

WILTSHIRE COUNCIL

CABINET

23 MARCH 2010

**Subject: SOUTH WEST UK BRUSSELS OFFICE – TUPE
TRANSFER OF STAFF TO WILTSHIRE COUNCIL**

**Cabinet member: Councillor John Brady – Economic Development,
Planning and Housing**

Executive Summary

The Council has been a member of the South West UK Brussels Office (SWUKBO) Partnership since its inception in 2001. As a trusted and steadfast member of that Partnership, partners have requested that the Council takes on the Secretariat responsibilities of the Partnership involving the TUPE transfer of staff from Somerset County Council.

Wiltshire Council would be paid a management fee for taking on this service. A secondary benefit would be a closer working arrangement with SWUKBO and potentially stronger relationships with European institutions and networks. This would help to build on the success the Council has achieved in securing European funding for local projects.

The Council will not face any additional costs in respect of taking on eight additional staff. Risks to the Council are considered to be acceptable given the provisions of the existing SWUKBO Partnership Agreement and the new Supplemental Agreement developed by Wiltshire Council Legal Service.

Proposal

1. That Cabinet agrees to support the TUPE transfer of South West UK Brussels Office staff from Somerset County Council to Wiltshire Council for a period of three years starting 1 April 2010 subject to confirmation that a sufficient number of signatories to the Supplemental Agreement relating to the SWUKBO developed by Wiltshire Council have been secured.
2. In the event that a sufficient number of partner signatories to the Supplemental Agreement have not been secured by the date of the Cabinet meeting, Cabinet authorises the Chief Executive in consultation with the Director of Economy & Enterprise to complete the process of TUPE transfer of SWUKBO staff subject

to the required level of sign up by partners being achieved.

Reason for Proposal

- **The Partnership Agreement for the South West specifies that the SWUKBO Secretariat responsibilities should rotate around the South West partners and as a trusted and steadfast member of the SWUKBO Partnership with the appropriate level of management capacity, Wiltshire Council has been invited to take on those responsibilities.**
- **A management fee would be payable to Wiltshire Council to take on this role. The new arrangement would also enable Wiltshire Council to develop a closer working relationship with SWUKBO and develop stronger relationships with the European institutions and networks including the European Parliament, Commission and Committee of the Regions with the benefit of early information regarding the availability of European funding opportunities to support the delivery of the strategic objectives of the Council and its partners. In the last three years, over £10 million of European funding has been secured for projects in Wiltshire; Wiltshire Council's membership of the SWUKBO Partnership has been a contributory factor to this success.**

**Alistair Cunningham
Director of Economy Enterprise**

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1. Purpose of Report

The purpose of this report is to obtain the support of members for the TUPE transfer of SWUKBO staff from Somerset County Council to Wiltshire Council.

2. Background

Wiltshire Council has been a trusted and steadfast member of the South West UK Brussels Office (SWUKBO) Partnership since its inception in 2001.

The purposes of the South West UK Brussels Office (SWUKBO) are:

- to ensure the South West has a clear voice in Europe, that its interests are heard and its potential explored;
- to relay information about developments on the European level of relevance and benefit to the region;
- to develop transnational links and opportunities for cooperation with other European regions.

The work of the SWUKBO is important to Wiltshire Council; in the last three years, the authority has secured in excess of £10 million of European funding to support various corporate and partnership projects and the Council's membership of the SWUKBO Partnership has been a contributory factor in this success.

SWUKBO is supported by the following partners:

- South West of England Regional Development Agency (SWRDA)
- 14 first-tier local authorities
- South West Councils
- Universities South West

Partners entered into a Partnership Agreement in 2005 which delegates the responsibility of managing the functions of the SWUKBO to specific partners. In return, the partners pay varying contributions to the annual budget of SWUKBO. In Wiltshire Council's case this is circa £16,000 per annum.

Somerset County Council (SCC) is the current Leasing Authority and takes on all liability of SWUKBO's office premises on behalf of the Partnership. All costs incurred by SCC to rent the premises are chargeable to the budget of the Management Board of SWUKBO and handled by SCC.

Somerset County Council is also the current Secretariat and responsible for the staffing arrangements of the office including appointing staff and setting terms and conditions of employment or making any necessary variations. All costs incurred by the Secretariat in making and implementing such arrangements are chargeable to the budget of the Management Board of SWUKBO. The office currently employs eight staff.

In recognition of the Council's longstanding membership of the SWUKBO Partnership and its management capacity, Wiltshire Council has been invited to take over the Secretariat function of the Partnership on 1 April 2010 but with SCC retaining its responsibilities for the leasing of the office.

3. Equalities Impact of the Proposal

Early consultation with the SWUKBO staff has not revealed any concerns around equalities except that the Brussels labour market within which the staff operate will need to be taken into account in the context of pay harmonisation.

4. Risk Assessment

Officers have undertaken due diligence to understand the potential HR, legal and financial risks associated with this project. Early consultation with staff has demonstrated firm support from staff for the proposed TUPE transfer.

If the proposed decision is not taken:

- Wiltshire Council would not receive the management fee income due
- The Council would lose the opportunity to develop closer working relationships with SWUKBO and the European institutions by virtue of its Secretariat status

If the proposed decision is taken:

- Wiltshire Council faces fluctuating employee costs owing to exchange rate movements; this risk will be managed through ensuring that the Partnership maintains sufficient contingency funds to cover such fluctuations. The Partnership Agreement allows for this contingency.
- Partners withdraw from the Partnership owing to either financial pressures or early termination of the office lease (the first opportunity to terminate is 31 December 2011) leading to possible dissolution of SWUKBO and the obligation to make redundancy payments to staff; this risk will be managed through a Supplemental Agreement with all partners developed by Wiltshire Council which will indemnify the Council for any additional costs which are unable to be covered by the SWUKBO budget. The SWUKBO Management Board is due to confirm this indemnification at its meeting on 22 March.

5. Financial Implications

5.1 Pension Liabilities

Several employees have joined the Local Government Pension Scheme (LGPS) that is run by SCC. Wiltshire Council also runs the LGPS. There will be no change in terms or conditions of the scheme on transfer to the detriment of any party.

SCC will pay Wiltshire Council an appropriate contribution (on behalf of each employee) to the pension scheme up to the date of transfer if there is any deficit in contributions. No additional costs will be incurred by Wiltshire Council in this respect. Wiltshire Council will continue to make its statutory pension contributions to the employees pension scheme post transfer.

Due diligence has revealed that no employee is close to retirement and therefore it is highly unlikely any additional costs will be incurred as a result of early retirement which Wiltshire Council, in the normal circumstances, would have to bear.

5.2 TUPE Transfer cost

Wiltshire Council will not face any additional costs due to the TUPE transfer of staff. A management fee in the region of £16,000 would be payable to Wiltshire Council for taking on the Secretariat responsibilities.

6. Legal Implications

Legal and HR Officers have conducted extensive due diligence into the proposed transfer and have identified the following:

6.1 HR / Employee Implications

There is an ongoing issue with the HMRC in relation to the fixed exchange rate currently in operation. This is being addressed by Somerset County Council and as yet it is not clear whether this constitutes a benefit in kind. Wiltshire Council will seek to maintain the status quo until this has been resolved.

Wiltshire Council is currently exploring a solution to enable paying the staff in Brussels a fixed euro salary in order to avoid the issue of fluctuating exchange rates. Consideration will be given to their individual circumstances to ensure their pay rate reflects the market conditions.

Consideration should also be given to the impact of any European employment law changes in the management of the employment relationship of the staff and the costs associated in supporting staff members who do not reside in Wiltshire.

Notwithstanding the above, Wiltshire Council has engaged in an extensive TUPE consultation process with Somerset County Council and the staff at the Brussels office. The TUPE obligations have been complied with, there having been no

issues raised by the transferring staff. The existing terms and conditions together with associated liabilities will on transfer pass to Wiltshire Council.

6.2 Commercial Implications

A serious commercial risk has been identified which relates to the stability of the Partnership in the next year that may intimate potential redundancy costs.

Wiltshire Council requires the continued commitment of the Partners to fund SWUKBO post transfer for a minimum period to avoid any additional costs incurred by Wiltshire Council for the staff in the event that there is a deficit in the SWUKBO budget. If the SWUKBO Partnership was to dissolve, Wiltshire Council requires that all current Partners commit to their current obligation under the Partnership Agreement to indemnify the Secretariat and Leasing Authority for any additional costs for closing SWUKBO which includes redundancy costs and termination of the Lease.

To obtain the Partners commitment, Wiltshire Council has produced a Supplemental Agreement to accompany the current Partnership Agreement. The Supplemental Agreement addresses the two issues mentioned above by obligating the Partners to contribute to any deficit in the SWUKBO budget as a result of resigning Partners. It also provides for resigning Partners to remain liable for the potential dissolution costs of SWUKBO up to 31 December 2011 regardless of whether they resign prior to that date.

Furthermore, the Supplemental Agreement contains a clause that would be triggered by the dissolution of SWRDA (who contributes half the annual funding of SWUKBO). If this clause is triggered, the Partners can vote to dissolve the Partnership immediately or in that current financial year. This provision protects all remaining Partners from an escalation of fund contribution.

If Wiltshire Council has not secured a sufficient number of signatories to the Supplemental Agreement, it is recommended that the TUPE transfer does not proceed.

7. Options Considered

One option would be for Wiltshire Council to take on the Leasing Authority responsibilities in addition to the responsibilities for staff. However, at this time it is considered that the risks associated with becoming the Leasing Authority are too high to recommend that the Council takes on those responsibilities. Those risks include:

- The lease is governed by Belgian Law
- The duration of the Lease is fixed and it appears that neither party can vary the duration under any circumstances (it will automatically expire on 31 December 2017)
- The costs of maintenance and all repairs fall to the tenant
- A reinstatement clause is present and this refers to the inventory taken at the beginning of the lease. Reinstatement of the premises may be costly depending on the alterations made

- If the lease is terminated by default, the tenant is liable for re-letting the premises and shall provide and indemnify all cost related to the re-letting of the premises equivalent to six (6) months rent and charges. This is considered a high risk in the event the Partnership suddenly dissolved and no early break clause being applicable

However, there is a lease break on 31 December 2011 when this issue could be revisited.

8. Conclusions

The Council will not face any additional costs by virtue of taking on the Secretariat responsibilities of SWUKBO and transferring staff to Wiltshire Council. Risks to the Council are considered to be acceptable given the provisions of the Partnership Agreement and the Supplemental Agreement with partners. Further, there are potential benefits associated with this TUPE transfer in terms of the management fee payable to the Council and the development of a closer working relationship with SWUKBO, European institutions and networks that may help to secure additional European funding for Wiltshire-based projects.

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Background Papers

Unpublished South West UK Brussels Office – Legal, Commercial & Property
Due Diligence Report, 15 February 2010

Supplemental Agreement relating to the South West UK Brussels Office

Appendices

None