

From: Gary Cooke, Cabinet Member Corporate and Democratic Services
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To: Personnel Committee

Date: 28 January 2015

Subject: Update on terms and conditions for Public Health staff

Classification: Unrestricted

Summary: This paper asks Personnel Committee for a decision on the terms and conditions for Public Health staff from 1 April 2015.

1. Background

- 1.1 In March 2013 Personnel Committee considered a report on terms and conditions for Public Health staff and approved time limited arrangements for Public Health to recruit new Consultants and Specialists on NHS terms and conditions until March 2015 and for future changes to NHS terms and conditions to be applied to transferred staff until 31 March 2015.
- 1.2 A further report was provided to Personnel Committee in June 2013 on the salary bands for Public Health Consultants compared to Kent Scheme salary ranges
- 1.3 In June 2014 a report to Personnel Committee confirmed the outcome of the Court of Justice of the European Union (CJEU) in relation to the applications of changes to terms and conditions to transferred staff post-transfer and confirmed that it would be possible for KCC to renegotiate terms and conditions covered by collective agreements as long as the overall change is no less favourable.

2. Context

- 2.1 The transfer of the public health workforce to KCC did not fall within the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), but was covered by a statutory staff transfer scheme enacted under the Health and Social Care Act 2012. The provisions of this transfer referred to any changes being subject to an economic, technical or organisational (ETO) reason, which would have to withstand the usual ETO tests that would apply in TUPE situations if there was any challenge.
- 2.2 A comparison of Kent Scheme and Public Health salaries is attached at Appendix 1.
- 2.3 There are currently 70 members of staff employed within Public Health and 29 of these are employed on NHS terms and conditions. Of these, 17 members of

staff are working in administrative and/or management roles. The remaining 12 employees are qualified medical and public health specialists or consultants.

- 2.4 Five new appointments have been made in the last year within Public Health, four of which have been administrative and managerial staff appointed on Kent Scheme terms and conditions. One Head of Health Intelligence was appointed on NHS terms and conditions
- 2.5 There have been 2 advertisements for Consultant and Specialist roles since April 2014. However no suitable applications were received for these roles and internal temporary arrangements were made to cover these.
- 2.6 KCC has a NHS Pensions Directions Order which allows continued access to the NHS Pension Scheme for Public Health professionals including new recruits where appropriate. Arrangements to ensure that updates to NHS terms and conditions are applied to public health staff are in place.
- 2.7 South East Employers have carried out a survey of authorities in the region regarding these issues and have advised that authorities have recruited new staff on their own terms and conditions but no authorities have moved away from the transfer scheme for inherited staff as yet.

3. Issues to consider

- 3.1 Any alteration to terms and conditions for Public Health staff who transferred in to KCC on 1 April 2013 would need to rely on an ETO reason for any changes. Harmonisation to make things easier would not be sufficient reason if challenged.

Whilst the original transfer agreement does specify that the arrangements were in place for 2 years, there is no specific business reason to make changes beyond April 2015. The staffing impact of making changes could be detrimental to KCC as a result of experienced health staff leaving at a time when recruitment is difficult and the public health agenda is challenging.

- 3.2 Continuing to maintain NHS terms and conditions including access to the NHS Pension Scheme would give KCC the option to offer this employment package for appointments to Consultant and Specialist roles if required. Given the recruitment difficulties that we have experienced, we are more likely to recruit specialists from the NHS if we have continued alignment with NHS terms and conditions including pensions as these would be more attractive to this group of staff.
- 3.3 As an employer we currently operate a variety of terms and conditions for different groups of staff including teachers, Soulbury staff and specific national terms and conditions. Changes to these specific terms and conditions are implemented as required for the staff affected. Continuing to include NHS terms and conditions in these arrangements would be manageable
- 3.4 The NHS terms and conditions in relation to managing performance, capability and disciplinary matters have been adopted as part of the transfer and can be used to manage specific staffing issues. In addition a specific Pay Progression

Policy was adopted to ensure compatibility with KCC's TCP and performance management arrangements (Appendix 2).

- 3.5 We continue to appoint new administrative and managerial staff on Kent Scheme terms and conditions as a matter of course, which means that over time there will be a reducing number of staff on NHS terms and conditions as a result of natural wastage and demography.

4 Options for consideration

- 4.1 Continue to operate the terms and conditions for all staff who transferred in April 2013 and update in line with the NHS changes.

Given the low number of staff on public health terms and conditions, it would be relatively straightforward to maintain the current arrangements for this group of transferred staff.

Continue to recruit new administrative and managerial staff on Kent Scheme terms and conditions and maintain NHS terms and conditions, including access to the NHS Pension Scheme, to utilise for specialist Public Health roles that are difficult to recruit to.

Keep this group of staff under review alongside other non-Kent Scheme staff groups.

- 4.2 Whilst there is no specific ETO reason for changing terms and conditions across the board, it is worthwhile identifying the key employment procedures and aligning these with KCC procedures. This would mean that all staff would experience consistent employment processes regardless of whether they are employed on Kent Scheme or NHS terms.

- 4.3 Undertake a programme of change to move all staff currently on NHS terms and conditions on to Kent Scheme terms and conditions. This would require a specific business case to demonstrate the ETO reasons for change; decisions around salary levels and the application of market premiums to match the higher rates and involve formal consultation with all affected staff to effect the change.

The potential risk to KCC's ability to attract and retain specialist staff would need to be understood and accepted.

5. Recommendation(s)

Recommendation(s): Personnel Committee is:

- 5.1 invited to consider the options identified in Section 4 of this report
- 5.2 asked to agree to items 4.1 and 4.2 above,
- 5.3 asked to keep this issue under review to ensure the terms and conditions for Public Health are fit for the future.

6. Background Documents

6.1 Personnel Committee Reports

19 March 2013 - Terms and conditions for Public Health staff

6 June 2013- Salary bands for Public Health Consultants

4 June 2014 – Progress report on terms and conditions for Public Health staff

7. Contact details

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