

Agenda Item

Executive Board

3 November 2010

PJ/smep



Leisure East Devon – Code of Workforce Practice (COWP)

Exempt Information

Para 3 – Schedule 12A - Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Summary

LED has requested that the formal legal agreement be changed to remove the requirement to work to the COWP.

This report sets out the advantages, and issues, with doing so.

Recommendation

To remove the requirement in the LED legal agreement that they must comply with the COWP, on the condition that LED ensures that it works in accordance with relevant TUPE legislation.

a) Reasons for Recommendation

This provides more flexibility to LED in conditions of work and permits savings to be made which will be returned to EDDC.

b) Alternative Options

Not to release this condition.

c) Risk Considerations

That LED may introduce work practices that do not accord with EDDC's wishes as commissioner of the service and as landlord of the premises.

d) Policy and Budgetary Considerations

Positive Impact Overall

Create Cashable Savings

e) Date for Review of Decision

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1 Main Body of the Report

- 1.1 LED have been asked to identify how they might reduce the costs to the Council. As they work via a contract any such reduction needs to be by mutual agreement. Whilst they have agreed to look at level of balances and future payment for works the most significant and recurring saving would be from adjusting terms and conditions of work of their employees.
- 1.2 At present however they are bound by a condition in the legal agreement which constrains this and links their overall working terms and conditions to Local Government principles, preventing a 'two tier' workforce.
- 1.3 Evidently the Council is looking at its own terms of remuneration, staffing levels and staff benefits to reduce costs.
- 1.4 LED have suggested that they may progressively be able to save up to £250k per year over a period of 5 years if this condition is lifted and they have successful negotiations with staff.
- 1.5 In discussion with the Council's legal team the following points have been made:
 - "The Code of Practice is defined in both the Business Transfer Agreement and the Funding Agreement as "the Code of Practice on Workforce Matters" in Local Authority Service Contracts (ODPM Circular 03/2003) as amended, updated or replaced from time to time.
 - The Funding Agreement requires the Trust to provide the Services, in compliance with the Code of Practice.
 - At the time of the original transfer full TUPE protection was afforded to the workforce and I think both parties would remain obligated to honour this."
- 1.6 The COWP itself says "this code will form part of the service specification and conditions for all such contracts" (i.e. TUPE contracts).
- 1.7 The Human Resources team at EDDC have stated:
 - "The COWP is designed to ensure that where we TUPE transfer staff out that the contractors do not cut their terms and conditions and recruit new people on much lower terms creating a two tier workforce.
 - What the COWP does not say is that terms and conditions can never be changed so, this is not preventing LED from changing terms and conditions providing this is done fairly. They are however constrained by TUPE legislation so will need to show a clear business case for the changes which are not connected to the transfer and ensure that they consult collectively."

1.8 LED have stated:

“We can indeed negotiate new terms and conditions and have already started the process. Our legal advice is that if the COWP applies we must, however, impose the same terms and conditions on all staff. If removed, we can bring in new terms and conditions (particularly for new entrants) and negotiate some concessions and/or protections for existing staff.

As we are looking for savings over a 4 year period the flexibility to offer some element of protection to existing staff would allow us to bring in new terms and conditions without too much objection.

Our understanding is that the COWP is indeed a code and is not a statutory requirement like TUPE.”

1.9 Overall therefore it seems that, providing LED proceed with due legal care, by a process of negotiations, they may indeed be able to reduce the EDDC service payment.

1.10 To lift this condition requires a formal decision by EDDC and a formal variation to the contract.

Legal Implications

Legal advice contained in the report.

Financial Implications

The annual payment to LED is currently budgeted at £1.155m and is a significant expenditure item in the Council's budget. Along with other measures being explored and taken by the Council to reduce costs to meet anticipated reductions in government funding it is appropriate to explore how a reduction can be achieved in this area.

Consultation on Reports to the Executive

Background Papers

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