



LEICESTERSHIRE  
COUNTY COUNCIL

GUIDANCE NOTES FOR PERSONNEL STAFF ON  
ASSESSING THE STAFFING IMPLICATIONS ARISING  
OUT OF SECONDMENT AND PARTNERSHIP ETC  
WORKING

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### **GUIDANCE NOTES FOR PERSONNEL STAFF ON ASSESSING THE STAFFING IMPLICATIONS ARISING OUT OF SECONDMENT AND PARTNERSHIP ETC WORKING**

#### **INTRODUCTION**

This report has been prepared following discussion at the Partnership/Secondments Joint Working Group and with the Head of Legal Services, and is based on a paper prepared for the Chief Personnel Officer in March 2000, on the implications for employees arising from a variety of employee transfers e.g. secondment/partnership/joint working etc.

#### **PURPOSE OF GUIDANCE NOTES**

To provide Personnel Sections, who have to deal with employee transfers whether internal or external to the organisation, with general guidance sufficient to ensure that all employee matters e.g. terms and conditions of service etc. are fully discussed and considered prior to transfer of any employee/s. This document is not meant to be either a Policy or a Procedure but merely a checklist of things to consider when confronted with secondment/partnership issues.

However, as a principle the guidelines referred to in this document must where appropriate be followed.

In terms of work for other organisations it is acknowledged that there are not always employee implications however, this report is aimed at those situations where there are implications arising out of a temporary or permanent change in employee/s duties and responsibilities and/or their employer.

#### **BACKGROUND**

There are a variety of different arrangements which could have an impact on employee/s conditions of employment. These range from internal secondments to more complex arrangements whereby employees, because of a formal or informal partnership agreement, whether with public or private sector bodies, are required to transfer to work with other organisations often at a different work location.

Such arrangements are not uncommon and have been around for some time. However, this type of working can for a variety of reasons be fraught with difficulties particularly if the arrangements are not fully discussed with employees, and their representatives if appropriate, prior to the commencement of any new working arrangement.

The under-mentioned is therefore, an attempt to both identify and address the issues that arise both before and after the secondment/transfer of any employee/s.

Basically there are three types of situation as follows:-

- i) Internal Transfers e.g. within same department or another LCC department
- ii) External Transfers e.g. various types of partnership/joint working/TUPE Transfers
- iii) Transfer-In of Non-County Council Employees e.g. Consultants/Agency Workers

**i) Internal Transfers**

These are usually straightforward and require no further consideration other than to follow the principles, as appropriate, and referred to in this report detailed in the paragraph headed 'The Way Forward' e.g. consultation with the group, duration of secondment, line management, programme of work, accommodation arrangements etc.

**ii) External Transfers**

Types of external transfer include (but is not exhaustive) the following:-

Contracting Arrangements	Authorities may enter into contracts with private or public sector bodies for the delivery of services. Where there is an externalisation of a County Council service (usually after a tendering exercise) a TUPE situation is likely to arise; however, this will depend on the details of the partnership arrangements.
Agency Arrangements	Authorities may make arrangements under Section 101 of the Local Government Act 1972 for other authorities to act on their behalf in discharging functions. Highways Agency Arrangements with District Councils are an example. Again, this may give rise to a transfer of staff.
Joint Committees	Two or more authorities may arrange for joint provision of services and for a committee to be created to manage that arrangement. The consequence for staff will vary from one such arrangement to another. It may be convenient for one authority to take responsibility as the employing body for staff delivering the services on behalf of the other authorities. This is the approach which has been taken in the ESPO agreement

Creation of a Company	A company is a body with a separate legal entity. There are particular rules governing the setting up of companies which are described as being "controlled" or "influenced" by local authorities. However, they remain independent of the local authority and will employ their own staff. Secondment may be used as a means of assisting the company in the early days of its operation. It is likely that, as matters progress, the company will wish to employ its own staff.
Consortium Arrangements	A number of authorities, or other bodies, may arrange to work together without giving up their autonomy in their particular areas of responsibility. In practice, one authority is likely to be identified as 'lead' or 'host' authority and staff may be seconded to that authority. The YOTS service is an example of a consortium arrangement.

Clearly this is the more complex area and may well include TUPE. The effect on staff will depend primarily upon whether the identity of the employer has changed. Where an employee transfers, this will be the case. Whether the terms and conditions of staff remain the same will depend upon the application of the TUPE Regulations. The right to membership of the Local Government Pension Scheme is not a right which will transfer when the TUPE Regulations apply. The new employer may have admitted body status for the purpose of the Pension Scheme or may seek to acquire that status through an admission agreement. In other cases the County Council will have an obligation to attempt to secure that the pension scheme provided is "broadly comparable" with the Local Government Pension Scheme.

In other situations where there is no formal transfer of employees but employees are required to work with a host organisation their secondment will require careful handling. Such working arrangements may require a division of management responsibilities between the County Council, which will retain lead responsibility as the employer, and the body to whom the secondment is made. This may affect such matters as, day to day supervision, grievance, discipline and work allocation, etc.

So far as TUPE is concerned it should be noted that where the County Council's responsibilities are transferred or where the County Council relinquishes responsibilities which another body already undertakes, and TUPE does *not* apply, then a redundancy situation may arise. In such cases the County Council's Policy in the Event of Redeployment and Redundancy will apply.

In some cases where, as a result of a non-TUPE transfer an employees duties and responsibilities have changed significantly e.g. salary, contractual overtime, essential user allowance, but where there is still a job to do, it may be necessary to take the step of terminating their contract of employment and re-issuing a new contract on different terms. However, if termination is being contemplated check whether this is really a redundancy situation.

### **iii) Transfer-In of Non-County Council Employees**

This relates to employees of other organisations which, perhaps because of a joint working/partnership agreement are, of necessity, required to have their employees working on our premises. In such cases, the concern here is to ensure employees with whom they are to work are aware of the situation e.g. where they are to work, with whom, doing what, impact on the work of others, Health & Safety etc.

One other important consideration is how will matters such as Harassment and Bullying/Grievance and Discipline be dealt with.

Clearly transfers-in may not be the norm but it is just as important to ensure that the way is paved for individuals coming into the department as it is for other types of secondments.

### **MATTERS TO CONSIDER PRIOR TO ANY TRANSFER**

In the past problems have centred around a whole host of issues concerned with conditions of service and line management responsibilities. It is accepted that experience of dealing with such matters is mixed however, the consequences of getting it wrong can be serious both in terms of management time and employee morale and can affect the success or otherwise of the project and the working relations with the other organisation.

With this in mind therefore, the following checklist has been prepared in an attempt to identify some of the issues that may well confront Personnel when faced with a range of alternative working arrangements. This list is not exhaustive but it does serve to identify the possible pitfalls.

#### ***Consultation:***

- i) Employees - Enter into full and proper consultation with the employee/s concerned and the new section/department or host organisation well before the anticipated commencement of the proposed new working arrangement whether formal or informal and this also applies to any employee on maternity leave, sickness etc.

**NB** A copy of the Appendix to this document entitled 'Employee Checklist' must be handed to the employee/s affected at this stage.

- ii) Trades Unions – It is important that the Trades Unions are always consulted prior to any transfer whether formal or informal e.g. internal secondments.

**NB** All consultations whether formal or Informal should be confirmed in writing.

***Employee Selection:***

Is it obvious who is to be seconded/transfer?

It may be that the work to be transferred is currently carried out by a number of different employees in such cases operational Managers should (where possible) make use of any available staff time recording data to identify which employee/s is/are the obvious one/s to transfer. If appropriate ask the group if anyone has an express wish to transfer. It could be seen as a development opportunity. This may also avoid any unnecessary concern on the part employees.

The key here is to ensure that everyone potentially affected has sufficient information to enable him or her to make an informed decision as to whether or not to volunteer for secondment/transfer.

**NB** Any selection criteria must be clear and well publicised.

***New Working Arrangements:***

Ensure the employee/s fully understand what the new arrangement entails e.g. is it merely a temporary secondment to undertake other duties elsewhere within the County Council or is it a transfer to another organisation. Where will the employee/s be working? If it is at a new location is there an increase in travel time/cost? Are there child-care issues which could be affected by the change in their circumstances?

***Health and Safety:***

This is also a primary consideration and it is essential that Managers are advised to speak to any host organisation prior to the transfer of any employee/s. Clearly it is not appropriate to identify particular issues in this document suffice it to say that agreements reached regarding Health and Safety responsibilities, which are shared in such circumstances, should be documented. This also applies to internal transfers i.e. within the County Council.

***Exit Arrangements:***

Jobs don't stand still, organisations change therefore, ensure that the employee/s understand this at the outset. Clearly in the case of a normal temporary short-term secondment the employee would expect to come back to their old job and continue as before. However, in the case of those working in a more formal arrangement e.g. partnership/consortium, this may not necessarily be short term.

It is imperative therefore, that the employee/s are advised that should they at some future date return to their former role it may have changed either in content, location or may not even exist. In case of the latter the employee/s should be advised of the procedure for dealing with such eventualities, e.g. changes in duties and responsibilities, redeployment, redundancies, etc.

**Contract of Employment:**

Remember, whether the transfer is formal or informal the arrangements must be confirmed in writing and should include information on precisely what the job is, its duration, hours of work, notice period etc.

**Conditions of Service:**

Is/are the employee/s to work at another location and with employees of other organisations? If so it will be necessary to review their conditions of service e.g. pay, lease car, hours of work annual leave etc., and including any workplace rules e.g. no smoking policies, dress code, Health and Safety etc. It is also important not to overlook management responsibilities e.g. who is responsible for day-to-day supervision and allocation of work, and who is responsible for grievance and discipline including the composition of Panel Hearings. These may be among the more difficult to resolve. The usual starting point will be that the employee/s terms and conditions of service will apply to all major issues e.g. grievance, discipline, code of conduct, redundancy.

Experience shows that in some cases dependant upon the type of arrangement, other organisations may, for obvious reasons, wish the employee/s to be on the same terms and conditions of service as their own employees e.g. morale. The differences may not be that far apart but nonetheless this will need careful handling.

It is for this reason that consultation/negotiations should start as early as possible.

**Data Protection:**

When working with other host organisations it is important to remember that the transfer of information is not automatic. Care will need to be taken when wishing to discuss employees roles with other organisations. If in doubt contact the County Council's Data Protection Officer.

**Pension Arrangements:**

Dependant upon the nature of the transfer, its likely duration and the possibility that the employee/s job may no longer exist at the time they return, employees may wish to have an indication of the implications for their pension e.g. particularly relevant if TUPE transfer (see page 3 above).

**Insurance:**

So far as Insurance is concerned this is not straightforward. However, the following may be helpful.

Having contacted the County Council's Insurance Section the view is that our (LCC's) Insurance Policy indemnifies:-

'any joint ventures where the insured (LCC) is engaged in a joint venture which has been declared to and accepted by the Company i.e. our Insurers'

The above relates to formal agreements however, whether formal or otherwise, Personnel Staff should always ensure that the County Council's Insurance Section are contacted prior to entering into any type of partnership arrangement. Clearly this does not apply to what I have chosen to call 'internal secondments' i.e. secondments within the County Council.

***Training:***

Ensure the Manager and more importantly the employee fully understand what is expected in the new role and whether any new skills will be required. If training is required this should, ideally, be provided prior to the transfer.

***Monitoring Arrangements:***

Ensure that regular contact with any of the County Council's employees seconded/transferred to work with other organisations is maintained either by means of a formal Appraisal or regular meeting. It cannot be emphasised too strongly how important this is both to the success of the arrangement and to employee morale.

During the course of any secondment/transfer personnel issues will inevitably arise. It is important therefore, that prior to employee/s secondment/transfer line management arrangements are put in place and that these are fully understood by all sides i.e. the employee and his/her manager and the 'other' organisation/s.

In other words who is responsible for day to day management and who is responsible for dealing with grievance or disciplinary matters. In the case of grievance or discipline the panel is likely to comprise officers of the County Council and representatives of the other organisation/s; this must be made clear at the point of secondment.

***Managing Return to Substantive Job:***

In cases of long term transfer e.g. more than one month, remember to pave the way for an employee/s return i.e. ensure there is a programme of work upon their return and that other employees within the team know that they are returning.

As a matter of good management, Managers should be encouraged to speak to their employee/s at the earliest opportunity to discuss their transfer and assess what new skills have been acquired during their period of transfer.

**CONCLUSION**

Whilst the above may not be exhaustive in terms of covering all situations nevertheless it does serve to identify the many wide ranging issues that confront personnel professionals when advising operational Managers of appropriate courses of action.

Any queries relating to this document should be directed to Graham Fairchild, Principal Personnel Officer, Planning and Transportation (telephone 2657115).



