

STAFF CONSULTATION FRAMEWORK (FINAL)

EFFECTIVE FROM 1 MARCH 2002

CROYDON
Personnel Services

STAFF CONSULTATION FRAMEWORK

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STAFF CONSULTATION POLICY AND GENERAL PRINCIPLES

1. Introduction

- 1.1 This policy covers consultation with staff and their representatives on all aspects of change affecting all Council employees except school-based staff who have their own procedures. It sets out the Council's expectations and requirements on consulting staff and their representatives within a partnership framework.
- 1.2 The Policy and General Principles give advice and guidance on **how** to consult trade union representatives and staff.
- 1.3 There are, in addition, four Appendices, which set out **when** to consult trade unions and staff in specific situations:
- Appendix 1: Consultation on the staffing effects of organisational or technological change.
 - Appendix 2: Consultation in redundancy situations, including statutory requirements.
 - Appendix 3: Consultation during the externalisation of services through competitive tender and other related processes, including statutory requirements.
 - Appendix 4: Consultation during Best Value reviews.
- 1.4 Organisational and technological change often present a variety of legal and employee relations issues. Even the most seemingly straightforward are likely to carry statutory or contractual obligations. Departmental personnel sections should be involved at the outset of such change to help in identifying and meeting these responsibilities and assist the change process.

2. The Benefits of Effective Consultation

- 2.1 The Council believes that communication and consultation with employees and their representatives should be an ongoing aspect of management to build commitment and partnership. Effective consultation is a keystone of good management in general and the management of change in particular. It can often be critical in whether or not the change process is successful. The Staff Consultation Framework supports the development of a partnership between managers, staff and their trade union representatives to facilitate the process of change.
- 2.2 Consultation should be genuine, timely and regular if it is to be effective. Simply telling employees and their representatives what has happened or is going to take place is not consultation. Employees are key stakeholders in any change process and must be involved at a formative stage. Consultation involves proper consideration of the responses of the group being consulted.

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- 2.3 Consultation on proposals for change should take place at two levels:
- Firstly with trade union representatives.
 - Separate, additional discussions directly with staff affected in their work groups and with their representatives.

3. When and How Much to Consult

- 3.1 Managers should start consultations with staff and their representatives on matters that are likely to effect them as early as possible before decisions are taken. Whilst managers may have a genuine concern about the impact on morale of consulting staff too early, it is better to consult early rather than have staff feel that they have been unfairly treated or kept in the dark.
- 3.2 Consultation must be meaningful. Staff and their representatives must have the opportunity to make constructive proposals and must be given sufficient information to enable them to contribute to discussions. This information will include:
- the number and designations of staff affected,
 - the reasons for the proposed changes,
 - the new structures or other arrangements management are proposing to introduce,
 - the date when it is intended to implement the proposals.
- 3.3 Comments and suggestions by staff and trade union representatives must be given serious consideration by managers and, if the suggestions are not accepted, the reasons explained.

4. Methods of Consultation and Communication

- 4.1 The method of staff participation and communication will depend on the nature and size of the change being proposed. Mechanisms such as meetings/briefings, working groups, suggestion schemes, newsletters, briefing notes and “surgeries” to discuss staff concerns can be used both in consulting staff and their representatives about proposed changes as well as implementing the changes.
- 4.2 In some circumstances consultation will take the form of advising the staff and trade unions of a Committee or management decision and seeking views on how the implementation process should be handled; there will be other occasions when the consultation will take the form of giving an outline of the proposals and seeking the participation of the staff and trade unions in both the decision-making and implementation process.
- 4.3 Best Value places an obligation on services to consult stakeholders such as

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service users, statutory and voluntary organisations with an interest in the service, local businesses, etc. and in many instances, especially in Social Services, legislative requirements make it necessary to link the process of consulting staff with consulting service users (and their carers, where appropriate). When both staff and service users are affected by change, it is important to co-ordinate the consultation process and to communicate with both groups at all stages.

- 4.4 It is important during times of change that management support staff as much as possible and keep communication channels open. Managers must try to minimise uncertainty or, at the very least, explain why the situation is uncertain and when it is expected to be resolved.

5. Consultation With Trade Union Representatives

- 5.1 Meaningful consultation with employee representatives is important in fostering good employee relations and is also a legal requirement in cases of redundancy and TUPE transfers (see Appendices 2 & 3). A failure to consult properly in such circumstances can lead to any subsequent dismissal being deemed unfair.

- 5.2 Trade union Representatives must be given sufficient time to consider and be familiar with proposals for change. This can be achieved in two ways:

- Inviting the trade union representatives to a meeting where they are given the information and invited back to a later consultation meeting when they have had time to consider the proposals.
- Sending information on the proposals far enough in advance of the consultation meeting to allow them sufficient time to fully consider, and be familiar with, the proposals.

In any event, the process of consultation must start at the earliest opportunity and be conducted with the aim of seeking agreement on the process for moving ahead. With both approaches, sufficient time should be allowed for trade union representatives to consult their members.

- 5.3 Where there are no local representatives, or if the change covers more than one Department, the appropriate Staff Side Secretaries should be consulted on the way forward. Where the workforce undergoing the change does not have any union members, the staff group concerned should be given the opportunity to elect employee representatives who should then be consulted.

- 5.4 Care should be taken when involving local representatives from the work group if they are directly involved/affected by the proposed change. In the event of a possible conflict of interest arising with local representatives and the proposed change, the appropriate Staff Side Secretary should be consulted.

- 5.5 Trade union representatives (or the Staff Side Secretary, if appropriate) must be consulted even if the work group is not unionised, unless the changes are of

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a minor nature and do not involve job losses. In such situations, confirmation should be sought from Departmental personnel sections on the way forward.

6. Direct Consultation with Staff

- 6.1 The successful implementation of change is assisted by the participation and commitment of the staff affected. Direct communication and consultation with staff is, therefore, not a substitute for consultations with trade unions, it is an essential, additional requirement.
- 6.2 Managers should communicate regularly and directly with their staff and involve them in matters affecting their work, such as:
- Suggestions for improving the quality and range of services provided to the public or to internal customers which meet their needs.
 - Organisational training and development priorities.
 - Decisions which have staffing implications such as allocation of work, potential redundancies and the effects of organisational reviews.
 - Technology, machinery or methods of work, which have a significant effect on staff numbers or on workload or on conditions of service.
 - Matters relating to employees' health and safety at work.
- 6.3 Once formal consultations on proposals for change have been started, a meeting with the work group affected should be arranged by management as soon as possible after the meeting between the management and the trade unions. The recognised trade union representative(s) should also be invited to attend this meeting. [also see section 2.3]
- 6.4 Depending on the size and dispersal of the work group it may be necessary to hold more than one meeting with smaller groups within a short period.
- 6.5 Staff meetings should be held within work time and with sufficient notice, particularly where field staff may have to arrange their work programme to be able to return to the office for a meeting. Care should be taken to ensure that part time staff can attend during their normal working time. If part time staff are required to attend outside their normal working hours, they should be paid at the same rate as equivalent full time staff. Shift workers should be consulted during their normal working time or special arrangements made to ensure that they are not disadvantaged.
- 6.6 Managers should also take care to involve staff who are away from the workplace for an extended period e.g. on maternity/adoption leave, career breaks, sick or annual leave. The process for involving them, including getting copies of documents/proposals, attending meetings, etc. should where possible be agreed with the staff concerned.
- 6.7 Management should:

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- Explain the proposed changes and the rationale behind the proposals fully.
- Set the parameters clearly so that staff are aware of the extent of flexibility and control they have in influencing what happens.
- Allow sufficient time for open discussion, questions and ideas from staff.
- Inform staff how they will be able to participate in the process and what the communication mechanism will be.
- Write to all staff to confirm the information given at the meeting, taking care to include any who had not been able to attend in person.

6.8 Proposals put forward by staff must be discussed openly with trade union representatives, either at the same meeting or at future meetings.

7. Consultation on Matters of Council Policy

7.1 The Council has a duty to its electorate to take decisions on the type and level of service provision in the interests of service users and the wider electorate. Not only may these decisions have implications for employees, it is also recognised that employees who work in the service may have specialist knowledge that could inform the Council's decisions. There are difficult issues here of democratic accountability to the electorate and the Council's genuine desire to consult its employees on decisions that could affect their terms and conditions of employment. The Cabinet will make key policy decisions that may affect employees, such as:

- Whether to develop, expand or contract the service.
- Whether or not to close or change the purpose of an establishment.
- Finance to be allocated to a service or area of work.
- Reorganisation of the top management structure.
- The distribution of major functions between departments in a way which influences the level and type of service provided. This does not mean that consultation should not take place on more operational changes in functions carried out by different departments.

7.2 This will normally involve:

- An initial report to the Cabinet on the key policy issues and options.
- Where policy decisions involve organisational/technological change with staffing effects arising from them, the trade union representatives will be consulted before the proposals are referred back to the Cabinet for decision.
- Reports to the Cabinet must include staffing and equalities considerations and report on the results of any consultations which have taken place. A copy will be provided to the union representatives before the Cabinet meeting.
- Consultations on any staffing effects following the policy decision by the Cabinet. The consultations must be meaningful in that they can influence what happens with the staffing effects and are within any specified time limits.

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- Any decisions on the staffing effects of changes taken by the Cabinet or by officers under delegated authority should not be made until after detailed consultations have taken place.

7.3 Organisational and technological change will on occasion be driven by government initiatives or legislative change. Under these circumstances, the Council's ability to consult on the decision to implement a change will be severely limited and in some situations there may be little scope for consultation on whether the changes are implemented. However, the Council is committed to consulting trade unions and staff on the implications for them of such changes and will do so within the framework of this document.

8. Responding to Staff Views

- 8.1 Suggestions from staff and trade union representatives should be noted and explored to see if they can be acted on. If proposals are rejected, an explanation must be given.
- 8.2 If the matter is referred by either side to the Staff Consultative Committee, managers will be required to provide a briefing note for Members explaining the background and the arguments for and against the various options. The Chief Officer and/or a nominated senior officer are also expected to attend the Staff Consultative Committee meeting to put their case to Members and respond to comments from the Staff Side.
- 8.3 If, after considering the proposed options and debating the issues involved at local level and if appropriate, at Member level through the Staff Consultative Committee, the final decision is contrary to staff wishes, the reasons will be fully explained.

9. Reaching Agreement

- 9.1 Consultations will be conducted with the aim of reaching agreement. This does not mean that full agreement has to be reached on all issues and nor does it mean an abdication of management's responsibility to take decisions. No action will be taken to implement changes in the event of a failure to agree until:
- the points of disagreement have been identified and discussed at officer/staff side level.
 - In the event of continuing disagreement, the matter has been referred to the Staff Consultative Committee. The Head of Personnel Services must be consulted on such matters so that she/he may advise Members on the employment relations and legal implications of the alternative options.

10. Changes Which May Affect the Contract of Employment

- 10.1 Changes in the terms and conditions of service of employees must in all cases

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be supported by sound business reasons and be negotiated with representatives of the recognised trade unions. Advice must be sought from the Departmental Personnel Manager in all such cases. The test of whether a proposal needs formal negotiation, rather than consultation, is to ask "will this have the effect of potentially changing the contract of employment?" Typical examples include:

- increase or decrease in weekly hours;
- altering the flexi-time scheme;
- introduction of cashless pay or move to monthly pay;
- changing/withdrawing performance or bonus schemes or plussages/allowances;
- introducing/altering a career progression scheme;
- changes to payments for unsocial hours/weekend working/overtime;

This list is not exhaustive. If in doubt, ASK.

10.2 The requirement to negotiate changes to terms and conditions with representatives of the recognised trade unions does not preclude the need to resolve the change with individual employees. Collectively agreed changes will not necessarily be acceptable to all and individual consultation with all affected employees should be undertaken.

10.3 Croydon's Summary of Principal Conditions of Employment includes a statement that the basic terms and conditions are subject to collective agreements currently in force, including any changes as may be agreed or issued from time to time. In such cases, although the contract may give management the discretion to alter terms, a process of explanation is essential for the changes to be deemed reasonable.

11. Equalities Considerations

11.1 Managers must consider and take account of the equalities implications of any proposals for change. Where any potential adverse impact is identified, this should be discussed with the Departmental Personnel Manager. There must be clearly justified, objective justification for proposals. Managers must ensure that following consultation, the implementation of change is carried out in a fair and reasonable manner.

11.2 The Sex Discrimination Act, Equal Pay Act, the Race Relations Act and the Disability Discrimination Act provide the legislative framework in this context.

12. Responsibilities for Consultation

12.1 Directors have the primary responsibility for communicating with staff and their representatives in accordance with this policy and procedure.

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- 12.2 All managers are expected and required to establish regular communication and consultation forums with their staff.
- 12.3 Directors have delegated authority for staff matters but must work within the core local policies or agreements or national conditions of service unless they have Committee approval to introduce different arrangements.
- 12.4 On corporate matters or on matters affecting more than one department, the Head of Personnel Services will take the lead in ensuring that consultation takes place.

13. Review

- 13.1 The Staff Consultation Framework will be jointly reviewed by the Council and the Staff Side as necessary.
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| AGREEMENT ON THE STAFFING EFFECTS OF CHANGE |
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1. Introduction

- 1.1 The Council have agreed with the Staff Side the steps set out in this paper to cover the interests of staff where work is affected by organisational or technological change and to ensure they and their representatives are involved in the process. The Council and the Staff Side agree to support the introduction of change which leads to improved efficiency or a more effective service to the public.
- 1.2 No individual agreements will be made for separate Departments, work places or offices, etc., or for different types of equipment or systems outside the principles in this agreement.
- 1.3 Many changes include the introduction of, or extension of use of "new technology" so it has been agreed to define this term as including: "the application of computer-based equipment and telecommunications systems to store, analyse, process and transfer information"

2. Consultation Procedure

- 2.1.1 Staff and their representatives will be consulted as early as possible if, for any area of work, organisational or technological change is being considered which could affect:
- the terms and conditions of employment, or
 - working conditions of staff, or
 - affect their work significantly
 - training needs in that it would introduce a requirement for significant retraining to be undertaken.
- 2.2 This consultation, which should be before decisions are taken on organisational and technological changes, will be carried out as follows:
- firstly, separate discussions will be held with staff representatives to consult them about the proposals.
 - secondly, staff in their work group(s) and their representatives will be invited to consultation meetings to be informed of what is proposed and consulted for their comments. This will be in addition to any meetings or other contacts between Management and staff to explain and facilitate the changes.
- 2.3 The Council undertakes to supply the staff representatives with sufficient information on all aspects of any new technology involved to enable all its

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effects on staff to be assessed. This information, especially technical details, will be presented in an understandable form.

- 2.4 The ability of any equipment to measure the work performance of individual operating staff or users will be fully explained.
- 2.5 If there are any changes in the terms and conditions of service of staff, these must be negotiated with recognised staff representatives.
- 2.6 The Council and the Staff Side intend that the consultations will achieve agreement prior to the introduction of any change covered by this agreement. Where this does not prove possible, no action to implement the change will take place until:
- the points of disagreement have been identified and discussed at Officer/Staff Side level;
 - in the event of continued disagreement, the matter has been referred to the Staff Consultative Committee.

3. Implementation of Change

- 3.1 Staff in the work group(s) concerned and their representatives will be involved in the arrangements for actually implementing any change as follows:
- Staff will be given regular briefings about the progress of the changes and their effects on them;
 - Staff representatives will be invited to appropriate formal meetings held as part of this process;
 - Staff will be directly involved by, for example, joining working parties or being invited to submit suggestions.

4. Health and Safety

- 4.1 The health, safety and welfare implications of any changes in relation to the equipment staff use, the layout or their work areas, their hours of attendance, working methods etc. are acknowledged by the Council.
- 4.2 The agreed Code of Practice on health, safety and welfare matters is described in the Module on Health and Safety.

5. Security of Employment

- 5.1 It is a requirement that any loss of jobs or employment entitlements should be assessed by Management and discussed by staff representatives in each case, with a view to preparing a plan to cover the protection of staff. Every effort will be made to avoid compulsory redundancies.

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- 5.2 If it is unavoidable to move staff from their posts in order to reduce staff levels in circumstances covered by this agreement, the following possibilities must be considered:
- redeployment to suitable alternative posts which should as far as possible maintain job satisfaction and levels of skill.
 - whether it is appropriate and possible to achieve the required reductions through voluntary or agreed severance arrangements, including early retirement.
- 5.3 Staff whose existing posts are being deleted should be given preferential access to posts in accordance with the Council's Redeployment Policy and Procedure. Whenever possible, efforts should be made to redeploy staff to posts with at least the same level of pay as their existing post or to in other ways protect their grade and salary. Protection of salary will be in accordance with the Council's Redeployment Policy.
- 5.4 The policy of the Council is that compulsory redundancies must only be considered after these matters have been considered. In cases where staff may be unable to work in different ways or with new equipment, Management will look at and deal with such cases sympathetically.
- 5.5 The Council will continue to provide the Staff Side with copies of any formal staffing reports submitted to Committee/Cabinet.

6. Training

- 6.1 Training is regarded as essential to the successful implementation of change.
- 6.2 In all cases of organisational or technological change, a statement must be produced showing any training required for staff and how it will be carried out.
- 6.3 Staff and their representatives must be consulted about the statement.
- 6.4 Staff representatives for particular work groups affected by projects for change will be invited to attend appropriate introductory or appreciation training, arranged in connection with such projects. Staff representatives will be permitted to attend trade union courses, for example on new technology, subject to the normal arrangements between the Council and the Staff Side in respect to such matters.

7. Pay, Grading and Conditions of Employment

- 7.1 Where changes require staff (including those to be redeployed) to undertake different responsibilities and duties, any necessary changes will be made to the job description and the post referred to the job evaluation scheme to determine appropriate remuneration.

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- 7.2 The Council and the Staff Side recognise the potential of organisational and technological change for providing benefits for the Council and their staff. They will keep the whole question of benefits and costs under review to ensure that any significant and assessable changes in these respects can be raised, discussed jointly and if appropriate acted upon.

8. Management Co-Ordination

- 8.1 To ensure a co-ordinated Management approach, Personnel Services should be informed of each case of significant change affecting more than one department and their advice sought on the appropriate means of involving staff representatives about change to terms and conditions of employment, and any arrangements for special training.

9. Review of Agreement

- 9.1 The operation of this agreement will be jointly reviewed by the Council and the Staff Side one year after its inception and thereafter as necessary.

GUIDANCE ON CONSULTATION IN REDUNDANCY SITUATIONS

The guidance in this appendix is supplementary to the policy and general principles which should be followed in all cases.

Introduction

The definition of redundancy is not necessarily straightforward. The statutory definitions of redundancy that will most commonly apply to the Council are where:

- a) the Council "*ceases or intends to cease to carry on the business for the purposes of which the employee was employed...*"
- b) the Council's requirements for employees "*to carry out work of a particular kind have ceased or diminished, or are expected to cease or diminish*"

A closure of a service, or a reduction in the numbers of employees providing a service, is an obvious example of where employees may potentially be dismissed by reason of redundancy. It is also possible for a redundancy situation to arise without a reduction in the size of the workforce, but where there are significant and substantial changes to the work undertaken by employees. Managers should consult their departmental personnel section for advice about whether a particular change may fall within the statutory definition.

1. Employee Consultation

- 1.1 The requirement to consult with employee representatives is covered by two separate pieces of legislation:
 - The Employment Rights Act 1996 requires employers to consult employee representatives if they are proposing to dismiss 20 or more employees within a period of 90 days or less.
 - EU Directive 75/129, on the other hand, places an obligation to consult with employees' representatives if the employer is contemplating redundancies.
- 1.2 There is, therefore, a distinction between formal consultation as required by the Employment Rights Act and earlier, consultation to meet the requirements of the EU Directive. Consultation must begin at the earliest opportunity, when redundancies are being contemplated - i.e., when managers are first envisaging the possibility of making employees redundant.
- 1.3 The specific, formal consultation requirements of the Employment Rights Act, however, can only commence once the employer has formed a proposal to

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make employees redundant and has provided the appropriate employee representatives with the specific information required by the act, which must be disclosed to the appropriate trade unions, in writing, at the earliest opportunity, in order that formal consultation can commence. Section 188 of the Employment Rights Act requires that the recognised trade unions are given specific information about potential redundancies, for the purposes of consultation, within specified time limits. (This is known as a "Section 188 Letter".) Formal consultation as required by the Employment Rights Act starts with the delivery of this letter, which must contain:

- the reasons for the redundancies;
- the number and description of employees to be dismissed;
- the total number of employees of such descriptions at the establishment(s) in question;
- the proposed method of selecting employees for dismissal;
- the proposed method of carrying out the dismissals, including the period over which they are to take effect.
- the proposed method of calculating the amount of any redundancy payments to be made to employees who may be dismissed.

The Section 188 letter should also invite the trade union to formal consultations, giving the time and place that the first meeting will be held.

- 1.4 Early, informal consultation should start before the Section 188 letter is issued, with employees and their union representatives being given initial information about the possibility of redundancies and following these principles:
- The union representatives must be told before the employees are told.
 - The employees should be told as soon as possible after the information has been given to their representatives.
- 1.5 The aim of the initial communication both to the employees and their representatives must be mainly to give information and people should not be expected to respond to detailed consultations at this stage. Follow-up consultations should be arranged for when the people concerned have been able to think about the issues.
- 1.6 Consultation must be undertaken with a view to reaching agreement with the union representatives about ways of:
- avoiding the redundancies
 - reducing the number of redundancies
 - mitigating the consequences of the redundancies
- 1.7 The consultation process should, therefore, set out to ensure that employees and their representatives are aware of the facts and the reasons for the employee reductions. Even if they do not agree with the reasons - and in many cases they will undoubtedly not do so - it is still the responsibility of management to give them as full an understanding of the situation as possible.

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- 1.8 There should be consultation about:
- the need for the reduction in employee numbers;
 - the way in which the reduction is being met, including any organisational changes;
 - any arrangements for seeking volunteers for early retirement and other forms of voluntary/agreed severance;
 - arrangements for pursuing redeployments;
 - where a selection for redundancy needs to be made, the criteria to be applied. (This must be in accordance the Council's overall scheme, as set out in Module 16 of the Personnel Handbook).
- 1.9 Managers are required to consider any representations made and reply to these representations. If any suggestions are rejected, the reasons for doing so must be stated.
- 1.10 The Personnel Manager/Officer for the Department concerned will normally co-ordinate the information for the Section 188 letter and make the necessary disclosure, in writing, to the appropriate trade unions with a copy sent to Personnel Services. When Council wide reductions are being proposed, Personnel Services will undertake this co-ordination role for all employees other than teaching/school based support employees.
- 1.11 The Chief Officer of the service(s) concerned will convene a meeting with the trade unions shortly after the relevant information has been issued in order to discuss the proposals in more detail. Consultation will be continuous through out with meetings being called regularly with the trade unions until the project is completed.

2. Notification to the Secretary of State: Form HR1

- 2.1 Where twenty or more employees (irrespective of which department they are employed in) are being made redundant at one establishment the original of the Form HR1 must be completed and sent to the Department of Trade and Industry. This notification must take place no later than the number of days prior to the first dismissal specified for consultation purposes set out in Paragraphs (a) and (b) in the table in Section 3, below.
- 2.2 Form HR1 may not be adequate to cover all the information required, especially where redundancies are being proposed in a variety of locations, work groups or departments. A covering letter or separate forms can be used to supply all the information required.
- 2.3 Unless sufficient information has been provided to enable meaningful consultations to take place, the appropriate statutory consultation period cannot

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begin to run.

- 2.4 It is better to consult on maximum potential redundancies even if it is very unlikely that this number will be reached. Having commenced consultation, if more redundancies have to take place than anticipated, a separate consultation process needs to be started for this new set of redundancies.
- 2.5 Consultations must be genuine and be seen to be so. Consultations should start enough time before the first redundancy notice is expected to be issued so that it can be regarded as meaningful.
- 2.6 Each individual must be consulted on a personal basis in addition to consultation with the trade union representatives. The response of any individual should not be assumed in advance without full consultation with them - people often make choices in these circumstances which others would not expect them to make. In any consultations with individuals, they should be given the opportunity of representation and assistance by a trade union representative or colleague.

3. Timescales for Formal Consultation

- 3.1 If twenty or more employees are to be dismissed for redundancy at one establishment*, the law lays down minimum periods of time which must elapse between the commencement of consultation with appropriate employee representatives (either elected by employees or representatives of independent trade unions recognised by the employer) and the date of the first dismissal. Even if less than twenty employees are involved, employers are required to be "reasonable", to inform and consult employees individually regardless of the number of dismissals, and allow a reasonable period of meaningful consultation, including responding to any views expressed by the trade unions.

(* The word "establishment" is included in the statutory requirements on consultation but is not defined in law. It is generally accepted as having a commonsense, everyday meaning. The European Court of Justice has ruled that it means the unit to which the workers are assigned for their duties. Where varying interpretations could have consequences for the consultative timetable, Personnel Services will be pleased to advise and if appropriate co-ordinate the completion of form HR1.)

- 3.2 The following table summarises the position:

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| FORMAL CONSULTATION WITH REPRESENTATIVES | |
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| ACTIVITY | TIMETABLE |
| Sending relevant information, in writing, to the Branch Secretaries of the appropriate trade unions. | Consultations on reductions in employee numbers should take place immediately after the appropriate Committee has taken the policy decision and should continue with trade union representatives and employees up to the final decisions by Service Committees and beyond. |
| Commencement of formal consultation period: (a) where 100 or more redundancy dismissals are proposed at one establishment within a 90 day period (b) where between 20 and 99 redundancy dismissals are proposed at one establishment within a 90 day period. Whilst there is no legal obligation to consult employee representatives if the number of redundancies is less than 20, there is still a requirement to inform and consult employees individually and to act reasonably. | At least 90 days before the first dismissal takes effect. At least 30 days before the first dismissal takes effect. |

NB. The day when the first dismissal takes effect is the proposed earliest date of expiry of the period of notice of an employee to be dismissed from the group in which there are redundancies.

- It is desirable to wait for full consultation to be completed before giving formal notice to terminate employment contracts (although it is not always necessary nor will it always be possible if time is limited). The trade unions should be allowed as much time as is practicable to comment on the situation, and should be kept informed of management's plans to progress matters.

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| GUIDANCE ON CONSULTATION DURING OUTSOURCING/COMPETITIVE TENDERING FOR SERVICES |
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The guidance in this appendix is supplementary to the policy and general principles which should be followed in all cases.

1. The Consultation Process

- 1.1 Competitive tendering has a number of potential stages. It is important that consultation with employees and trade union representatives is built into the process throughout.

2. Analysis/Review Stage

- 2.1. This is the stage when a positive review of tendering a particular service (either in whole or in part) is being carried out and its feasibility evaluated through market testing before the submission of a report to Members.
- 2.2. At this stage the reviewing/client Chief Officer and the Head of Personnel Services should consult trade unions and staff in the following ways:
- Inform trade union representatives and staff of the intention to review the options for service delivery and give regular information on the progress of the review.
 - Hold meetings with trade union representatives and staff to discuss staffing issues relevant to the review, including issues of possible staff transfer as far as they are known at this stage.
 - Give trade union representatives and staff the opportunity to see and comment on the results of the market testing exercise, except where this would involve disclosing commercially sensitive information.
 - Include a section in the report to Members setting out the trade unions' comments.
 - Give the trade union representatives a copy of the report in draft and allow them to comment on it.

3. The Tendering Process

3.1 Preparation of the Specification

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- 3.1.1 If a decision is taken to tender for part or all of the service, the next stage will be the drawing up of a detailed tender specification. There should be consultation with staff and their trade union representatives during the preparation of this specification to explain the position to them, and to receive their views.

3.2 Invitations to Tender

- 3.2.1 The Council may decide to proceed with an invitation to tender on a range of possible bases, including:

- Inviting tenders from a shortlist of companies
- Inviting tenders on an open basis

Either of these options may include a tender negotiation phase and may include or exclude the current in-house service provider.

- 3.2.2 If a tender negotiation phase is included, care must be taken to ensure that staff and their representatives are kept informed and consulted throughout (but excluding information that may be commercially sensitive).

3.3 Monitoring the Implications of TUPE

~~3.2.13.3.1~~ 3.3.1 It is not always possible to state in advance when a decision to pursue a transfer within the terms of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) will be taken, nor to state when the requirement to consult with representatives of employees affected by such a transfer must start. The situation will vary from case to case depending on the tender specification, whether the in-house service provider is included in the tender process and information that emerges throughout the tendering process.

~~3.2.23.3.2~~ 3.3.2 Managers must monitor the position, seeking advice from the Head of Legal Services and their Departmental Personnel Manager as appropriate, and start consultation on the implications of the TUPE Regulations as soon as it becomes apparent that the situation may require their application.

3.4 Preparation of the In-House Tender

~~3.2.33.3.3~~ 3.3.3 At the earliest possible time meetings should be held with staff and their trade union representatives about the ability of the in-house service to submit a competitive bid and to consider options, such as restructuring the service to reflect the tender specification and changing working practices and terms and conditions of employment. Management should ensure that all staff in the areas of work affected (which may include support staff working in other Departments) are fully informed of the issues and involved. This consultation process should lead on to negotiations with trade union representatives on those changes which need agreement to be put into effect.

3.4.2 Changes to existing contracts of employment need the agreement of either each individual member of staff or a collective agreement with the trade unions recognised by Croydon for collective bargaining purposes for the group of staff affected. If it is not possible to reach such agreement(s) then the in-house bid will be submitted on the basis of the existing terms and conditions of employment (or on the basis of those changes that have been agreed), regardless of whether management believe that such a bid will be unsuccessful.

3.5 Tenders Limited to External Bids

3.5.1 If the in-house service is not included in the tender process, management should consider whether, at this stage, a decision has effectively been taken to pursue a relevant staff transfer within the terms of TUPE.

3.5.2 Even if it is not possible to be absolutely clear about whether TUPE will apply, the Chief Officer should write to the trade union branch official(s) representing the affected employees, giving them as much information about the position and as much of the information required by the Transfer of Undertaking Regulations as possible.

3.5.3 The “affected employees” includes not only those who may be subject to a transfer but also other employees, in the Department concerned or elsewhere whose contract of employment is likely to be changed if the service is outsourced.

3.5.4 Whether or not management have formed a view, on the basis of legal advice, that TUPE applies, there should be consultation with trade union representatives and staff throughout the process. The objective of these consultations should be to share as much information as possible and should include:

- Regular meetings with staff and trade union representatives to discuss staffing issues. These discussions should always proceed with the aim of reaching agreement, but if TUPE applies, the Regulations require that consultations are carried out with a view to reaching agreement.
- Trade union and staff representatives should be given an opportunity to meet the shortlisted companies.
- Trade union representatives and the affected staff should be given further information on staffing matters as it becomes available, including information relating to the intentions of potential transferees.
- Trade union representatives should be given reasonable facilities to meet with their members in the work areas concerned.

3.5.5 After the deadline for the submission bids, trade union and staff representatives

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should be given the opportunity to see and comment on the bids or those parts of them concerned with staffing and related matters (but excluding information that may be commercially sensitive). ***(NB. This facility cannot be extended if the in-house team has been invited to tender)***

3.5.6 Trade union and staff representatives should be given the opportunity to comment on the contractors who have submitted bids and to express preferences between them. They should also, if they wish, have the opportunity of commenting on the views and preferences of staff, which they will have been invited to make separately. It should be noted, however that this consultation is not part of the formal tender evaluation process. ***(NB. This facility cannot be extended if the in-house team has been invited to tender)***

3.5.7 Nevertheless, the draft report to Members giving the results of the tendering exercise should be shown to trade union and staff representatives and their comments included. ***(NB. This facility cannot be extended if the in-house team has been invited to tender)***

4. Consultation Following the Award of the Contract

4.1 Staff and their representatives must be told of the Members' decision as soon as possible and whether the decision is subject to confirmation.

4.2 If the contract is awarded to the in-house service provider, management should meet trade union and staff representatives to address any issues arising, including arrangements for implementing any changes agreed at the start of the tender process which have not already been implemented.

4.3 If the contract is awarded to an outside contractor it is likely that TUPE will apply. Management must seek advice from the Head of Legal Services in every case.

5. "TUPE" Transfers

5.1 The decision about whether TUPE applies is a legal question which the Council will take on the basis of legal advice.

5.2 Consultation is a key element of the transfer process and a formal legal requirement. It must take place with representatives of all employees (whether the employees are union members or not) affected by the transfers. Affected employees are not only those staff subject to transfer; the transfer may well result in changes which affect other staff, such as alterations to work systems, support staff, or changes in job location.

5.3 Consultation with trade union representative and the affected staff on the

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implications of the transfer must start as quickly as possible.

- 5.4 It is likely that the successful contractor will be consulting their own staff about the effect of the transfer. There must be, therefore, a planned and co-ordinated approach involving both managements, to ensure that the information given to both groups of staff is consistent and not contradictory.
- 5.5 There will be a period of detailed negotiation between the Council and the successful contractor before the contract is finalised. Consultation with Trade union representatives and staff will continue throughout this process and will include:
- Meetings with the management of the Council as the transferor.
 - Meetings with the transferee company.
 - Reasonable facilities to meet with members in the work areas concerned.
- 5.6 The successful tenderer should be given the opportunity to meet the employees to be transferred in order to describe in detail what the transfer will involve and to highlight any particular issues, such as new working methods, training and development needs, etc.
- 5.7 The TUPE regulations require that consultations include:-
- The fact that the relevant transfer is to take place, when, approximately, it is to take place and the reasons for it.
 - The legal, economic and social implications of the transfer for the affected employees.
 - The measures which the Council envisages it will, in connection with the transfer, take in relation to the affected employees.
 - The measures which the transferee envisages they will, in conjunction with the transfer, take in relation to the Council's employees who become employees of the transferee after the transfer. If there are no such measures, this should be confirmed.
- 5.8 The transferee should be required to provide *comprehensive* information to the Council regarding their proposals for the transferring staff and this information should be passed on to the trade union representatives and staff.
- 5.9 Staffing issues raised by trade union representatives or staff should be addressed and discussed with a view to reaching agreement on them before the contract is signed.
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GUIDANCE ON CONSULTATION DURING BEST VALUE REVIEWS

The guidance in this appendix is supplementary to the policy and general principles which should be followed in all cases.

1. Introduction

- 1.1 The Government's guidance to Best Value authorities states that reviews will need to involve those currently delivering services. It goes on to say that this applies to all employees, but particularly to frontline staff whose experience of face-to-face contact with the public and service users can bring an important perspective as to how a service is perceived and valued, and how it can be improved. This support is critical to successful implementation.
- 1.2 Croydon shares this belief that staff have a crucial role to play in achieving Best Value and the Council will encourage staff to contribute their skills and knowledge through effective communication, consultation and involvement.
- 1.3 This guidance sets out how the Council will ensure that the trade unions and staff are consulted throughout the Best Value process and given the opportunity to contribute to the continuous improvement of our services.
- 1.4 Nothing in this guidance should be interpreted as overriding the specific requirement to consult trade unions and staff where Best Value Reviews lead to:
 - Technological or organisational change,
 - Redundancies,
 - Externalisation through competitive tender or related processes.The appropriate consultation requirements and procedures set out in the other appendices of this document must be complied with.
- 1.5 The Best Value objectives apply to all services, not just those that are actively going through the process of a review. Those objectives are to:
 - Promote accountability to local people
 - Achieve continuous service improvementsThese ongoing demands will undoubtedly affect staff and need to be addressed within the regular communication and consultation forums.
- 1.6 There are 5 stages to the Best Value process at Croydon. Effective communication and consultation with trade unions and the staff affected should

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play a key roll in all of them:

- Defining and planning Best Value Reviews
- Reviewing the service
- Developing options
- Agreeing the way forward, with performance improvement targets and an implementation plan.
- Implementation and monitoring

2. Defining and Planning Best Value Reviews

- 2.1 The Council will seek and take account of the views trade unions and staff (alongside other stakeholders such as service users, statutory and voluntary organisations with an interest in the service, local businesses, etc.) on the scope, priorities and programme for Best Value Reviews.

3. Reviewing the Service

- 3.1 Staff Consultation during Best Value Reviews may take place in one or more of the following ways, depending on the characteristics of the particular service:
- Inviting trade union and/or staff representatives to join the Review Team.
 - Consulting through the normal Departmental consultation forums and machinery.
 - Consulting through written reports and giving the trade unions and staff the opportunity to present written submissions to the Review Team.
 - Giving trade union and staff representatives the opportunity to speak directly to the Review Team.
- 3.2 The approach to staff consultation should be decided jointly with the Staff Side representative in each department.

4. Developing Options

- 4.1 Best Value Reviews include consideration of a range of service delivery options including:
- Whether the service should continue to be provided.
 - What type of service should be provided.
 - What level of service should be provided.
 - How the service should be provided.
 - Who should provide the service.
- 4.2 Staff and trade unions (alongside other stakeholders such as service users, statutory and voluntary organisations with an interest in the service, local businesses, etc.) will have a significant contribution to make to assessing the feasibility of the various options.

5. Agreeing the Way Forward

- 5.1 The service delivery option put forward for approval will be accompanied by performance improvement targets and an implementation plan.
- 5.2 The trade unions and the staff affected will be told which service delivery option is being recommended, with reasons, and will be given the opportunity to comment to Members.
- 5.3 There will also be consultation with the trade unions and staff representatives on how the recommended option will be implemented and on the appropriateness and feasibility of the performance improvement targets.

6. Implementation and Monitoring

- 6.1 Consultation with the recognised trade unions and the staff directly affected by change is an essential element in the successful management of change.
- 6.2 The trade unions and the staff directly affected must be given relevant information on quality and performance targets. Only by involving trade unions and staff in monitoring performance and encouraging them to contribute to the continuous improvement of services can the Council expect to secure their active support and commitment to the process. Services may either:
 - Establish joint machinery specifically to monitor quality and performance, through which employees and trade unions may contribute to the continuous improvement programme, or,
 - Ensure that there are effective arrangements for addressing such issues through the regular departmental consultation forums and machinery.
- 6.3 The trade unions and the staff directly affected should be consulted on the ongoing development of initiatives to support the achievement of performance improvement targets.

7. Audit and Inspection

- 7.1 Best Value is supported by a process of external audit and inspection. The trade unions and the staff directly affected should be:
 - Told about the timetable for audits and inspections
 - Involved in the preparations for audits and inspections.
 - Involved throughout audits and inspections.
 - Told the outcomes and recommendations arising from audits and

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inspections.

- Consulted on how the service should respond and implement the recommendations.

8. Interrelationship Between Consultation on Best Value and Other Aspects of Change

- 8.1 The Best Value process will inevitably lead to organisational and technological change and could, potentially, lead to redundancies and/or decisions to externalise services either in part or in full. The specific consultation requirements set out in the other Appendices to this policy statement must be observed.

End

