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30 September 2013

Dear Jennifer

RE: Final Measures letter dated 25 September 2013

Before I respond to specific issues I want to take this opportunity to provide some background to this particular TUPE transfer in order to give a context behind our responses.

From the outset of consultation UNISON registered their concern about the fast tracking of TUPE transfer of Council staff working in regulatory services. In the past 18 months there have been a number of One Barnet TUPE consultations all of them have had at least a minimum of three months to complete the process.

It was unfortunate that this consultation began in August a month where significant numbers of staff were away on leave. In response to the accelerated TUPE proposal UNISON requested weekly meetings, this was initially rejected but later in the process an attempt to redress this matter was made by providing what has been referred to as **DRS prep time**. In principle UNISON did not object to this proposal which was initially frustrated by the lack of information to discuss and review. However, the reality has been that local reps were often caught up in their day to day jobs and so felt unable to take this time to try and review documents. If we had more time UNISON believes this could have been addressed.

The fact of the matter is that there has been insufficient time to carry out this TUPE transfer which is something that has been raised in many of our tripartite meetings. UNISON does not believe we have had the time and resources to be able to carry out our duties as set out in TUPE Regulation 13.

Joint employment contracts

As you know TUPE Regulation 13(6) imposes that agreement should be sought with the workers representatives however the decision to implement an accelerated TUPE has meant that agreement was simply not possible prior to transfer.

This has specific resonance in relation to the joint employment contract. Whilst some documentation was provided on 5 August, the fact that it was incomplete and a final version not provided until staff received the contracts week commencing 23 September has meant staff and UNISON did not have sufficient time to review and consult with members.

It has been worrying to hear that staff state they feel they have been put in a 'fait accompli' and as such had no choice but to sign even though many have grave doubts about the ability of **joint employment contracts** to support them when carrying out non delegable statutory powers. Many of our members are convinced the contract will be challenged at some point and are worried about implications for their roles in the event a challenge is successful.

For example a number of our members have said *"All it will take is for a clever lawyer acting on behalf of a business or resident to start to challenge whether the officer made the enforcement decision as a employee of the Council or Capita. If a challenge is successful then joint employment option will no longer be able to be used to carry out non delegable statutory duties or functions, and this would put the Council at risk of not being able to discharge its statutory duties and functions"*

UNISON has outlined in detail our concerns in a letter to General Functions Committee on 9 September 2013 (see attached). The contents of which were not addressed by the GFC at all, neither was I allowed to speak at the GFC itself.

Finally I would like to a response to another question which I have been frequently asked.

In the event of a successful challenge to **joint employment contracts** has the Council developed a contingency plan whereby all staff currently on joint employment contracts would be TUPED back to the Council?

Yours sincerely

A handwritten signature in blue ink that reads "JDB" followed by a checkmark.

John Burgess
Branch Secretary
Barnet UNISON

Enc UNISON Report to General Functions Committee 9 September 2013.