### 5.5 Basic funding options

The standard admission agreement, and any associated contracts between BCC and the new employer, would normally specify that the new employer is wholly responsible for meeting the employers contributions into the LGPS for the relevant staff. The standard admission agreement also specifies that other payments due to the fund, over and above those due from the employers contribution rate should also be met by the new employer (For example, such liabilities could be incurred if the employer made an individual redundant, or chose to enhance their pension benefits or to release their pension early)

The relevant employers contribution rate would be assessed by the Pension Fund's actuary at the outset of the contract, and typically re-assessed on a tri-annual basis (although the contract can specify more frequent re-assessments of the contribution rate it must take place at least tri-annually). However it is possible for an agreement to be made where the employers contribution rate

paid by the new employer is fixed or limited to a certain maximum level. If this arrangement is adopted Bristol City Council is responsible for making up any shortfall between the limited level paid by the new employer and the rate due to the pension fund.

“Cap and Collar” arrangements would limit the new employers contribution between a maximum & minimum band. In this situation Bristol City Council would receive any additional payments which may be made by the new employer if the employers contribution rate fell below the minimum “collar” level specified in the contractual agreements.

Fixing the employers contribution rate at a specified level, or between a pre-defined “cap & collar” can give the contractor more certainty over the liabilities which they are taking on. Although in principle it is generally beneficial to transfer risk to a contractor during an outsourcing exercise this will provide no benefit to the authority if the new employer is pushed into insolvency because they are unable to carry this level of risk.

The contract with the new employer can also specify that pension costs are passed through to Bristol City Council by the new employer.

Whichever payment method is agreed this should have been specified in the original tender for the contract and taken into account when assessing the overall merits of each bid. The manager responsible for the outsourcing agreement would agree these details with the contractor.

## 5.6 Termination payments

When the contract is terminated the pension regulations require any shortfall in funding to be paid for. But the new employer would not receive a refund of contributions if there was a surplus in the funding of liabilities at this point. This “asymmetric risk” is specified in the LGPS regulations, but it places the contractor in a worse position than would apply to an in-house bid from the local authority, as the local authority does not have to make such a termination payment. Bristol City Council objected to this “asymmetric risk” during a recent government consultation exercise concerning outsourcing arrangements, as contractors who are aware of this risk need to price the costs of this into their bid.

## 5.7 Open or Closed admission agreements

The admission agreement will specify whether the arrangement is “open or closed”. For an open admission agreement new employees who are employed, in relation to the work which has been out-sourced, will also be eligible to join the LGPS in the same way as the employees who transferred over to the new scheme. For a closed admission agreement only those who transferred over to the new employer will be eligible to join the LGPS through this employer.

The new employer will specify whether they would like the agreement to be open or closed.

Although a recent consultation exercise on the provision of admitted body status provisions asked relevant stakeholders whether or not open admission agreements should be made compulsory it is currently possible for the contractor to establish either an open or a closed arrangement.

- 5.8 The manager in charge of the outsourcing arrangement is responsible for making the relevant decisions in relation to these matters, as they should be viewed in the context of the rest of the contractor's bid.

Problems can arise when the pension considerations are not clarified during the initial tendering process. The TUPE guidelines discussed at the HR committee on the 13<sup>th</sup> of March 2008 now highlight the importance of establishing the appropriate pension arrangements at this stage.

The template admission agreement produced by the administrators of the Avon Pension Fund (B&NES) is shown in appendix 2.

The template bond agreement produced by the administrators of the Avon Pension Fund (B&NES) is shown in appendix 3.

- 5.9 In theory Bristol City Council could also offer the new contractor a “past service guarantee”. This would mean that Bristol City Council would pay for all the pension liabilities accrued before the date of the transfer. This would take an element of risk away from the new contractor as the past service liabilities would be considered 100% funded at all times in the future (not just at the date the transfer took place). However, the risk is then retained by Bristol City Council when some elements of that risk are controlled by the

contractor (e.g. Pay). Should the scheme's investments perform badly then, under this scenario, Bristol City Council may need to provide additional payments to ensure that these liabilities remain 100% funded.

To administer such an arrangement, we would need to instruct the schemes actuaries to calculate such a split in liabilities and this additional calculation would need to be paid for. If the new contractor made someone redundant or allowed the early release of pension benefits then Bristol City Council could also be liable to for additional costs if we had agreed to “fully fund past service liabilities at all times and in all circumstances”. Other risk sharing arrangements which are available which are far easier to administer, as outlined above.

5.10 Given the information outlined above, it is important to resolve pensions issues at the beginning of the outsourcing process.

## 6. Other Options Considered

Not applicable. This is an information report on the various arrangements available in the circumstances outlined above.

## 7. Risk Assessment

Risk	Impact	Likelihood	Mitigation
If the new employer is unable to meet its liabilities as an admitted body of the LGPS due to a commercial failure Bristol City Council will be required to meet these costs.	High	Low	<p>The admission agreement can specify that an indemnity Bond should be obtained*. This would make good the funding position if the contractor defaults - up to the level of the bond.</p> <p>The risk assessment from the scheme actuary will specify various risk factors resulting from different circumstances and the estimated costs which would be associated with these events. The value of the bond required can then be specified by BCC in light of this information.</p> <p>*For some organizations it may not be possible for them to</p>

			obtain a bond. For example a not-for-profit organization who's activities are funded solely through government grants would be unlikely to be able to get a bond from a bank or insurance company. However, this sort of organization is not the primary subject of this report, which is in relation to “transferee admission bodies”.
<p>Retaining risks by fixing the pension contribution rate of the new employer, a pass through cost arrangement or other alternative funding strategy retains an element of risk by definition.</p> <p>Should a contractor initially put in a bid which ignores the investment risks, but attempts to negotiate the risks away once they have become the preferred bidder this could cause problems if such an approach was accepted.</p>	Variable	This would only happen with the agreement of BCC.	The overall merits of the tender should be assessed. Any application for alternative funding arrangements should be viewed in the context of the overall bid against those of the other bidders and not negotiated at the 'last minute'.
If the contractor is unable to carry the full pension risks they could be placed in financial difficulties if they win the contract and all these risks are passed over to them.	Variable	low	<p>We should be open about the various risks associated with an admission agreement if potential bidders have any questions about the process of becoming an admitted body.</p> <p>Again, the overall merits of the tender should be assessed. Any application for alternative funding</p>

			<p>arrangements should be viewed in the context of the overall bid against those of the other bidders.</p> <p>It may be in the authorities commercial interests to retain part or all of these risks rather than paying for these to be passed to the new employer through the pricing of the contract bid.</p>
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**Risk sharing can occur at all points in the contract:**

- 1) Initial valuation of liabilities - usually 100% funded
- 2) Ongoing contributions - Reviewed regularly allowing for change in cost of accrual and for spreading any surplus or deficit on past service.

Note that the term of liabilities for an admission body may be much shorter than a typical pension scheme, as they must be settled at the end of the contract. They are therefore very dependant on investment market position at the close of the contract. It could be argued that an LGPS asset strategy is more risky for an admission body than an in-house service and that if this is always priced into the contract there may be some situations where the authority is paying for a risk which is better kept in-house.

- 3) Periodic retirement strains - one off costs for enhanced early retirement pensions.
- 4) Contract termination - closure valuation.

**8. Equalities Impact Assessment**

This report follows on from a previous HR committee report (presented on the 13.03.2008) entitled “Guidance for TUPE transfers”.

As staff pensions are only part of the TUPE process the equalities impact assessment produced for the report entitled “Guidance for TUPE transfers” is also applicable in relation to the further information provided in this report, and a copy of the earlier equalities impact assessment is provided in appendix 4.

## 9. Legal and Resource Implications

### Legal:

There are no specific legal implications. The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), govern how employees are treated following the transfer of a business or a change in service provision.

The effect of TUPE on pensions is a complex area of law, and it is helpful for the Council to have written guidance on the options available in respect of pensions when a service is out-sourced.

(Advice from Husinara Islam, Senior Practitioner Solicitor, Legal Services)

### Financial:

#### (a) Revenue

The costs arising from specific exercises involving TUPE would generally be the responsibility of the department concerned, in the first instance. However in a situation where a significant proportion of the council's employees transferred to an external organisation, there could be implications for the employer's contribution rate payable by the Council. Such cases would need to be considered on an individual basis. When outsourcing, the relative merits of each bid needs to be assessed, including any associated pensions costs.

#### (b) Capital N/A

(Advice from Dave Miles, Corporate Finance Manager)

**Land:** N/A

**Personnel:** As set out in paragraphs 5.2 to 5.8 above.

### Appendices:

Appendix A	TUPE and the implications of 100% funding of pension liabilities at the start of the contract
Appendix B	Admission Agreement relating to Participation in the Local Government Pension Scheme (Template produced by Bath and North East Somerset Council who administer the LGPS in this area)

Appendix C                      Guarantee Bond to Accompany an Admission  
   Agreement (Template produced by Bath and  
   North East Somerset Council who administer the  
   LGPS in this area)

Appendix D                      Equality Impact Assessment

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**Background Papers:** None

**TUPE and the implications of 100% funding of pension liabilities at the start of the contract**

As an example, if we assume that BCC's pension fund assets and liabilities are as outlined in line one of the table below, transferring a number of employees out to an external contractor could have the following effect on BCC. **[The example below is designed to convey the principle involved with fully (100%) funding the transfer as at the date of the transfer and not the actual figures of BCC's assets and liabilities, the liabilities transferred to the new contractor, or the effect on the overall funding level of this arrangement.] :-**

<u>level)</u>	<u>Liabilities</u>	<u>Assets</u>	<u>Deficit (funding</u>
BCC before the TUPE	£100M	£80M	£20M (80%)
Example Company Ltd	£1M	£1M	Nil (i.e. 100% funded at the date of the transfer)
BCC after the TUPE	£99M	£79M	£20M (79.8%)

All other factors being equal, the monetary value of BCC's deficit is not increased by transferring enough assets to cover all the pension liabilities transferred to "Example Company Ltd". However, BCC's funding level would be slightly reduced, and there would be less contributors to the pension scheme working for BCC, which would mean that the employers contribution rate would have to be marginally increased if all other factors were the same at the next valuation (as there are less people paying into the scheme from which to recover the deficit). At the next pension fund valuation, BCC's deficit would be assessed by the actuary and the recovery plan determined as for other valuations (i.e. the recovery of the £20M still outstanding after the TUPE transfer in the example above could be spread over 20 years, just as it could if the TUPE transfer did not take place).

The last valuation was completed in 2007 and the next one is due in 2010. **The actuary's report on the pension fund liabilities may well state that "the liabilities of the transferring staff are small relative to Bristol CC,**

**and as a result the risks involved might be considered de minimis in the context of Bristol City Council's interest in the Fund as a whole" if the transfer-out does not involve a significant percentage of the people employed by the authority.**

However, if a significant percentage (say more than 5%) of the workforce was being transferred out to an external company this could have a noticeable impact upon the employers contribution rate paid by the authority. If there is a transfer-out, or series of outsourcing arrangements, which involve a significant percentage of the workforce the impact of fully funding pension liabilities at the start of the contract would need to be carefully examined.

We would normally simply need to instruct the pension fund to notionally transfer assets to the contractor in order to cover 100% of the accrued liabilities at the outset of the contract. (This funding strategy is applied in our standard admission agreements). The actuaries reports from Mercer's have previously stated that this is usual when staff transfer to an admitted body, with the employees participating in the Fund under an admission agreement.

**DATED**

**2007**

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**(1) BATH AND NORTH EAST SOMERSET COUNCIL**

**(2)**

**(3)**

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**ADMISSION AGREEMENT**

relating to  
participation in the  
LOCAL GOVERNMENT  
PENSION SCHEME

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**THIS AGREEMENT** is made on

2007

**BETWEEN**

- (1) **BATH and NORTH EAST SOMERSET COUNCIL** of Riverside Temple Street, Keynsham, Bristol BS18 1LA (hereinafter referred to as the "**Administering Authority**"); and
- (2) [ ] (hereinafter referred to as the "**Scheme Employer**") of [ ] and [ ]
- (3) [ ] (company number [ ] (hereinafter referred to as the "**Transferee Admission Body**") whose registered address is [ ]

**WHEREAS**

- (1) The Administering Authority is an administering authority within the meaning of the Local Government Pension Scheme Regulations 1997 (as amended) (the "Regulations") and administers the Local Government Pension Scheme (the "Scheme") and maintains the Avon Pension Fund (the "Pension Fund").
- (2) The Scheme Employer is a Scheme employer within the meaning of the Regulations.
- (3) With effect from the Commencement Date the Transferee Admission Body will provide services (the "Services") in connection with the exercise of a function of the Scheme Employer pursuant to a contract dated [ ] 2007 between the Scheme Employer and [ ](the "Contract")
- (4) The Administering Authority, the Scheme Employer and the Transferee Admission Body have agreed to enter into an admission agreement to enable the "Eligible Employees" (as hereinafter defined) to be members of the Scheme and to participate in the Pension Fund.
- (5) The terms and conditions of such an admission have been agreed between the parties hereto as follows:-

**NOW IT IS HEREBY AGREED** as follows:

**1. INTERPRETATION**

1.1 "Eligible Employees" means:

1.1.1 the employees listed in Schedule 1 to this Agreement who were active members of or eligible to join the Scheme immediately before they transferred to the Transferee Admission Body;

1.1.2 [any employees currently employed by the Scheme Employer who may transfer to the Transferee Admission Body in connection with the Contract in the future; and ]

1.1.3 [any other employees nominated by the Transferee Admission Body ]

for so long as they are employed by the Transferee Admission Body in connection with the provision of the Services.

**PROVIDED THAT**

1.1.4 the employee is not a member of another occupational pension scheme (within the meaning of section 1 of the Pension Schemes Act 1993) other than where membership under that pension scheme would not affect the status of the Scheme as registered pension scheme for the purposes of Part 4 of the Finance Act 2004; and

1.1.5 the employee otherwise satisfies the requirements of the Regulations appertaining to eligibility for membership of the Scheme.

1.2 For the purposes of this Agreement, the words "employed in connection with" shall mean spends the majority of his time working in delivering the Services.

1.3 "Business Day" means any day other than a Saturday or a Sunday or a Public or Bank Holiday in England.

1.4 Save as aforesaid the words and expressions used in this Agreement shall have the same respective meanings as in the Regulations unless the context otherwise requires.

1.5 In this Agreement where the context so admits:-

1.5.1 words denoting the singular shall include the plural and vice versa, words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include corporations unincorporated associations and partnerships;

1.5.2 reference to any statutory provisions shall be deemed unless the context otherwise requires to include reference to any such provisions as from time to time amended varied replaced extended or re-enacted by any other provisions or regulations made under such provisions;

1.5.3 reference to clauses or schedules shall be deemed to be references to a clause or a schedule to this Agreement and references to a sub-clause shall be deemed to be a reference to a sub-clause of the clause in which the reference appears; and

1.5.4 headings are included for ease of reference only and shall not affect this Agreement or the interpretation thereof.

## 2. **COMMENCEMENT DATE**

This Agreement shall have effect from the \_\_\_\_\_ (the "Commencement Date").

## 3. **ADMISSION**

The Administering Authority shall as from the Commencement Date referred to in clause 2 permit the Eligible Employees to be members of the Scheme and to participate as active members of the Pension Fund.

## 4. **PARTICIPATION**

4.1 The provisions of the Regulations shall apply for determining the rights and obligations of, and the action which is to be taken by, each party to this Agreement and for the transmission of information between them and each party hereby undertakes with the others to take such action promptly.

- 4.2 The provisions of the Regulations shall apply to the Eligible Employees in the same way as if the Transferee Admission Body was a Scheme Employer within the meaning of the Regulations.
- 4.3 The Transferee Admission Body warrants and represents to the Administering Authority and to the Scheme Employer that each Eligible Employee is employed in connection with the Services for the purposes of clause 1.2 of this Agreement.
- 4.4 The Transferee Admission Body undertakes that it will promptly notify the Administering Authority and the Scheme Employer in writing if any Eligible Employee ceases to be such in consequence of failing to satisfy sub-clause 1.1.4 or sub-clause 1.1.5 and that employee shall cease to be eligible to be an active member of the Scheme.

## 5. **PAYMENTS**

- 5.1 The Transferee Admission Body shall pay to the Administering Authority for credit to the Pension Fund such contributions and payments as are due under the Regulations in respect of the Eligible Employees. The Transferee Admission Body shall also procure that all contributions deducted from the pay of Eligible Employees which are Additional Voluntary Contributions (AVCs) shall be transmitted directly to the Institution with which the AVCs are invested ("AVC Provider") identified from time to time to it by the Administering Authority. The AVCs shall be credited with the AVC Provider at the same time as the contributions referred to in clause 5.2 are credited to the Pension Fund but in no event later than the 19<sup>th</sup> day of the month following the month in which the AVCs were deducted from earnings of the employees, but no penalties shall be payable under clause 5.2 if such payments are late.
- 5.2 The Transferee Admission Body shall pay to the Administering Authority for credit to the Pension Fund the employee and employer pension contributions on a monthly basis in arrears. The payment must be paid to the Administering Authority no later than the date specified in regulations made under the Pensions Act 1995. If the payment is late, the Administering Authority will charge the Transferee Admission Body interest on the amount owing calculated in accordance with the Regulations.

5.3 The Transferee Admission Body shall pay to the Administering Authority for credit to the Pension Fund any revised contributions due under sub-clause 7.2.2 within 30 days of receipt of a written request from the Administering Authority.

5.4 Where the Transferee Admission Body certifies that:

5.4.1 an Eligible Employee who is aged 50 or more is retiring by reason of redundancy or in the interests of efficiency, or

5.4.2 an Eligible Employee is voluntarily retiring with the consent of the Transferee Admission Body on or after age 50 and before age 60, or

5.4.3 an Eligible Employee is retiring on the grounds of permanent ill health or permanent infirmity of mind or body, or

5.4.4 the deferred benefit of an Eligible Employee is brought into payment with the Transferee Admission Body's consent on or after age 50 and before age 60, or

5.4.5 the deferred benefit of an Eligible Employee is brought into payment on the grounds of permanent ill health or permanent infirmity of mind or body;

and immediate benefits are payable under the Regulations, the Transferee Admission Body shall pay to the Administering Authority for credit to the Pension Fund the sum notified to them in writing by the Administering Authority as representing the actuarial strain on the Pension Fund, as certified by an actuary appointed by the Administering Authority, of the immediate payment of benefits to the Eligible Employee of the Transferring Admission Body but only, in the case of sub-clauses 5.4.3 or 5.4.5, to the extent that the strain is not met through the Transferee Admission Body's employer contribution rate, such sum to be paid within 30 days of receipt of the written notification.

However, where the sum notified is more than £1,000 such sum may be paid by equal annual instalments over a period of 5 years (or the remaining period of the Contract if less), the first instalment of which is to be paid within 30 days of receipt of the written notification and the remaining instalments to be

paid with interest within one month of the relevant anniversary of receipt of the written notification. Interest is to be calculated as determined by the Actuary to the Pension Fund.

- 5.5 Any financial penalty incurred by the Pension Fund arising from the failure of the Transferee Admission Body to comply with the terms of this Agreement shall be repaid to the Pension Fund by the Transferee Admission Body within 30 days of receiving a written request from the Administering Authority.
- 5.6 If any sum payable under the Regulations or this Agreement by the Transferee Admission Body to the Administering Authority or to the Pension Fund remains unpaid at the end of one month after the date on which it becomes due under this Agreement or the Regulations, the Administering Authority shall require the Transferee Admission Body to pay interest calculated in accordance with the Regulations on the amount remaining unpaid or, in respect of sums under Clause 5.4 where any payment is not received by the due date, interest will be charged as follows:-
- 5.6.1 Where the amount to be paid is a single upfront payment, 2% above base rate from the due date to the date of payment
- 5.6.2 Where payment is by annual instalments, additional interest at 1% above base rate on the outstanding amount from the due date to the date of payment.
- 5.7 If any sum payable under the Regulations or this Agreement by the Transferee Admission Body to the Administering Authority or to the Pension Fund has not been paid by the date on which it becomes due under this Agreement or the Regulations the Administering Authority may require the Scheme Employer to set off against any payments due to the Transferee Admission Body (if any) an amount equal to the sum due from the Transferee Admission Body under this Agreement or the Regulations (including any interest due in accordance with clause 5.6) and to pay the sum to the Administering Authority for credit to the Pension Fund by a date specified by the Administering Authority.
- 5.8 The Transferee Admission Body shall pay to the Administering Authority such additional sums in respect of its share of any exceptional expenses of

management of the Scheme as are not covered by the general contribution rate and were incurred at the request of the Transferee Admission Body as an actuary appointed by the Administering Authority may determine.

- 5.9 Any contributions required to be paid by the Transferee Admission Body under clause 5.1 will be assessed by the actuary appointed by the Administering Authority on an ongoing funding basis assuming a past service funding level in respect of the Eligible Employees of [ ] %] as at the Commencement Date.

## 6. TRANSFEEE ADMISSION BODY'S UNDERTAKINGS

- 6.1 The Transferee Admission Body undertakes

6.1.1 to provide or procure to be provided such information relating to the Transferee Admission Body's participation in the Pension Fund and the Eligible Employees' membership of the Scheme as is reasonably required by the Administering Authority;

6.1.2 to comply with the reasonable requests of the Administering Authority to enable it to comply with the requirements of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996/1655).

6.1.3 to adopt the practices and procedures relating to the operation of the Scheme set out in the Regulations and in any employer's guide published by the Administering Authority and provided by the Administering Authority to the Transferee Admission Body;

6.1.4 to formulate and publish within 3 months of the Commencement Date a Statement concerning the Transferee Admission Body's policy on the exercise of its discretions under the Regulations and to keep such policy under review;

6.1.5 to notify the Administering Authority and the Scheme Employer of each occasion on which it exercises a discretion under the Regulations and the manner in which it exercises that discretion;

- 6.1.6 without prejudice to the requirements of the Regulations and any employer's guide published by the Administering Authority and provided to the Transferee Admission Body, to notify forthwith the Administering Authority and the Scheme Employer in writing of any material change in the terms and conditions of employment of any of the Eligible Employees which affect entitlement to benefits under the Scheme and of any termination of employment by virtue of redundancy or in the interests of efficiency or for any other reason;
- 6.1.7 that it shall not grant an additional period of membership to an Eligible Employee under regulation 52 of the Regulations save to the extent that the appropriate sum is paid to the Administering Authority for credit to the Pension Fund before the expiry of the relevant period within the meaning of the Regulations;
- 6.1.8 that it shall not grant an additional period of membership to an Eligible Employee without consent of the Administering Authority under Regulation 53 of the Regulations;
- 6.1.9 not to do any act, omission or thing which would prejudice the status of the Scheme as a registered pension scheme for the purposes of Part 4 of the Finance Act 2004; and
- 6.1.10 to notify the Administering Authority and the Scheme Employer immediately of:
  - 6.1.10.1 any matter which may affect, or is likely to affect, its participation in the Scheme and the Pension Fund;
  - 6.1.10.2 any actual or proposed change in its status which may give rise to a termination, including but not limited to take-over, reconstruction or amalgamation, liquidation or receivership and a change in the nature of its business or constitution.
- 6.2 The Administering Authority undertakes to provide or procure to be provided to the Transferee Admission Body such information relating to the Transferee Admission Body's participation in the Pension Fund and the Eligible

Employee's participation in the Scheme as is reasonably required by the Transferee Admission Body.

## **7. PERIODIC VALUATIONS**

7.1 The Administering Authority may periodically obtain from an actuary a certificate specifying, in the case of the Transferee Admission Body, the percentage or amount by which, in the actuary's opinion, the contribution rate at the common rate or any prior individual adjustment within the meaning of the Regulations should be increased or reduced (such assessment shall be subject to clause 5.9). This is with a view to ensuring that, as far as is reasonably possible, the value of assets of the Pension Fund in respect of Eligible Employees and former Eligible Employees is neither materially more or materially less than the anticipated liabilities of the Pension Fund in respect of the said Eligible Employees at the date the Services or this Agreement are due to end.

7.2 When this Agreement is terminated, the Administering Authority must obtain:-

7.2.1 an actuarial valuation as at the termination date of the liabilities of the Pension Fund in respect of the Eligible Employees and former Eligible Employees, and

7.2.2 a revision of any rates and adjustments certificate within the meaning of the Regulations showing the revised contributions due from the Transferee Admission Body.

## **8. TERMINATION**

8.1 Subject to clause 8.2 and 8.3 this Agreement shall terminate at the end of the notice period upon any of the parties hereto giving a minimum of three months notice to terminate this Agreement to the other parties to this Agreement.

8.2 This Agreement shall automatically terminate on the earlier of the date of:-

8.2.1 the expiry or earlier termination of the Contract , or

8.2.2 the date the Transferee Admission Body ceases to be a transferee admission body for the purposes of the Regulations.

8.3 This Agreement may be terminated by the Administering Authority by notice in writing to the Transferee Admission Body taking immediate effect in the event of:-

8.3.1 any breach by the Transferee Admission Body of any of its obligations hereunder PROVIDED THAT if the breach is capable of remedy the Administering Authority shall first afford to the Transferee Admission Body the opportunity of remedying that breach within such reasonable period as the Administering Authority may specify;

8.3.2 the insolvency, winding up or liquidation of the Transferee Admission Body;

8.3.3 the withdrawal of approval by the Commissioners of the HM Revenue & Customs to the participation of the Transferee Admission Body as a scheme employer in the Pension Fund;

8.3.4 the failure by the Transferee Admission Body to pay any sums due to the Administering Authority or to the Pension Fund within 7 days of the periods specified in Clauses 5.2, 5.4 and 5.5 or in any other case within 37 days of receipt of a notice from the Administering Authority requiring it to do so; or

8.3.5 the failure by the Transferee Admission Body to renew or adjust the level of a bond or indemnity in accordance with clause 9.3 or 9.4.

## 9. **BOND OR INDEMNITY**

9.1 The level of risk arising on the termination of this Agreement shall, prior to the Commencement Date, be assessed by Scheme Employer, taking account of actuarial advice.

9.2 The Transferee Admission Body warrants that it has provided a bond or indemnity in such form as the Administering Authority and Scheme Employer have approved to this Agreement to meet the level of risk specified in clause 9.1 with a person who has permission under Part 4 of the Financial Services

and Markets Act 2000 to accept deposits or carry out contracts of general insurance and that the bond or indemnity is or will be in place by the Commencement Date.

- 9.3 Where the bond or indemnity provided under clause 9.2 is not for the full period of this Agreement the Transferee Admission Body shall either renew the bond or indemnity (if possible) or provide a new bond or indemnity in such form as the Administering Authority and Scheme Employer reasonably require to meet the level of exposure which has (prior to the renewal of the bond or indemnity or the delivery of any new bond or indemnity) been assessed by the Scheme Employer taking account of actuarial advice.
- 9.4 The level of the bond or indemnity shall be reviewed at twelve monthly intervals from the Commencement Date (or some other period specified by the Scheme Employer) to ensure that it still covers a level of risk exposure which has been assessed by the Scheme Employer taking account of actuarial advice. Where the existing bond or indemnity does not cover the required level of risk exposure the Transferee Admission Body shall procure that the existing bond or indemnity is renewed or amended (where necessary) to cover the revised level of risk exposure or that a new bond or indemnity in such form as the Administering Authority and Scheme Employer reasonably require is provided to cover the revised level of risk exposure.

## 10. **NOTICES**

Any notice to be given under this Agreement shall be in writing and shall be deemed to be sufficiently served if delivered by hand or sent by prepaid first class post to the registered office of the Transferee Admission Body or the headquarters address of the Administering Authority or the Scheme Employer or the office of the Secretary of State (as the case may be) and shall be deemed to have been duly given or made (i) if delivered by hand, upon delivery at the address provided for in this clause 10 unless such delivery occurs on a day which is not a Business Day or after 4pm on a Business Day, in which case it will be deemed to have been given at 9am on the next Business Day; or (ii) if sent by prepaid first class post, on the second Business Day after the date of posting.

**11. PUBLIC INSPECTION**

This Agreement shall be made available for public inspection by the Administering Authority at its headquarters address and by the Scheme Employer at its headquarters address.

**12. DISPUTES**

Any question which may arise between the parties to this Agreement relating to its construction or to the rights and obligations under the Agreement shall be referred in writing to the Secretary of State within the meaning of the Regulations for determination.

**13. APPLICABLE LAW**

This Agreement shall be governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

**14. RIGHTS OF THIRD PARTIES**

The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

**15. COUNTERPARTS**

This Agreement may be executed in two counterparts, both of which taken together shall constitute one and the same agreement and any party may enter into this Agreement by executing one of the counterparts.

**IN WITNESS** whereof the parties have executed this Agreement as a Deed the day and year first before written.

**THE COMMON SEAL of BATH and** )  
**NORTH EAST SOMERSET COUNCIL** )  
was hereunto affixed in the presence of:- )

.....  
Authorised Officer

**THE COMMON SEAL of [** )  
was hereunto affixed )  
in the presence of:- )

**THE COMMON of [** )  
was hereunto affixed in the presence of:- )  
)

.....  
Director/Company Secretary

**SCHEDULE 1**

**Eligible Employees**

<b><u>N-I Number</u></b>	<b><u>Surname</u></b>	<b><u>First Names</u></b>	<b><u>Date of Birth</u></b>	<b><u>Sex</u></b>
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**DATED** \_\_\_\_\_ **2007**

- (1) BATH AND NORTH EAST SOMERSET  
COUNCIL
- (2) [SCHEME EMPLOYER]
- (3) [ADMISSION BODY]
- (4) [GUARANTOR]

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**GUARANTEE BOND TO  
ACCOMPANY AN ADMISSION AGREEMENT**

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The Avon Pension Fund

**THIS AGREEMENT** is made on

2007

**BY**

- (1) **BATH AND NORTH EAST SOMERSET COUNCIL** of The Guildhall, High Street, Bath BA1 5AW (the "**Administering Authority**");
- (2) [ ] of [address] the "**Scheme Employer**";
- (3) [ ] whose registered address is [address]  
, (the "**Admission Body**"); and
- (4) [Company] (registered number [number]) whose registered office is at [address] (the "**Guarantor**").

## **BACKGROUND**

- (A) The Administering Authority is an administering authority within the meaning of the Regulations and administers the Scheme and maintains the Fund.
- (B) The Admission Body is a transferee admission body within the meaning of the Regulations.
- (C) The Scheme Employer is Scheme employer within the meaning of the Regulations.
- (D) The Admission Body will provide services in connection with the exercise of a function of the Scheme Employer pursuant to the Contract and will employ the Eligible Employees.
- (E) The Guarantor has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits or carry out contracts of general insurance.
- (F) The Administering Authority, the Scheme Employer and the Admission Body intend to enter into the Admission Agreement subject to the provision of a bond/indemnity in the form of this Agreement.
- (G) The Guarantor has agreed at the request of the Admission Body to enter into this Agreement as a bond in a form acceptable to the parties to this Agreement.

## **OPERATIVE PROVISIONS**

### **1. INTERPRETATION**

Save as defined below unless the context requires otherwise words and expressions used in this Agreement shall have the same meanings as in the Regulations.

## 2. DEFINITIONS

<b>"Admission Agreement"</b>	the admission agreement between the Administering Authority, the Scheme Employer and the Admission Body, which allows the Eligible Employees to be members of the Scheme and participate in the Fund;
<b>"Bond Amount"</b>	[ ] pounds sterling (£) or such other amount as may from time to time be amended by an Extension Notice;
<b>"Business Day"</b>	any day other than a Saturday or Sunday or a public or bank holiday in England;
<b>"Contract"</b>	the contract dated 2007 made between the Scheme Employer and [ ];
<b>"Eligible Employees"</b>	the employees of the Admission Body specified in the Admission Agreement as being eligible to be members of the Scheme;
<b>"Expiry Date"</b>	[DATE] or such other date as may be extended by an Extension Notice;
<b>"Extension Notice"</b>	a notice substantially in the form of the notice at Schedule 1;
<b>"Fund"</b>	means The Avon Pension Fund;
<b>"Payment Notice"</b>	a notice substantially in the form of the notice at Schedule 2;
<b>"Regulations"</b>	The Local Government Pension Scheme Regulations 1997 (SI 1997/1612) (as amended from time to time);
<b>"Relevant Event"</b>	either of:  (a) the termination of the Admission Agreement; or  (b) the failure by the Admission Body to procure not less than 30 days before the Expiry Date the delivery to the Administering Authority of a Replacement Bond; or  (c) the failure by the Admission Body to procure not less than 30 days after the results of an actuarial re-assessment of the Bond Amount have been notified to the Admission Body in writing by the Administering Authority the delivery to the Administering Authority of either

an Extension Notice or a Replacement Bond covering the revised Bond Amount;

**"Replacement Bond"**

a bond or an indemnity in a form approved by the Administering Authority and the Scheme Employer to secure the payment of the Scheme Liabilities;

**"Scheme Liabilities"**

all employer and employee contributions, payments and other sums due from the Admission Body to the Administering Authority under the Admission Agreement or the Regulations in respect of the current or former Eligible Employees;

**"Scheme"**

the Local Government Pension Scheme

- 2.1 In this Agreement where the context so admits words denoting the singular shall include the plural and vice versa and words denoting the masculine gender shall include the feminine gender and vice versa.
- 2.2 Reference to any statute or statutory instrument shall be deemed to include reference to any such statute or statutory instrument as from time to time amended varied replaced extended or re-enacted and any orders or regulations under such provisions unless the context otherwise requires.
- 2.3 Reference to clauses or schedules shall be deemed to be references to a clause or schedule to this Agreement and references to a sub-clause shall be deemed to be a reference to a sub-clause of the clause in which the reference appears.
- 2.4 Headings are included for ease of reference only and shall not affect this Agreement or its interpretation.

**3. CLAIMS AND PAYMENT**

- 3.1 Where following the occurrence of a Relevant Event the Admission Body has failed to pay all Scheme Liabilities (in whole or in part) to the Administering Authority within 30 days of receiving a written demand from the Administering Authority the Guarantor shall pay to the Administering Authority such sum or sums (not exceeding in the aggregate the Bond Amount) as the Administering Authority claims in respect of the unpaid Scheme Liabilities.

- 3.2 Any claim by the Administering Authority pursuant to the terms of this Agreement shall be made by the service of a Payment Notice and shall be accepted by the Guarantor as conclusive evidence for all purposes that the amount claimed, is due to the Administering Authority. The Guarantor shall pay the sum so demanded within 7 days of receipt of the Payment Notice.
- 3.3 All sums paid by the Guarantor pursuant to **clause 3.1** shall be held and applied by the Administering Authority for the purpose of paying and discharging the Scheme Liabilities.
- 3.4 Following any payment by the Guarantor pursuant to **clause 3.1**, the Administering Authority shall provide to the Guarantor within 6 months of receipt of payment a written account in respect of the application of the payment. If any payment made by the Guarantor exceeds the amount required to discharge the Scheme Liabilities the Administering Authority shall refund any overpayment to the Guarantor.
- 3.5 The obligations and liabilities of the Guarantor under this Agreement shall not be reduced discharged impaired or affected by the giving of time or any other indulgence, forgiveness or forbearance by the Administering Authority.
- 3.6 The service of a Payment Notice by the Administering Authority under the terms of this Agreement shall not (subject only to the provisions of **clause 4.1**) preclude the service of any further Payment Notice.

#### **4. BOND AMOUNT**

- 4.1 The maximum aggregate liability of the Guarantor under this Agreement shall not exceed the Bond Amount being the sum assessed to the satisfaction of the Administering Authority on behalf of the Scheme Employer taking account of actuarial advice.

#### **5. EXPIRY DATE**

- 5.1 This Agreement shall expire and the obligations and liabilities of the Guarantor shall cease and determine absolutely on the Expiry Date save in respect of any obligation and liability arising as a result of a Relevant Event

occurring on or before the Expiry Date in respect of which a Payment Notice has been received by the Guarantor within 12 months of the Expiry Date.

5.2 If the Admission Body procures the service of an Extension Notice by the Guarantor the provisions of this Agreement shall remain and continue in full force and effect subject only to the amendment of the Expiry Date to the date set out in such Extension Notice and/or to the amendment of the level of the Bond Amount to the level set out in such Extension Notice.

5.3 This Agreement shall remain in operation notwithstanding any variation made in the terms of the Admission Agreement the Regulations or the Contract or the Sub-Contract and notwithstanding the insolvency winding-up or liquidation of the Admission Body (compulsorily or otherwise) or it otherwise ceasing to exist or function. This Agreement shall not be affected by any disclaimer of the Admission Body's contracts or liabilities by a liquidator.

## **6. NOTICES**

6.1 Any notice to be given under this Agreement shall be in writing and shall be deemed to be sufficiently served if delivered by hand or sent by prepaid first class post to the addresses of the parties stated at the beginning of this Agreement (unless a party notifies the others in writing of a different address for service) and shall be deemed to have been given or made:

6.1.1 if delivered by hand upon delivery at the address unless such delivery occurs on a day which is not a Business Day or after 4pm on a Business Day in which case it will be deemed to have been given at 10am on the next Business Day; or

6.1.2 if sent by prepaid first class post on the second Business Day after the date of posting.

## **7. EXECUTION**

This Agreement may be executed on a separate counterpart by each party which documents when taken together shall constitute one original.

## **8. APPLICABLE LAW**

This Agreement shall be governed by and construed in accordance with English law and the parties submit to the jurisdiction of the English courts.

## **9. RIGHTS OF THIRD PARTIES**

The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

**THIS DOCUMENT** is executed as a deed and delivered on the date started at the beginning of this deed.

## SCHEDULE 1

### Specimen Extension Notice

To: Bath and North East Somerset Council

From: [Guarantor]

[DATE]

**BOND NUMBER: [ ]**

We refer to the Agreement which is due to expire on [date].

We have been instructed by [ ] Limited to [renew/amend] the Agreement. We now accordingly give notice that the Agreement shall be treated as renewed for a further period of [one] year and so that [date] shall become the Expiry Date.

[We [also] confirm that the Bond Amount shall be amended and from the date of this Extension Notice the new level shall be [[amount] pounds sterling (£)].

Save as amended by this Extension Notice, the Agreement shall remain in full force and effect.

---

**Duly authorised for and on behalf of**

[Guarantor]

**SCHEDULE 2**

**Specimen Payment Notice**

To: [Guarantor]

From: Bath and North East Somerset Council

[DATE]

**BOND NUMBER: [ ]**

We refer to the above Agreement and certify that a Relevant Event has occurred in relation to [ ] Limited.

The sum of [ ] pounds sterling (£) is properly due in respect of the Scheme Liabilities. We attach a copy of a certificate signed by [fund actuary] stating that such sum is now due.

We demand payment of the above amount within seven days of receipt of this notice.

The above amount should be paid to us by transfer to the following account:

**Account Number**

**Sort Code**

**Account  
Name**

**Bank**

**Bank Address**

---

**Duly authorised for and on behalf of**

**Bath and North East Somerset Council**

**THE COMMON SEAL** of )  
**BATH AND NORTH EAST** )  
**SOMERSET COUNCIL** )  
was affixed in the presence of: )

Authorised Officer

**THE COMMON SEAL** of )  
[the scheme Employer] )  
was affixed in the presence of: )

Authorised Officer

**THE COMMON SEAL** of )  
[the admission body] )  
was affixed in the presence of: )

Director /Company Secretary

**SIGNED** as a deed by )  
[GUARANTOR] )  
acting by a director and its secretary )  
or two directors )

Director

Director/Secretary

## Equality Impact Assessment (EqIA)

### Stage 1: Initial Screening Form for New/Revised HR Policies or Functions

#### A: Summary Details

Department: Central Support Services

Section: Employee Relations

Person responsible for the assessment: Karen Stephens

Contact details: 0117922 2165

Name of Policy to be assessed: TUPE guidance

Is this a new or revised policy: New guidance - none currently in existence

Date policy scheduled for Overview and Scrutiny/Cabinet/LAB: HR Committee  
March 2008

#### B: Preparation

*It is important to consider all available information that could help determine whether the policy could have any potential adverse impact. Please attach examples of available monitoring information, research and consultation reports.*

1. Do you have monitoring data available on the number of people (from different target groups) who are using or are potentially impacted upon by your policy? *Please specify what monitoring information you have available (your monitoring information should be compared to the current available census data to see whether a proportionate number of people are taking up your service).*

**We cannot predict exact work groups that will be TUPE'd in or out of Bristol city council therefore we cannot give an analysis of specific staff groups to be effected. However, we have undertaken some analysis of staff recently TUPE'd out of Contract Services as part of the catering contract and this is summarised below.**

## No available data relating to sexual orientation or religious faith groups.

Schools Catering TUPE Analysis (Statistics based on Personnel spreadsheet)

### Ethnic Origin

Count	%	Description
1	0.26%	Bangladeshi
12	3.16%	Black Caribbean
4	1.05%	Black Other
11	2.89%	Don't know/not sure
2	0.53%	Indian
2	0.53%	Mixed White & Black Caribbean
1	0.26%	Other Asian
3	0.79%	Other Ethnic group
340	89.47%	White British
2	0.53%	White Irish
1	0.26%	White Other
1	0.26%	Would rather not state

380

### Gender

Count	%	Description
374	98.42%	Female
6	1.58%	Male

380

### Age

Count	%	Description
1	0.26%	Under 25 Years of Age
360	94.74%	Over 25 and under 50 Years of Age
19	5.00%	Over 50 Years of Age

380

### Religion

Count	%	Description
380	100.00%	Would rather not state

380

### Sexual Orientation

Count	%	Description
380	100.00%	Would rather not state

380

### Disability

Count	%	Description
3	0.79%	I am disabled
352	92.63%	I am not disabled
25	6.58%	Would rather not state

380

2. If monitoring has NOT been undertaken, will it be done in the future or do you have access to relevant monitoring data for this area? If not, specify the arrangement you intend to make; if not please give a reason for your decision.

**It is recommended that employees TUPE transferring out of the city council are monitored by way of the spreadsheet detailed in related guidance section of personnel policies & procedures on the Intranet.**

3. Please list any consultations that you may have had and/or local/national consultations, research or practical guidance that will assist you in completing this EqIA

**Guidance and support in completing this has been obtained from Corporate Development (HR). Guidance has also been circulated to Equalities and 'SOG's'.**

### **C: Your Policy or Function**

1. What is the main purpose of the policy or function?

**To ensure that managers and HR are aware of and comply with their legal responsibilities when considering and implementing a TUPE transfer. To facilitate a seamless TUPE transfer with minimum disruption and insecurity for staff and service users.**

Are there any other objectives of the policy or function, if so what are they?

**To give procedural guidance on all aspects of out-sourcing, in-sourcing, externalisation or contract renewal.**

- 2 Do any written procedures exist to enable delivery of this policy or function?

**No dedicated city council guidance notes currently exist other than minimal notes detailed within the Managing Change Policy.**

- 3 Are there elements of common practice in the service area or function that are not clearly defined within the written procedures?

**No**

- 4 Who are the main stakeholders of the policy?

**Employees dedicated to the transferring service, members of the working party co-ordinating the exercise, management and staff of the organisation receiving the service and trade union representatives of these staff.**

- 5 Is the policy associated with any other Council policy (s)?

**In-sourcing, out-sourcing or externalisation may often take place in conjunction with the managing change policy.**

6 Are there any areas of the service that are governed by discretionary powers? If so, is there clear guidance as to how to exercise these?

**If a city council service is transferred the employees within it cease to be employees of the city council. The guidance stipulates that employees transfer on existing terms and conditions of employment with continuity of employment preserved (as a legal right) with specified circumstances in which the new employer can change these terms. It is however acknowledged that staff face uncertainty when transferring to a new employer, and the guidance stipulates that (for transferring out services) the Chief Officer/Head of Service should ensure monitoring arrangements are in place so that the new employer/contractor meets its requirements. The guidance also recommends that robust contract terms are in place to ensure that the contractor complies with its responsibilities under the Code of Practice on Workforce Matters in LA transfers. There is an appeal process should the employee consider that they should not be on the transfer list and also a dispute procedure (Alternative Dispute Resolution Procedure) in situations where an employee (or TU representative) considers that the TUPE regulations or the Code of Practice has been broken. The employee also has a statutory right to raise a grievance should they be unhappy about their treatment by the new employer.**

7 Is the responsibility for the proposed policy or function shared with another department or authority or organisation? If so, what responsibility, and which bodies?

**The guidance notes state that all rights and liabilities for the transferred service transfer from the point of transfer to the new employer. However, as previously stated, contractual terms and conditions transfer with limited scope to change these.**

#### **D: The Impact**

*Assess the potential impact that the policy could have on each of the target groups. The potential impact could be negative, positive or neutral. If you have assessed negative potential impact for any of the target groups you will need to also assess whether that negative potential impact is high, medium or low – see glossary in the attached guidance notes for definitions.*

1.

a) Identify the potential impact of the policy on men and women:

Gender	Positive	Negative (please specify if High, Medium or Low)	Neutral	Reason
Women			x	
Men			x	

Whilst this data shows that in relation to this particular transfer that over 90% of transferring employees were women it does not follow that there will be a negative impact. TUPE is intended to protect those employees and the new employer has limited scope to change terms and conditions. Notwithstanding this the uncertainties that staff face are acknowledged and there are actions that staff and trades unions can take should they be unhappy with treatment by the new employer. The guidance suggests that Chief Officers ensure that robust contract terms are contained in the contract to ensure that contractors comply with TUPE regulations and the Code of Practice on Workforce Matters.

b) Identify the potential impact of the policy on different race groups:

Race	Positive	Negative (please specify if High, Medium or Low)	Neutral	Reason
Asian (including Bangladeshi, Pakistani, Indian, Chinese, Vietnamese, Other Asian Background – please specify _____ )			x	
Black (including Caribbean, Somali, Other African, Other black background – please specify _____ )			x	
White				

(including English, Scottish, Welsh, Irish, Other white background – please specify _____)			x	
Mixed Dual heritage (White and Black Caribbean, White and Black African, White and Asian, Other mixed background - please specify _____)			x	
Other (please specify)			x	

This is slightly below the compendium figure for BME employees in the workforce which is 6.83% as of December 2007.

c) Identify the potential impact of the policy on disabled people:

Disability	Positive	Negative (please specify if High, Medium or Low)	Neutral	Reason
			X	

(See \*)

d) Identify the potential impact of the policy on different age groups:

Age Group (specify, for	Positive	Negative (please specify if High, Medium or	Neutral	Reason

example younger, older etc)		Low)		
			x	

Representation in the workforce by age is :

16-24 4.22%  
 25-49 61.83%  
 50-64 32.29%  
 65+ 1.66%

e) Identify the potential impact of the policy on lesbian, gay men, bisexual or heterosexual people:

Sexual Orientation	Positive	Negative (please specify if High, Medium or Low)	Neutral	Reason
Lesbian			x	
Gay Men			x	
Bisexual			x	
Heterosexual			x	

No BCC data available

f) Identify the potential impact the policy on different religious/faith groups?

Religious/ Faith groups (specify)	Positive	Negative (please specify if High, Medium or Low)	Neutral	Reason
Buddhist			x	
Christian			x	
Hindu			x	
Jewish			x	
Muslim			x	
Sikh			x	
Other (please specify)			x	

No BCC data available

g) As a result of completing Question 1 a-f above what is the potential impact of your policy?

**High**

**Medium**

**Low**

**If you have assessed the potential impact as HIGH you must complete a full Equalities Impact Assessment**

**Insufficient data currently exists but it is recommended that monitoring of staff transferring out of BCC is undertaken (see 6 above).**

2. Could you minimise or remove any negative potential impact that is of medium or low significance? Explain How.

**All contractual terms and conditions of employment transfer to the new employer with limited scope for changing these. There is no evidence that the impact of any transfer will be positive or negative.**

**Guidance notes stipulate that the Chief Officer/Head of Service should ensure that mechanisms are in place for monitoring the performance of the contract and that the contractor/new organisation meets it's statutory requirements in terms of it's employees. A monitoring officer should be appointed.**

**There is a dispute procedure entitled; Alternative Dispute Resolution Procedure which is a legally binding procedure to be followed if a transferred employee considers that TUPE regulations have been broken.**

**Ultimately, an employee can take out a grievance or refer breaches to an Employment Tribunal.**

Race:

Gender:

Disability:

Age:

Sexual Orientation:

Religious/Faith groups:

3. If there is no evidence that the policy promotes equal opportunity– could it be adapted so it does? How?

**(\*)Guidance notes stipulate that HR Advisers should identify disabled**

**staff on the transfer list to ensure that any reasonable adjustments are identified and implemented ahead of the transfer.**

**It is recommended that employees TUPE transferring out of the city council are monitored by way of the spreadsheet detailed in related guidance section of personnel policies & procedures on the Intranet.**