

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.