

**Letter from Baroness Stowell of Beeston, Parliamentary Under Secretary of State,
Department for Communities and Local Government**

16th December Select Committee Follow Up

Following the Committee meeting on Monday 16th December, I undertook to provide the Committee with some additional information as set out in your Clerk's email of 17th December. I will take each of these points in the order set out in your Clerk's email.

The department's views on the employment terms and conditions applicable to local government contract delivery by private or other sector organisations (Q439-442)

The department notes that councils are locally elected bodies and individual employers. As such, councils are best placed to make decisions about the shape of their workforces, taking account of local circumstances and ensuring they deliver value for money for taxpayers.

We recognise that workforce costs make up a significant proportion of local authority spending. Given this, councils will inevitably look to achieve savings in the way they manage their staff. This may include the outsourcing of jobs and services to the private sector. Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) is an important part of the protection of employees' rights. When it comes to outsourcing jobs and services, councils must, of course, abide by the law. They should also ensure that employees transferring to private or voluntary sectors are treated fairly and equally. All contracts with private sector firms for the delivery of public services routinely contain provisions which require the supplier to comply with all applicable laws and statutes. This is the standard way of ensuring that there is a contractual requirement for suppliers to meet their legal obligations with regard to employment law.

Councils are often major employers and influencers in their local communities and can play a significant role in encouraging other employers in their communities to pay their workers a proper wage e.g. Living Wage or the local equivalent. Local government should always award contracts on the basis of the best value for money for the taxpayer and whether to pay the living wage must be a question for the employer. The government helps the low paid through the National Minimum Wage and indeed has cut income tax to help low paid people. However, it is for workers and employers to decide the level of wages above the minimum wage based on current circumstances. This includes the government as a procurer and an employer. Over 95% around 20 million employees, across all sectors in the UK, earn above the minimum wage and the majority of public sector workers currently earn above the Living Wage.

On the matter of staff pension rights, staff employed by best value authorities¹ are currently entitled to a broadly equivalent pension scheme if transferred and many contractors have elected to keep staff in the local government pension scheme by becoming admitted bodies within the scheme. The government is currently considering how these arrangements might be reformed in the light of the new Fair Deal guidance

¹ A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness (LGA 1999, section 3[1]). A list of best value authorities can be found at <http://www.legislation.gov.uk/ukpga/1999/27/section/1> .

produced by Treasury², under which central government and school employees are entitled to remain in their current public service pension scheme if their work is transferred to a non-public provider.

As regards zero hours contracts, we note that their use is not new, but since 2005, there has been an increase in their use and they are used by councils of all political colours, especially for part-time or casual employment roles. More recently government has been made aware of, and taken note of, anecdotal evidence that has illustrated instances of abuse. As mentioned during the Committee meeting of 16 December, the Business Secretary is looking into issues around zero hours contracts and has asked officials from the department for Business, Innovation and Skills to undertake a fact finding exercise to explore how these contracts work and what the issues are. The government published a formal consultation on options to address these issues and improve how zero hours contracts are used in the economy on 19 December. The consultation will close on 13 March 2014 after which the Government will publish a response setting out any next steps we intend to make. The consultation document is available at www.gov.uk/government/consultations/zero-hours-employment-contracts.

The proportion of local authority sector spend on services and goods delivered by non-UK companies (Q456)

The department does not have an estimate of the proportion of local government spend delivered by non-UK companies. However spend data and details of contracts awarded would identify who the winning supplier was. For the purposes of the Regulations, a properly incorporated UK subsidiary of a firm is a UK firm. This means that UK based subsidiaries or groups of multinational firms would count as being UK based. It is therefore debateable as to the extent that money is flowing out of the UK economy.

The department is encouraging councils to open up their procurement to local firms but government procurement is subject to Public Procurement Regulations 2006 and these prohibit any form of discrimination against companies solely on the basis of their nationality within the European Economic Area and those countries which are signatories to the Government Procurement Agreement. It would therefore be unlawful to seek to restrict artificially the number of contracts awarded to non-UK based firms. It is similarly unlawful to seek to reserve a proportion of spend for UK based firms. These regulations are designed to ensure fair cross border trade, and they of course work both ways. The benefit for UK firms is that they are able to compete effectively and without unfair prejudice against them in non-UK markets, especially within the European Union. Other European countries are subject to the same regulations and for the same reasons.

The government is continuing to support the involvement of small and medium enterprises (SMEs) in public sector procurement; this includes measures to support the involvement of local small and medium enterprises in local government procurement.

² The Fair Deal is a non-statutory policy setting out how pension issues are dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services. New Fair Deal guidance was issued by Treasury in October 2013 and applies when staff who are members of a public service pension scheme move from the public sector to an independent contractor by way of a transfer to which TUPE applies, and when staff who are members of a public service pension scheme move by way of a non-voluntary transfer to a public service mutual or to other new models of public service delivery (regardless of whether or not TUPE applies).

The Secretary of State strongly supports the abolition of Pre-Qualification Questionnaires in order to open procurement to small businesses and, following from the recommendations made in Lord Young's report 'Growing Your Business' 2013, new UK regulations are planned by summer 2014. These regulations concern the abolishing of Pre-Qualification Questionnaires for low value contracts (i.e. below European Union threshold) and mandating the use of a standard core Pre-Qualification Questionnaires for high value contracts; requiring public bodies to be more open about procurement and report their procurement spend with small and medium enterprises; and advertising of contract opportunities on a single online portal. Contracts Finder, the one stop shop for suppliers to access live and future procurement opportunities, allows users to search for information about contracts worth over £10,000 with the government and its agencies and local government. The system takes feeds from a number of local procurement portals across the country enabling UK business and small and medium enterprises to access local government procurement opportunities whether at local and national level.

The department's views on the impact of the abolition of the Audit Commission on the ability of local authorities to detect and tackle fraud, including what the role of the National Audit Office should be in supporting whistleblowers and whether there are any uncertainties about the provision of an independent third party for whistleblowers to contact if they are aware of fraud related to local authority procurement exercises (Q463)

In response to the point raised by the Committee on the impact of the abolition of the Audit Commission on the ability of councils to detect and tackle fraud we would agree that the Audit Commission has made an important contribution, not least through the requirement for all public bodies subject to audit to participate in the biannual data matching exercise carried out by the Commission's National Fraud Initiative. During the passage of the Local Audit and Accountability Bill, the government announced that the Initiative (which since its inception in 1996, has helped to identify over £1 billion of fraud, error and overpayment) and its associated data-matching powers would transfer to the Cabinet Office. My officials are working with the Cabinet Office to ensure a smooth transition of that important function. We are also working with the Commission to determine the future of its other counter fraud tools that matter to local government. Furthermore, the wider scope of public audit means that the external auditor would need to be reassured that the body had suitable counter fraud measures in place to protect public funds.

In addition, on 10 December we announced a £16.6 million of new investment which will not only protect local government from the impact of the Single Fraud Investigation Service on its non-welfare counter fraud capacity, it could enable around 200 more fraud investigators to be recruited in the fight to tackle this £2 billion a year problem.

In relation to whistleblowing, we are mirroring the current arrangements. At present, the Audit Commission directs whistleblowers to the appointed auditor who is the person empowered to take any appropriate action in the course of the audit. We will amend the order so that whistleblowers will continue to be able to go directly to their auditor and the National Audit Office's Comptroller and Auditor General to raise concerns, when the Commission is abolished. Any disclosures made to the National Audit Office or the appointed auditor will continue to be protected under whistleblowing legislation.

20 January 2014