

OFFICER DECISION RECORD 1 FORM

This form should be used to record Officer Decisions in Excess of £100k (but below the key decision threshold), or where required by Financial, Contract or other Procedure Rules or following formal delegation from Cabinet or a Cabinet Member or a Council Committee.

Decision Reference No: CR/471/10/21

BOX 1

DIRECTORATE: Corporate Resources **DATE:** 16th July 2021
Contact Name: Holly Wilson **Tel. No.:** 01302 737664

Subject Matter: Procurement Services Service Level Agreement (SLA) with St Leger Homes (SLH)

BOX 2

DECISION TAKEN: To conduct Procurement Services on behalf of St Leger Homes (SLH) and to TUPE transfer applicable staff from SLH into the DMBC Strategic Procurement Team (SPT) through the establishment of a Service Level Agreement (SLA) agreed and signed by both parties.

BOX 3

REASON FOR THE DECISION: SLH is a company wholly owned by DMBC "the Council". SLH was originally established by the Council to manage the Council Housing stock. SLH approached the Council to investigate whether their procurement services could be delivered by the Council's Strategic Procurement Team (SPT). This was for the following rationale:

- Value for money on shared resource
- Resource coverage due to a larger team
- Benefit from shared expertise
- Increased staff retention due to a larger team offering more opportunities
- Collaborative contracting and associated benefits i.e. economies of scale, it is estimated that approximately 82% of contracts could be jointly procured
- Standardisation of procedures and reporting
- Systems sharing
- Achievement of similar corporate objectives linked to procurement and contracting
- Standardised approach to future opportunities mentioned in the 'Transforming Public Procurement' green paper on changes to public procurement law that may be implemented, subject to the consultation.
- Access to an in-house legal team and other departments linked to procurement projects.

The Council's Head of Procurement put forward a service offer and met with key stakeholders at SLH and provided the necessary information. The transfer of procurement services from SLH to the Council will result in [REDACTED] staff being eligible for transfer into the Council, after the

appropriate consultation under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

The delivery of these services to SLH will be covered contractually through the establishment of a jointly agreed Service Level Agreement (SLA) and this will include, but is not limited to, the service specification, costs payable by SLH and key performance indicators (KPI's). This will be contract managed by SLH and the lead officer at the Council will be the Head of Procurement.

The total cost charged to SLH for year 1 of the agreement will be £ [REDACTED]. This will be reviewed on the anniversary of the agreement and a figure agreed for year 2.

The indicative transfer date will be the 1st December 21.

BOX 4

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- **Not offer to take on the Procurement Services on behalf of SLH** – this was rejected because 1. SLH are an Arm's Length Management Organisation (ALMO) of the Council who manage the Council's Housing stock, therefore the Council is incentivised to provide an improved service to SLH and 2. The benefits associated by conducting these services on SLH's behalf as per the narrative in Box 3.

BOX 5

LEGAL IMPLICATIONS

Where TUPE applies, section 4 (2) Transfer of Undertakings (Protection of Employment) Regulations 2006 provides that the transferee steps in to the shoes of the transferor as far as its rights and obligations with respect to its employees are concerned:

- (a) All the transferor's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee; and
- (b) any act or omission before the transfer is completed, of or in relation to the transferor in respect of that contract or a person assigned to that organised grouping of resources or employees, shall be deemed to have been an act or omission of or in relation to the transferee.

The transfer of all existing rights, duties, liabilities and obligations highlights the need for due diligence by the transferee to ascertain exactly what accrued liabilities and obligations it is acquiring.

All accrued liabilities of the transferor, such as acts and omissions which can give rise to claims, claims for constructive dismissal, sex and race discrimination, equal pay, accrued debts owed to the employee and other tortious liability (for example, personal injury), will pass to the transferee under regulation 4(2) it is therefore critical that the transferee obtains appropriate indemnities from the transferor in respect of all pre-transfer liabilities

The automatic transfer principle also extends to both contractual and statutory benefits, such as holiday pay and redundancy schemes. Any terms from a collective agreement which have been incorporated in employees' contracts also transfer.

Both the transferor and transferee must inform and (if it is proposed to take any "measures" in relation to the employees) consult representatives of their own affected employees in relation to the transfer. If they fail to do so, an employment tribunal can award up to 13 weeks' actual pay for each affected employee.

Although [redacted] staff will be offered a transfer, *anyone* employed by the transferor immediately before the transfer and "assigned to the organised grouping of resources or employees that is subject to the relevant transfer", who has not objected to the transfer will transfer.

Any dismissal will be automatically unfair where the sole or principal reason for the dismissal is the transfer itself and is not an ETO reason. It will also be necessary to show that the dismissal was procedurally fair. This will include any resignations in response to a repudiatory breach of contract or to substantial changes in working conditions to the employee's material detriment.

A pre-transfer dismissal is automatically unfair if the sole or principal reason is the transfer, liability will transfer to the transferee even if the employee was no longer employed at the time of the transfer.

The transferee will need to provide employees with a statement of changes within one month of the change (section 4(1)). If the transferor failed to originally give the transferring employees a section 1 statement, the transferee will need to provide them with a section 1 statement.

The employee's length of service will not be affected by the transfer and will continue to accrue, if it exceeds 1 year upon termination the employee may be entitled to be placed on the redeployment register and after 2 years may be entitled to a redundancy payment and will have accrued rights pertaining to unfair dismissal.

Name: Gemma Ashton **Signature:** G Ashton **Date:**
26.08.21

Signature of Assistant Director of Legal and Democratic Services (or representative)

BOX 6**FINANCIAL IMPLICATIONS:**

There are no direct financial implications as there should be no additional cost as a result of this agreement.

Name: Paul Holgate Signature: By e-mail Date: 23/08/2021

Signature of Chief Financial Officer and Assistant Director of Finance (or representative)

BOX 7**OTHER RELEVANT IMPLICATIONS - HR**

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended in 2014) (TUPE) protects the rights of employees in a transfer situation enabling them to be protected on the same contractual terms and conditions and their continuity of service is also preserved.

Where employees transfer the “transferee” will take over the rights and obligations arising from those contracts of employment, except criminal liabilities. Any liabilities relating to employees who were dismissed before the transfer (for a reason connected with it) also transfer to the transferee.

The Council has a responsibility to conduct a full and meaningful consultation with employees at the earliest practicable time. The Council is also obliged to give the “transferee” written information about the employees who are to transfer. The “transferee” will need to inform the transferring employees of any “measures” that it intends to take following the transfer.

HR engagement has already commenced on the process and we will ensure there is sufficient focus on HR issues particularly in respect of the agreement to transfer staff under TUPE regulations and future ways of working.

Name: Sue Hand Signature: S. Hand Date: 23/08/21

Signature of Assistant Director (or representative)

ANY IMPLICATIONS SENT TO DEPARTMENTS SHOULD GENERALLY BE SUBMITTED AT LEAST 5 WORKING DAYS IN ADVANCE TO ENSURE THESE CAN BE GIVEN THE RELEVANT CONSIDERATION.

BOX 8**EQUALITY IMPLICATIONS:** (To be completed by the author).

Equality or diversity implications related to the TUPE transfer of staff they will be addressed as part of the consultation.

BOX 9**RISK IMPLICATIONS:** (To be completed by the author)

- **Failure to deliver the services for SLH** – this is mitigated by the production of the SLA, project plan, existing system integration, existing close relationships between the organisations specifically the procurement departments and aligned corporate objectives.

- **Staff do not transfer** – to enable the delivery of these services it is important that staff do accept the transfer from SLH. This are mitigated, as there would be no role at SLH once the transfer of services takes place and they are moving into the Council who wholly own SLH with similar terms and conditions.

**BOX 10
CONSULTATION**

Trade Unions
SLH Staff
SPT Staff

**BOX 11
INFORMATION NOT FOR PUBLICATION**

It is in the public's interest to be aware of this decision record under the Freedom of Information Act 2000, The decision will be published with the following redactions

- All commercial and financial information related to each organisation.
- All staff information which may identify personal information

Name: _____ **Glyn Sparrow** _____ Signature _____ by email _____ Date:
31/08/21


Signature of FOI Lead Officer for service area where ODR originates

**BOX 12
BACKGROUND PAPERS**

Please confirm if any Background Papers are included with this ODR **YES/NO**

(If YES please list and submit these with this form)

**BOX 13
AUTHORISATION**

Name: S. R. Fawcus 
Assistant Director of Legal & Democratic Services

Date: 13.10.21

Does this decision require authorisation by the Chief Financial Officer or other Officer

YES/NO

If yes please authorise below:

Name: _____ **Signature:** _____ **Date:** _____

Chief Executive/Director/Assistant Director of _____

Consultation with Relevant Member(s)

Name: _____ **Signature:** _____ **Date:** _____

Designation _____

(e.g. Mayor, Cabinet Member or Committee Chair/Vice-Chair)

Declaration of Interest ~~YES~~/NO

If YES please give details below:

PLEASE NOTE THIS FORM WILL BE PUBLISHED ON THE COUNCIL'S WEBSITE IN FULL UNLESS IT CONTAINS EXEMPT OR CONFIDENTIAL INFORMATION.

Once completed a PDF copy of this form and any relevant background papers should be forwarded to Governance Services at Democratic.Services@doncaster.gov.uk who will arrange publication.

It is the responsibility of the decision taker to clearly identify any information that is confidential or exempt and should be redacted before publication.