

Best Value and Procurement Workforce Matters in Best Value Authority Contracting

Statutory Guidance: Draft for Consultation

Response from UNISON

Introduction

1. UNISON is the UK and Europe's largest public sector union with more than 1.3 million members, including 900,000 who provide services directly or indirectly for Best Value Authorities. This includes people working for local councils, police authorities, voluntary organisations, housing associations and private companies.
2. The Government has repeatedly committed itself to high quality public services, provided in a genuinely efficient way and not undermined by reducing the terms and conditions of the staff delivering them. UNISON was one of the social partners involved in negotiating the original Two-Tier Code in 2003, which was a historic step forward for workforce protection and quality public services at the time.
3. This consultation on the Two-Tier Code has been triggered by the introduction of Comprehensive Area Assessment (CAA) as the new performance management framework for Local Authorities and other local public services, following the Local Government and Public Involvement in Health Act 2007.

Summary

4. UNISON welcomes the opportunity to comment on the draft regulations.
5. As citizens, our members rely on public services, and we believe that the provision of high quality public services is inextricably linked to a high quality workforce. This is reflected not only in issues around reducing staff turnover, but in the ethos of public service. Therefore we fully endorse the fundamental principle that the Two-Tier Code should “ensure that the provision of quality services is not undermined by poor employment practices in respect to new joiners. It will prevent the damaging ‘two-tier’ situation where TUPE transferred staff work beside newly recruited staff on much poorer terms and conditions.”¹
6. The targets for the new round of efficiency savings as part of the Comprehensive Spending Review 2007 and the spread of the strategic commissioning approach to the provision of public services is increasing the amount of contracting-out. So the importance of a modern effective Code protecting the contracted-out workforce is greater than ever.
7. In the ‘Credit Crunch’, maintaining a high level of aggregate demand in the economy is vital for the survival of both small and large companies. Wages of low paid workers tend to be spent not saved, and spent in the local area where the money recycles around local businesses. Therefore a rational local economic policy should ensure the pay of public servants is maintained and not cut in a short-term attempt to reduce contract costs.
8. No evidence has been presented in the consultation about the current working of the Code. There has been no evaluation of the effectiveness of the original Code after six years of experience, nor consideration of problems identified by UNISON’s own research (see appendices). This is contrary to provisions in the Code itself and it is essential that the existing provisions in the Code are applied and a full review of its operation carried out.
9. UNISON welcomes the clarification that the Code applies to all contracts, including retendered contracts that were originally issued prior to 2003 (when the Code was introduced).

¹ Chapter 6, paragraph 16

10. However there are significant improvements needed to these draft regulations if they are to achieve the Government's stated policy objective of eliminating the two-tier workforce. UNISON has made 17 recommendations to enable the Two-Tier Code to fulfil the policy objectives it is designed to address in four sections. We have also included two appendices with supporting evidence.

Monitoring

11. Effective monitoring of the operation of the Two-Tier Code has never been carried out, and the new Code proposes to remove any monitoring. UNISON has extensive evidence that it is not being applied. The Two-Tier Code should be made a headline performance indicator in Comprehensive Area Assessment.

Enforcement

12. The application of the Code has been reduced to a paper exercise in many areas, and is extremely difficult to enforce.

Modernisation

13. New contracting mechanisms mean that the Code no longer fulfils the policy aim of eradicating the two-tier workforce in contracted-out public services. To remain relevant it has to be modernised to address the whole workforce.

Handling of Workforce Matters in Contracting

14. The involvement of the workforce in the contracting process is key to successful service delivery outcomes. The guidance need a more positive and imaginative attitude to including workforce, social and equality issues in contracting, including equal pay.

UNISON recommendations

- 1. The Two Tier Code should be made mandatory. It should be a 'directive' rather than just 'statutory guidance'.**
- 2. It is essential that the existing statutory monitoring provisions in the Code are applied and a full review of its operation carried out.**
- 3. The vital importance of the workforce in quality public services must be recognised by making the Two Tier Code a headline National Performance Indicator in Comprehensive Area Assessment.**
- 4. To ensure that it is being properly applied, there should be a requirement for Best Value Authorities to consult with unions about its application on an annual basis.**
- 5. Authorities should be required to make public (either via their annual report or on their website) summary details of contracts which they have awarded and whether they have applied the Two-Tier code to each one. This information should be collated - as a matter of public and commercial interest – by Regional Improvement and Efficiency Partnerships in England and by the devolved administrations elsewhere.**
- 6. There should be a simple means of redress for non-compliance with the Code. This should be to the Central Arbitration Committee (CAC) – which inter alia also decides union recognition issues.**
- 7. The new Code should receive a high profile launch with high level ministerial support.**
- 8. The basis of the Two-Tier Code should be widened to apply to all public service workers providing services for Best Value authorities.**
- 9. Upper tier Local Strategic Partnerships should be responsible for coordinating the monitoring of the Two-Tier Code where partner authorities have contracts involving shared services.**
- 10. There should be no time limit on protection, and a 'nominal' comparator should be permitted where all transferred staff have left.**
- 11. The Government should widen the Code to cover Northern Ireland.**
- 12. Pension protection for new starters should be improved to a level properly comparable with TUPE transferees.**

- 13. Experience to date demonstrates the need for a general statutory duty to prevent a two-tier workforce amongst all workers providing public services.**
- 14. The guidance needs to be clear that when using ‘competitive dialogue’ authorities must ensure that meaningful consultation with trade unions is build into the process.**
- 15. The guidance should encourage the creative use of the power of well-being and of social clauses where desirable and possible by reminding authorities of their powers under the new EU Procurement Directive and including examples.**
- 16. The importance of addressing equal pay issues should be specifically highlighted in the guidance.**
- 17. The ‘Public Sector’ Code should be brought into line with, and put on the same statutory basis as, the Best Value Code.**

Monitoring

15. Effective monitoring of the operation of the Two-Tier Code has never been carried out, and the new Code proposes to remove any monitoring. UNISON has extensive evidence that it is not being applied. The Two-Tier Code should be made a headline performance indicator in Comprehensive Area Assessment.
16. The original Code in 2003 made provision (paragraph 11) for local authorities to require contractors to provide information “necessary to allow the local authority to monitor compliance with the conditions set out in this Code.” This included “terms and conditions for transferred staff and the terms and conditions for employees recruited to work on the contract after the transfer.” UNISON has yet to find evidence of such monitoring taking place.
17. The original Code also made provision (paragraph 12) that the “service provider and the local authority will also support a central Government sponsored review and monitoring programme on the impact of the Code, drawn up in consultation with representatives of local government, contractors, trade unions and the Audit Commission and will provide information as requested for this purpose.”. This has never been carried out.
- 18. It is essential that the existing statutory monitoring provisions in the Code are applied and a full review of its operation carried out.**
19. It is hard to see how CLG can issue new guidance without a solid evidence base relating to how the current Code is working in practice. The limited studies which exist suggest that use of the Code is low. An INLOGOV report in August 2005 found that just under one third of authorities had failed to include workforce matters as a standard issue in contracts for services. Significantly, the 2006 survey did not even ask the question.
20. Local Authorities have been required to include a ‘statement on contracts’ in their Best Value Performance Plan (BVPP), which sets out how they are applying the Code to their contracting. Whilst this has happened, the wording used is identical in almost all cases which suggests that it has merely been ‘cut and pasted’ to satisfy an audit requirement. Auditors are not required to attempt to verify the accuracy of these statements; merely that one has been included in the BVPP.

21. UNISON was informed in early 2008 that CLG were looking at undertaking some research in this area, and we agreed to support this in whatever way possible. Enquiries about this research and our reiteration of this offer in October received no response.
22. In the absence of monitoring by any other body, UNISON has expanded its own programme of monitoring. In late 2008 / early 2009 we conducted a Freedom of Information survey of local authorities and also surveyed our own branches. The results of the former are contained in appendix A, and the full results of the latter in appendix B.
23. These results demonstrate that, at the very least, the Code is not being universally applied and there is deliberate avoidance by public bodies. Without further detailed research of the kind required by the existing Code it is not possible to ascertain the full extent of this problem. However there are some disturbing indications:
 - 59% of UNISON branches responding to the survey 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. Further details are in Appendix B.
 - The Freedom of Information survey of councils found a small but significant number who openly said they did not apply the Code. Details are in Appendix A.
24. The new “Two-Tier Code” would remove even the existing minimal requirements to state annually how the Code is being applied.
25. Ostensibly the new Two Tier Code is now included in Comprehensive Area Assessment, but in reality any systematic monitoring has been removed.
26. It is only included in a brief note in an obscure part of guidance to District Auditors for some authorities². Not only is this wholly inadequate, but the nature of Comprehensive Area Assessment is that services are examined on a ‘exceptions’ basis – so the workforce would only be considered if a service was failing to meet performance targets. As long as performance targets are hit, the treatment of the workforce is completely disregarded. This is a marginalisation of the Two-Tier Code and the workforce.

² Comprehensive Area Assessment has 198 headline Performance Indicators. It also includes a ‘Use of Resources’ assessment, which has a number of ‘Key Lines of Inquiry’ (KLOEs). The new code would merely be included in the associated guidance to District Auditors in a reference in the ‘Evaluation of procurement’ options sub-section of KLOE 2.1 (Does the organisation commission and procure quality services and supplies, tailored to local needs, to deliver sustainable outcomes and value for money?). It is not even mentioned in the main focus for this KLOE. Moreover it is only referred to in the guidance on Local Authorities, and not for Police, Fire or other Best Value Authorities.

27. **The vital importance of the workforce in quality public services must be recognised by making the Two Tier Code a headline National Performance Indicator in Comprehensive Area Assessment.**
28. **To ensure that it is being properly applied, there should be a requirement for Best Value Authorities to consult with unions about its application on an annual basis.**
29. But further than this, local authorities are spending council tax payers' money on contracts and there is an important issue of transparency and public accountability. This is especially true as more authorities adopt a 'strategic commissioning' approach and backbench councillors have less direct contact with services that councils are responsible for.
30. **Authorities should be required to make public (either via their annual report or on their website) summary details of contracts which they have awarded and whether they have applied the Two-Tier code to each one. This information should be collated - as a matter of public and commercial interest – by Regional Improvement and Efficiency Partnerships in England and by the devolved administrations elsewhere.**

Enforcement

31. The application of the Code has been reduced to a paper exercise in many areas, and is extremely difficult to enforce.
32. The Two-Tier Code is not mandatory but merely 'statutory guidance', and UNISON has extensive evidence that it is not being applied (see Appendices). This appears to be worsening as financial pressures on authorities lead some to cut costs at the expense of their staff by privatising on the cheap and not applying the Two Tier Code.
33. The Code does include an 'Alternative Disputes Resolution' (ADR) procedure for tackling the refusal of contractors to apply it. However this has proved very hard to use in practice. One of the rare examples of its invocation was in the sister Code which covers the rest of the public sector. In that case, Parkwood Healthcare did not apply the Code in its contract with the University Hospital of North Staffordshire. Although the ADR procedure was used, it was not effective and the dispute has escalated. all the way to the Minister.
34. But the major problem with enforcement is not that contractors do not apply the Code, but that local authorities refuse to include it as a contractual requirement. Furthermore, there is no redress if authorities fail to apply the Code since the ADR can only be used once the Code has been applied.
35. Whilst it is unusual that authorities have a blanket policy of refusing to apply the Code (it is still statutory guidance), some get around this by considering each contract individually but then consistently not applying the Code. UNISON's research suggests that 97% of union branches believe that the requirement to apply the "Two Tier Code" should be strengthened.
36. **The Two Tier Code should be made mandatory. It should be a 'directive' rather than just 'statutory guidance'.**
37. UNISON has asked District Auditors to intervene when the Code has not been applied, but such requests have been refused and the Audit Commission has stated that it does not see the role of District Auditors as including this sort of 'complaints' function.
38. Therefore the only other way that the refusal of Authorities to apply the Code can be challenged is by Judicial Review. UNISON has considered this high risk and very expensive procedure in a number of cases, but the very tight timescales for bringing Judicial Reviews have proved insurmountable for this type of problem.

- 39. There should be a simple means of redress for non-compliance with the Code. This should be to the Central Arbitration Committee (CAC) – which inter alia also decides union recognition issues.**
40. In addition to this, there are 'soft' measures that should be taken to increase compliance with the Code by raising its profile. Monitoring, mentioned above, is one of these, but the Code was originally promised a high profile launch which would have fixed it in the minds of procurement professionals, personnel officers, elected members, trade unionists and the public.
- 41. The new Code should receive a high profile launch with high level Ministerial support.**

Modernisation

42. New contracting mechanisms mean that the Code no longer fulfils the policy aim of eradicating the two-tier workforce in contracted-out public services. To remain relevant it has to be modernised to address the whole workforce.

43. The need to make a new round of efficiency savings as part of the Comprehensive Spending Review 2007 and the spread of the strategic commissioning approach to the provision of public services is increasing the amount of contracting-out. So the importance of a modern effective Code protecting the contracted-out workforce is greater than ever.

Shared Services and Strategic Partnerships

44. Shared services introduce a degree of complexity into contracting that the Code was not designed to deal with. The increasing number of Back Office Shared Service arrangements means the Code can be avoided by re-deploying transferred staff to work for different clients.

45. With transferees from numerous public bodies, it can be unclear who the appropriate comparator is for new starters, and which “Two-Tier Code” should apply – the ‘Best Value’ one currently being consulted on or the wider ‘Public Sector’ Code. There are also arrangements where workers cross national boundaries within the UK, and different codes may apply. This creates confusion and red tape.

46. The ‘Public Sector’ Code should be brought into line with, and put on the same statutory basis as, the Best Value Code.

47. The basis of the Two-Tier Code should be widened to apply to all public service workers providing services for Best Value authorities.

48. The first paragraph of the Two Tier Code might be reworded as follows: “This document sets out an approach to workforce matters in best value authority service contracts, which involve a transfer of staff from *a the best value authority or other public sector organisation to which the Cabinet Office Statement of Practice on staff transfers in the public sector applies (January 2000 - revised November 2007) (COSOP)* to the service provider, or in which staff were originally transferred out from *a the best value or other public sector organisation* as a result of an outsourcing are TUPE transferred to a new provider under a re-tender of a contract. This Code applies regardless of whether the original contract was entered into before the coming into force of this Code or its predecessor. This Code *must should* form part of the service specification and conditions for all such contracts.” (additions in italics, deletions struck through)

49. In England, UNISON has welcomed the increased integration of local public services through Local Area Agreements and Local Strategic Partnerships. Public Service Boards in Wales have a similar role. These new bodies provide a forum for addressing issues arising from closer service integration, such as the application of the Two-Tier Code.
50. **Upper tier Local Strategic Partnerships should be responsible for coordinating the monitoring of the Two-Tier Code where partner authorities have contracts involving shared services.**
51. The Two Tier Code states "7. Where the service provider recruits new staff to work on a best value authority contract alongside staff transferred from the authority ..."
52. Protection under the Two-Tier Code ceases after the last transferee leaves, which means in long contracts in services with high staff turnover, new starters are often left unprotected. This is being exacerbated as strategic commissioning develops the trends towards larger contracts lasting for a longer period of time. So ultimately there are no original transferees and the Two Tier Code will not apply.
53. **There should be no time limit on protection, and a 'nominal' comparator should be permitted where all transferred staff have left.**

Northern Ireland

54. The new 'Two Tier Code' will affect best value authorities in England, and police authorities in Wales. A parallel 'Section 52' Code covers Scotland. However there is no protection for workers in Northern Ireland.
55. **The government should widen the Code to cover Northern Ireland.**

Pensions

56. Under the Code, pension provision for new starters on contracts remains significantly inferior to that of their TUPE transferred comparators. With the Pensions Direction of 2007, most TUPE transferred staff can expect to remain in the Local Government Pension Scheme where the employee pays 6%, and the employer provisions is around 14%. The Two Tier Code merely provides for an employer contribution of 6% and therefore obstructs a level playing field for in-house and out-sourced services. It is likely to be cheaper to contract-out services due to a reduction in pension costs.

57. **Pension protection for new starters should be improved to a level properly comparable with TUPE transferees.**

Beyond TUPE transfers

58. The Two-Tier Code was introduced to tackle the issue of the two-tier workforce. But it only covers TUPE transfers and there is strong evidence of a two-tier workforce in other situations.
59. Many Strategic Service Delivery Partnerships often involve secondments, and so the Best Value Code does not apply because there are no TUPE transferred staff. New starters are often employed on terms and conditions inferior to those of seconded staff.
60. There has also been a huge increase in the number of agency staff working directly for local authorities, other public bodies and contractors. This is the ultimate opt-out for authorities wanting to avoid the Code. UNISON has conducted a Freedom of Information survey of Local Authorities which received responses from 63% of UK councils. From this we project that £1.4 billion was spent on agency staff in 2007/8. The detriment that staff and services suffer can be adduced from the example of Camden council, where there is now 60% annual turnover amongst agency cleaning staff.
61. Hundreds of thousands of low paid care workers are now excluded from the protection of the Two Tier Code because it only applies where a TUPE transfer takes place.
62. A major group of staff work in care homes where local authorities 'spot purchase' individual care packages. Because there is no transfer of staff (only a 'package' is purchased) the effect is that the staff in many private care homes (funded by public money) are on greatly inferior terms and conditions than their public sector counterparts.
63. Tens of thousands workers provide care for clients who are - or will - be in receipt of direct payments. These staff are currently employed by local authorities. However, in future, individual clients will employ their carers directly with no restrictions on their terms and conditions except basic legal protections.
64. Finally, in generic service centres, new starters can be recruited to work on a non-best value authority contract (thus avoiding the Code) and then later moved around. In practice, it is quite likely that they will be recruited to work generically, on a variety of contracts, as the type of work is likely to be very similar.

65. **These examples demonstrate the need for a general statutory duty to prevent a two-tier workforce amongst all workers providing public services.**

Handling of Workforce Matters in Contracting

66. The involvement of the workforce in the contracting process is key to successful outcomes. The guidance needs a more positive and imaginative attitude to including workforce, social and equality issues in contracting, including equal pay.
67. Alongside the Two Tier Code, there is accompanying guidance (Annex A on “Handling of Workforce Matters in Contracting”) addressing how workforce matters should more generally be handled in contracting. This is also being updated and reissued.
68. The involvement of the workforce and trade unions in the contracting process is critical to the success of large-scale procurements, and it is welcome that the guidance reiterates this. However experience has revealed some practical problems.
69. Large contracting exercises increasingly use the ‘competitive dialogue’ process. This typically involves a broad discussion between the authority and each potential contractor about the scope and shape of a contract. These typically take place under cover of commercial confidentiality, and therefore frequently exclude union or workforce consultation. UNISON believes that this process has been used avoid consultation with trade unions, as in the case of ‘South West One’.
- 70. The guidance needs to be clear that when using ‘competitive dialogue’ authorities must ensure that meaningful consultation with trade unions is built into the process.**
71. It is welcome that the importance of social, environmental, workforce and equality issues in procurement is identified, and how the procurement process can be used to further these policy objectives.
72. However the guidance is predominantly negative. There are few positive examples of how these issues can be included and the guidance repeatedly stresses the dangers of introducing any issues which might be construed as infringing European procurement legislation. This tone is likely to dissuade imaginative uses of the procurement process.
- 73. The guidance should encourage the creative use of the power of well-being and of social clauses where desirable and possible by reminding authorities of their powers under the new EU Procurement Directive and including examples.**

74. Given the huge implications of equal pay for employers and employees alike, it is essential that this guidance clearly states that equal pay and equality legislation applies to all employers and that contractors have a duty to comply. This will help avoid litigation on equal pay grounds part way through a contract.
75. **The importance of addressing equal pay issues should be specifically highlighted in the guidance.**
76. The guidance inaccurately states that the public sector equality duties do not apply directly to contractors, and this should be corrected.
77. The non-statutory guidance on the use of social clauses (at the end of Annex A) should reference the Interpretive Communication (in line with recent case law) which explicitly permits the use of social and environmental considerations at the technical specification, tenderer selection, contract award and contract execution stages. Specifically, the reference to contract conditions (fourth paragraph) should include a reference to regulation 39.
78. The guidance should also point out in relation to sections 13/14 of Annex A that the award criteria ('lowest price' or 'MEAT') do not apply to Part B contracts, or those below the threshold value.
79. The draft statutory guidance could also refer to reg. 30(6) and the ability to request further information in the case of abnormally low tenders. This is a potentially useful tool that could be used to probe tenderers' compliance with and commitment to policy objectives and good workforce practices.

Appendix A

Examples of the avoidance of the “Two-Tier Code”

UNISON’s 2008 Freedom of Information survey of local authorities in England and Wales (to which 287 responded) found a small but significant number of councils who admitted not applying the Code. They were:

- Arun
- Basingstoke
- East Northamptonshire
- Epping Forest
- Forest of Dean
- Gwynedd
- Lewisham
- Wandsworth (not applied to 37 contracts in the last 18 months)
- Welwyn Hatfield
- Wycombe

In addition there are a range other authorities which UNISON is aware of that have not or are not applying the Code. These include:

- Camden
- City of Westminster
- Lancashire County
- Charnwood
- Stockport
- West Berkshire (who claimed, in UNISON’s FOI survey, that they were applying the Code)

London Borough of Hackney - “Too problematic”

Hackney has refused to apply the Best Value Code to a string of high value contracts (including Payroll Services and HR System hosting, Connexions Services, Fleet Maintenance, Recycling Services, Operation of CCTV Centre, and Highways Maintenance). They claim that they have legal advice that enforcing the Code “would be too problematic”.

Lancashire County Council - “Efficiency savings by cutting pay”

Lancashire County Council has awarded “Alternative Futures Group” a contract to run a service to support adults with learning difficulties at some 20 homes in the Lancaster area. In a letter of 18 February 2008 Alternative Futures confirmed that the contract did not contain the Code of Practice requirements.

UNISON raised this with the Lancashire County Council (the commissioning agents for the tender) on 22 January 2008 and they replied, stating that the “Commissioners (LCC) did not invoke the Code of Practice on Workforce Matters with Alternative Futures, as it is intended that the service will have to consider year on year efficiencies in order to meet demands and commitments to the pooled fund. Therefore, Code of Practice for Best Value supersedes Code of Practice on Workforce Matters on this occasion”. They claim that they have received legal advice from a senior legal officer in the Council for this approach.

They are following a similar approach for a contract currently being tendered jointly with East Lancashire Teaching PCT and Blackburn with Darwin PCT. The contract is for 20 homes for adults with learning difficulties in the East Lancashire area and Lancashire CC are refusing to apply the Code despite the Department of Health advising East Lancashire Teaching PCT that it should be applied!

In summary, Lancashire is refusing to apply the Code because they wish to make cost savings at the expense of the workforce. This is despite the council claiming in the ‘Statement on Contracts’ in its annual Performance Report (2005-2006) that “All individual contracts awarded during the last year which involved a transfer of staff complied, where applicable, with the requirements in the Code of Practice on Workforce Matters in local authority service contracts”.

Westminster City Council - “Not applicable to re-tenders”

In 2007 Westminster Council awarded the re-tender of their Housing Options Service contract to “Dunlop Hayward”. Despite vociferous opposition by UNISON, they refused to apply the Best Value Code to this contract on the grounds that the Government’s 4Ps agency advises that the Code need not be applied to re-tenders of contracts originally let prior to March 2003. This is contrary to counsel’s opinion obtained by UNISON, and would exclude workers on thousands of contracts let under 13 years of Compulsory Competitive Tendering from protection. The council also refused to engage in the Alternative Dispute Resolution (ADR) procedure on the grounds that there was no free standing right to invoke it, and it was only applicable if the Best Value Code was already being applied.

There are few remedies if an authority refuses to apply the Best Value Code, and although UNISON explored taking the authority to a Judicial Review (and was prepared to do so) the tight time limit on JRs prevented this.

East Sussex County Council - “Omission of the Code from the contract”

East Sussex County Council has let its contract for careers services to V.T. Enterprise and the contractor indicated that they would not be applying this legal requirement, on the basis that the client (ESCC) had not included the Code of Practice in the contract specification.

London Borough of Camden - “The Minimum Wage is Best Value”

The London Borough of Camden examined its Building Cleaning Services contract which was being let to four different contractors, and decided to consolidate these in one new tender. However, they refused to apply the Best Value Code to this and other contracts. In this specific case, it was primarily on the grounds that the Code will not provide ‘Best Value’ because new cleaners can continue to be appointed on the national minimum wage which is claimed to be the current “going rate” in the industry. However the existing practice of paying the minimum wage had led to a turnover rate of 60%.

Cornwall County Council - “Responsibility lies with previous contractor”

Cornwall County Council’s Department of Adult Social Care took over the responsibility for commissioning services for people with learning disabilities in sheltered accommodation from Cornwall Partnership NHS Trust, as a result of the Healthcare Commission Report in 2007.

Whilst the contract documentation refers to the Code of Practice on Workforce Matters in Local Authority Service Contracts, the Cabinet Office Statement, TUPE and other matters, it does not provide any detail as to how these are to be complied with. It leaves it entirely to the service provider to determine how they interpret those measures and there are no mechanisms within the County Council, as the Commissioner, to enforce, monitor or seek compliance with those provisions. There is no Dispute Resolution Procedure currently in place within the County Council.

The only provision is an agreement purported to be between the ex-provider, Cornwall Partnership Trust (CPT), and the new providers where the onus is entirely placed on the outgoing contractor to ensure that the Code of Practice is being complied with. However it seems to UNISON that it is impossible, or implausible, that a third party could have any role in monitoring or compliance of human resources and workforce issues.

West Berkshire District Council - “The wrong two-tier workforce”

West Berkshire are currently contracting out the provision of certain leisure services in a contract covering three leisure centres - Lambourn, Downlands and Theale Green Recreation Centres. They have decided to let the contract to “Parkwood Leisure” who already run some other leisure services for West Berkshire, but have refused to apply the Best Value Code.

The refusal is on the highly spurious grounds that Parkwood’s salaries “reflect the local marketplace and the UK leisure industry in general” and that applying the Code would prolong a two-tier workforce amongst the contractor’s employees. This is clearly the wrong comparator for a ‘two-tier’ workforce and Parkwood appear to be simply flouting the Code.

Parkwood have also refused to apply the Code on other contracts, for example in 2005 on a leisure contract with the London Borough of Bexley where all but 41 out of approximately 300 staff have now left. They have stated they will not apply for contracts which require the Code to be applied.

Cheshire Police Authority - “From one contractor to another”

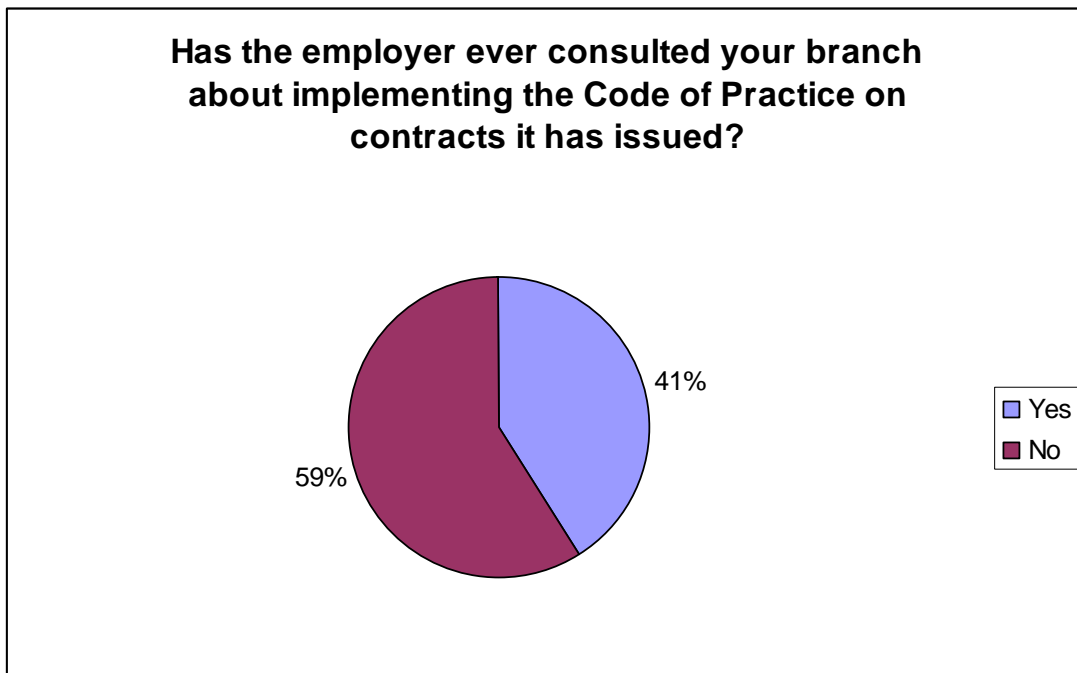
Cheshire Police Authority is another Best Value Authority not currently applying the Code. GSL UK Ltd originally won a contract for prisoner transport, but new starters on the contract were not given the same weekend and shift allowances that transferred staff benefited from. In the middle of UNISON taking up the case, the contract was re-tendered for one year and won by a different contractor, Reliant, and the new staff transferred on their inferior terms and conditions. The contract is now coming up for re-tender in March 2009 and UNISON is pushing for the Code to be applied and all staff to be employed on an equal basis.

Appendix B

Survey of UNISON branches on the “Two-Tier Code”

68 branches responded to the survey.

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.

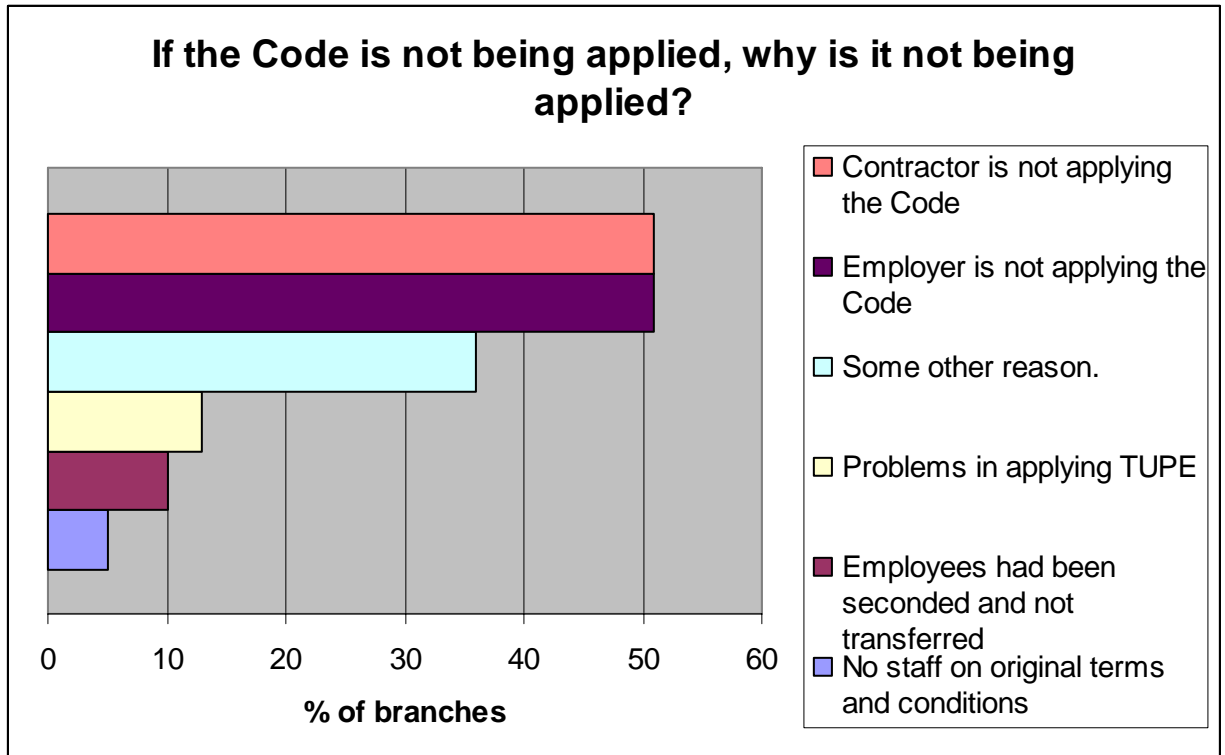


42% of branches said that the Code was not being applied by their employer. 41% said the Code was being applied. 16% were not sure or gave no answer



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 there were no staff still on original terms and conditions
- 10% said employees had been seconded and not transferred
- 36% gave some other reason.



Question 4 asked for further details.

Question 5 asked which service areas were experiencing a two-tier workforce. 38 branches answered this question, of whom 32% mentioned social care, 16% mentioned homecare, 13% mentioned cleaning and 13% mentioned catering.

Question 6 asked for the names of private or voluntary organisation operating a TTWF. 34 branches gave details.

Question 7 asked what improvements should be made to the Two-Tier Code. Branches were able to give multiple suggestions. 63 branches answered and of these:

76% said the Code should require employers to consult trade unions on all outsourcing/retendering decisions

97% said the Code should be a mandatory duty for employers

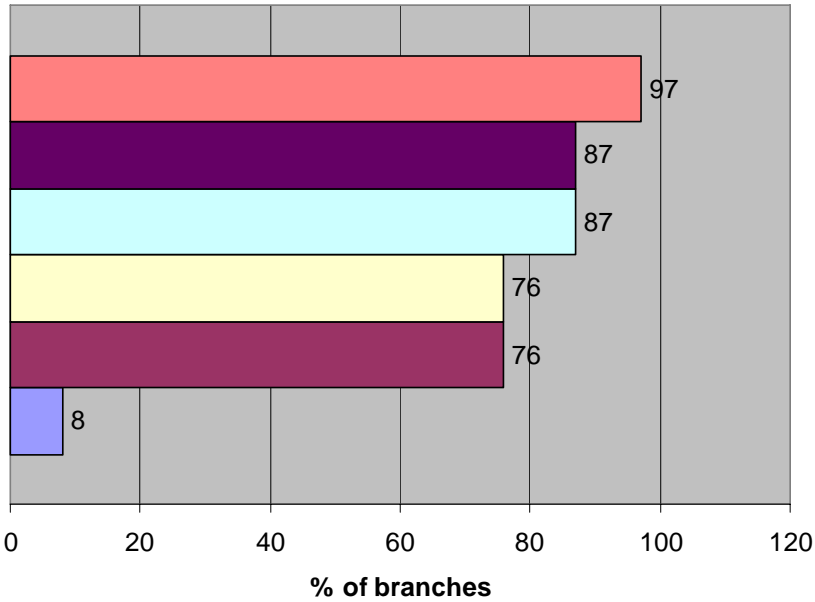
87% said that contracts should only be granted to contractors who signed up to the principles of the Code

76% said the Code should require that employers give trade unions details of service contracts coming up for retender or outsourcing

87% said the Code should stop new contracts being granted to contractors who fail to implement the Code 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?



- The code should make the code a mandatory duty for employers
- The code should stop new contract being granted to contractors who fail to implement codes on past contracts
- Contracts should only be granted to contractors who are signed up to the principles of the code
- The code should make employers give trade unions details of service contracts coming up for retender or outsourcing
- The code should make employers consult trade unions on all outsourcing/retendering decisions
- Suggested some other improvement to the code.