

Report for: **Staffing and Remuneration Committee**

Item number:

Title: **Homes for Haringey TUPE Transfer**

Report authorised by: **Tracie Evans, Chief Operating Officer**

Lead Officer: **Jacquie McGeachie, Assistant Director HR and SSC**

Ward(s) affected: **N/A**

Report for Key/ Non Key Decision: **Non Key**

1. Describe the issue under consideration

- 1.1 On 15th September 2015, Cabinet resolved to offer Homes for Haringey (HfH) a management agreement for a further 10 years from 1st April 2016. Cabinet noted the recommendation of the Future of Housing Review Group that those staff seconded to HfH in 2014 from Community Housing Services, where it was appropriate to do so, be transferred to HfH's employment. Cabinet also noted the recommendation of the Future of Housing Review Group that roles identified within HfH that are in the scope of the Business Infrastructure Programme and Customer Services Transformation be transferred from HfH to the Council. It was noted at Cabinet that it was likely that TUPE would apply to both transfers.
- 1.2 Subsequent work identified 17 support services posts (10 in Finance and 7 in HR) at HfH who would be in scope to transfer.
- 1.3 Advice concluded that TUPE should be treated as applying to both transfers. Accordingly, those support staff from HfH have been subject to formal engagement with a view to transferring to the Council with effect from 1st January 2016.
- 1.4 There is an agreed list of 148 members of staff employed by the Council but seconded to HfH, who are in scope to be transferred permanently to HfH. Discussions are ongoing to agree a statement of principles by the two organisations and once agreed with the unions, will be signed by all three parties. As soon as this is resolved, a period of formal staff engagement will begin, with a view to staff being transferred by the 31 March 2016.

- 1.5 The Council and HfH will formally indemnify the other against any actions or decisions taken by the other party pre-transfer. This will be achieved with the use of an agreement between the Council and HfH in respect of each transfer, which will mirror each other.

2. Cabinet Member Introduction

Not required for S&R Committee

3. Recommendations

The Committee is asked to note the content of this report.

4. Reason for decision

- 4.1. This approach is consistent with the report submitted to Cabinet on 15th September 2015.

5. Alternative options considered

- 5.1. Following the decisions to transfer the relevant staff, advice was received that the most appropriate and compliant way to achieve this was to work on the basis that TUPE applied to the transfers.

6. Background information

- 6.1. The functions within Community Housing were those residual elements of the Housing Service that stayed with the Council after the initial creation of the ALMO. Most of the functions involved work in the area of homelessness, although there are also some support functions.
- 6.2. When re-defining its operations in order to promote efficiency, the Council determined that a unified housing service would yield more efficient operations and a better service outcome. For this reason, under the project of 'Housing Unification', the Community Housing function was transferred from the Council to HfH. The existing management agreement between HfH and the Council was formally amended to reflect this.
- 6.3. During this period, the Council also wanted to re-examine its approach to future housing delivery and commissioned a review into future delivery options. This made the future of HfH as a separate legal entity uncertain. For this reason, staff carrying out the transferring function were not transferred to HfH, but remained Council employees. There was a temporary secondment agreement for the staff in question, allowing them to be seconded temporarily until the end of March 2016. This date is the end date of the existing management agreement between HfH and the Council.

- 6.4. Now that the Council has decided to offer HfH a new ten year management agreement starting on 1st April 2016, HfH would be best placed to permanently employ the staff that deliver the services it is responsible for.
- 6.5. Staff and managers within the Community Housing service have been the subject of informal communication. Formal communication meetings were arranged, but were cancelled when an official trade dispute was raised by Unison at the CEJCC meeting on 27th October 2015. The dispute lodged by Trade Union colleagues' centres on the identity of the employer post transfer.
- 6.6. The Council is currently in negotiation with the trade unions to resolve matters so that the dispute can be closed. As at the 1st December 2015 a statement of practice, draft at Appendix A, is currently in discussion by the Council, HfH and the trade unions and it is hoped that a version of this can shortly be agreed and adopted by all parties. As soon as the dispute is closed, a formal staff engagement process will begin.
- 6.7. Part of the team currently seconded to HfH is the Housing Improvement Team. This team deals with enforcement actions against private landlords, mostly in connection with Houses of Multiple Occupation (HMOs). This service transferred to HfH in September 2014 but is now subject to the Council wide review of how enforcement action is undertaken across different team. It is possible that a decision may be taken to bring this function back into the Council, which means that the 13 members of staff affected (not included in the 148 referred to above), will not be transferred to HfH. In this event, their secondments would be ended and they would remain in the Council's employ and work within a central enforcement department within the Council.
- 6.8. An exercise was undertaken to ascertain the full extent of support services within HfH. As a separate legal company, it is reasonable for HfH to retain some support services that it cannot reasonably expect from the Council, such as governance support, or a specialist company accountant. The results of the analysis that was undertaken are that 17 members of staff are now in scope to transfer to the Council.

7. **Contribution to strategic outcomes**

8. **Statutory Officers' comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities**

8.1 **Assistant Director of Corporate Governance**

The legal issues raised by this report are covered in the body of the report.

8.2 **Chief Finance Officer**

The Chief Finance Officer has been consulted on this report; given that it updates members on the proposed transfer of staff, there are no direct financial implications arising from it although clearly there will need to be an agreed

transfer of the funding associated with the various transfers of staff between the Council and Homes for Haringey.

9. **Use of Appendices**

Appendix A - Draft statement of practice

10. **Local Government (Access to Information) Act 1985**

Draft Statement of Practice in respect of Transfer of Staff from Haringey Council to Homes for Haringey (draft relevant as at 1 December 2015)

1. This Statement of Practice will be monitored by a Tri-Partite Forum between the recognised trade unions, Haringey Council and Homes for Haringey which will meet as/when required by any of the parties between the date of transfer and 1st September 2016. This forum is not a decision making body but it provides an opportunity to effectively engage on all matters related to the employment policies and practices affecting staff transferred from Haringey Council to Homes for Haringey on (insert date of transfer).
2. Nothing in this Statement of Practice shall be deemed to remove any statutory right of individuals or the parties to the agreement.
3. Homes for Haringey confirm they do not seek to harmonise terms and conditions of employment or take any other actions which would be unlawful under the TUPE regulations therefore, existing conditions of service including redundancy and early retirement provisions would remain as part of the contracts of employment of those transferred. In the event that Homes for Haringey seek in future to vary existing conditions of service these would be subject to consultation and negotiation with the recognised trade unions at the time.
4. New starters on or after the TUPE transfer will be offered Homes for Haringey terms and conditions of employment. The minimum hourly rate for any person employed shall be equivalent to the London Living wage rate as determined by the Mayor's Office annually. Homes for Haringey will remain an accredited Living Wage Employer. Homes for Haringey shall implement the London Living wage uplift in line with announcements from the Mayor's Office and any increase to the rate shall be backdated to the date of the announcement in line with Haringey Council's London Living wage policy.
5. Homes for Haringey confirms that all staff TUPE transferred from the Council will maintain their membership of the Local Government Pension Scheme or the option to join this scheme at some stage in the future. The Company is and will remain an admitted body of the Haringey Council Pension Fund.
6. Future NJC pay awards and incremental progression entitlements and any changes in the National and Regional Local Government Services agreements will be honoured under the contracts of employment of the employees transferred.
7. Any transferred employee who applies for and is successful in obtaining a new position within Homes for Haringey would be applying for that position on Homes for Haringey terms and conditions but Homes for Haringey terms and conditions would not be applied to individuals who change roles as part of a restructure where the role is predominantly similar to their current role. Any such proposals shall be subject to consultation.

8. Homes for Haringey are committed to equal opportunities, work life balance, whistle blowing and health and safety policies and have in place policies on each of these. These shall be made available to transferring staff.
9. Homes for Haringey is committed to workforce development, education and training this has been recognised by the achievement of Investor in People Gold status and Top Employer accreditation.
10. Homes for Haringey is committed to collective bargaining and will maintain both corporate and directorate consultative machinery as at present. It will continue to observe its existing facilities/recognition agreement with the recognised Trade Unions. These arrangements shall include the right to have lawful Union deductions taken at source (check off) and to be represented by a Union Official of their choosing. The right to be party to these arrangements will extend to transferred employees.
11. The Council has a robustly resourced client function to performance manage the Management Agreement with Homes for Haringey and ensure contractual and service compliance is maintained. The Council is represented on the Homes for Haringey Board at both member and officer levels
12. Homes for Haringey is a top employer. Working for Homes for Haringey means:
 - ❖ We treat our employees fairly and with respect
 - ❖ We believe in equality in the workplace
 - ❖ We consult and involve our employees in change
 - ❖ We value employees who take responsibility for providing excellent customer service
 - ❖ We value commitment to resolving housing needs in Haringey
 - ❖ We are a team and we invest in the development of our team

Signed:

..... On behalf of Haringey Council

..... On behalf of Homes for Haringey

..... .. On Behalf of Trade Unions