



**ADSS Cymru**

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Leading Social Services in Wales

**ASSOCIATION OF DIRECTORS OF SOCIAL SERVICES CYMRU**

**Delivering Transformation Grant (DTG)  
Programme 2018-19**

**Advice Note 7 – Workforce Implications  
of Formal Partnerships**

**April 2019**

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## Summary

1. The success of partnership arrangements will depend on the enthusiasm of skilled and trained staff in working together. *“Partnership staff should be familiar with the partner organisations and have a wide range of contacts within them. Partnership staff will also need to understand the organisational context of those with whom they work”*.<sup>i</sup>
2. In 2000, the Cabinet Office published a Statement of Practice: *Staff Transfers in the Public Sector*, which was revised in December 2013.<sup>ii</sup> The guiding principles include:
  - That the Government is committed to ensuring that the public sector is a good employer and model contractor and client.
  - That Public Private Partnerships and the process of modernisation through organisational changes in the public sector, will be best achieved by clarity and certainty about the treatment of staff involved.
  - That the Government is committed to ensuring that staff involved in all such transfers are treated fairly and consistently and their rights respected. This will encourage a cooperative partnership to the modernisation of the public sector with consequential benefits for all citizens.
3. In its Circular, Code of Practice on Workforce Matters (referred to as the Two-Tier Code)<sup>iii</sup>, Welsh Ministers endorsed the Cabinet Office Statement in its application to Wales and provided further guidance.
4. The Cabinet Office Statement also explains that the Government takes a positive attitude towards TUPE, regarding it as an important aspect of employment rights legislation and the potential to promote a cooperative partnership approach towards business restructuring and change in the public sector. It is worth noting that the TUPE Regulations have been amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014, which came into force on 31<sup>st</sup> January 2014.

## Background

5. Part 9 of the Social Services & Well-being (Wales) Act 2014 (or Section 33 of the NHS (Wales) Act 2006), allows the local authority and the NHS partners to pool budgets or delegate functions. In either of these cases, one partner will act as the host for undertaking the duties of both on a day-to-day basis. The partners may establish a joint committee to assist in the management of the partnership but ultimately staff employed by one organisation cannot direct or undertake the duties of another unless there is a formal partnership in place which arranges for this to happen.
6. The sharing jointly of the cost of an appointment does not automatically confer upon the post holder any rights to manage or control affairs in another organisation, without the formality of a Part 9 Agreement (or Section 33 Agreement).
7. The roles that staff will undertake need to be considered alongside but not confused with:
  - Who (which agency partner) will manage them day-to-day?
  - The structure of service and accountability
  - How they will receive professional supervision as opposed to management for the direction of their duties?
  - How clinical and service governance will be assured?
  - Which policies and procedures for employment will apply?
  - Which terms and conditions for employment will apply?
  - Which pension membership to use regardless of the employer (in certain circumstances, i.e. where there are Section 33 arrangements, NHS staff transferring to a local authority employer may retain NHS pension scheme membership and similarly for local authority staff transferring to the NHS).
8. Partners will need to identify at an early stage who the staff are within the service and the staff budget that will be subject to the partnership agreement.

**Question?**

Are you able to identify the full establishment of budgets, numbers and types of staff?

9. **It should be noted that the partnership will not employ any staff.** The operation of partnership arrangements, under the legislative provisions above, does not, of itself, give rise to a separate legal entity. Staff will continue to be employed by one organisation or the other and this should be able to stand the test of clarity on accountabilities and management that a critical incident might, for example, question.
10. Staff may be anxious about assumptions rumoured to have been planned in respect of the proposed new partnership. Their contribution to the design of the partnership will help. The partners will want to ensure that staff rights and opportunities are not impinged.
11. The overriding principle is that staff and their representatives should be involved in discussions on the development of local arrangements that affect them.

**Key Message – HR is Critical**

In developing partnership arrangements, do not under estimate the importance of careful management of the human resource implications

12. The range of staff groups that could be involved in partnerships is considerable, as many health service functions and health related local authority functions, could be involved in partnerships. This means the whole workforce will potentially be involved.
13. The vision and direction of the partnership as developed by its commissioning and service plans and documented in its model of governance, will, in turn, shape the financial arrangements and thereby, the integration of the workforce. The size of the partnership arrangements will vary according to the needs of the local situation. Partners will need to consider the organisational impact that arises from a large scheme, as well as that of a small scheme. The latter may affect staff by isolating individuals from their professional team and could make the recruitment and retention of staff problematic. There is no 'one size fits all' approach.
14. The contract of employment is the key to understanding the employment relationship of where the responsibilities, requirements and entitlements for both employers and employees rest. This is a fundamental legal position and one that can, at times, appear to be an insurmountable barrier between partners. However, proper planning that includes workforce arrangements from the outset can pay dividends. After all, the success of partnership arrangements will depend on the enthusiasm of skilled and trained staff in working together.

## Establishing a Partnership Arrangement

15. The Partnership Regulations require that prior to entering into partnership arrangements, there should be consultation with all of the relevant stakeholders, i.e. those affected by the proposed establishment of partnership arrangements. Staff groups and organisations are key stakeholders. It is important to consult and work with staff from the earliest possible opportunity to consider and develop the arrangement. Existing representatives (for example, Trade Unions and other representative bodies) should be consulted. However, the partnerships may cover a broader range of staff groups, and consideration will need to be given to ways of bringing together the representatives of those staff across the agencies involved. The consultation should be conducted jointly (between the partners) and must be with all persons or groups that appear to the partners to be affected.
16. The importance of meaningful engagement with staff from the earliest stages of the development of partnership arrangements should not be underestimated. Operational staff are often in a good position to see what the barriers are and how they can be overcome. They, like all other stakeholders, will be able to make suggestions about improving the effective delivery of services.
17. The impact on staff of a partnership arrangement will vary depending on the arrangements being taken forward in this way:

- Where there is a pooled fund, depending on the terms of the local agreement and level of delegation, nominated staff from the partner bodies will be able to access the fund to purchase services and goods. The eligibility criteria for use of the pooled fund will have been agreed in order to set it up and the normal assessments will take place. The possibility of staff being able to use joint assessment records, undertake joint assessments, and, in some cases, establish ‘trusted assessment’, where one person assesses on behalf of other service areas, is likely to arise, at least for some of the services. This will have significance for training, education, and the development of core competencies, as well as the need for clarity in accountabilities for fulfilling tasks.
  - For lead commissioning and integrated provision, the delegation of functions from one statutory body to another may lead to the transfer of those staff who perform those functions. There are two likely scenarios:
    - The transfer may consist of closer co-ordination of the present services, in which case, it will require movement of staff from one organisation to another by whatever means is considered appropriate to the stakeholders involved. This may take the form of a permanent transfer under TUPE or a secondment if the arrangement is likely to be short-term or a staff development opportunity. Such a transfer may be part of a redevelopment of services, for example, following a service review. However, in each case, the human resource issues that will arise, will reflect the size of the partnership, the level of change and the number of functions involved.
    - In the case of a transfer of staff to a service provider or of staff originally transferred out as the result of an outsourcing, reference should be made to the Welsh Government Code of Practice on Workforce Matters: Procurement Advice Note (PAN) for the Public Sector in Wales.<sup>iv</sup>
18. The different organisational cultures that staff are accustomed to, and the methods of working, training, supervision, policies and procedures, will need to be addressed to ensure that the staff involved feel they can fit in to the new organisational arrangement. The expertise of all of the staff will need to be valued if the team(s) are to work effectively and gain trust in each other. The Annex to this advice note gives a practical example of how staffing is dealt with in an actual agreement.
19. For the sake of clarity, the partnership will not employ any staff. The operation of partnership arrangements under Part 9, does not of itself, give rise to separate legal entities (unless constituted as such, e.g. by incorporation). Staff will continue to be employed by the relevant partner organisation.

## Human Resource Planning

20. Partnership arrangements will be set in the context of strategies that are agreed locally. It is important that in deciding what service outcomes are required, careful attention is paid to how such outcomes will be achieved with the workforce that is available within each organisation. Strong leadership is crucial in implementing such change and issues around leadership may be presented in several ways:
  - Structural change
  - Policy, procedural and practice development
  - Creating new relationships and weakening others
  - Budget disaggregation
  - People management issues
  - Changing systems and migration issues
  - Office moves and co-location
  - Maintaining and improving current performance during a period of change.
21. In addition, paragraph 2 of Schedule 12 to the 2006 Act, empowers Welsh Ministers, by Order, to transfer staff from an NHS body to a local authority and vice versa. This has the effect of transferring contracts of employment as if the contract had been made by the transferee and transfers rights and liabilities under any transferred contract of employment. TUPE and pension requirements will still apply, albeit any order may operate so as to transfer relevant pension provisions. This also allows for division of contracts into separate contracts.
22. Change management links the leadership of the partners engaged and all of the relevant workforce(s) to develop and maintain a shared vision. Change management complexities will depend on the level and scope of change to be achieved and the overall available resources and timescales.
23. There are also a range of culture change issues that are manifest as partners and their workforces come together. Some of these are linked to whether the proposals constitute a merger or a take-over and others to professional values and identity. These call for highly skilled and active management interventions, learning from best practice elsewhere in public services.
24. Workforce planning needs to take account of all of these issues. Although there is no set model for workforce planning, all models are designed against the outcome; getting the right people, in the right place at the right time. Traditionally, this relies on information in three key stages:
  - Where are we now?
  - Where are we going?
  - What is the gap between the two and how do we bridge it?
25. Workforce planning is carried out at a range of levels. At the integrated and commissioning level, the process will link policy implementation and service reconfiguration with workforce re-modelling. At the employer collaborative level, it will link shared issues such as skills shortages or concern about sector image with joined up effort and pooled resources. For each partner, it brings together the overall vision of the organisation with the business, service, finance and workforce plans.

26. Communication is also a vital part of workforce planning and human resource management. Information is vital in the integration process. Communication, particularly the lack of communication, frequently arises as a criticism in change situations. Trade Union engagement from an early stage in managing communication, as well as identifying and helping to create solutions to cross-organisational tensions, is cited in the field as one of the ingredients to success. Research indicates that full, meaningful and continuous communication is the key to managing complex service re-organisations; underpinned, where appropriate, with legal consultation requirements. Previous experience within Welsh public services as a whole, include the use of joint councils with Trade Unions, which may also be a ready source of support in deciding how to ensure this communication happens.

## Human Resource Arrangements in Partnerships

27. There are many partnership agreements which rely entirely upon secondments, plus some joint funded single employer posts. Some may also agree over time to recruit to vacancies through one partner.
28. At the outset, it may be easier to arrange the transfer of staff through secondments. This may be particularly true of new partnerships that have not yet been tested for the intended durability or final model of service. Certain staff groups may wish to preserve their route to career and professional development by being seconded. Most agreements will usually, and sensibly, be subject to annual review and renewal as well.
29. In the medium to longer term, other arrangements are likely to be required in order to develop the stability of the partnership arrangement and create a more consistent approach.
30. Staff may be transferred under TUPE arrangements (see “Statement of Practice on Staff Transfers in the Public Sector” published by the Cabinet Office). This makes clear that transfers of staff within the public sector should be conducted on the basis that TUPE will apply, unless there are genuinely exceptional reasons for their not doing so, for example, where an activity is essentially new or a one-off project. It is expected that all public sector organisations should adopt this statement of practice.
31. Partners should undertake their own risk assessment and advice on whether or not they feel that TUPE applies in the short-term and what the longer-term intention is alongside any instability that may come from a major change in practices early on, particularly if that may unsettle performance delivery.
32. As partnership arrangements develop, they may also need to take on new staff to fulfil new roles and as vacancies arise, it will be important to establish appropriate terms and conditions under which they are employed. It could be that the terms and conditions of the statutory body taking the lead in the arrangement, or a modified version of those existing terms and conditions could be used, although this is up to the discretion of the local partners working in agreement with staff bodies. These arrangements will be based on job evaluation schemes already developed.
33. Policies that govern the activities of staff within partnership arrangements will need to fulfil the statutory employment requirements. They will also need to be harmonised across the public



sector bodies concerned, particularly health bodies' and local authorities' present policy and procedural arrangements. This includes issues such as Health and Safety, rights of access to Occupational Health, and responses made to requests under the Freedom of Information Act 2000, and the Data Protection Act 2018.

34. Staff seconding or transferring will, if required, use their existing disciplinary and grievance procedures. These will be updated in order to reflect the management arrangements in the partnership. In particular, the procedures should clearly specify the bodies of appeal and representation rights. It is expected that the policies should reflect best local practice and should be agreed with trade union representatives.
35. The Part 9 Agreement will need to be clear what happens to staff and how responsibilities for employment liabilities are distributed at wind up of an agreement. Agreeing jointly to appointments within a Part 9 arrangement does also create liabilities for funding the posts within that arrangement.

## Pension Arrangements

36. Where people have been seconded to another partner organisation, their pension rights should not be affected. Where staff are transferred, even under TUPE arrangements, they cannot usually remain members of their organisation's pension scheme. Individuals have a number of options about their pension rights, which will need to be fully explained to them. Broadly comparable pension arrangements must be made available and differences between schemes may require adjustments to the overall remuneration package. Bulk transfer of pension rights should be available to protect those who wish to transfer their accrued pension rights to their new employer's scheme, and these will be offered to provide year-for-year service credit. Where new staff are employed, the agreement on the terms and conditions will need to include arrangements about pensions.
37. Staff leaving the NHS to join a local authority employer under Part 9 arrangements and vice versa, may choose to join the new employer schemes or stay in their prior schemes. Employer pension advisers will be able to assist with such information. This is a specific design of the pension arrangements in order to cover for Part 9 arrangements, which allows for this.
38. Some staff have special terms and conditions which relate to their job role. These rights will need to be recognised within the partnership arrangements.
39. In all cases, these are matters for local negotiation and agreement and where staff are involved, staff side representatives should be fully informed and involved in any plans.

## Training and Development

*“To support these new models of care, we must strengthen the support, training, development and services available to the workforce with a focus on building skills across a whole career and supporting their health and wellbeing.” (A Healthier Wales).*

40. Collaboration and partnership require a different set of abilities and skills. A range of partnership competencies will be needed by managers, leaders, staff and professionals to enable successful partnership working. These will include:
  - identifying the opportunities for jointly-delivered solutions;
  - recognising innovative and creative proposals;
  - knowledge of roles and responsibilities of the partners;
  - building and sustaining relationships across different cultures, professions and organisations – good social and interpersonal skills and crucially, building trust;
  - skills at working across organisational boundaries;
  - influencing without control – mediation/brokerage;
  - user responsiveness in joint working environment; and
  - working with individuals in need of care and support and other professionals to identify outcomes.
41. For all staff involved in partnerships, the focus must be on the development of core competencies with related training programmes, jointly developed and linked to professional training. Staff performance systems within partnerships need to relate to the intended outcomes of the partnership not just to individual organisational accountability.
42. Occupational standards provide a useful framework for common understanding of these competencies across organisational boundaries. Occupational standards can also be used as a common language, helping those from different backgrounds and training routes to understand the roles of others.
43. Shared learning across the public sector partners will need to underpin the partnership arrangements. Given the wide range of functions that can be delegated, in time this is likely to involve many staff, some of whom will not have a history of working so closely together. The shared learning they take part in will be crucial to the success of the schemes/projects.
44. The education and training sector at national and local levels can have a significant part to play in developing competencies, training and promoting lifelong learning activities, which take account of opportunities offered in the partnership arrangements.
45. Partnership arrangements will not change the responsibilities for the separate staff groups for their continuing professional development. Where training opportunities for students may be created through partnership arrangements, these will need to be agreed with the requisite professional bodies/regulators.
46. There may be some roles and functions that need to be developed as a matter of priority, such as the formation and development of integrated commissioning teams.

47. Advice Note 2 on Policy and Legislation makes reference to grants. These can be used effectively to facilitate joint training opportunities.

## Annex 1: Extract from a Signed Agreement

### STAFFING

[All Staff working as part of the Arrangements shall continue to be employed by the Partner employing them at the date of this Agreement and they shall retain their current terms and conditions of employment.

The Partners are of the view that TUPE shall not apply to these Arrangements. However, in the event that any Staff shall be deemed to have transferred under TUPE from one Partner (the "employing Partner") to another (the "Transferee"), the employing Partner shall indemnify the Transferee against any additional costs incurred by the Transferee as a result of such transfer, whether such transfer occurs before, on or after the Commencement Date.]

The personnel procedures operative in relation to Staff shall be those of their respective employer. Subject to any joint protocols agreed by the Partners under [protocols/clause X] insofar as they are consistent with Staff terms and conditions of employment, matters relating to terms and conditions of employment, discipline, grievances and all other employment procedures are the responsibility of the relevant Partners in relation to their respective Staff.

The Partners will work together to formulate joint protocols for the management of Staff included in the Arrangements from time to time.

Where it is necessary for the purposes of any Partner's personnel procedures for a member of Staff employed or contracted by one of the other Partners to co-operate with the operation of such procedures, the employing Partner shall use all reasonable endeavours to ensure that such co-operation is forthcoming.

For the avoidance of doubt, where a member of Staff employed by one Partner (the Manager) is the manager of a member of Staff employed by one of the other Partners (the Managed Person), the Manager is authorised by virtue of this Agreement to give instructions to the Managed Person and to take all appropriate management action in respect of the Managed Person subject to the terms of the relevant personnel procedure.

Except as provided at Clause Y [refer to clause title if possible], new appointees to the Staff (whether by way of replacement of existing posts or to new posts) will be recruited in accordance with the process that shall be agreed by the Partners and included at in Schedule Z [refer to schedule title if possible].

Changes in the roles or skill mix of the Staff and/or increases or decreases in Staff numbers and the corresponding adjustment required to the Partners' Financial Contributions to the Pooled Fund shall be agreed by the Partners acting through the Local Project Board and in consultation with the Partners' appropriate professional leads.

All Staff salaries shall be paid by the Council from the Pooled Fund.

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## References

- <sup>i</sup> Audit Commission, *A Fruitful Partnership: Effective Partnership* (Management Paper), 1998.  
<file:///C:/Users/Paul%20Pavia/Downloads/A%20Fruitful%20Partnership%201%20per%20participant.pdf>
- <sup>ii</sup> Cabinet Office, *Staff Transfers in the Public Sector: Statement of Practice*, 2000 (Revised Ed. 2013).  
<https://www.gov.uk/government/publications/staff-transfers-in-the-public-sector>
- <sup>iii</sup> Welsh Government, *Circular: Code of Practice on Workforce Matters*, 2014.  
<https://gov.wales/sites/default/files/publications/2019-02/circular-code-of-practice-on-workforce-matters.pdf>
- <sup>iv</sup> Welsh Government, *Code of Practice on Workforce Matters: Procurement Advice Note (PAN) for the Public Sector in Wales, June 2014*.  
<https://prp.gov.wales/docs/prp/toolkit/150702procurementadvicenotetcodepracticeworkmatters.pdf>