

## **EMPLOYEES' CONSULTATIVE FORUM: 29/09/2009**

### **EMPLOYEES' SIDE REPORT ON: Terms and Conditions of employment**

#### **SUMMARY AND DECISION REQUESTED**

UNISON again wishes to raise the unilateral decision to implement the new suite of non contractual procedures (which is still unresolved). We feel that this decision was based on inaccurate and poor advice and this matter has far reaching and damaging implications to all employees of Harrow Council.

#### **CHRONOLOGY:**

<b>DATE</b>	<b>ACTION</b>	<b>OUTCOME</b>
Previous dates	Through CJC, ECF	On going issue, poor response

#### **REPORT**

UNISON again wishes to raise the unilateral decision to implement the new suite of non contractual procedures (which is still unresolved). We feel that this decision was based on inaccurate and poor advice and this matter has far reaching and damaging implications to all employees of Harrow Council. UNISON believe that these factors were evidently overlooked by the Divisional Director of HRD when reaching a position to put this matter towards the portfolio holder for either full agreement or a decision based upon advice received. UNISON fully believes that further erosion of the contractual procedures impacts on our members rights as EU citizens and as you will all be aware there is an EU directive covering this area of employment in the eventuality of either sale or transfer of part of the business i.e. The Acquired Rights Directive (77/187/EEC) replaced by the Transfer of Undertakings (Protection of Employees) Regulations 2006. Therefore UNISON believes that the unilateral introduction of these new non contractual procedures erodes the fundamental rights of protection in employment upon transfer for Harrow Council employees.

Harrow Council like all other public authorities must ensure that they incorporate the fundamental principles of the Human Rights Act (1998) into their policies and procedures and UNISON Harrow LG branch feel that these principles have not been fully accounted for when this decision was taken in respect of these fundamental freedoms and protections under EU legislation. The probable result being that public sector services become far more attractive and economically viable due to the erosion of terms and conditions prior to transfer.

The Divisional Director has stated to UNISON that it maybe useful to instigate a TUPE Plus arrangement to an incoming provider to incorporate the non - contractual procedures on transfer under this remit. UNISON questions the purpose of this discussion as it seems to suggest there has been a grave error of judgement on behalf of the employer. UNISON also challenges the employer's stance regarding the use of TUPE plus in this manner as this is a consultation tool used to provide an enhanced transfer, not to retrieve lost contractual rights/ benefits. Harrow UNISON LG Branch would therefore be acting irresponsibly in our duties as trade union/employee representatives.

UNISON would request that the decision taken is reconsidered to ensure that employees of this council are fully covered under the Acquired Rights Directive. If this is denied on the second hearing at ECF it will leave us no other option but to formally progress this to the British Courts of Justice for consideration in what UNISON believe to be a legal flaw that solely erodes employee's rights under the Acquired Rights Directive.

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