

Report to CABINET

GM Continuity of Service Protocol

Portfolio Holder:

Cllr A Jabbar

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Reason for Decision

The report proposes that Oldham Council adopts the GM Continuity of Service Protocol which requires signature bodies to recognise voluntarily, continuity of service where an individual voluntarily changes employer between Local Authorities and NHS employers within Greater Manchester.

Recommendations

It is recommended that Cabinet considers this report and:

- approves adoption and implementation of the Protocol from 5th April 2018, subject to formal approval by the GMCA on 29 March 2018 and following call-in period; and
- note that a financial analysis of the proposals is not possible and as such it is not possible to fully assess whether public law duties under best value and the fiduciary duty to the public purse have been satisfied. As such it is proposed across the parties to review the scheme on a tri – annual basis and /or before any major staffing review.

1.0 Background

- 1.1 In February 2015 the 37 NHS organisations and local authorities in Greater Manchester signed a landmark agreement with the Government to take charge of health and social care spending and decisions in the city region. This included a commitment to produce a comprehensive plan for health and social care.
- 1.2 In December 2015, the Greater Manchester Combined Authority and Health and Social Care Partnership Board agreed a GM Protocol for Joint Working on Workforce Matters. This Protocol recognises the vital role of our workforce in delivering high quality public services and that high quality employment in public services is crucial in the functioning of the Greater Manchester economy and society.
- 1.3 It was recognised that flexibility of employment across public services is an ambition shared by the organisations and recognised trade unions. Portability of accrued service is a key consideration for employees which must be addressed to secure such flexibility. It was agreed that a mechanism for the recognition of service would be further explored in circumstances where an individual employed within local government, the Combined Authority, or in the NHS in Greater Manchester, moves employment between those organisations/sectors on a voluntary basis.
- 1.4 Unless there is an enforced move across sectors (e.g. TUPE) continuity of service is lost where an employee voluntarily moves from local government to the NHS. Given that continuous service determines the qualification for, and value of employment related entitlements (statutory and contractual), including redundancy pay, annual leave, occupational sick pay etc., this is a key factor which could impede the flexibility of employment.
- 1.5 Continuity of service between Local Authorities is recognised by virtue of the Redundancy Modification Order (RMO); a statutory order which effectively gives member bodies “Associated Employer” status for the purpose of statutory redundancy provisions. The national conditions of service for Local Government Employees (Green Book) further recognises service with RMO bodies for the purposes of calculating entitlement to annual leave, occupational maternity pay and occupational sick pay.
- 1.6 There are no regulations that allow for service to be recognised for voluntary moves between the other sectors. To this end, the concept and possibility of voluntarily recognising continuous service across the GM NHS, Council and GMCA organisations has been discussed and progressed at the GM Workforce Engagement Board (WEB) and Strategic Partnership Board. The “Continuity of Service Protocol” was subsequently developed and approved by this board. This is attached as Appendix one to this report for consideration and approval by signatory organisations which includes Oldham Council. For Oldham Council, it is Cabinet which must make this decision because adoption of the protocol would represent a change to (and in this case, betterment of) terms and conditions of employment for individuals who move between participating organisations.

1.7 The Localism Act 2011 allows new freedoms and flexibilities for local government to make decisions, and allow elected Mayors to focus on long-term strategic decisions such as bringing together different agencies to make public services work better and attract jobs and investment to their city. The new, general power gives councils more freedom to work with others in partnership to be creative and find new ways to drive down costs.

1.8 The Localism Act includes a 'general power of competence' which gives local authorities legal capacity. Instead of being able to act only where the law says they can, local authorities will be freed to do anything - provided they do not break other laws or do something that is strictly prohibited (such as increasing taxes). The Act also gives the Secretary of State the power to remove unnecessary restrictions and limitations where there is a good case to do so, subject to safeguards designed to protect vital services.

2.0 Current Position

2.1 The Protocol represents the first step towards implementing greater flexibility and opening up opportunities for employees of a wide number of Greater Manchester (GM) public sector organisations in this first stage. It is anticipated that this will be voluntarily extended into other GM public sector organisations in the future.

2.2 The proposed Protocol is proposed to include all staff employed by:

- a GM CCG organisation
- a GM NHS body
- a GM Council (but excluding staff employed by schools)
- North West Ambulance Service (NWAS)
- GM Combined Authority and its constituent bodies
- Greater Manchester Health & Social Care Partnership
- Transport for Greater Manchester (TfGM)

2.3 At this time those employed within GM Police and the Waste Disposal Authority are not in scope. However, once these organisations formally join the Combined Authority, they will be automatically included in this or whatever is in place at the time. Wider employer groups comprising commissioned providers e.g. third sector parties, GP practices, etc, are not included.

2.4 Likewise employees within schools or within the council's partner organisations such as Unity and Mio Care Services will not be covered by the Protocol in this first instance.

Conditions of service

2.5 The aim of the Protocol is not to change terms and conditions of service for any individual organisation in scope but it will be necessary to ensure that any local arrangements that refer to continuity of service will need to take account of, and be consistent with the Protocol.

2.6 The calculation of an employee's continuous service and/or reckonable service is extremely important in determining the qualification for and value of 'time served'

entitlements as this commonly determines access and value of contractual entitlements. Within Oldham Council service the Protocol will be recognised for the purposes of calculating entitlement to annual leave, occupational sick pay, and occupational maternity pay. This reflects the rights extended to RMO body members.

- 2.7 This voluntary recognition may therefore have an impact on direct costs (sick pay costs, maternity pay etc).
- 2.8 The requirement to have 2 years continuous employment with the same employer before an employee can claim unfair dismissal remains unchanged. As is currently the case, an employee will need to demonstrate 2 years continuous employment with the same employer before an Employment Tribunal claim can be made (except discrimination claims).

3.0 Implementation

- 3.1 It should be noted that those organisations that have already applied the Continuity of Service Protocol on a voluntary basis so far report not having experienced significant increases in direct costs as a result of this approach.
- 3.2 The final GMCA report is due to be presented to the Private Leaders Meeting within the Combined Authority (CA) for approval on the 29th March 2018. Therefore approval of this report by Cabinet at this stage is still subject to the final approval of the Combined Authority.
- 3.3 Assuming approval, Oldham will need to amend the statement of particulars in order to make it clear that continuity is recognised for employers other than those covered by the RMO. In addition we will develop a “Continuity of Service” protocol which will detail in one place which the new organisations to be recognised and for what purposes.
- 3.4 In addition the Combine Authority Working Group is also in the process of finalising additional documents and advice together with a number of FAQs that will help create a common understanding and address queries to support a consistent approach to implementation.
- 3.5 Within Oldham Council, continuity of service for those existing employees who have previously come from a signatory organization will be recognized for the purposes of calculating the contractual rights detailed at 2.6 (holiday pay, occupational sick and maternity pay) going forward but will not back date any entitlement. It will not be possible to identify eligible employees so claims will need to be addressed on a case by case basis.

4.0 Monitoring and Review

- 4.1 There will be a detailed review across the signatory bodies of the general operation of the scheme after 12 months to consider how the Protocol has enabled greater flexibility of the workforce and impacted on the ability to attract, recruit and retain our public sector workforce, along with any on-going difficulties/challenges that may be faced.

4.2 It is envisaged that the evaluation and review will be shared with other public sector organisations, and associated organisations, including Schools to aid future discussions about potentially extending the employers in scope.

5.0 Conclusion

5.1 The GM Continuity of Service Protocol applies in the first instance to the voluntary movement of employees in- between the identified public sector organisations in scope. It is a ground breaking concept, and marks a significant step for Greater Manchester in supporting the reform of public services.

5.2 A competent, engaged workforce is a key enabler to successful reform and it is important to facilitate not only retention of skills and knowledge, but to ensure that the sector is seen as attractive and rewarding to future generations.

5.3 It is recognised that adoption of the Protocol will assist in the retention and deployment of a flexible workforce with a breadth of skills and knowledge that enables GM to transform, lead and develop new models of care for the benefit of all residents in GM.

6.0 Options/Alternatives

6.1 The council could chose not to adopt the Protocol and not recognise continuity of service with NHS bodies. It is recognised that in the event that not all GM organisations adopt the Protocol, this will result in an imbalance of approach. Whilst this may lead to adopting organisations becoming an employer of choice over other neighboring organisations, it is considered at GM level that this inconsistency may result in delaying or impeding the integration of health and social care across the region which is a primary reason for implementing the Protocol.

7.0 Preferred Option

The preferred option is that Cabinet considers this report and approves adoption and implementation of the Protocol (attached at appendix one) from 5th April 2018, subject to formal approval by the GMCA on 29 March 2018 and following the councils call-in period.

8.0 Financial implications

8.1 As advised at paragraph 2.7, this voluntary recognition may have an impact on direct costs such a sick pay and maternity pay but this cannot be quantified with any certainty. Given that the influencing factor is the personal circumstances of individuals who might be affected, it is not possible to put a value to the potential financial implications, although it is recognised that there will be an impact over time. As proposed, the scheme should be reviewed over a three year period to ensure fiduciary rigour is satisfied.

Anne Ryans – Director of Finance

9.0 Legal implications

9.1 It is lawful for the Authority to treat employees who have come from other authorities (in circumstances where statutory continuity of service does not apply) as if their service in the previous authorities is service in their authority save in relation to the provisions relating to statutory redundancy.

Under the Localism Act 2011 there is a general power of competence (section 1), which is subject to not being able to do anything which is a prohibition, restriction or other limitation expressly imposed by a statutory provision that (a) is contained in the Act, or in any other Act passed no later than the end of the Session in which the Act is passed, or

(b) is contained in an instrument made under an Act and comes into force before the commencement of section 1.

In these circumstances there is a prohibition/restriction/limitation expressly imposed by a statutory provision in relation to redundancy payments which cannot be exceeded.

However, by virtue of regulation 5 of the *Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 [SI 2006/2914]* ("the 2006 Regulations") there is a power to increase termination payments on the basis set out therein and is the only basis on which such payment should be made.

Further consideration could be given to regulation 6 of the 2006 Regulations, which allows local authorities to make 'Discretionary compensation' to persons who cease to hold employment, but for this to be included in the Protocol further analysis of the legal and financial implications would be required, as it is a discretionary payment.

Payments under regulations 5 and 6 of the 2006 Regulations should be in accordance with the policy statement that each local authority must adopt under regulation 7 of the 2006 Regulations.

Statutory entitlements cannot be overridden so it is important to ensure this does not happen unilaterally when implementing the protocol.

Given that a financial analysis of the proposals has not yet been possible, it is not possible to fully assess whether public law duties under best value, Wednesbury reasonableness or the fiduciary duty to the public purse have been met nor is it possible until there is evidence of demand and therefore important scheme kept under review and regularly assessed.

Colin Brittain, Assistant Borough Solicitor

10.0 Co-operative Agenda

10.1 The adoption of this Protocol would support of our co-operative values and in particular the principles of fairness, responsibility, working together, accountability and respect. This report serves to support the delivery of the Oldham Plan 2017 – 2022 and particularly our quest for an inclusive economy, where everyone has a fair and real chance to access opportunities and improve their own lives.

11.0 **Human Resources Comments**

11.1 HR comments are included within the body of the report

12 **Risk Assessments**

12.1 This report sets out a pragmatic way of resolving what remains a challenging issue with residual risk regarding the powers contained under the Localism Act 2011 as set out in the body of this report to enable progress to be made.

Mark Stenson, Head of Corporate Governance.

13 **IT Implications**

13.1 N/A

14 **Property Implications**

14.1 N/A

15 **Procurement Implications**

15.1 N/A

16 **Environmental and Health & Safety Implications**

16.1 N/A

17 **Equality, community cohesion and crime implications**

17.1 None

17 **Equality Impact Assessment Completed?**

17.1 No

18 **Key Decision**

18.1 Yes

19 **Key Decision Reference**

19.1 Reference Number CFHR-03-18

20 **Background Papers**

20.1 None

21 **Appendices**

21.1 Appendix one – Greater Manchester Continuity of Service Protocol.

GREATER MANCHESTER CONTINUITY OF SERVICE PROTOCOL**INTRODUCTION**

The Greater Manchester Combined Authority and Health and Social Care Partnership Board agreed a GM Protocol for Joint Working on Workforce Matters in December 2015.

This Protocol recognises that staff play a vital role in the delivery of high quality public services and that high quality employment in public services plays a vital role in the functioning of the Greater Manchester economy and society.

Flexibility of employment across public services is an ambition shared by the organisations and recognised trade unions. Portability of accrued service is a key consideration for employees which must be addressed to secure such flexibility.

There is no reason in law why an employer cannot introduce express terms into its contracts of employment, or do so by means of a change of policy, which are more advantageous than the statutory rights already afforded to its employees, provided it ensures those terms are applied fairly and in accordance with its equalities duty. What it cannot do is seek to limit or take away those rights except in the most exceptional of justified circumstances or where permitted by law.

A public body must also ensure its rationale for such action makes economic, social and environmental sense for them and their communities, and is of benefit to the public purse.

Any change in terms and conditions of employment to employees of a public body would be subject to consultation.

PURPOSE

As a first step this protocol provides a mechanism for recognition of service where an individual employed within local government or the NHS in GM moves employment between those sectors on a voluntary basis.

Adoption of the protocol by the GM local authorities, GMCA and NHS organisations would be voluntary and would be a decision for each individual organisation within their respective governance arrangements.

This protocol applies to the employers listed below and does not seek to extend such an agreement to the wider employer group comprising commissioned providers e.g. third sector parties, at this point in time.

Local Authorities:

GM Local Authorities	GM Combined Authority (GMCA)
<ul style="list-style-type: none">• Bolton• Bury• Manchester• Oldham• Rochdale• Salford• Stockport• Tameside• Trafford• Wigan	Including: <ul style="list-style-type: none">• GM Fire & Rescue Service• GM Core Investment team (as employees are hosted/seconded by Local Authorities)• GMPSR team (as employees are hosted/seconded by Local Authorities)• GM Integrated Support Team (as employees are hosted/seconded by Local Authorities)• GM Waste Disposal Authority

NHS Bodies:

Association of GM CCGs	GM NHS Provider Trusts
<ul style="list-style-type: none">• NHS Bolton CCG• NHS Bury CCG• NHS Central Manchester CCG• NHS Heywood, Middleton and Rochdale CCG• NHS North Manchester CCG• NHS Oldham CCG• NHS Salford CCG• NHS South Manchester CCG• NHS Stockport CCG• NHS Tameside and Glossop CCG• NHS Trafford CCG• NHS Wigan Borough CCG	<ul style="list-style-type: none">• Bolton NHS FT• Central Manchester University Hospitals NHS FT• Greater Manchester Mental Health NHS FT• Pennine Acute Hospitals NHS Trust• Pennine Care NHS FT• Salford Royal NHS FT• Stockport NHS FT• Tameside Hospital NHS FT• The Christie NHS FT University Hospital of South Manchester NHS FT• Wrightington, Wigan and Leigh NHS FT

Other Public Sector Partner Organisations:

<ul style="list-style-type: none">• GM Health & Social Care Partnership• Transport for Greater Manchester (TfGM)

The accrued service will be used for the calculation of contractual entitlements in accordance with the policies and terms and conditions of the relevant participating employer, except where statute does not permit.

This protocol does not apply to pension arrangements.

DEFINING CONTINUITY OF SERVICE

The calculation of an employee's "continuous service" and/or "reckonable service" is extremely important in determining the qualification for and value of 'time served' entitlements.

It determines access to statutory entitlements such as making a claim for unfair dismissal at an Employment Tribunal and the application of the statutory redundancy scheme. However, continuous service recognised through this Protocol will not be taken into account when determining service for unfair dismissal or redundancy pay. The recognition of continuous service within this Protocol will determine access and value of contractual entitlements such as annual leave, occupational sick pay, occupational maternity pay and contractual severance schemes. Individual employers can decide how their contractual entitlements will be applied.

BENEFITS OF RECOGNISING CONTINUITY OF SERVICE

The benefits of a flexible workforce, facilitated by the adoption of this protocol, are summarised below: -

- Having a geographically and organisationally mobile workforce at a GM level will benefit both organisations and individuals. Employee movement within and between these organisations flexibly can help movement of staff into priority areas ensuring delivery at local level.
- A flexible GM workforce will strengthen cross organisational cultural understanding, enhance professional links and increase partnership working. Learning best practice from each other can only improve the totality of approaches adopted individually by each organisation.
- Employees, in turn, gain opportunities for personal and professional growth which can enhance their career opportunities. This increases staff morale and a motivated workforce, within a potentially shrinking public services sector, which is critical in delivering the challenges of devolution.
- A flexible workforce could support the deployment of staff across sectors during periods of organisational downsizing and service redesigns, increase GM ability to attract and retain staff with specialist skills and improve workforce and succession planning on a wider scale.
- Organisations can cut staff turnover costs and fill specialist roles more easily e.g. social workers moving from local authorities into local integrated care organisations under the NHS.
- Organisations can save on redundancy costs as there would be a wider pool of reasonable, suitable redeployment opportunities.
- Staff with cross-sectoral experience and understanding are essential for delivering new transformed services and redesigned roles in integrated services. The easy movement of staff between the NHS and local authorities will increasingly be needed going forward. A flexible workforce will aid the development of a shared language to describe capabilities required in all roles, with accompanying tools and resources.

CHANGES TO EMPLOYER POLICIES

Organisations who are party to this protocol may need to make amendments to their local employment policies and procedures in respect of entitlement for contractual purposes.

Local Authorities will need to amend their policies in respect of application of the 2006 Discretionary Compensation Regulations to incorporate recognition of continuous service with NHS bodies and others party to this Protocol. Reference may also be included in the annual Pay Policy Statement.

NHS organisations party to this protocol have some flexibilities in national agreements and to act outside the national agreements if they opt to do so. The test must always be one of 'acting reasonably' in relation to resources/ and the use of public money.

CONCLUSION

This protocol marks a significant step for Greater Manchester in achieving reform of public services. A competent, engaged workforce is a key enabler to successful reform and it is important to facilitate not only retention of skills and knowledge but to ensure that the sector is seen as attractive and rewarding to future generations.

The protocol applies in the first instance to the voluntary movement of employees between local government/identified public sector bodies and NHS employers as a proof of concept. The Greater Manchester Workforce Engagement Board will monitor the application and success of this protocol and will make recommendations for any further revisions as appropriate.