

**By:** Gary Cooke – Cabinet Member for Corporate and Democratic Services  
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**To:** Personnel Committee

**Date:** 4 June 2014

**Subject:** Progress report on terms and conditions for Public Health staff

**Classification:** **Unrestricted**

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**SUMMARY:** This paper provides information to Personnel Committee on the NHS salary bands for Public Health Consultant posts in comparison to Kent Scheme pay bands for senior KCC staff.

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## **1. BACKGROUND**

- 1.1 In March 2013, Personnel Committee considered a report on terms and conditions for Public Health Specialist and Professional posts. A further report was provided to Personnel Committee in June 2013 on the salary bands for Public Health Consultants for further information.
- 1.2 The recommendations of the March 2013 report were approved which included time limited arrangements for Public Health to recruit new Consultants and Specialists on NHS terms and conditions until 31 March 2015 and for future changes to NHS terms and conditions to be applied to transferred staff until 31 March 2015. Personnel Committee also determined that a progress report would be submitted to the Committee in 12 months' time.

## **2. PUBLIC HEALTH CONSULTANT AND SPECIALIST POSTS**

- 2.1 There have been a number of new appointments in the Public Health Division in the past year. These have largely been administrative and managerial posts which have all been appointed on Kent Scheme Terms and Conditions. There has been one Consultant vacancy since the transfer and the Public Health Consultant for child health resigned in January 2014.
- 2.2 The Consultant vacancy was advertised in July/August 2013 and the Division was not able to appoint. It is felt that the lack of interest was largely due to the timing of the advert as most newly qualified Consultants will already have secured posts at that point. The post is about to be re-advertised together with the additional Consultant vacancy.
- 2.3 Reportedly, other Authorities in the region have had similar difficulties in recruiting and a survey is being undertaken by South East Employers to determine the current position.
- 2.4 There has been limited turnover within roles considered as Public Health Specialists with only one post, the Head of Health Intelligence, being advertised

and appointed to on NHS terms and conditions at pay band 8b. A further post of Head of Quality and Infection Prevention and Control is also being recruited to on NHS pay band 8b.

### **3. CHANGES TO NHS TERMS AND CONDITIONS**

- 3.1 The March 2013 report to Personnel Committee provided information about a decision which was awaited from the Court of Justice of the European Union (CJEU) about whether staff transferring under TUPE must continue to have applied to them any changes made to their terms and conditions following transfer (known as the 'dynamic' approach). Whilst the transfer of Public Health staff was not a TUPE transfer, this was covered by a statutory transfer scheme providing 'TUPE-like' protections for two years. It was therefore necessary to consider what impact the CJEU decision would have.
- 3.2 At that time, KCC's Legal opinion was that, in the absence of any provision in the draft transfer scheme which specified whether terms and conditions must be treated as dynamic or static as at the point of transfer, KCC should be able to rely on the Advocate General's opinion in favour of the dynamic approach and apply future changes for at least the first two years after transfer, during which the transfer scheme has legal effect.
- 3.3 A number of changes took effect on Public Health transferees, up to July 2013, as they had already been incorporated into NHS Terms and Conditions prior to the transfer date. In addition, the minor changes to the 1 April 2014 NHS pay scales were implemented for Public Health staff, on the basis of the Personnel Committee agreement to apply post-transfer pay awards until 31 March 2015.

### **4. NEXT STEPS**

- 4.1 In July 2013, the CJEU determined that the static approach should apply and new employers will not therefore be bound by post-transfer agreed changes in circumstances where it was not possible for the transferee to be involved in the collective agreement negotiations. However, within the UK, subsequent changes to TUPE Regulations require that transfers after January 2014 will necessitate that a dynamic approach is applied to collective agreement provisions for one year after transfer. Beyond that, it is now possible for receiving organisations to renegotiate terms and conditions, covered by collective agreements, as long as the overall change is no less favourable to the employees involved.
- 4.2 Further work is now being undertaken on the recommendations to be made to Personnel Committee on what should be applied from April 2015.

### **5. RECOMMENDATIONS**

- 5.1 Personnel Committee is invited to note the update on recruitment and terms and conditions for Public Health staff.

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