

BRISTOL CITY COUNCIL

HUMAN RESOURCES COMMITTEE

For Information

21 January 2010

Report of: Robert Britton, Service Director: Strategic HR & Workforce Strategy

Title: External Contracts - TUPE Monitoring

Ward: N/A

Officer Presenting Report: Employee Relations Manager

Contact Telephone Number: 0117 922 2215

RECOMMENDATION

That the Committee note the current arrangements for monitoring of TUPE Contracts, which requires the appointment of a client side Contract Monitoring Officer for each service externalisation.

Summary

Following a public forum item in October 2009 from the Trade Union, the Chair suggested that officers should review and assess whether it would be appropriate for a monitoring report to be prepared, covering all outsourced contracts.

The significant issues in the report are:

- That there is a Contract Monitoring Officer appointed when TUPE (++) occurs. It is the responsibility of that officer to monitor the performance of the contract and deal with any employment related issues which come to our attention, with the support of appropriate officers e.g. Legal, HR or Pensions Officer.
- We have considered whether we could prepare a monitoring report of

all outsourced contracts but have had to discount this on the basis that there is no capacity within HR to carry out this piece of work. There is also no available funding to recruit someone to undertake this work.

- That employment related issues should firstly be raised with the Contract Monitoring Officer and/or HR. It is not appropriate for personal details to be discussed at Public Forum items. If any Trade Union Representative is subsequently unhappy with the conclusion of the issue, they may address their concerns directly with the 3 party group leaders for HR Committee.

1. Policy

- 1.1 Comprehensive TUPE guidance exists to support managers and HR Practitioners involved in TUPE situations. This guidance reflects the current legal obligations and suggested good practice.
- 1.2 As indicated previously, when TUPE occurs a Contract Monitoring Officer is appointed to over see and monitor the contract for its duration. It is the responsibility of this Officer to respond and deal with any employment related issues arising with the support of other officers as appropriate, e.g. Legal, Procurement and HR.
- 1.3 The Trades Union, individual employees or Staff Representatives also play an important role in bringing issues to the attention of the Council, as they have done to date.
- 1.4 To date, the Council has responded to all concerns raised and resolved the pay and pensions issues which have arisen. The most recent issue which was raised at HR Committee has also been responded to. In the event that there are still concerns arising, a meeting/discussion will be offered with the Contract Monitoring Officer.
- 1.5 It should be noted that many employment related issues appear to be raised first with HR Committee through the Public Forum item rather than addressing concerns initially with the Contract Monitoring Officer and/or HR.
- 1.6 The views of the Corporate Procurement Manager have been sought regarding the possibility of Corporate Procurement providing an overview regarding contract monitoring, particularly where TUPE issues arise. His response is:-

“The only involvement in this we have had was when we were asked about monitoring officers - and we have no knowledge. I believe the information was supplied by legal officers.

I have not been asked for any information on how contract management could be covered. This is not something CCPS could take on (given current resources/priorities)”.

2. Consultation

2.1 Internal

The views of Legal Services and the Pensions Officer have been incorporated into this report.

2.2 External

The Corporate HR Manager has contacted the GMB Regional Officer responding to concerns identified by the GMB at a previous HR Committee meeting as follows:

“Just a reminder that you were going to let me know the companies where you have problems with compliance. This followed our meeting on 26th November where we agreed that the Council would write to contractors reminding them of their obligations in respect of the workforce that transferred from the council.”

3. Context

3.1 The Council has a significant number of outsourced contracts.

3.2 Consideration has been given to the request for a monitoring report. In order to provide this report, a dedicated officer would need to be recruited to programme and monitor all the outsourced contracts from resources which we do not currently have and are unlikely to be able to dedicate moving forward. In order to assign dedicated resources, additional funding would be required.

3.3 Effective arrangements exist for issues relating to outsourced contracts/TUPE (++) to be addressed, please re-refer to Policy Section 1.1 to 1.3).

4. Proposal

- 4.1 We continue with current arrangements for contract monitoring through the Contract Monitoring Officer.
- 4.2 Any concerns arising from the operation of the contract should be raised with the Contract Monitoring Officer, who in turn will involve other officers as appropriate e.g. HR, Legal, Pensions Officer.

5. Other Options Considered

- 5.1 Please refer to point 3.2 above.

6. Risk Assessment

- 6.1 As there is a responsible Contract Monitoring Officer assigned to all outsourced contracts, the risk is minimal. Employees also have access to the STS to log any issues of concern. Trade Unions may also raise issues of concern with the Strategic HR Manager.

7. Equalities Impact Assessment

- 7.1 Not applicable.

Legal and Resource Implications

Legal

There are no direct legal implications arising from this Report. The Council's TUPE Guidelines document should be referred to when dealing with a TUPE transfer involving Council staff.

Advice from Husinara Jones for Head of Legal Services

Financial

(a) Revenue:

There is no budget available to fund the production of a monitoring report, nor any additional funding expected to be available in the current

financial environment. If a report is required, existing staff will need to be reprioritised.

(b) Capital:

Not applicable.

(Advice from Steve Skinner, Finance Business Partner DCX, Resources & Transformation)

Land

Not applicable.

Personnel

As set out in paragraphs 3 and 4 above.

Appendices

None.

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
Background Papers:**

None.