

Shadow Board – Shetland Merger Project

Committee	Shadow Board
Subject	TUPE Transfer and Restructuring.
Action requested	<input type="checkbox"/> For information only <input type="checkbox"/> For discussion <input checked="" type="checkbox"/> For recommendation
Brief summary of the paper	Report from SIC HR and Project Manager concerning a timetable for TUPE transfer from existing employers into the new college, and staff restructuring in the new college
Resource implications [if yes, please provide detail]	Yes Staff time to collate and review staff information for TUPE, external resource may be required for legal assurance
Risk implications [if yes, please provide detail]	Yes Law and regulation governs TUPE and restructuring. ACAS and CIPD guidance is being followed along with professional SIF HR collaboration.
Date paper prepared	23-Jul-19
Date of committee meeting	31-Jul-19
Author	Joint paper SIC and Project Manager
Equality and diversity	No
Status	Non-confidential
Freedom of Information Can this paper be included in 'open' business?*	Yes

19. Background	
1.1	<ul style="list-style-type: none"> In discussion with SIC HR professional advice, two key processes required to enable the merger to take place have been reviewed to ensure appropriate timescales and procedures: TUPE transfer of staff from the existing two employing bodies to one new college Consultation with stakeholders on how the new college can work better eg identification of new income streams, reductions in areas which are not sustainable. The outcome of any consultation would feed into the potential options for restructuring after the TUPE transfer. The exercise will help ensure a sustainable college with capacity to grow key areas of business, whilst ensuring an affordable structure in which staffing is designed to meet the needs of students, stakeholders and college operations, whilst recognising that the talent, experience and resilience of staff is the key factor enabling the college to be competitive, innovative and achieving excellence.
20. Report authors	
2.1	<p>Dilys Evans, SIC HR Adviser Ruth Campbell, Project Manager</p>
21. Partners / stakeholders	
3.1	<p>NAFC Board – NAFC as an employer will be required to ensure that TUPE transfer requirements are followed and that consultation with staff takes place prior to transfer into a new college. Whilst it is anticipated that the Project Manager will assist with consultation and administrative processes, it is anticipated that preparation for transfer will impact on NAFC workload, for which external support may be required.</p>
3.1	<p>Shetland Islands Council – SIC as an employer will be required to ensure that TUPE transfer requirements are followed and consultation with staff takes place prior to transfer.</p>
3.2	<p>Students and stakeholders (including funders and sponsors) – any changes relating to how services are delivered must be communicated to all stakeholders positively and well in advance of activity. This will require all staff to provide details of current partners and stakeholders to ensure communication can be provided in a timely and consistent manner.</p>
3.3	<p>Scottish Funding Council – SFC support for transition arrangements require that processes such as TUPE, restructuring and any potential voluntary severance processes and costs are conducted properly and consulted on in advance with SFC. Support for additional resources to support preparation for transition – what does this mean? will be applied for once the extent of the required support is confirmed.</p>
22. Risks	
4.1	<p>Post TUPE transfer any staff changes going forward must be based on a clear rationale linked to the needs of the college to be sustainable and achieve growth in order to meet the needs of the tertiary education market. Any organisational restructure will follow required legislation and the appropriate policies and procedures. The aim will be to achieve staff stability quickly, allowing staff to contribute confidently to development and growth. Indecision and delay will extend uncertainty and cause additional stress to staff. Appropriate welfare support to staff to staff will be made available before and after the TUPE transfer.</p> <p>Liabilities in relation to staffing are transferred to the new employer.</p> <p>Failure to follow the appropriate legal processes and relevant Organisational Restructure and voluntary severance policies and procedures poses the risks of a loss of trust in the pre- and post-merger process, reputational damage and the risk of grievances. .</p>
23. Dependencies	
5.1	<p>Application to join SIC pension scheme requires the Mem & Arts to be finalised – (which in turn requires a name for the new entity) so that it can be assessed for entry to the scheme. Staff will need some clarity on pension provisions during consultations prior to the TUPE transfer.</p>
5.2	<p>The financial case for the merger will provide key evidence on the rationale for future staffing structures. This will be available by end September.</p>

1. Introduction

The following table outlines the process for managing the TUPE transfer of staff and consulting with staff about the transfer and in order to inform any restructuring exercise after vesting. If the consultation process begins prior to vesting then the feedback can help inform future proposed staffing structures post vesting date. However, any proposals for restructuring post vesting date would follow the relevant organisational restructure and redundancy processes.

2. Key Steps to TUPE and Restructuring (including Voluntary Redundancy)			
Process	Communication strategy	Timeline	Project input
1. Planning	Conduct whole-staff anonymous survey on strategic priorities for change informing staff structure in the new college (note 1). Staff participation in “canvas” of current work, (performance, growth projections and costs + data gathered during previous consultations and business case development), along with further working groups on implementation. Begin TUPE transfer process (see note 2)	Shadow Board agreement 31/7 Implement August 2019.	HR Advice on Plan PM implement
2. Development	Report survey findings to Shadow Board. Gain Shadow Board (NAFC + College Board) agreement to strategic priorities for staffing and areas of business of new college. Board draft overview of global budget forecast will be provided at this time. Board draft overview of current/future demand and delivery performance of college activities.	Board meetings: Shadow Board 28/8 September College/NAFC Boards	EIS representatives SIC HR Budget team (NAFC/SIC review) PM draft/ Principal Designate remote oversight.
3. Develop options appraisal for restructure based on strategic priorities, delivery requirements of the new college based on past performance and projections of demand for college functions, and affordability based on the budget forecast.	Develop options, align with new budget forecast, and show how structures support proposed growth and sustainability plans. Consult with union representatives Report to Shadow Board options and consultation findings. At this stage, an outline proposed structure meets the requirement for the Ministerial Merger	Board meetings: Shadow Board 25/9 October College/NAFC Boards	SIC HR Budget team (NAFC/SIC review) PM draft/lead

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Sketch the roles/likely costs (formalise in consultation post vesting when restructuring takes place).	Business Case (MMBC). It will be subject to amendment and further consultation post-vesting.		Principal Designate in post and leading.
4. Consult on draft MMBC	Prepare and consult with stakeholders Communications plan and implementation.	October concurrent with steps 5 &6	PM/ SIC HR Principal Designate in post.
5. Implement TUPE Transfer process	See note 2	Report progress to Shadow Board and NAFC / College Boards	SIC HR / PM / external resource
6. Union representative consultation	<ol style="list-style-type: none"> 1. Confirm individual staff consultation process and communications strategy. 2. Continue consultation process and communication strategy for TUPE 3. Follow steps in Note 2. 	September- November	PM SIC HR EIS-FELA Unison Unite NAFC Staff reps
7. Prepare post-vesting process for staffing and restructuring	<ol style="list-style-type: none"> 1. Create plan for Shadow Board. 2. Consult with staff and Trades Unions on plan. 	September - November	Principal/CEO Designate

NOTE 1

Initial Staff Consultation/Survey outline

Dear < >

This is a confidential survey for all staff of NAFC Marine Centre, Shetland College and Train Shetland, concerning arrangements for staffing in the proposed new college for Shetland. This survey has been approved by Shetland Island Council and NAFC Board, your current employers.

Responses to this survey are anonymised. You can answer the questions freely and your responses cannot be linked to your current role or your place of work.

At committee meetings in December reassurance was given to councillors and TUs that the Principal would be leading on the restructure proposals. I think we need to make mention of the Principal Designate if at all possible. The findings from this survey will be collated and considered by the Shadow Board for the new college, and the existing Boards of NAFC Marine Centre, and Shetland College, when discussing staffing structures for the new college. Who will be taking ownership/drafting the new staffing structures for lecturers and support staff? Will the views of the new Principal be sought? If yes, then perhaps this needs to be stated. The findings will help us to understand what you believe to be important strategic and practical considerations when staffing the new college.

This survey is only one part of informal consultation. Further informal consultation will take place with unions and staff representatives between August and October 2019 in order to help inform any initial restructure proposals post vesting date. There will also be opportunities for individual staff consultations.

You will see that there are many stages to complete and this is only the first stage of the process. You can ask any questions you wish to ask from Ruth Campbell, Project Manager,

To ensure we can account for your responses to these questions within the process, the deadline for completion of this survey is 23rd August 2019.

Indicative questions – approx. 20 questions in total

Theme 1 – understanding of change and change readiness

Theme 2 – current level of engagement (baseline data for future post-merger staff surveys)

Theme 3 – insight into strengths and weaknesses of current structures (baseline data for future staff surveys)

NOTE 2 TERTIARY REVIEW TUPE PROCESS and PLAN

Target date for implementation of Merger/TUPE Transfer – 6 January 2020

- Set up HR/Finance/Legal Support/Resources for the lead up to and implementation of Merger/TUPE transfer
- The timescale below allows 5 months for the implementation of a TUPE transfer from the decision that it should take place (August 2019)

TARGET DATE	ACTION
Stage 1: Before committing to the Transfer	
December 2018	Decision by governing bodies of Shetland College (SIC) and NAFC (Board of Trustees) to merge.
	Continue analysis of costs and liabilities for the new college to inform staffing requirements.
	Prepare for TUPE – Transfer of Undertakings (Protection of Employment). Follow legal process and guidelines for good practice (ACAS, CIPD).
	Ensure all current employee liabilities (e.g. relating to Equalities Assessment) are understood.
	Review issues of location change (low impact anticipated but flexibility of location introduced); and issues of specific employee needs (e.g. specialised equipment such as standing desks).
July-August	Develop detailed timeframe over which the transfer is to be conducted
	Inform recognised Trades Unions’ elected members about the anticipated transfer.
September - November	Review and refine future running costs, growth potential and liabilities. Ensure NAFC Board of Trustees and SIC, and the Shadow Board, endorse the position. Formal Proposal and business plan submitted to SFC & Scottish Government for approval.
November-December 19	SFC & Scottish Govt approve merger proposals.
Stage 2: Prepare for the transfer	
July 19 ongoing	Request and analyse employee liability (employee detail) information and verify liabilities.
“	Obtain warranties and indemnities that the information provided by the outgoing employers is correct. Due diligence checks undertaken (potentially external resource).
	On finalising the Memorandum & Articles of Association, begin application to SIC Pension Fund to become an admitted body for the provision of pensions to employees of the new college.
August 2019	Inform/consult with existing affected employees about the transfer – include those on long-term sick/maternity/paternity leave
September 2019	Create timeline of employment relations arrangements e.g. meetings with Trades unions, staff representatives after the transfer

“	Identify and agree between transferor and transferee what employees are to transfer – it is anticipated that all employees are to transfer. NAFC and SIC would confirm this intention at this stage.
	Ensure employee advice and information is available concerning pension transfer arrangements.
	Ensure external stakeholder communications plan covers regular communication which reflects the internal consultation process and advises of business continuity arrangements pre and post vesting.
October 2019	Inform “old” outgoing employer about any “measures”/changes being considered regarding the transferring employees. At this stage, an outline structure for the new college will be developed for consultation. Restructuring takes place after vesting, and is a separate exercise from TUPE transfer.
“	Seek permission from outgoing employer to inform/consult with any recognised TU/staff representatives about the transfer in small workplace groups and by 1:1 meeting on request. Employees provided with advice on TUPE, the protection this provides for them, and the opportunity to discuss their current terms and conditions.
“	Check out the information received from the transferring employees, tallies with information received under employee liability and due diligence information. Check and resolve any discrepancies with outgoing employer.
“	Consider how to deal with any Ts&Cs of the transferring employees which cannot be continued after the transfer, ensuring that the result is at least as favourable as the original arrangement. This will be a consultative process to arrive at solutions with the least impact on employees and the future business of the new college.
Sept/Oct	A separate paper to the Board will be developed and presented August/September regarding restructuring consultation which will begin October/November
November	Prepare payroll and HR systems for the transferring employees. Any others?
“	Confirm pension requirements and seek advice where appropriate and/or set up new pension provisions.
“	Prepare an induction package for the transferring employees including Q&A on line management and senior management arrangements post-transfer.
“	Ensure all working areas and equipment is ready and working for the day of the transfer. Check for any requirements for reasonable adjustments for transferring employees. Note it is envisaged that the majority of employees will keep their current work area and equipment as it is at present.
“	Ensure external stakeholder communications reflects the transfer and advises of access to employees/services.
“	Ensure Staff Welfare and support mechanisms are available
Stage 3 – The Transfer	
6 January 20	Check all employees have arrived for work and are welcomed
“	Continue staff engagement with all staff
“	Check once more with transferring employees that their terms and conditions match those which transferred across with them and resolve any discrepancies at an early stage.

“	Begin the induction process and ensure that line managers are provided with information to answer questions
	Ensure working practices of the new college reflect good practice in relation to employer/employee relations and recognition of Trades Unions, collective bargaining.
Stage 4 – After the Transfer	
January-June 2020	Continue to consult with representatives and affected employees on restructuring following legal requirements as outlined to Board in September/October.