

Human Resources Committee Agenda



Date: Friday, 5 March 2021
Time: 10.00 am
Venue: Zoom meeting

E-mail: democratic.services@bristol.gov.uk

Date: Thursday, 25 February 2021



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Agenda

4. Public Forum

NB. up to 30 minutes is allowed for this item

(Pages 3 - 15)

Any member of the public or councillor may participate in Public Forum. The detailed arrangements for so doing are set out in the **Public Information Sheet** at the back of this agenda. Please note that the following deadlines will apply in relation to this meeting:-

Questions - Written questions must be received 3 clear working days prior to the meeting. For this meeting, this means that your question(s) must be received in this office at the latest by 5 pm on 1 March 2021

Petitions and Statements - Petitions and statements must be received on the working day prior to the meeting. For this meeting this means that your submission must be received in this office at the latest by 12.00 noon on 4 March 2021.



Human Resources Committee

5 March 2021

Public Forum Items



Statements

Name	Subject
01 - GMB Jeff Sutton	Proposed TUPE transfer of BCC staff to BWC
02 - UNISON Tom Merchant	Proposed TUPE transfer of BCC staff to BWC
03 - UNITE Steve G Davies	Proposed TUPE transfer of BCC staff to BWC





Submission to HR Committee 5th March 2021 – **STATEMENT NUMBER 1**

TUPE transfer of Cleaning and Security to BWC

There are a few points that the GMB would like to raise a few issues that come out of a statement from David Martin to staff who may be TUPE'd out as well as John Walsh's report.

JW report–

Background

A concept proposal was originally presented to BCC by BWC on Thursday 19th September 2019. The concept proposal came from BWC as an attempt to expand their business in line with their business objectives and expertise- and the identification that the council could benefit from a different approach to some FM service delivery. This was presented to the BCC commercial team, who have subsequently been disbanded. The FM services covered by the proposal were transferred to workforce and Change in February 2020. There was a re-engagement in February 2020 from BWC with relevant team members in BCC. Following this there was an agreement made (underpinned by a letter of intent from BCC) to explore the proposals further and enter into a Due Diligence phase to ensure that the proposals offered value for money. Bristol City Council representatives have been working with the management team from its teckal enterprise Bristol Workplace (an operating division of Bristol Waste) over several months, to determine the feasibility of introducing an integrated facilities management (FM) service.

GMB

When these services were transferred to Workforce and Change there was constant dialogue between Management and staff about reviewing the service, re-grading the jobs, revamping Operating procedures etc. to make the Services fit for purpose.

We, the Unions were engaged with and there was a positive spin put on the future of these staff by Management. The possibility of outsourcing was asked and denied.

The day following our last such meeting the TUPE transfer was announced! You can see why we are suspicious of the whole project.

JW

A BCC internal governance board was set up during the Due Diligence phase composed of key team members representing FM, Legal, Procurement, HR, Finance and IT. The purpose of this group is to scrutinise the proposals in order to reach a decision about progressing forward to cabinet. The internal board made a unanimous decision on the 27th October 2020 to explore set service lines (Security and Cleaning and associated contracts), but not the entire scope of the proposal by BWC, but with agreement that other service areas could be explored in the future.

We would like to know and need to know what other services were originally in scope and will eventually be looked at to be TUPE'd over.

JW

Additionally, the service team and people involved in the delivery have access to wide ranging opportunities for career development, training, rewards, recognition and other organisational benefits.

DM

Over time, Bristol Workplace intends to bid for additional work and grow the business further. Bristol Workplace is committed to investing in its workforce by providing continuous career and development opportunities, offering training and mentoring, and introducing apprenticeships. Bristol Workplace is also keen to support employee health and wellbeing through wellbeing workshops, helpline, regular bulletins, mentoring programmes, health and lifestyle plans, and exercise programmes

GMB

We fail to see why the staff concerned cannot achieve these benefits by staying with BCC. Isn't BCC investing in its staff, supporting their health and wellbeing. Don't we provide all of the above a BCC?

Do BWC offer flexitime and Carers Leave?

JW

The integrated service team will introduce specialist management and service personnel from BW, together with BCC service personnel that will be transferred into BW employment. This provides a single management approach that will be focused on serving the BCC 'soft' FM service needs, including the training and development of this team in modern service techniques and best practice. BW will invest in the introduction of new service equipment and technology; it will manage all of the services working closely with the BCC executive management team.

GMB

Aren't the specialist management team from BCC failing to do their job? If the BCC management of FM were up to the job would we be in the position we are now? Or is this down to previous

management who stopped the provision of training, stopped recruitment, decided not to tender when school cleaning contracts came up, who ran the service with an insufficient number of managers and both under a climate of fear. Those people may have gone but their legacy is here now and has not been redressed.

Working closely with the BCC executive management team – who are too far removed from the shop floor to have a real understanding of what is going on. Time after time BCC Executive and Senior managers fail to engage with the workers on the ground, who know what is going wrong, where the savings are and how to achieve them.

This is part of the reason why David Martin said at the previous meeting they use 24 different suppliers some to supply chemicals and equipment, some to make up shortfalls in staff and to provide services they no longer can provide themselves.

JW

Summary

There has been a collaborative approach to ensuring that the proposals offer both value for money and confidence in service delivery. At the same time the implemented processes have allowed for proper scrutiny and challenge to be made to ensure that the correct benchmarks and baselines are in place. This will enable any potential service delivery in the future can be monitored accordingly. Should Cabinet approve the proposal, there will be a further phase of scrutiny during the on-boarding process prior to any potential transfer on 31st April.

GMB

Why hasn't the time spent on this piece of work been spent looking for cost savings within BCC? Who will be carrying out the scrutiny? Given that initially BWC will be given a 4 year contract what penalties will be in place, as with other contractors, to ensure BWC have an interest ensuring benchmarks are reached.

DM

Terms and conditions of employment

I understand that many of you will have concerns about how the potential transfer might affect your terms and conditions of employment, so please let me repeat my assurances that these will remain unchanged on transfer and throughout the life of the contract. These protections extend to all of your contractual benefits, including annual leave and sick pay entitlements, LGPS membership and redundancy terms.

GMB

It seems David Martin and BWC, who accused me of not knowing the TUPE rules didn't know them themselves

<https://www.gov.uk/transfers-takeovers/transfers-of-employment-contracts>

After the transfer

The new employer can't change an employee's terms and conditions if the reason is the transfer itself.

The new employer can change an employee's terms and conditions if the reason is an 'economic, technical or organisational reason' (ETO) involving changes in the workforce or workplace, such as a result of redundancies or a move from a managerial to a non-managerial position. The employee needs to agree to this change.

'Economic' reasons are to do with how the company is performing.

'Technical' reasons are to do with the equipment or processes the company uses.

'Organisational' reasons are to do with the structure of the company.

Employers can make changes if the employee's existing contract allows for those changes. But the transfer itself can't be the reason for change.

Positive changes

Employers can improve employees' terms and conditions if they agree. For example, they might want to increase the amount of holiday so that it's the same for everyone.

An employer can't normally impose changes - they have to be agreed by the employees or their representatives.

Dismissals

Employers can dismiss employees for an ETO reason involving changes in the workforce, e.g. redundancies. The normal rules around fair dismissals will still apply.

Further thoughts

No conversations have been had with these services internal (BCC) customers to seek their views or support. What we do know is the Head of Housing Management, with the total support of the management team, is keen to discuss with David Martin the insourcing of cleaning staff into the Sites and Estates (caretaking team). We understand David has pushed this discussion into the long grass. This may be because of the potential loss of 360k may have in the transfer.

The Sites and Estates manager recognises the existing problems his team has managing existing contracts his team has with BWC, compounded by the lack of any written contract or penalty clauses.

The GMB has previously broached this possible transfer to BWC blue collar Management who were shocked as they feel they (white collar management) can't cope with the work they currently undertake.

Going back to my earlier comments around what other services could be in scope – BWC currently undertake grounds maintenance, added to the cleaning will be the Caretaking service. Also they are undertaking some IT work for BCC so this section may well be on the list.

Finally what influence do you have over the decisions made running of the teckals? An overview? Can you make changes to their Policies, term and conditions of employment? Don't we all agree that if they are companies who are wholly owned by BCC they should be bound by BCC Policies, subject to the same scrutiny, the staff have the same rights of appeal to yourselves?

And now finally as regards financial returns to BCC – when I asked Tony Lawless he sates they had returned about £1.75m a year each of the previous 2 years.

This money had come from the HWRC – Household waste recycling Centre which BCC transferred some 4 years ago so not exactly a financial gain. Added into this equation is the £2.84m that BCC is paying for the upgrading of these facilities so a net gain of 516k after 3 years.

Is the mayor's ultimate plan to put all non statutory services into various teckal's ready to sell them off when times get hard?

In conclusion far more time and effort has been spent has been spent looking at 'insourcing' these services than ever was spent improving them within BCC. Successive managers have allowed the services to be under resourced, not tendered for new business or to keep existing business when contracts where to be renewed. These services have been run into the ground by management in the past and now the existing management just want to wash their hands of them and let the staff suffer the consequences.

Jeff Sutton

GMB

Chair

Avon and Wessex Branch

STATEMENT NUMBER 2

UNISON Statement

Statement for HR Committee Starts:

The issues are quite complex and I thought, after the last committee, that it might be helpful to unpick some of the issues.

What we are describing is not whether or not management has consulted with staff correctly or has followed the law as set out in the Transfer of Undertakings Protection of Employees regulations (Tupe). Or whether management has followed the rules of correct management / staff relations. What we are talking about is whether it is right (because of loss of rights or plain ethics) for a council such as ours to make the decision to order a permanent transfer of staff from the public sector to another company, whether that company is owned by BCC or not. The decision has not been made yet and we are asking that you choose to do the right thing, in our view, which is not to go ahead.

UNISON's position is partly ideological and partly practical. The union – by conference decision and by practice – is opposed to staff being transferred out of the public sector. It takes this position because of its historic position within the Labour movement and that movement's position is a social democratic one of using the state to protect the dignity, wages and conditions of working people (and also marginalised groups of all kinds) and even to give them an uplift from time-to-time. For a council of this kind, the roll back of protections and conditions for working people seems a very strange course to take which is causing (with other contentious matters) an unnatural disaffection within the Labour movement's ranks locally.

The practical position is because we are a membership organisation and this proposal to transfer undermines the dignity, wages and conditions of our members. John Walsh was telling the truth when he said that terms and conditions would be protected within the parameters set out by management. But terms and conditions (the way they are defined by John) form only a subset of what is the whole employment rights package.

Loss of Rights

We can take, for example, what is set out on the Acas website (the government agency that sets out basic fairness rules at work) regarding Tupe. You can see the section in italics below on this page at Acas – <https://www.acas.org.uk/employee-rights-during-a-tupe-transfer/how-your-employer-should-inform-and-consult-you-during-tupe>

'Consult' is when your current employer asks for and considers your feedback on the changes to working practices ('measures') that the transfer will bring, before making a decision. The consultation will not discuss the fact that the transfer is happening. But it could include changes like:

- *location of work*
- *the date you get paid*
- *hours of work*

For an employer that places value on equality (which BCC says it does – it has employed multiple people to monitor these values) it should think twice before going through with actions that would undermine work / life balance. The few bullet points above – location of work and hours of work

show that Tupe does not protect these fundamental building blocks of busy working people trying to get by. They are juggling the needs of family, are picking up / dropping off kids at school (and other caring needs) and BCC has traditionally supported that. Under BCC's regime those measures are to a great extent binding. Under Tupe they are not. In fact, we think this is the real reason the transfer has been proposed: management wanted to change location of work and hours of work of their cleaning staff but were unable to make much headway because of the organisation's equality agenda.

There are also 'economic, technical and organisational changes involving a change in the workforce'. A technical term within the regulations –

[...] any purported variation of the contract shall be void if the sole or principal reason for the variation is—

(a) the transfer itself; or

(b) a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce.

And can be found here – <https://www.legislation.gov.uk/ukxi/2006/246/regulation/4/made>

There are some double-negatives here, but if you unpick them it means that variations of contracts are perfectly possible for those three reasons. The idea that *all* your rights and conditions of work are set in stone at the point of transfer is false.

There are other areas which I have set out to you before which are not necessarily covered by the terms and conditions defined by John: pensions, future pay increases, work-life balances, potential harmonisation (quickly or not), possibly fewer opportunities using different pay bands, the awful Bradford Factor to decide when and how to dismiss for sickness, loss of national pay bargaining, removal from the green book entirely, obviously relocation but not just base but also where they are posted, the right to have access to the councillor appeals committee when they are dismissed to get an unbiased opinion; and lastly – in my opinion - the equality policy is not as good as ours. Did I mention rotas? Most of the HR policy corpus will be replaced by that of BWC. And we know this because we asked if it would.

If, when BWC was set up, the company had been set up with all staff getting the same terms and conditions as Bristol City council staff and for those terms to be matched each year there might not have been as much suspicion from our members as there has been.

I have included, for reference, my previous statement should that be useful to the committee.

Thanks,

Tom Merchant,

Branch Secretary, Bristol UNISON

Previous statement for reference purposes:

A mere twenty-four hours after I wrote to political stakeholders regarding our opposition to the outsourcing of our members, management announced that they were thinking of outsourcing Bristol City council's security and cleaning staff to the Bristol Waste Company. It was not unexpected by

myself but it was a shock to some of my colleagues. We had been officially told that there was no plan to transfer these staff and some of my colleagues were annoyed at seemingly being misled.

Several senior people connected to the council have shown some surprise at our position regarding this outsourcing; after all, "we own" the Bristol Waste Company. BWC's terms and conditions, in my opinion, are not as good as Bristol City council's. As has been pointed out the transferred staff will retain their main BCC terms and conditions. However there are possible stings in this tail -

- those terms are not guaranteed forever and over time may "harmonise" with the company;
- other terms of their employment are not protected such as where they are posted and what particular hours they do;
- flexible working and reasonable adjustments can be changed;
- they are likely to be subject to the Bradford Factor which tends to lead to dismissal for ill-health quicker than our own system;
- all new staff will not receive the same terms that their workmates will get; and
- pay and conditions going on from the point of transfer will no longer be subject to national pay negotiations nor the same gender, equal-pay job evaluation.

Therefore their broad terms can't immediately change; but, how you work, where you work, when you work, when you get warnings for sickness or how you can be dismissed, can. So, a single-mum with caring needs that has a certain amount of leeway (the scope of which is sadly shrinking at BCC) to take account of those needs may find that that leeway might be up for grabs when she transfers. The same goes for staff with disabilities. Some might argue that that is not the role of a business to give leeway for people with difficult social positions, but the equality agenda has made it clear that it is and when we take into account the authority's duty to promote equality then transferring staff out is not what we should be doing. When I asked specifically about work/life balance and reasonable adjustments I was told that BWC's policy would apply and not BCC's, even under Tupe.

Besides, if we own BWC why do the basic conditions seem poorer than those enjoyed by BCC?

The affected staff are very angry indeed over this and we don't see why we should be shielding anyone from what is an understandable disaffection on the part of our members.

Flexibility

The argument has been made that using a Teckl company frees the council up as far as modern, flexible service delivery is concerned. We don't see why modern and flexible services can't be delivered in-house. (The same can be said, incidentally, regarding the energy department transfer.) Our role is not to put obstacles in the way of efficient services but to promote fairness, protect work/life balance; push for equality, decent wages, and health and safety. We have been misrepresented as promoters of Spanish practices and old-fashioned services. I promote the latest good practice; I simply oppose attacks on the conditions of the ordinary working man and woman, which we, at least, still endeavour to represent.

"In-Sourcing"

The argument has been made that this is not outsourcing but in-sourcing: that is, staff will be transferred from one block of staff controlled by Bristol City council to another. In BCC, staff have

the protection of national pay negotiations and the green book, which BWC does not seem to have. Our reps at BWC tell us that the equality set-up is not good enough but they were told, when they asked, that they couldn't have Bristol City council's even though BCC owns them.

But BWC staff look up to Bristol City council standards and wish they had them, even with all the problems that we have. But if you look at the scope of ethical and equality safeguards in BCC you can see why they would want the opportunity of such engagement.

In BCC we have safety committees at all levels and a corporate safety committee with councillor oversight. We have joint consultative committees at departmental level so that staff and unions can talk to each other about change. Covid-19 has modified some of this but compensatory consultation takes place. Above the JCCs is the corporate joint consultative committee that is run jointly with unions and management and considers matters that can't be resolved and then reports to the HR committee that has councillor oversight.

Staff can appeal to the councillor-run appeals committee if they are dismissed for whatever reason. There is a wellbeing board and a new equality board that has staff engagement. There are staff-led groups that allow staff from traditionally underrepresented groups to input into the larger strategy of the organisation. There are a multitude of equality-focused staff ensuring that BCC takes steps to reduce inequality at all levels.

And these processes tend to meet six-weekly or quarterly so it is not overly bureaucratic: it is in fact workforce engagement and supposed to be the standard in any organisation.

BWC has a small fraction of all this. The process of transferring staff to BWC risks creating a two-tier workforce. And as staff who have transferred retire or are dismissed, new staff are appointed on contracts that are less favourable because they have no protection from Tupe, which is more two-tier workforce. You could argue that it all becomes a three-tier workforce with those on base-level terms from BWC, those with some BCC protections but working under BWC management and BCC staff.

The Market

Finally, the only time staff like a Tupe is when the company is failing and someone steps in to take over, which is not the situation now. The rest of the time staff who face transfers feel like they are bought and sold like cattle and though this phrase really upsets HR it is how the staff feel and I don't see why I should be shielding the organisation from this level of disappointment from so many staff.

STATEMENT NUMBER 3

Delivery of Cleaning and Security Services

I must write to register the objection of Unite the Union over the proposal to transfer these services and staff from Bristol City Council (BCC) to Bristol Waste Company (BWC). The grounds for this are

1: There is no evidence that BWC have the knowledge skills or experience to deliver the services and efficiencies that are promised by BWC if there was the will and the commitment from management to invest in these services in a manner that they have previously not shown.

3: This is privatisation under any other name, there are a plethora of examples of Privatisation failing in the public sector and the public are the ones who always have to pick up the Bill.

4: the staff involved are all staff, who have continued to come into work keeping the council and it's estate safe and clean deserve to be treated with the respect that Council leaders claim to have for them, rather than to be moved to another company with inferior terms and conditions and less job security. It is possible to argue that these services have not been well looked after in the past and are now in a position where this outsourcing is a possibility due to the failure of the council to manage them properly and certainly not the fault of the staff who will all be put at risk.

If we look at the Corporate Strategy alignment: (P2) of the delivery pathway it lays out their intentions and is very concerning for the staff involved and the staff for whom they provide services.

1; Workplace Organisational Priorities. The savings made here by the integrated service model approach will reduce FTEs and therefore support the corporate strategy. When the Unions were first approached about this we were assured that this was not about reducing staff but more efficient working. This information is contradicted in the very first point.

2; One City plan is about investment in the correct tools, BBC could and should have done this for several years and has failed to do so. Rather than address its own failings BBC now seems intent on passing that responsibility to someone else.

3, Well Connected. It appears that BWC are going to be sending staff to local work. This already happens many of our staff in these areas live and work locally and where they don't BWC will not be in a position to offer a better service in this respect in any manner that I can see.

4; Well-connected This again is about investing in technology for staff these are things for which staff have been crying out for years and BCC management have never been interested or possibly imaginative enough explore this. The fault does not lie with the staff but the management this is the issue that should be addressed.

5; Wellbeing, Cleaner air. If BCC is not intending to be doing everything that BWC promises on this item, well shame on them. BCC should be leading the way here with its own resources.

6; Wellbeing Embed health. Once again it is shameful the BCC is not leading the way and considers that somebody else will be able to deliver wellbeing to our staff better than we can,

7; Fair and inclusive. Historically BBC has not invested in these services and they have worked through without this level of commitment to staff development. BCC has a large apprenticeship levy available to it to invest in its own staff and it should be grasping the opportunity to become an employer for whom people want to work because they feel respected and invested in.

8; Covid Recovery and Renewal. I fail to see how putting layers of a different organisation in place will enable a more rapid response than BCC could deliver itself. There are already mobile teams that with a small amount of tweaking could deliver all that is talked about here and more.

9; Covid Recovery and Renewal. The crux of the matter is savings for which there is little evidence, many are deliverable within the service we have with good investment and a commitment to the staff.

10; Covid Recovery and Renewal. This will allow BWC to bring in additional income from outside sources. Security services does already carry out some external work and has looked at commercialisation in the past. This is indeed an opportunity to expand the service but the appointment of a good commercialisation officer within BCC would enable this. It feels more like this is the driver for BWC as the more work they have from BCC the more work they can do from outside the organisation. BCC staff should be used as a tool in the expansion of BWC.

11; Workplace Organisational Priorities. Once again this is about underpinning BWC not delivering services to BCC. It is not the job of BCC to prop up a TECKAL company.

12; Climate Emergency Action Plan. Once again this is about using sustainable and environmentally responsible products and equipment. Again BCC should be leading by example, showing the world that this is what we do, not what we're having others do for us.

13; Corporate Landlord- Again I fail to see how externalisation and adding another layer between the organisation and its buildings can possibly deliver greater consistency. We should talk to ourselves between the departments that we have.

City Benefits

1; Equalities and Diversity

BWC lays out a set of highly commendable principles over equality and diversity that I would expect to be second only to those of BCC within Bristol. Importantly within that BCC as an organisation should be the exemplar here. Looking at the Equalities Impact assessment for this it appears that there is a disproportionately high number of women and ethnically diverse staff affected by this particularly in cleaning services this looks very much like it is targeting those staff..

2; Health and sustainability. There are a lot of words about mental health and buddying, but there can be no hiding from the fact that the sickness policy off BWC is less favourable than that of BCC and despite ant TUPE regulations this will have an effect on our staff even if just through the immediate two, potentially 3 tier workforce and the inevitable tensions therein.

3; Social Value, BWC adopt and operate the same social value policy as BCC. #while there may be no detriment, there is clearly no benefit either.

I am critical of the historic management of both of these services and have been for some time, they have had a very old school local authority style of management for many years. In the last few there have been some attempts to address this and move them forward.. I was hopeful when the current management came in but it now feels very much like their role has been to identify what was needed and package the service up to be externalised. The Unions have for all of this process been assured that there is no agenda for privatisation. It appears that there is now a semantic argument whereby we staff and Unions are expected to believe that this is not privatisation due to BWC's status. To the staff it feels like privatisation, to the unions it looks like privatisation and to many Councillors it appears to look like privatisation. Staff have has convoluted conversation where

they've asked if they're not to be working for the council who are they working for if not a private company and they've walked away more confused than they were when they started. Who knows what the status of companies such as BWC will be in three years' time? The relative job security that comes with working for BCC is of huge value to staff, the fact that they feel BBC is truly accountable and will look after them is a major factor when looking for work. This undermines the faith that staff have in that and sends a negative message about how BCC treats its staff.

There has been consultation That consultation was on the terms under which the staff will transfer, there has been no consultation with staff or unions as to whether or not they should.

This feels like a real slap in the face for hard working dedicated staff who have come in to keep their colleagues safe all the way through the pandemic and I feel that the council should put the same level of commitment into their services in house that they would expect BWC to rather than expect someone else to do it for them.

Steve Davies

Unite the Union