

TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT)
REGULATIONS : TUPE TRANSFER OF MENTAL HEALTH SOCIAL WORK STAFF

To: Cabinet

Date: 22nd February 2011.

From: Rod Craig

Electoral division(s): Countywide

Forward Plan ref: 2011/21 *Key decision:* Yes

Purpose: To outline the case for the approval of the TUPE Transfer of Mental Health Social Work staff to Cambridgeshire and Peterborough NHS Foundation Trust (CPFT).

- Recommendation:*
- a) To approve the TUPE Transfer of Mental Health Social Work staff to CPFT NHS Trust, in principle, to allow the next steps in the process to progress, including consultation with the staff affected.
 - b) To report back to Cabinet in April for a final decision following the consultation with staff affected.

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1. BACKGROUND

- 1.1 Cambridgeshire County Council continues to employ 41 social work staff seconded to work within the Cambridgeshire and Peterborough Foundation Trust (CPFT). The staff work across the Adult and Older Person's Mental Health Services.
- 1.2 The secondment arrangement has been in place for eight years since the health and social care services were first integrated in 2002 with the newly created Mental Health Trust.
- 1.3 At the time of the secondment of staff to establish integrated mental health teams there was a legal requirement, under the Mental Health Act 1983, for Local Authorities to employ qualified social workers who were also trained and worked as Approved Social Workers. This situation changed with the **Mental Health (Approved Mental Health Professionals) (Approval) (England) Regulations 2008**. These regulations introduced the new role of Approved Mental Health Professional (AMHP) which allows greater flexibilities in the range of professionals responsible for patients detained under the Mental Health Act 1983. The approval of AMHPs is still the responsibility of the local social services authorities, but does not require the local authority to be the employer. The regulations came into force on 3 November 2008. This change offers the Council the opportunity to reconsider the existing secondment arrangements.
- 1.4 The Social Care provision within the Adult Mental Health Service was reviewed by Melanie Brooks, Interim Head of Mental Health in August 2010. Findings from the social work review October 2010 have indicated that the current arrangements present a number of issues both operationally and for Human Resources Management.
- 1.5 This paper sets out those issues and makes a case for the full TUPE of staff to the Trust.

2. MAIN ISSUES

2.1 Summary of the Findings of the Social Care Review

- 2.1.2 Managing staff through dual Human Resources processes leads to inefficiency and frustration, both by managers and staff. It is estimated that operating within the two systems accounts for 10% of their workload. A particular pressure area is in the recruitment of staff.
- 2.1.3 Staff members report a feeling that they are not owned by either organisation. Staff are not always communicated with effectively as employees of the Council, as they are managed in integrated teams, where the majority of the managers are employed by CPFT.

- 2.1.4 Team managers within the Trust struggle with divisions between operational and professional management which is complicated by employment accountability to the Council. This leads to poor management of staffing issues at times. For example poor management of sickness absence due to non-compliance with Council reporting systems.
- 2.1.5 Social Workers do not have equal terms and conditions with other professionals within the same team who carry out equivalent roles and duties. This has created staff unrest, as described in 2.2. The lack of parity in pay has led to poor recruitment and retention of staff.
- 2.1.6 There is a need to review job roles, skills mix and career progression for staff to reflect modern social work practice. TUPE would provide an excellent opportunity for this work to be carried out in an integrated way.

2.2 Staff Concerns on pay and conditions

- 2.2.1 Management recently met with the social work staff who had raised concerns about their pay and conditions.
- 2.2.2 The main source of grievance is that their terms and conditions are below that of NHS colleagues performing similar roles within CPFT. TUPE would provide an excellent opportunity for staff to be transferred and then for their terms and conditions of employment to be harmonised.

2.4 Unison View

- 2.4.1 Unison have expressed the view that it is difficult to see how Cambridgeshire County Council (CCC) remain legal employees of the Mental Health Social Workers and that a transfer to the Trust is inevitable. Unison are pushing strongly that we should proceed with TUPE as soon as possible.

2.5 Human Resources (HR) Best Practice

- 2.5.1 Due to the way the teams are set up within the Trust there appears to be a lack of clarity around what lies under professional supervision provided by senior social workers and from team management for individuals. This has allowed issues to slip as there is no clear demarcation of accountabilities.
- 2.5.2 Trust managers are expected to use different employment policies which causes difficulty and, at times, confusion. The roles of CCC managers and Trust managers are different and supported by different levels of back office support.
- 2.5.3 Employee engagement can be difficult. For example, the last CCC Staff Survey proved problematic to distribute as it was facilitated by email and many CCC employees only have access to Trust IT. This prevents CCC employees being kept up to date with Council business and their access to policies that are part of their contractual employment.
- 2.5.4 Data protection of the information retained by CCC has led to some difficulties. For example, recently CCC were asked to provide personal details for CCC employees for a Trust survey. To release this information CCC would have needed to contact all the employees concerned and to ask if they agreed to their details being passed on.

Because of the timeframe for the survey, this resulted in the Trust being unable to include the social workers views in the survey.

- 2.5.5 At times there is a duplication of work for Trust managers, for example a dual reporting system for sickness. This also impacts on the Trust administrative staff, who are required to be aware of, and adhere to two different systems for administering sickness, overtime and other practical matters.

3. NEXT STEPS

- 3.1 Pending the in principle approval by Cabinet, it is proposed that the following steps be undertaken to progress this work:

- Further negotiation with CPFT to inform the process for the review of job roles, skills mix and career progression and application of the Agenda for Change pay structure
- Modelling the potential impact of the application of Agenda for Change pay structure in terms of available budget and staff numbers
- Preparation for and launch of the consultation with staff and Unison
- Recommendations following the consultation to be reported to a future Cabinet meeting.

4. SIGNIFICANT IMPLICATIONS

4.1 Resources and Performance

- 4.1.1. It is not clear if the CCC employees will wish to harmonise terms and conditions if a TUPE was to go ahead. However, this is likely given that in most cases there would be a financial benefit in terms of the payscales they would transfer to. There are financial implications connected with a harmonisation process. This is currently being costed. However, there are a number of long-term vacant posts which could be deleted to manage the cost pressure and to ensure that the transfer would be cost neutral.

- 4.1.2 HR have given advice and have had discussion with Unison. Should the TUPE transfer not go ahead, the Council would be at risk of legal challenge by employees. Unison have stated that they expect the transfer to proceed.

- 4.1.3 As described in 2.5 the proposal is in line with HR Best Practice.

4.2 Statutory Requirements and Partnership Working

- 4.2.1 There are no significant implications for any of the headings within this category

4.3 Climate Change

- 4.3.1 There are no significant implications for any of the headings within this category

4.4 Access and Inclusion

- 4.4.1 There are no significant implications for any of the headings within this category

4.5 Engagement and Consultation

4.5.1 Employee consultation will take place should Cabinet approve the decision, in principle, to TUPE transfer staff.

Source Documents	Location
Mental Health (Approved Mental Health Professionals) (Approval) (England) Regulations 2008	Interim Head of Commissioning, Mental Health & Supporting People