

Open Report on behalf of Debbie Barnes, Executive Director responsible for People Management

Report to:	Executive
Date:	05 September 2017
Subject:	Trade Union Recognition of the Royal College of Nursing
Decision Reference:	I014017
Key decision?	No

Summary:

Public Health transferred to Local Authorities in 2013, when the Councils became responsible for commissioning public health services for 5 to 19 year-olds (up to 25 for young people with Special Educational Needs and Disabilities (SEND)). On 1st October 2015, Local Authorities were further delegated commissioning responsibility for public health services for 0 to 5 year olds.

In November 2016, the Council's Executive made the decision that the children's health service 0-19 (25 SEND) is in-sourced and provided by the Council's Children's Services Department. The recommended model for Lincolnshire children's health services has been developed taking into account findings from a review completed in 2015; this is believed to offer the best approach to securing value for money services that will improve outcomes for children, young people and families.

240 employees are due to transfer into Lincolnshire County Council (LCC) on 1st October 2017. The 2 main Trade Unions who support this staff group are Unison and the Royal College of Nursing. Although Unison is currently recognised by LCC, the Royal College of Nursing (RCN) is not.

The Royal College of Nursing has requested Trade Union Recognition by LCC as a result of this.

Recommendation(s):

That the Executive approves the recognition of the Royal College of Nursing as a LCC recognised Trade Union.

Alternatives Considered:

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| 1. | Not to recognise the Trade Union. However, there is a statutory process that could be followed by the union if we did not recognise so they could seek to secure recognition that way. |
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Reasons for Recommendation:

The RCN meets the criteria laid down in the Council's policy.

This is a new staff cohort transferring by operation of law under the TUPE Regulations. The Council will be relying on these staff to deliver the newly acquired services and it would give a negative impression of the Council as their new employer to remove from the recognition of their Trade Union that they currently enjoy. This may impact on the Council's ability to recruit and retain.

1. Background

The employees who will be transferring into LCC from the NHS will have the right to Trade Union Representation.

The Council's policy on Trade Union Recognition states the following:

A request for full recognition by Lincolnshire County Council for collective bargaining purposes will be considered if the trade union concerned:

- a) is an independent registered trade union
- b) is on the staff side of the appropriate National negotiating body; and
- c) has substantial membership in the employment group concerned

If a Trade Union wishes to apply to be recognised by Lincolnshire County Council they should write to the Head of People Management. Such requests will be considered by the Council's Executive and will need to evidence that they meet the criteria and a, b and c above.

As per the LCC policy the RCN is an independent registered trade union and is on the staff side of the appropriate National negotiating body.

Approximately 38% of the transferring workforce are members of the RCN.

This means they have a substantial membership which is also a requirement of the County Council's policy as above.

Members of the unions pay their own membership fees and the Council as their employer allows for facilities time for any accredited representatives to undertake representation and to attend relevant meetings. The Council's policy on this states that this is "limited to an aggregate total of 9 whole days or 18 half days in any 12

month period although officials may apply for further time off with or without pay in exceptional circumstances".

It is not anticipated that this will incur a cost to the Authority. If, by exception, additional facilities time is required and is deemed to be affecting the service area and back-fill is required then this is agreed on an individual basis and a business case is presented to the Executive Director responsible for People Management for approval on a time limited basis.

2. Legal Issues:

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- * Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- * Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- * Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- * Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- * Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
- * Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is

identified consideration must be given to measures to avoid that impact as part of the decision making process.

The staff cohort affected by this decision and the membership of the RCN generally is understood to be predominantly female and it is considered to be likely to remain so given the historic patterns of recruitment to such roles. It is therefore considered that the adverse effects of non-recognition will impact disproportionately on women as a group with a protected characteristic. There is no mitigation that could be put in place to remove or reduce this impact.

In those circumstances if this is treated as a provision criterion or practice that places employees with a particular protected characteristic at a disadvantage then it could potentially give rise to claims for indirect discrimination.

Recognition of the RCN is therefore considered to be most consistent with the Council's Equality Act duties.

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision.

Consideration has been given to the JSNA and the JHWS. The overall impact of the services delivered by the transferring staff impacts positively on the aims of the JHWS. Insofar as union recognition supports good employee relations and therefore on the delivery of the services it also positively impacts on the JHWS.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area

Consideration has been given to these matters and there is not considered to be any direct impact of this decision.

3. Conclusion

As a result of the information noted above it is recommended that the Council recognises the Royal College of Nursing (RCN) as part of its Trade Union Recognition Policy.

4. Legal Comments:

The legal considerations relating to this decision are set out in detail in the Report.

The decision is consistent with the Policy Framework and within the remit of the Executive if it is within the budget.

5. Resource Comments:

There are no additional budget implications arising from this proposal.

6. Consultation**a) Has Local Member Been Consulted?**

Yes

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

The Overview and Scrutiny Management Board met on 27 July 2017 and considered a report concerning the Trade Union Recognition of the Royal College of Nursing. The Board unanimously supported the recommendations contained in the report.

In addition, the following comments were made:

- It was suggested that the unions should look into having learning representatives as these would be beneficial to staff and to the employer. There was a vast array of courses available to help staff which could be promoted through learning representatives.
- It was queried what the relationship was like between Unison and the Royal College of Nursing (RCN) and whether the Council had negotiated with them before. It was confirmed that the Council had not negotiated with the RCN before, but engagement meetings had been taking place between the RCN and Unison in the NHS and the Executive Director of Children's Services. The Council's Unison officers were now being engaged in preparation for the forthcoming consultation.

d) Have Risks and Impact Analysis been carried out?

No

e) Risks and Impact Analysis

See the body of the Report.

7. Background Papers

The following Background documents have been used in the preparation of this Report

Document title	Where the document can be viewed
Trade Union Recognition Policy	People Management

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