

TRAFFORD COUNCIL

Report to: Employment Committee
Date: 2 July 2018
Report for: Information and approval
Report author: Sara Saleh, Interim Director of Human Resources
Report Title

GM Continuity of Service Protocol

Purpose of Report

- **To detail the rationale behind the protocol, the benefits and risks, and to seek agreement to implement it in Trafford from 1st April 2018.**

Recommendation(s) / Decision Required

- **Support the implementation of the GM Continuity of Service Protocol in line with our GM colleagues, which recognises continuous service with the bodies signed up to the Protocol for the purposes of sick pay, maternity pay, adoption pay and annual leave.**

1. Executive Summary

- 1.1 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.
- 1.2 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 and 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 the NHS in Greater Manchester moves employment between those sectors on a voluntary basis.
- 1.3 Unless there is an enforced move across sectors (e.g. TUPE) this means that currently continuity of service is lost where an employee voluntarily moves from one public sector to another. 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 may impede the flexibility of employment.
- 1.4 There are no regulations that allow for service to be recognised for voluntary moves across the different areas of the public sector. 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. A Continuity of Service Protocol was subsequently developed and is attached at Appendix A.

- 1.5 Currently continuous service with local authorities is recognised via the Redundancy Modification Order and for Councils within GM it means the addition of this protocol, so the service with the organisations who adopt it will be recognised for employment purposes.

2. Scope of the Protocol

2.1 The Protocol extends to include all staff employed by:

- a GM Clinical Commissioning Group (CCG) organisation
- a GM National Health Service (NHS) body
- a GM Local Authority / Council (but excluding staff employed by schools)
- the GM Combined Authority (GMCA) and its constituent bodies
- the Greater Manchester Health & Social Care Partnership (GMHSCP)
- Transport for Greater Manchester (TfGM)

2.2 At this time those employed within GM Police and the Waste Disposal Authority are not in scope. However, should these organisations formally join the Combined Authority, they will be automatically included, unless they choose to adopt the Protocol earlier. Wider employer groups comprising commissioned providers e.g. third sector parties, GP practices, etc, are not included.

2.3 Whilst it is not recommended that individuals working within the range of schools and further education establishments across GM are currently included within the Protocol, there is a commitment to further extend the Protocol following full adoption by the parties identified in this first phase. It is hoped that this will be extended into other GM public sector organisations in the future.

2.4 The protocol means that continuous service will be recognised for new employees who have prior service with any of the bodies within the protocol. This is the case for qualification for and to determine the value of occupational entitlements such as sick pay, maternity pay, adoption pay and annual leave.

2.5 The intention had initially been that redundancy would be included in the protocol. However legal advice has concluded that continuous service with organisations not covered by the Redundancy Modification Order cannot be recognised for statutory redundancy pay and so it will not be included. It is hoped that with continued closer working between the NHS, Local Authorities and other public sector organisations, the law may eventually be changed as was the case when the RMO came into being.

When would the Protocol not apply?

2.6 The Protocol would not apply in the following circumstances:

- a. TUPE, which has specific legal requirements/assurances;

- b. Where a break in service of more than one week (Sunday to Saturday) exists;
- c. Historic voluntary employment moves between organisations in scope. Therefore this Protocol will only recognise continuous employment to new appointments made **on or after 1 April 2018**.
- d. When calculating a statutory redundancy payment

3. Benefits

- 3.1 The Protocol will raise the profile of working within GM public sector roles and may provide a more attractive recruitment proposition than the private sector, or indeed other public sector organisations outside of GM. This commitment will put working within GM on the map and will support our ability to attract, recruit, develop, motivate and retain our workforce.
- 3.2 A flexible workforce can have both economic and social benefits, having a direct impact on engagement and turnover, while providing increased development, motivation, and job satisfaction for the employees. Employees 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 and opportunities of devolution.
- 3.3 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 GM workforce will strengthen cross organisational cultural understanding, enhance professional links, increase partnership working and the sharing of best practice.
- 3.4 With greater collaborative working, it is possible that those organisations needing to reduce the size of their workforce could reduce the cost of redundancy by enabling the transfer of staff between organisations without impacting on continuity of service and associated employee benefits.

4. Challenges and Risks

- 4.1 It is important to clarify that the aim of the Protocol is not to change terms and conditions of service for each individual organisation in scope. All local agreements, employment benefits and terms and conditions will be retained, however, any local arrangements that refer to continuity of service will need to take account of, and be consistent with the Protocol. This will include accrual of service for the calculation of contractual entitlements in accordance with the policies and terms and conditions of the relevant participating employer.
- 4.2 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 such as occupational sick pay, maternity pay, adoption pay and annual leave schemes. Therefore, longer service normally allows for elevated and extended entitlements where previously this may not have been the case. This may therefore have an impact on direct costs (sick pay costs, maternity pay etc.).

- 4.3 Any dismissal with notice payments will be based on the increased paid notice period, or increased pay in lieu of notice entitlement, as a result of recognising continuous service.
- 4.4 The requirement to have 2 years continuous employment with the same employer before a claim is submitted at an Employment Tribunal 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).

5. GM Implementation

- 5.1 During January and February 2018, discussions were held with CCG Leaders (AGG), Provider Federation Board and Wider Leadership Team to encourage support and adoption of the Protocol. All groups indicated their support for this and agreed in principle subject to full adoption within their own organisational governance processes. Manchester City Council subsequently decided to implement the whole protocol on a discretionary basis.
- 5.2 The group proposed that the relevant governance processes be put in place within all organisations outlined as within the scope of the Protocol to enable full adoption back-dated to 1 April 2018. This approach will ensure that all relevant organisations within GM will have the Protocol in place and continuity of service recognised from 1 April 2018.
- 5.3 The GMCA Heads of HR and Joint GMCA/NHS HRD leads will ensure that the detailed implementation and communication plan is put in place once all organisations have adopted. Comprehensive HR and workforce FAQs have been prepared.

6. Local Implementation

- 6.1 The HR Service is leading on the implementation of the protocol, working with the Greater Manchester HR Shared Service (GMSS) and Legal Services to ensure that it will be in place back-dated to 1st April 2018.
- 6.2 There are 5 main strands of work:
- Creating a Continuity of Service Policy/Statement, which will reference the current regulations and the new protocol and what they mean.
 - Amending all HR policies which reference continuous service.
 - Changing the process for establishing continuity of service within GMSS, to include service with organisations who have adopted the protocol. This will need to be continually updated as more organisations join.
 - Amending the Statement of Employment Particulars (employment contract) so it references the protocol.
 - Communicating with the workforce.
- 6.3 The Unions have been engaged with and so are aware of the adoption of the protocol and supportive of it as it will benefit staff and provide more flexibility within

the public sector within GM. They will be updated as we near the implementation date.

7. Conclusion

- 7.1 The GM Continuity of Service Protocol is a ground breaking concept, and marks a significant step for Greater Manchester in achieving reform of public services. The 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.
- 7.2 Although there may be some additional costs to the Council of implementing the Protocol, the benefits will far outweigh these and it is a positive move which will benefit our workforce.
- 7.2 Employment Committee is recommended to support the implementation of the protocol from 1st April 2018 and incorporation into the annual Pay Policy statement.

APPENDIX A - 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
<ul style="list-style-type: none">• Bolton• Bury• Manchester• Oldham• Rochdale• Salford• Stockport• Tameside• Trafford• Wigan• GMCA

NHS Bodies:

Association of GM CCGs	GM NHS Provider Trusts
<ul style="list-style-type: none">• NHS Bolton CCG• NHS Bury CCG• NHS Manchester CCG• NHS Heywood, Middleton and Rochdale CCG• NHS Oldham CCG• NHS Salford 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 statutory redundancy. 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 redundancy or 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.