

Justice for Contracted Public Service Workers: UNISON's concerns about the revised 'Two-Tier Workforce' Code

Introduction

The revised 'Two Tier Workforce' code on which Communities and Local Government have recently consulted is a vital protection for workers facing privatisation and other sorts of outsourcing.

The two-tier code was introduced in 2003 and was a landmark achievement of the Labour Government that was included in the Warwick agreement. It is being re-issued because the 'Best Value' regulations on procurement were changed following the 2007 Local Government and Public Involvement in Health Act.

UNISON welcomes the clarification that the Code will apply to contracts retendered since 2003. However UNISON is surprised that the revised Code makes no attempt to evaluate the effectiveness of the original Code nor take account of problems identified by UNISON and others. The proposed new Code is virtually unchanged and takes no account of:

- the fact that the original Code has never been properly applied
- the passage of time and changing circumstances, which mean it is no longer fit-for-purpose
- existing weaknesses on enforcement – in fact enforcement is weaker than in the previous Code, because District Auditors no longer have a strong role in enforcement

In response to the lack of official evidence of how the code is working, UNISON has undertaken a snapshot survey of branches and of councils (see appendix) that show:

- 59% of UNISON branches said that their employer had never consulted them on the Code of Practice on Workforce Matters
- 42% of branches said that the Code was not being applied by their employer

A UNISON survey of councils found a small but significant number who freely admitted that they had not applied the Code to service contracts, where it should have been applied. There were also councils that had not applied the Code to any recent service contracts.

The issues

Monitoring

Problem The government undertook to monitor implementation of the Code but has not and has also ignored the evidence provided by UNISON and others that shows the Code is being evaded by some councils. The Labour Party promised to introduce monitoring in the 'Warwick II'

agreement with unions at the National Policy Forum in July 2007, but this is not in the proposals either.

Solution The new Comprehensive Area Assessment system should include a National Performance Indicator for the two tier code.

Enforcement

Problem UNISON has many examples of local authorities refusing to apply the code, to get bargain basement prices for public service contracts by cutting pay. The Code is only 'statutory guidance' (rather than being compulsory). Enforcement will be weaker than under the existing code because District Auditors will no longer have an enforcement role.

The Alternative Dispute Resolution procedure is proving unenforceable. UNISON has not found a single case taken in local government and only two in health, one of which has gone as far as the Secretary of State and it remains to be seen whether it can be enforced where a company refuses to comply.

Solution The code should be made **mandatory** – a 'directive' rather than 'guidance'. There should be a simple means of redress for non-compliance, such as to the Central Arbitration Committee (CAC) – which currently also decides union recognition issues.

Scope

Problems (a) some public service workers are not covered eg where a TUPE transfer does not technically take place such as Large Scale Voluntary Transfers of housing stock or spot purchasing of home care.

(b) Once all the workers who originally transferred from an authority have left, the Code no longer applies.

(c) There is no protection for workers in Northern Ireland.

Solutions (a) The Code should apply to all public service workers employed by contractors.

(b) If all original staff have left then the terms and conditions of the last leaver should be used as a comparator.

(c) The government should encourage the Northern Ireland Executive to introduce a similar Code.

Awareness

Problem One of the 'soft' reasons behind the code not being applied is that it never had the high profile launch that was promised for it. Therefore elected members, personnel officers, procurement officers and even trade unionists are not always aware of it.

Solution The new code should receive a high profile launch with high level ministerial support.

Fitness for purpose

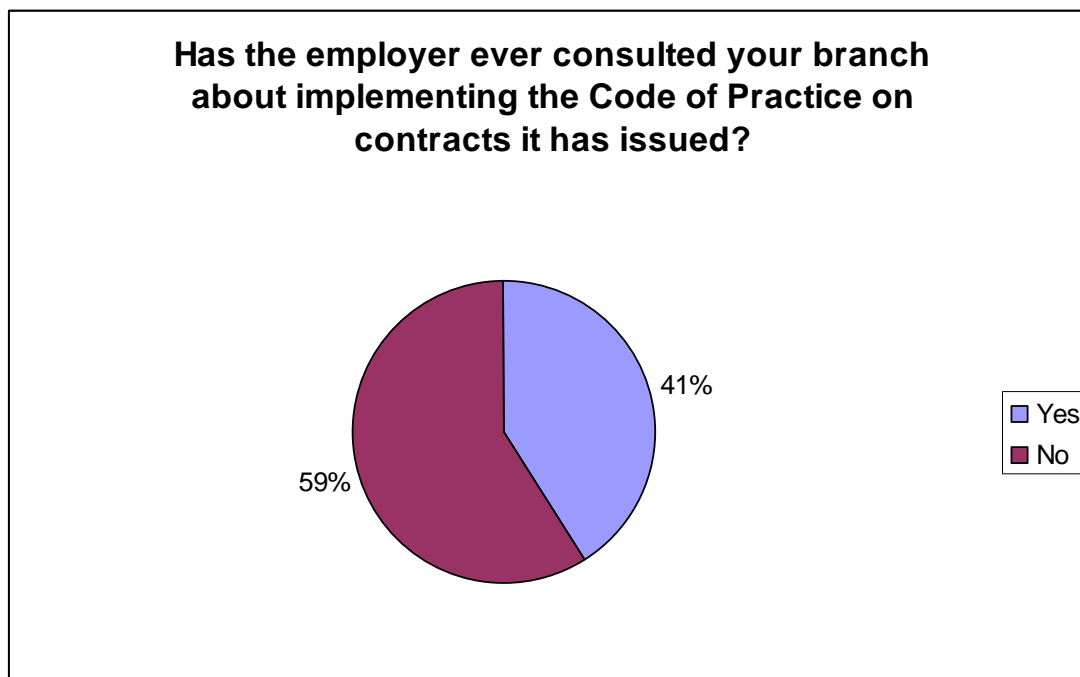
- Problem** The passage of time and changing circumstances means that the Code is no longer fit-for-purpose.
- For example, it is not easily applicable to more complex procurements such as across shared services.
- A separate part of the guidance covers involving the workforce in any contracting process. But many large privatisations now use the European ‘competitive dialogue’ process, which involves a broad discussion between the authority and each potential contractor. This has been used to avoid consultation with unions and needs to be addressed in the new guidance.
- The same section also covers the scope for including social and equalities issues in the contracting process. However this is done in a wholly negative way and should be re-written to include positive advice.
- Solution** The Code needs to be updated to take account of developments in procurement.
- The Code needs to reflect the stronger equality dimension now expected in procurement.

Appendix: Code of Practice on Workforce Matters Survey

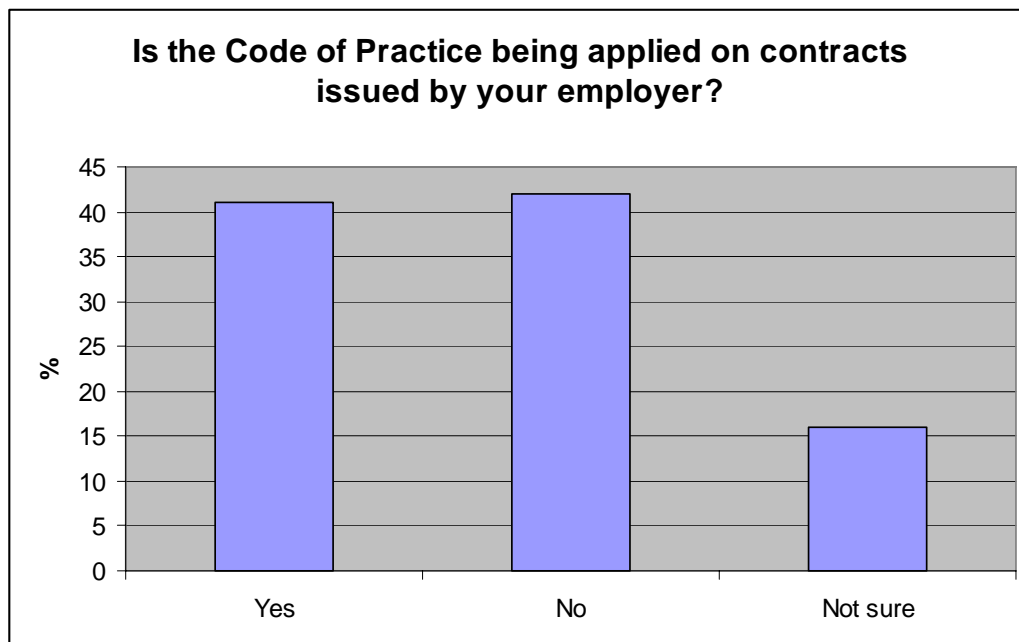
Results at 9th January 2009 (responses still coming in)

Branches responding: 68

1. 59% of branches said that their employer had never consulted them on the Code of Practice on Workforce Matters. 41% said that they had been consulted.

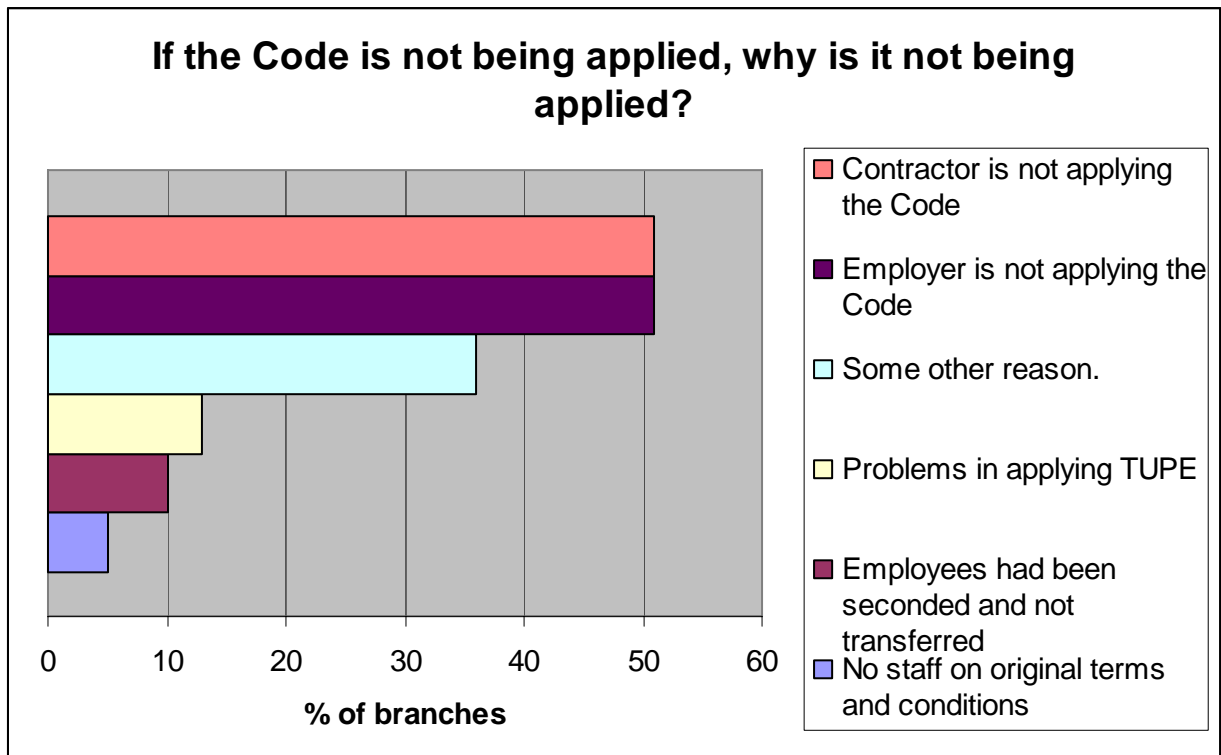


2. 42% of branches said that the code was not being applied by their employer. 41% said the code was being applied. 16% were not sure or gave no answer



3. Question 3 asked why the code was not being applied. Branches were able to give multiple reasons. 39 branches answered this question, of these:

- 51% said the employer was simply not applying the Code
- 51% said the contractor was not applying the Code
- 13% said there were problems in applying TUPE
- 5% said their were no staff on original terms and conditions
- 10% said employees had been seconded and not transferred
- 36% gave some other reason.



4. Question 4 asked for further details.
5. Question 5 asked which service areas were experiencing a TTWF. 38 branches answered this question of whom 32% mentioned social care, 16% mentioned homecare, 13% mentioned cleaning and 13% mentioned catering.
6. Question 6 asked for the names of private or voluntary organisation operating a TTWF. 34 branches gave details
7. Question 7 asked what improvements should be made to the Code of Practice. Branches were able to give multiple suggestions. 63 branches answered and of these:
 - 76% said the code should make employers consult trade unions on all outsourcing/retendering decisions
 - 97% said the code should make the code a mandatory duty for employers
 - 87% said that contracts should only be granted to contractors who are signed up to the principles of the code
 - 76% said the code should make employers give trade unions details of service contracts coming up for retender or outsourcing
 - 87% said the code should stop new contract being granted to contractors who fail to implement codes on past contracts
 - 8% suggested some other improvement to the code.

In your view, what changes to the Code would help stop the development of a two tier workforce?

