



Education & Skills and Catering

Update Report for UNISON Members

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UNISON 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.

1. Background

On 15 September 2014 Barnet Council's Children's Education, Libraries & Safeguarding (CELS) Committee agreed to the following:

1. That the Children, Education, Libraries and Safeguarding Committee note the content of the report and the draft outline business case.
2. That the Children, Education, Libraries and Safeguarding Committee agree to further consultation and engagement on the three preferred options, as set out in paragraph 2.2, and the in house option.
3. That the Children, Education, Libraries and Safeguarding Committee note that the draft outline business case will be referred to the Policy and Resources Committee for approval of the consideration to set up a separate legal entity to deliver education and skills services.
4. That the Children, Education, Libraries and Safeguarding Committee note that a final outline business case setting out recommendations on the preferred option will be produced and further note that this will be reported to the Children, Education, Libraries and Safeguarding Committee on 12 January 2015.

Over the last few months a number of meetings have taken place with staff working across the services.

UNISON has attended all the meetings and had the opportunity to hear feedback from staff.

Common themes from these meetings:

Future employment implications for all of the service delivery models

Some creative ideas of how to win new business for the service

A lot of feedback about concern that schools may not purchase the service if Capita won the contract.

2. What the options mean for services and staff

This section briefly outlines the three options for service delivery considered by Barnet Council, plus the alternative in-house option.

First, it is important staff are clear that all options apart from in house will mean they will no longer be an employee of the Council.

In-house option:

The Council continues to provide the service and staff remain council employees. A Service Improvement Plan will set out a sustainable future for the service – see page 7.

Outsourcing options:

A schools-led company/social enterprise

A new organisation/company would be jointly owned by schools and the Council. Council staff would transfer to the new company under the TUPE regulations. The new company would be the employer. There has been no suggestion to date that staff would be members of the 'social enterprise', so they would have no formal role in the policy making process.

Joint Venture Company (JVC) between the Council and a private contractor

Service delivery is outsourced under contract to a private company and Council staff would transfer to the JVC under the TUPE regulations. The JVC would be the employer. The Council and contractor could also establish a JVC where Council staff are **seconded** to the JVC for the length of the contract. Staff remain council employees, but would be managed by the JVC.

There are various options for ownership of shares in a JVC, but many private contractors seek majority control of the company with a 51% or larger share stake. A small partnership board consisting of senior representatives of the Council and the private company will be responsible for implementing the JVC's strategy. Schools will have a role in service level commissioning and strategic commissioning, but would not take an ownership role.

A Joint Venture Company between the Council, schools and a private contractor

Schools would form a new organisation or company, which in turn would join a Joint Venture Company between the Council and a private contractor. Council staff would transfer to the JVC under the TUPE regulations. The JVC would be the employer.

Defining a social enterprise or mutual

Service delivery is outsourced under contract to a social enterprise or mutual. A new organisation is usually established which is owned and controlled by staff and/or service users. There are various legal models for non-profit ownership. Council staff would transfer to the contractor under the TUPE regulations.

However, some local authorities are promoting options that are masquerading as social enterprises or mutuals when in fact they are mutual trading companies or non-profit joint venture organisations. For example, Croydon Council is proposing to set up 'mutual trading company' that is 40% owned by the Council, 40% by the Croydon Head Teacher Association and 20% by employees. This is basically an organisation in which staff have a 20% shareholding, but it is not mutually controlled and owned by staff and/or service users.

The sustainability of an organisation is vitally important. Many employee-owned bus companies were established in the late 1980s and 1990s following the privatisation of municipal bus services. Similarly, many local government technical services were outsourced to newly established management buyout companies. None of these companies now exist, because they were taken over by large national or multinational companies.

3. Why should staff take all the risks?

Apart from remaining in-house it is clear that in the event of failure the staff will be taking all of the risks.

All Barnet staff are aware of the One Barnet Programme. Between January 2012 and October 2013 Barnet Council outsourced the following services:

Adult Social Care, Parking Services, Legal Services, Customer Services, Estates, Finance, Human Resources and Payroll, IT Infrastructure and Support, Procurement, Revenues and Benefits, Commercial Services, Housing Options, Building Control, Planning Administration (Development Management), Strategic Planning and Regeneration, Transport, Highways Services, Land Charges, Environmental Health, Trading Standards and Licensing, Cemetery and Crematorium, Barnet Registration and Nationality Service.

In September **2012** Barnet Council employed **3,200 staff** (excluding maintained school staff)

In September **2014** Barnet Council employs **1,830 staff** (excluding maintained school staff).

What is TUPE?

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) protects the rights of employees transferring to a new employer.

TUPE Transfer Commitments

On **16 January 2012** Barnet Council agreed what became known as the TUPE transfer commitments.

<http://barnet.moderngov.co.uk/Data/General%20Functions%20Committee/201201162000/Agenda/Document%205.pdf>

However the Coalition Government has made some serious changes to the TUPE legislation which took effect from 31 January 2014. The changes have **seriously eroded worker rights**, making outsourcing a **high risk** option for Council staff. The key changes are as follows:

1. New employers will be able to renegotiate collectively agreed terms one year after the transfer, as long as the overall change does not leave employees worse off.
2. The new employer will only have to adopt the terms agreed between the previous employer and employee representatives up to the date of transfer. Anything agreed after this date will not apply to transferred employees.
3. A change in location of the workforce after a transfer will be allowed as an Economic Technical Organisational (ETO) reason, meaning that this can be used by the new employer as a reason for dismissal.
4. If agreed by the two employers transferring staff, any redundancy consultation that begins before the transfer can count as part of a collective redundancy consultation process with the new employer, as long as it is a meaningful consultation.

At a meeting with the Council on Thursday 4 December 2014, UNISON raised concern that the Council could progress to procurement shortly after the Committee makes a decision on 12 January 2014. It was agreed on 4 December 2014 that sufficient time would be allowed for negotiations for an updated TUPE commitments proposal to be ready early January 2014.

Location of the services.

UNISON has been in the unfortunate position of having to support members who were made redundant as a result of jobs being moved out of the London Borough of Barnet. It will be a key issue for us on this project that jobs must remain in Barnet and is something we have already raised in meetings with management

4. How much money is needed to prevent cuts and redundancies?

This is a good question and something our members have been asking.

There has been considerable outsourcing over the past few years and UNISON has seen first-hand how our members have borne the financial & employment risk of outsourcing failure.

It is not uncommon for a contractor to make all sorts of promises when they are bidding to run services. It is quite often the case that when the contractors take over they are not the same staff that bid and it is not uncommon for the contractor to say that they were not aware of the reality and subsequently it has been our members who have either lost their jobs or had to take cuts to their terms & conditions.

Your Choice Barnet (YCB) was a Local Authority Trading Company set up and owned by the London Borough of Barnet. The staff provide services for adults with disabilities. The Council produced a business case that it claimed was a **growth bid** which would not look to make cuts to the Terms & Conditions of the staff. UNISON questioned the assumptions behind the financial modelling, but no credible evidence was ever provided that there was new business (growth opportunities) for YCB services.

The reality of the **failed financial modelling** of this alleged growth service delivery model was that the staff **paid** the cost. Our members had their **terms & conditions cut**, with a 9.5% pay cut and the workforce reduced by almost a third.

All of this happened within the **first two years** of YCB'S creation.

It is because of this experience UNISON has from the start wanted greater transparency behind the financial modelling. Despite numerous requests for the details of the modelling we have not seen anything to alleviate our concern that staff will ultimately pay the price of commercial failure.

In our meetings with senior managers we have both verbally and in writing sought answers to the following questions

Please provide:

1.
 - A list of number of schools currently purchasing traded services from Education & Skills in each of the last 3 years
 - What is the total income generated from the above for each year?

2. For each traded service a list of schools purchasing, together with value of service purchased, from the Council in each of the last 3 years.

3. For each traded service a list of schools which are not currently purchasing any traded services from the Council.

4. For each traded service a list and analysis (reasons why) of which schools have stopped purchasing services from the Council in each of the last 3 years.

5. A breakdown of the current spend and name of provider for the following services for each school that does not buy them from Barnet.
 - Catering
 - Governor clerking
 - School improvement traded service
 - Newly Qualified Teachers
 - Educational psychology (part)
 - Education Welfare Service (part)

6. For each traded service please provide a list of schools that have indicated they are seriously considering purchasing that service from the service delivery vehicle.

7. For each traded service details of any assumptions with supporting market research on any proposed growth in service delivery and hence income
8. For each traded service a list of the types of services competitors (including schools) are currently providing together with the names of the providers.
9. For each traded service what is the critical amount of income needed to avoid having to make any cuts or redundancies?
10. For each traded service what is the estimated income for next 3 years.
11. For each of the non-traded services how will the delivery model be funded (payment mechanism by the Council)? For example will it be a prepayment, block payment, per pupil place or per pupil etc.
12. Would a new service delivery vehicle take on responsibility for the accrued Pension Deficit as at the transfer date?
13. Which current contractual obligation would a new service delivery vehicle have to take on, e.g. Capita CSG, Re, accommodation etc.?

5. Developing the In-house Option

Over the last six years UNISON has continued to argue the case for the in-house option to be seriously considered as an option. On each occasion the Council has treated the in-house option as a 'do nothing' option. This is not what we regard as an in-house option. We have evidence of funded in-house options delivering an alternative to outsourcing. Below is a high level guide to show what we believe would generate a legitimate in-house option.

1. Assess future needs and demands for the service

Assess the extent to which the service meets existing needs and demands.

Assess the potential impact of demographic, technological and economic changes on the service

Identify key developments and trends in the service sector, such as changes in the use of services and changing needs.

Identify and map existing inequalities in service delivery and workforce.

Service delivery and performance

Summarise current performance in meeting the quality service standards.

Identify the cause and effect of problems and/or gaps in current provision.

Identify the extent to which good practice has been established.

Identify any shortcomings in the current method of service delivery.

Current costs

Establish accurate analysis of current expenditure on service delivery with breakdown of costs:

- staff
- support service costs
- corporate overhead costs
- current sources of revenue

Staffing

Determine adequacy of current staffing levels, skills and experience to deliver the service:

- addressing vacancy levels and any recruitment problems
- reducing sickness absence
- implementation of workforce development policies

2. Service Improvement Plan

The Service Improvement Plan will cover a three-year period and should be regularly monitored and reviewed. It should set priorities for improvement and development of the service.

The Service Improvement Plan must draw on service user and staff experience. A Protocol should be agreed between the Council, community organizations and trade unions on continuous engagement of service users and staff in the development of the Plan, its implementation and review.

Scope for improved services and cost effectiveness

Identify the scope for innovative change, how and when they can be implemented:

- adjust the delivery of current services
- introduce new services

Need for improved or renewal of information and communications technology.

Increase the coordination and integration of the service with other public services in Barnet.

Identify changes needed in the procurement and supply of goods and services, including equipment, to improve the quality of service and reduce costs.

Organisation and management of the service

Proposals to increase the effectiveness and efficiency of service delivery by improving the way services are designed, organised and managed:

- changes to methods of service delivery and working practices
- scope for team working and flatter management structure

Scope to expand the service

Develop a strategy to increase use of the service by Barnet organisations and individual service users:

- within the Council
- other public bodies, organisations and businesses in Barnet
- individual service users in Barnet
- neighbouring boroughs

Understand the reasons why some organizations and/or individuals do not currently use the service. If they previously used the service identify why they moved to another provider.

If they are contracted with other providers, how quickly can they change provider.

Fully cost the marketing and promotion of the service including staff time, legal advice, procurement and bid costs, together with realistic forecasts of revenue generation.

Draw up proposals to reduce access/quality of service and workplace inequalities.

Enhancing democratic accountability

Establish regular service user/community organisation and staff/trade union involvement in developing and implementing the Service Improvement Plan.

Agree regular review of the Plan by the relevant Council Committee with service users/community organisations and staff/trade unions submitting evidence.

Finance and resources

Resources needed to implement the 3-year Service Improvement Plan.

Scope for pooled budgets and joint funding.

Agree policy on service user charges.

Itemise cost of changes in use or replacement of equipment and buildings or investment in training and new equipment.

Set out the financial reasons for changes in the procurement and supply of goods and services, including equipment, required by the service.

Employment

Policy on maintaining public sector pay and conditions.

Identify human resources changes needed to support implementation of the Service Improvement Plan:

- reskilling and (re)training requirements
- re-deployment if necessary
- workforce development policies
- industrial relations
- trade union facility time
- health and safety

Strategy to minimise risks

Identify the key operational and financial risks and how they will be reduced or mitigated:

- failure to implement service improvements on time and within budget
- income generation targets are not met and/or incur unplanned promotion, procurement and other costs
- quality of service performance declines
- problems in recruiting and retaining skilled and experienced staff
- existing and/or new inequalities are not tackled

Conclusion

We are waiting for responses to the questions outlined in this report, which we will circulate to members. It is UNISON's view that the in-house model has not been given sufficient resource in order for it to be genuine realistic option in this process. Therefore we formally submitted our in-house Service Improvement Plan template in order for the in-house to have the opportunity to compete on a "level playing field."

The Council will be publishing their report to the Children's Education, Libraries & Safeguarding (CELS) Committee of 12 January 2015 with recommendations on 5 January 2015. UNISON will be providing a formal response for the 12 January 2015 meeting.