

**REPORT TO S188, STRATEGIC LEADERSHIP  
TEAM, HR PORTFOLIO, HR AND APPEALS  
PANEL**



<b>Title:</b>	<b>Greater Manchester Continuity of Service Protocol</b>
<b>Date of Meeting:</b>	<b>S188 - 15<sup>th</sup> February 2018 SLT – 26<sup>th</sup> February 2018 HR Portfolio – 1<sup>st</sup> March 2018 HRA – 8<sup>th</sup> March 2018</b>
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<b>Project Sponsor:</b>	<b>Tracy Murphy – Assistant Director of Resources and Regulation (HR/OD)</b>

**1.0 PROJECT DESCRIPTION**

1.1 The purpose of this report is to provide an update on the progress made and the governance/implementation plans in relation to the GM wide Continuity of Service Protocol for recognition of service where an individual voluntarily changes employer between Local Authorities and NHS employers within Greater Manchester.

**2.0 BACKGROUND**

2.1 In February 2015 the 37 NHS organisations and local authorities in Greater Manchester signed a landmark agreement with the Government to take charge of health and social care spending and decisions in our city region. This included a commitment to produce a comprehensive plan for health and social care.

2.2 The final draft of this plan 'Taking Charge of our Health and Social Care in Greater Manchester' was endorsed by the Health and Social Care Strategic Partnership Board on Friday, 18 December 2015. It details the collective ambition for the region over the next five years, setting out our direction of travel.

2.3 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.

2.4 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.

- 2.5 Unless there is an enforced move across sectors (e.g. TUPE) 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.
- 2.6 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.
- 2.7 The Localism Act 2011 allows new freedoms and flexibilities for local government to make decisions, giving councils more freedom to work together with others in new ways to drive down costs and do more creative, innovative things to meet local people's needs.

### 3.0 **CURRENT POSITION**

- 3.1 The Protocol has been developed and represents the first step towards implementing greater flexibility and opening up opportunities for employees of a wide number of Greater Manchester public sector organisations. The Protocol currently includes all staff employed by:

- a GM CCG organisation
- a GM NHS body
- a GM Council (but excluding staff employed by schools)
- GM Combined Authority and its constituent bodies
- Greater Manchester Health & Social Care Partnership
- Transport for Greater Manchester (TfGM)

GM Police and the Waste Disposal Authority will be automatically included in scope when they formally join the Combined Authority.

There is a commitment to further extend the Protocol following full adoption by the parties to include schools across GM and it is hoped that this will be extended into other GM public sector organisations in the future.

- 3.2 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 may need to be reviewed to ensure that these are mindful of the Protocol and ensure that this is applied in all relevant aspects of employment. It is important that the accrued service will be used for the calculation of contractual entitlements and for redundancy purposes in accordance with the policies and terms and conditions of the relevant participating employer.

### 3.3 There are a vast number of benefits in adopting the Protocol:

- Maintaining employment benefits
- Raising the profile of working within GM public sector
- Greater flexibility and choice for public sector workers
- Supporting our ability to attract, recruit, develop, motivate and retain our workforce
- Increased likelihood of attracting people with specialist knowledge and skills
- More motivated staff and a higher retention of staff resulting in a reduction of recruitment costs, overtime and sickness absence and a higher level of engagement and job satisfaction
- Parties would become an employer of choice
- Wider pool of applicants
- More creative recruitment solutions and career development opportunities
- Greater opportunity to fill specialist roles, eg social workers moving from local authorities into local integrated care organisations under the NHS
- Greater collaborative working and options to reduce redundancy costs by enabling the transfer of staff between organisations
- Having a geographically and organisationally mobile workforce at a GM level will benefit all organisations and individuals, and will expedite the integration of health and social care and workforce transformation across GM.

## 4.0 **DECISIONS REQUIRED**

### 4.1 Members of SLT are asked to support the adoption of the Protocol at Appendix 1.

## 5.0 **PROPOSALS**

- 5.1 That the Protocol detailed in Appendix 1 is adopted within the Council.
- 5.2 The, following adoption, all local agreements and arrangements referring to continuity of service be reviewed to take into account the needs of the Protocol.
- 5.3 That the policy in respect of the application of the 2006 Discretionary Compensation Regulations be amended to incorporate recognition of service with NHS and Public Health England.
- 5.4 That the protocol is reference in the Pay Policy Statement.
- 5.5 That for staff in the NHS Pension Scheme under a Directions Order, the Order is checked to see whether or not the terms of the order means we can pay redundancy benefits under the NHSPS.

## 6.0 **KEY MILESTONES FOR THIS PERIOD**

- 6.1 S188 – 15<sup>th</sup> February 2018.
- 6.2 SLT 26<sup>th</sup> February 2018.
- 6.3 HR Portfolio Meeting 1<sup>st</sup> March 2018.
- 6.4 HR and Appeals 8<sup>th</sup> March 2018.
- 6.5 JCC date tbc.

## 7.0 **PROGRESS TO DATE**

- 7.1 Informal discussions are beginning to take place with the trade unions to enable the Protocol to be subject to formal consultation and adoption.
- 7.2 During January and February 2018, discussions have been held with CCG Leaders (AGG), Provider Federation Board and Wider Leadership Team to encourage support and adoption of the Protocol. All groups have indicated their support for this and have agreed in principle subject to full adoption within their own organisational governance processes.

## 8.0 **RISKS (Including Health and Safety)**

- 8.1 Council arrangements that are dependent upon continuity of service will have to be reviewed and agreed with the Trade Unions.
- 8.2 In the event that not all GM organisations adopt the Protocol, this is likely to result in an imbalance of approach between the GM public sector

organisations. Whilst this may lead to this organisation becoming an employer of choice over other neighbouring organisations, this inconsistency may result in delaying or impeding the integration of health and social care across the region which is a primary reason for implementing the Protocol.

## **9.0 FINANCIAL IMPLICATIONS**

- 9.1 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, 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).
- 9.2 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.
- 9.3 The recognition of previous continuous service also increases the potential for employees to meet the minimum statutory requirement of 2 years continuous service earlier. Where this is the case, it is possible that a higher number of employees will be entitled to statutory redundancy payments and access to other locally agreed enhanced schemes.
- 9.4 The entitlement to, and the application of redundancy and any voluntary severance scheme, is perhaps the area that may realise the most substantial impact on direct costs. It should be noted that those organisations that have already applied the Continuity of Service Protocol on a voluntary basis so far have not experienced significant increases in direct costs as a result of this approach.
- 9.5 There may be occasions where an employee, previously employed by a GM organisation in scope of the Protocol, has left voluntarily through a settlement agreement involving a financial compensation award, and is then subsequently re-engaged by another GM organisation in scope. The Continuity of Service Protocol would not apply in these circumstances, however, any statutory entitlement to continuity of service will continue to apply.
- 9.6 Tighter methods of identifying these circumstances must be implemented during the recruitment process to allow the GM organisations to explore this further. There is a financial obligation upon all public sector organisations to protect the public purse and organisations will also want to re-assure themselves that no settlement agreement that may have been entered into is inadvertently breached, or continuity of service has been inappropriately applied.

## **10.0 EQUALITY AND DIVERSITY**

- 10.1 No implications.

## 11.0 FUTURE ACTIONS

- 11.1 It is proposed that the relevant governance processes are put in place within all organisations outlined as within the scope of the Protocol to enable full adoption from 1 February 2018 and no later than 31 March 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. 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.
- 11.2 Feedback and progress from each partner organisation will be sought during February/March 2018 to establish the level of Protocol adoption and understand any issues or difficulties that may have arisen which will need to be overcome.
- 11.3 An update report will be provided to the GM Workforce Engagement Board in March 2018 providing an update on adoption of the protocol across GM. This will be followed by a more detailed review after 12 months to consider how the Protocol has enabled greater flexibility of the workforce and impacted on our ability to attract, recruit and retain our public sector workforce, along with any on-going difficulties/challenges that may be faced.
- 11.4 It is envisaged that the evaluation and review will be shared with other public sector organisations, and associated organisations, including Schools to aid future discussions about extending the employers in scope.
- 11.5 It will be necessary to have a proactive and coordinated approach to the communication and engagement process across GM. It has been agreed that this will be led by the GMHSCP HR team and a detailed communication plan is currently being developed. Individual organisations will also need to consider appropriate communication and engagement with their current workforce and ensure that websites and communication materials reference adoption of the Protocol.
- 11.6 The Protocol is proposed to the organisations outlined in scope above. In the future there may be the opportunity to include/invite more employers in scope and extend this to include schools, further education establishments and GPs. This will provide greater opportunities to redeploy or deploy skills to a wider pool of individuals, across different public sector areas.

## **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:**

<b>GM Local Authorities</b>	<b>GM Combined Authority (GMCA)</b>
<ul style="list-style-type: none"> <li>• Bolton</li> <li>• Bury</li> <li>• Manchester</li> <li>• Oldham</li> <li>• Rochdale</li> <li>• Salford</li> <li>• Stockport</li> <li>• Tameside</li> <li>• Trafford</li> <li>• Wigan</li> </ul>	<ul style="list-style-type: none"> <li>• GM Fire &amp; Rescue Service</li> <li>• New Economy</li> <li>• Police &amp; Crime Commissioner.</li> </ul>

**NHS Bodies:**

<b>Association of GM CCGs</b>	<b>GM NHS Provider Trusts</b>
<ul style="list-style-type: none"> <li>• NHS Bolton CCG</li> <li>• NHS Bury CCG</li> <li>• NHS Central Manchester CCG</li> <li>• NHS Heywood, Middleton and Rochdale CCG</li> <li>• NHS North Manchester CCG</li> <li>• NHS Oldham CCG</li> <li>• NHS Salford CCG</li> <li>• NHS South Manchester CCG</li> <li>• NHS Stockport CCG</li> <li>• NHS Tameside and Glossop CCG</li> <li>• NHS Trafford CCG</li> <li>• NHS Wigan Borough CCG</li> </ul>	<ul style="list-style-type: none"> <li>• Bolton NHS FT</li> <li>• Central Manchester University Hospitals NHS FT</li> <li>• Greater Manchester Mental Health NHS FT</li> <li>• Pennine Acute Hospitals NHS Trust</li> <li>• Pennine Care NHS FT</li> <li>• Salford Royal NHS FT</li> <li>• Stockport NHS FT</li> <li>• Tameside Hospital NHS FT</li> <li>• The Christie NHS FT University Hospital of South Manchester NHS FT</li> <li>• Wrightington, Wigan and Leigh NHS FT</li> </ul>

**Other Public Sector Partner Organisations:**

<ul style="list-style-type: none"> <li>• GM Health &amp; Social Care Partnership</li> <li>• Transport for Greater Manchester (TfGM)</li> </ul>
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The accrued service will be used for the calculation of contractual entitlements and for redundancy purposes 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. It will also commonly 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 and there is some discretion to the calculation of redundancy beyond the statutory scheme.

## **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 wish to be party to this protocol will need to make amendments to local policy and terms and conditions in respect of entitlement for contractual purposes. In respect of recognition of service for the purpose of redundancy the steps to be taken within each sector are set out below.

### **Local Government**

- Local Authorities who wish to be party to this protocol 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 PHE. Reference may also be included in the annual Pay Policy Statement.
- It is recognised that policy amendments can be made with one months' notice and therefore authorities cannot make advance guarantees that certain redundancy compensation payments will be paid.
- If the employees are in the NHS Pension Scheme under a Directions Order, the local authority will need to check whether the terms of the Direction Order means they can pay redundancy benefits under the NHSPS.

### **NHS**

- Section 16 of the Agenda for Change Handbook (NHS Terms and conditions of service) outlines entitlement to redundancy pay. Employees dismissed by reason of redundancy must have at least 2 years of continuous full-time or part-time service. To qualify for a redundancy payment the employee must be working under a contract of employment for an NHS employer as defined in Annex 1 of the AfC Handbook (national agreement) and any predecessor or successor body.
- NHS organisations who wish to be 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/use of public money i.e.: redundancy payment should not be more than is necessary unless justified and agreed.

## **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.

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