

**To: The Chair of the Probation Board/Trust
The Chief Officer of the Probation Board
The Chief Executive of the Probation Trust
(Copy enclosed for the Head of Human Resources)
The Secretary of the Probation Board/Trust
The Treasurer of the Probation Board/Trust
Members of the NNC**

30 July 2009

NNC CIRCULAR NO.8/2009

Dear Madam/Sir

Workforce Matters

The following documents are available on the Probation Association website:-
www.probationassociation.co.uk (Employee Relations /NNC Circulars 2009).

- (a) Staff Transfers in the Public Sector Statement of Practice January 2000 (Revised November 2007)
- (b) Code of Practice on Workforce Matters in Public Sector Contracts March 2005

Probation Boards' and Trusts' attention is drawn to the requirement for the following procedures in workforce matters to apply to all contracting out of probation services. Boards and Trusts are advised to familiarise themselves with the provisions of the Statement and Code of Practice, which require the following:

1. Statement of Practice:

- Consultation over potential transfers must take place with recognised unions at the earliest appropriate stage.
- TUPE should apply and will be followed in any contracting exercise involving probation staff.
- This includes second and subsequent round contracts that result in a new contractor and where a function is brought back into a public sector organisation where, in both cases, when the contract was first awarded staff transferred from the public sector.

- There should be appropriate arrangements to protect occupational pensions, redundancy and severance terms of staff in all these types of transfer. Please see the guidance in:-
 - A fair deal for Staff Pensions 1999.
 - Fair deal for Staff Pensions; Procurement of Bulk Transfer Agreements and related issues 2004.

(The above documents are available on the Probation Association website : www.probationassociation.co.uk (Employee Relations/NNC Circulars 2009).

- Probation staff transferring must be offered membership of a pension scheme which is broadly comparable to the public service pension scheme they are leaving, either via the new employer gaining admitted body status in the Local Government Pension Scheme, or by obtaining a GAD certificate of comparability in respect of any scheme to be offered by the new employer
- Where transferred employees are offered membership of a broadly comparable pension scheme there will be a 'bulk transfer' agreement between the LGPS and the new employer's pension scheme. Under the agreement the staff would be able to transfer their accrued benefits into the new scheme on terms that would provide a day-for-day service credit in the new scheme (or an equivalent recommended by the Government Actuary's Department as a suitable reflection of differences in benefit structures between the schemes).

2. Code of Practice

- This Code will form part of the service specification and conditions for all contracts.
- Where the new service provider recruits new staff to work on a public service contract alongside staff transferred from a Probation Board/Trust, it will offer employment on fair and reasonable terms which are, overall, no less favourable than those of transferred employees
- The new service provider will consult representatives of UNISON and Napo on the terms and conditions to be offered to such recruits
- The new service provider will be required to offer new recruits either
 - membership of a good quality employer pension scheme, or
 - a stakeholder pension scheme

- The new provider will be required to provide the Probation Board/Trust with information to allow the Probation Board/Trust to monitor compliance with the Code
- The Probation Board/Trust will enforce the obligations on the service provider created under the Code

The Ministry of Justice will monitor the application of the Code with UNISON and Napo.

You are asked to advise all concerned as appropriate.

Yours faithfully

Christine Lawrie
Jonathan Ledger

Joint Secretaries