



# **Analysis of Business Case for Local Authority Trading Company**

Future of Adult Social Services In-house  
Provider Services Project  
London Borough of Barnet

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The **European Services Strategy Unit** is committed to social justice, through the provision of good quality public services by democratically accountable public bodies, implementing best practice management, employment, equal opportunity and sustainable development policies. The Unit continues the work of the Centre for Public Services, which began in 1973.

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# Executive summary

## **The commercialisation of learning disability and physical and sensory impairment services**

The Local Authority Trading Company (LATC) model is intended to commercialise Barnet's provision of learning disability and physical and sensory impairment services for adults. The business case refers to 'profits' and the Council using its power as shareholder to demand annual 'dividends'. Rather than subsidising important social and housing services, these services will in future subsidise other Council services!

**The LATC is, in effect, a cost cutting mechanism. An arms length trading company, with a proscribed budget, will be the service provider and employer, so the Council can relinquish responsibility for decisions taken by the company.**

## **Privatisation vehicle**

The LATC will not be limited to Adult Services and Barnet Homes. The business case makes it clear that other services could be transferred to the LATC, which will be used to assess their commercial viability before privatisation.

The outsourcing of the LATC's corporate services would further distance the company from the Council and could ultimately lead to its full privatisation losing accountability to the electorate.

## **Value for money**

Value for money was not proven in the draft business plan and exclusion of the financial chapter from the published version of the plan, makes it impossible for service users, staff and trade unions to examine and challenge the viability and sustainability of the business case.

## **Risks**

Risks for service users and staff have been deliberately understated because the Council is fixated with developing the LATC model so that it can "*assess the commercial viability of other services before any longer-term decision is taken regarding their divestment.*" The Council's strategy is to transfer risks to service users and staff, so it can relinquish responsibility for service provision and employer obligations. We understand that **Chelsea Care, a London Borough of Kensington and Chelsea LATC, has allegedly gone bankrupt!**

## **Serious shortcomings**

A Business Case should provide a strategic, economic, financial, operational and management case for a change in service delivery, investment or a specific project. Shortcomings identified in the trade union Interim Critique have not been addressed.

## **Lack of market analysis**

A decision is being taken to establish a trading company without a clear understanding of the sector or market within which the company will operate. The Council seeks to commercialise services, yet fails to be fully prepared for the commercial consequences.

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## Risks to staff

The final business case asserts, “...staff are at no greater risk being outside of the council.” This is factually incorrect. The Council’s response to the trade union’s Interim Critique stated, “**No associated assumptions nor recommendations have been made within the business case relating to staff terms and conditions. This is beyond the remit of the authority and will need to be determined by the LATC once formed for inclusion within the business plan.**” The Fremantle and Housing 21 examples indicate the real threat to jobs, terms and conditions.

## Limited staff consultation

Staff engagement has been limited, under a veil of secrecy and appears to have been merely a box-ticking exercise.

## Equalities

The draft and final business cases have shown little understanding or regard for equalities.

## Formal consultation of Barnet Tenants

The proposed transfer of Barnet Homes to a LATC will introduce new governance arrangements and new risks for council tenants.

## Recommendations

1. To terminate further work on the LATC and retain Adult Services in-house and prepare a service improvement plan with full involvement of service users, staff and trade unions.
2. If the Council proceeds to establish a LATC it should require that it make a commitment:
  - Launch a formal consultation of Barnet Homes tenants on their views about a potential transfer to a LATC.
  - To maintain the range and quality of services being transferred.
  - Not to reduce staff terms and conditions.
  - Not to seek a dividend from the LATC for the provision of Adults and council housing management services.
  - To implement corporate policies at least equal to those of the Council.
  - To regularly review the performance of the LATC and to fully engage service users and staff in the evaluation process.
  - To accept the Council has a responsibility to monitor the employment policies of the LATC to prevent the emergence of a two-tier workforce and continuing access to the Local Government Pension Scheme for transferred staff and new starters.

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## Part 1

# Commercialising Adult services

The Council plans to transfer learning disability and physical and sensory impairment services for adults to a Local Authority Trading Company (LATC) together with Barnet Homes, the Arms Length Management Organisation managing the council housing stock. About 160 staff (145.6 Full Time Equivalents) in Adults services will transfer to the LATC. The services are described in Table 1.

Table 1: **Adult In-house Services**

Service	Description	Establishment (Full-Time Equivalents)
<b>Learning disability</b>		
Agatha house	a small, six bedded residential home	9.5
Flower Lane Autism Service	specialist services and community day opportunities for people with Autistic Spectrum Conditions	26.1
The Space	building and community based day opportunities	19.2
Rosa Morrison	building based day opportunities for people with profound, multiple learning disabilities	24.3
Valley Way	respite service that offers short break stays for adults over 18 with severe learning and physical disabilities	12.6
Barnet Supported Living Service	daily living support for people with their own tenancies	26.3
Community Support Team	community based day opportunities to promote inclusion, skills development and access to employment	12.8
<b>Physical and sensory impairment Services</b>		
Barnet Independent Living Service	building and community based day opportunities to promote inclusion and independent living	11.8
Business Development Unit		3.0
<b>Total</b>		<b>145.6</b>

Source: Future of Adult Social Services in-house provider services project Business Case, May, 2011.

## Exclusion of financial information

Detailed financial information has been excluded from the final version of the Business Case for no apparent reason.

Firstly, this is a total disregard for a basic level transparency necessary to ensure consultation with staff/trade unions and service users/tenants and community organisations.

Secondly, there has been no concern about the disclosure of financial information in options appraisals and other business cases which have proceeded to procurement, in contrast to Adult Services that are planned to be transferred to a local authority trading company. The basic financial information in a business case cannot be construed as commercially confidential with respect to a procurement process because it does not disclose any information that would not be divulged to bidders. They will be supplied with significantly more information than is contained in the

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business case. There is even less justification in the establishment of a LATC because the Council is not required to undertake a procurement process.

Thirdly, the withholding of basic financial information circumscribes the assessment of the business case. We can only conclude that this is a deliberate attempt to minimise discussion of key public policy matters.

Finally, the release of the earlier version of the business case and Barnet UNISON's interim comments, raised two important financial issues. The LATC is being designed to create an annual surplus for the Council of 8% by year four, which is not justifiable in terms of social justice, nor sustainable for the services concerned. The business case also concluded that *"...the Council could impose efficiencies either directly through reducing the amount it will pay for the services on a block or spot purchase for council managed budgets, or indirectly through the Resource Allocation System to challenge the current costs of care"* (p28) concluding *"...there is potential to generate further savings through the LATC model through the contracting approach and shareholder relationship"* (p32). Any liability for Corporation Tax on LATC profits would be a loss to the users of Adult Services and to Barnet Council taxpayers.

Staff have a very significant role in the delivery of these services, thus UNISON can only conclude that the failure to disclose financial information is related to plans to change staffing levels, terms and conditions.

### **Flawed options appraisal**

The trade unions submitted a detailed assessment of the options appraisal of the Adult Social Care In-House Provider Services options appraisal. It concluded the options appraisal was

*"...limited in scope and depth of analysis and does not provide an acceptable evidence base on which to make fundamental decisions about the future provision of the services. The Council has a fiduciary duty to safeguard the public interest in the management of public services and assets and an obligation to maintain the integrity of the options appraisal and procurement processes. The Adult Social Care In-House Provider Services options appraisal fails to meet these obligations and responsibilities.*

*The options appraisal process is flawed because it is operating to a predetermined agenda, it is not comprehensive, nor in sufficient detail to examine the impact and consequences of the options. The examination of options was uneven and did not fully examine the advantages and disadvantages of each option. The evidence base and the quality of data also raise questions about whether value for money has been properly assessed.*

*The choice of consultant to carry out the appraisal demonstrates poor judgement and undermines the integrity and independence of the options appraisal process and resulted in an inherent bias in the options appraisal from the beginning" Barnet UNISON, 2010).*

It recommended 'high level' options appraisals should be replaced with a more rigorous and comprehensive options appraisal assessment. Further work should be carried by officers with staff and trade unions involved in the options appraisal process. This should be based on genuine engagement and not limited to consultation about the appraisal recommendations. The methodology should consist of a fair appraisal of each option assessing costs and benefits, advantages and disadvantages.

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## **The commercialisation of learning disability and physical and sensory impairment services**

The LATC model is intended to commercialise Barnet's provision of learning disability and physical and sensory impairment services for adults. The business case refers to 'profits' and the Council using its power as shareholder to demand annual 'dividends'. Rather than subsidising core social and housing services, these services will in future subsidise other Council services!

This statement makes it clear that the Council intends to use personal budgets as a market mechanism to manipulate the market. They will be used to drive down costs, primarily, staffing costs, or to increase user charges so that users are forced to 'pay more for less'. The Business case is silent on the finance of personal budget advisers/brokers, and although this is a national issue, it has implications for LATC and should therefore have been at least discussed in the business case.

The Equalities Impact Assessment (Appendix B of the report to Cabinet Resources Committee, 24 May 2011) describes the consequences of commercialisation and marketisation in a simplistic way that illustrates the consequences and risks of the Council's proposals:

*"The project is the first building block to establish the set up of the company. In the future, these services may change if people want to use their Personal Budget to buy different kinds of support. If not enough people choose to use these services, there is a chance that they could stop running. However, if lots of people want to use them, changes can be made to make them better."*

### **Chelsea Care LATC goes bankrupt?**

We understand that Chelsea Care, a London Borough of Kensington and Chelsea LATC, has allegedly gone bankrupt!

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## Part 2

# Analysis of the LATC Business Case

The following comments are based on the draft *Business Case: Future of Adult Social Services In-house Provider Services Project*, version 1.6, February 2011, the Council's response to the trade union's Interim Critique of the Adults In-house Business Case for the CDG, 29 March 2011 and the Report to Cabinet Resources Committee in May 2011.

The purpose of a Business Case is to provide a strategic, economic, financial, operational and management case for a change in service delivery, investment or a specific project.

The Council claims that a Business Case "...provides a framework for planning and managing the business change" whilst the business plan "...outlines the definitive strategic and operational risks for the Local Authority Trading Company."

The trade union interim report identified a number of omissions and shortcomings in the draft Adult Services business case. These criticisms and concerns remain valid.

**Strategic case:** Corporate impact and strategic risks are inadequately addressed.

**Economic case:** Neither a value-for-money assessment nor a sensitivity analysis has been carried out. In addition, a cost benefit appraisal that includes wider impacts (economy, equalities, sustainability, environment) and distributional impacts.

**Commercial case:** Fundamental questions and concerns regarding risk assessment, employment issues and equalities policies remain.

**Financial case:** The trade union interim report identified the lack of contingency plans for cost overruns/liabilities and income and expenditure, user charges and affordability were only partially addressed. The failure to disclose the financial analysis now means that all the components of a financial case – budget forecasts, capital and revenue forecasts, user charges, income and expenditure, affordability based on whole life costs and contingency plans for cost overruns/liabilities cannot be publicly verified.

**Management case:** Stakeholder involvement was not addressed. The business case lacked a transformation plan and contract management, monitoring and review.

### Privatisation vehicle

The LATC will not be limited to Adult Services and Barnet Homes. The business case makes it clear that other services could be transferred to the LATC:

*"Beyond social care provision, these proposals provide LBB with an opportunity to implement a flexible corporate delivery vehicle that can be used to assess the commercial viability of other services before any longer-term decision is taken regarding their divestment"* (page 16).

But the current proposals for the LATC are inadequate and raise serious doubts about its longer-term viability and sustainability. This, in turn, raises further questions whether it would be a legitimate and feasible mechanism to assess other council services.

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## The LATC Model and personal budgets/direct payments

Whilst it is true that in-house services cannot be purchased with a Direct Payment, this is not the case for a Personal Budget. A service user can decide to have part of the Budget used for in-house services and the rest of it paid out as a Direct Payment. Indeed a service user may wish to have none of the Budget paid out as a Direct Payment. These arrangements are already in place in the Council and we have been provided with a breakdown from Adult Social Services demonstrating that all these variations exist.

It is also true that the Government has expressed a wish for services/ Budgets to be issued in the form of Direct Payments but nowhere has the Government said they *must* be issued in this form. The truth is the Council has failed to produce any kind of evidence that service users would choose to have a Direct Payment knowing this would exclude them from the very service they wish to access. Nor has the Council produced any evidence that what we are expressing here in terms of point of fact over Direct Payments and Personal Budgets is inaccurate. Indeed in negotiations they have agreed with us.

The argument regarding Direct Payments is therefore a complete red herring.

### Financial sustainability and viability

The trade union's interim critique of the Adult Services business case raised important questions concerning the sustainability and suitability of the LATC model for these services, in particular, their longer-term financial viability. The Council's response was revealing:

*"The business case covers the short to medium term and it is recognised there could be a potential decline in services in the longer term as the market develops. There will be a challenge for the LATC to remain competitive"* (Response to Trade Union Interim Report, 2011).

The exclusion of financial information from the business case, combined with the proposals to commercialise Adult Services with the LATC to providing 'dividends' (profit) to the Council as shareholder in the company, further reinforces our analysis in the context of continuing significant public spending cuts.

The Council's claim that *"...the LATC will be in a position to respond to a changing market in a way that the Local Authority would not therefore there is flexibility for the LATC to maintain a competitive edge"* confirms that these services are being placed in a highly vulnerable position (Response to Trade Union Interim Report, 2011).

**The LATC is, in effect, a cost cutting mechanism. An arms length trading company, with a proscribed budget, will be the service provider and employer, so the Council can relinquish responsibility for decisions taken by the company.**

The extent to which adult and council housing management services are liable or exempt from VAT, and liability of the LATC for VAT and Corporation Tax, are only a problem because the Council wants to establish a LATC.

The business case suggests that corporate overheads could be reduced by 77% resulting in a potential annual saving of £1.2m. Whilst some degree of cost reduction can be achieved with the Adult Services joint use of Barnet Homes corporate services, the scale of the planned reduction raises questions about the feasibility and

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sustainability of this level of cost reduction, the current allocation of corporate costs and the scope for change if the services were to be retained in-house.

The business case explains *“Barnet Homes is currently reviewing its SLA arrangements with LBB with a view to sourcing better deals from the external market, particularly around accommodation, facilities management and Information Technology”* (page 28). There is a strong possibility that the LATC outsources or subcontracts one or more corporate services. This could have the effect of further distancing the organisation from the Council and adopting a more fundamental commercial approach that could ultimately bring into question why it is a local authority owned company. In these circumstances, proposals for full privatisation would appear to be inevitable.

## **Market Sector Analysis**

The Council agreed with the interim trade union analysis of the business case that it lacked a market analysis:

*“It is agreed a detailed competitor analysis needs to be conducted to include other types of competitors such as the private/voluntary sector. This will be included within the business plan as outlined on p84. If this changes our assumptions and requires costs revisions as a result of the analysis, then this will be reflected within the full business plan”* (Response to Trade Union Interim Report, 2011).

The market analysis should have been undertaken as part of the options appraisal but wasn't, despite it being an essential part of a business case. It confirms the inadequacy of the 'high level analysis' undertaken by the Council. The Council claims that a market analysis will be carried out at a later date as part of the LATC business plan. This is totally inadequate, because the decision to proceed with a LATC will already have been made.

*“The market will develop over time as service users decide what they want to buy with their budgets. The LATC is expected to develop services which service users will find attractive.”* This statement confirms trade union concerns about the viability and sustainability of the LATC model and the need for a market analysis.

The lack of a market analysis **increases the risks for the LATC**, service users and staff because a decision is being taken to establish a trading company without a clear understanding of the sector or market within which this company will have to operate.

## **Employment and pensions policies**

The final business case asserts, *“...staff are at no greater risk being outside of the council”* (page 44). The Council's response to the Trade Unions Interim Critique of the draft business case, included in the report to Cabinet Resources Committee in May 2011, made the same assertion: *“Staff are at no additional risk to a change in terms and conditions than they would be should they remain part of the council.”* **This is factually incorrect and totally misleading.** It also raises important questions about the accuracy of information given to staff and what they were told about the potential impact of the LATC on their jobs, terms and conditions.

Risks are transferred to staff under TUPE. An analysis of the degree of changes to terms and conditions of service, pensions, staff consultation and representation and the risk of problems with a secondment agreement concluded **84% of the risk for employees in a TUPE transfer are in the high and medium risk categories compared with only 8% for a TUPE Plus transfer and none for secondment** (European Services Strategy Unit, 2010). The recent withdrawal of the Code of

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Practice on Workforce Matters that provided some protection against a two-tier workforce, has increased the risks borne by staff.

Furthermore, a very different picture emerges with the following statement in the Council's formal response to the trade union's Interim Critique of the business case:

***“No associated assumptions nor recommendations have been made within the business case relating to staff terms and conditions. This is beyond the remit of the authority and will need to be determined by the LATC once formed for inclusion within the business plan”*** (page 10, our emphasis).

Firstly, this statement implies that any assurances or guarantees made by the Council prior to the LATC being established are worthless.

Secondly, it raises important questions about the viability of the financial case and the degree of rigor and comprehensiveness since the Council and its consultants know that another financial analysis will be undertaken by the LATC.

Thirdly, the agreement that staff can remain part of the LGPS, made in principle at the Pensions Fund Committee on 21 March 2011, needs to be reassessed and brings into question the basis on which the Committee made this decision.

Finally, it implies that much of the business case could be changed by the LATC when it prepares the business plan. The LATC business plan could result in wholesale changes to service provision, jobs and/or terms and conditions, which the Council could claim were not its responsibility.

An analysis of staffing levels and employment policy matters is also absent in the Business Plan. It only refers to legal matters concerning a TUPE transfer (pages 53/55).

We assume the financial model will have made certain assumptions about staffing levels, terms and conditions in projecting costs over the four-year period plan period. The Council and the LATC must disclose these assumptions to staff and the trade unions. Any deterioration in terms and conditions and pensions could damage the quality and attraction of these services. The services stand and fall by the ability and commitment of the staff group. Although the LATC will be a separate employer, the Council cannot claim that they have to defer decisions on staffing levels, terms and conditions until after the transfer of staff and the LATC becoming the employer, because employment costs are a fundamental part of the viability and sustainability of the business case. Another Fremantle type dispute would have a major impact on services, users, staff, trade unions, the LATC and the Council.

The trade union comments on the Adult In-house Services options appraisal report made clear our concerns about the lack of information on future employment policies. The superficial scope of the 'personnel issues' section in the draft Business Case indicates that there has been little progress.

There is a significant threat that the LATC will impose changes to staffing levels and/or terms and conditions. The Fremantle and Housing 21 examples indicate the real threat to jobs, terms and conditions. Housing 21 staff have just been informed they will:

- Lose approximately 24% of their pay:
- Lose 11 days annual leave
- Have no occupational sick pay!

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- Have a smaller pension as a result of the loss of income.

## **Staff engagement**

The report makes reference to staff engagement and consultation on a number of occasions. The appendix in the report notes three events in particular. These events took a total of some two hours each and each staff member attended only one of the events, because they were a repeat of the same exercise. Not all members of staff had the opportunity to attend one of these events. They were given a clear direction that the service they work in was about to become a Local Authority Trading Company and views were not sought as to how staff felt about that.

However, they were asked their views for that which forms the bulk of that Appendix. These are their views about how the service could work irrespective of whether there is a LATC or not. It is clear there is a wealth of knowledge and creativity present in the current workforce, which unfortunately has not been tapped into. There is no reason why this creativity could not have been made use of within Adult Social Services and the existing structures.

Apart from this there are staff panels where “representatives” from the staff members attend to be informed as to the latest stage of the programme. They are sworn to secrecy and the questions they can put are restricted.

This is far from our idea of consultation and staff engagement. It cannot escape the accusation that this is merely a box-ticking exercise.

## **Equalities assessment**

The treatment of equalities has been inadequate in both the options appraisal and business case processes. Our analysis of the Options Appraisal concluded: *“The options appraisal is totally devoid of equal opportunities policy implications – no reference to the gender/race of staff and service users, no assessment of the potential impact of the options on staff or service users”* (Barnet UNISON, 2010).

The draft and final business case have shown little understanding or regard for equalities.

A separate Equalities Impact Assessment (EIA) has been appended to the business case. However, equalities cannot be fully considered as an appendage, but must be mainstreamed throughout the business case. Furthermore, service users/community organisations and staff/trade unions have not been fully consulted.

## **Relationship with Barnet Homes and impact on tenants**

Significant changes are being proposed in the corporate structure of Barnet Homes and housing management arrangements. When substantial changes are proposed the Council is required to consult with tenants, as required under legislation. The LATC is designed to be “operating commercially”, creating profit, paying a dividend to the Council and “partnership working with Barnet Homes.” The Managing Director of the LATC is required to be “...commercially business savvy to make commercial decisions” (page 45). These and other statements in the business case clearly indicate a substantial change in the housing management service.

Furthermore, Barnet Homes has not consulted with the trade unions or tenants on any aspect of the planned LATC. When the trade unions submitted questions regarding these matters, they were informed that this was not a matter for the Council, but a Barnet Homes responsibility. This denial of responsibility is a foretaste of the future.

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The ALMO will be a subsidiary of a Local Authority Trading Company with new governance arrangements and new risks. A formal consultation of Barnet Homes tenants is, therefore, essential.

### **Governance issues**

The Council, as shareholder, will be able to impose financial obligations and objectives on the company. These issues and implications require much fuller public debate before the LATC is approved.

### **The failure to address risk assessment**

The Business Case fails to fully address the range and scale of risks inherent in the LATC model. These were raised in the trade union Interim Critique of the business case and remain valid. The business case identifies some risks, excludes others or claims that the risks are low, and fails to undertake a risk assessment claiming that this is a task for the LATC once it is established. These risks should be addressed first at the business case stage, followed with a comprehensive risk assessment at the business plan stage. But the Council has failed to address the scale of risks at the business case stage, which is a serious omission.

The choice of the LATC model is designed to transfer significant risks to personal budget holders ie service users and staff. Yet the business case does not acknowledge this and thus avoids identifying the scale of risks and how they could be mitigated or eliminated.

Furthermore, a LATC is a new, largely untested model that will generate new risks. The Council's legal advisers "...indicate that democratic and governance risks are low" (Response to Trade Union's Interim Critique of the Adults In-House Business Case for CDG, 29 March).

Firstly, there are only a handful of social care LATC in Britain, so this opinion lacks an evidence base. Secondly, the Council's legal advisers are professionally entitled to express legal opinions, but they are not noted experts on democratic accountability, governance and participation. There are significant risks in the way the LATC could operate which would have a material effect on democratic accountability and governance.

The LATC model and the transfer of Barnet Homes will raise significant new risks for council tenants. These have not been identified, let alone addressed in the business case.

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## Part 3

# Recommendations

Notwithstanding the planned legal and operational separation of the LATC from the Council, we believe that the Council has a duty to ensure learning disability and physical and sensory impairment service users and council tenants, together with staff, are given certain assurances.

1. To terminate further work on the LATC and retain Adult Services in-house and prepare a service improvement plan with full involvement of service users, staff and trade unions.
2. If the Council proceeds to establish a LATC it should require that it make a commitment:
  - Launch a formal consultation of Barnet Homes tenants on their views about a potential transfer to a LATC.
  - To maintain the range and quality of services being transferred.
  - Not to reduce staff terms and conditions.
  - Not to seek a dividend from the LATC for the provision of Adults and council housing management services.
  - To implement corporate policies at least equal to those of the Council.
  - To regularly review the performance of the LATC and to fully engage service users and staff in the evaluation process.
  - To accept the Council has a responsibility to monitor the employment policies of the LATC to prevent the emergence of a two-tier workforce and continuing access to the Local Government Pension Scheme for transferred staff and new starters.

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