

London South Bank University

	STRICTLY CONFIDENTIAL	PAPER NO: HR.12(12)
Board/Committee:	HR Committee	
Date:	15 May 2012	
Paper title:	TUPE Transfer of staff to SBUEL	
Author:	Katie Boyce, Director of Human Resources	
Executive sponsor:	Martin Earwicker, Vice Chancellor	
Recommendation by the Executive:	To recommend approval of this proposal to the Board	
Aspect of the Corporate Plan to which this will help deliver?	Becoming London's Enterprising University	

Executive summary

- South Bank University Enterprises Limited (SBUEL) is a wholly owned subsidiary of the University and now forms the main commercial vehicle for the generation of enterprise income
- To enable SBUEL to enhance its capacity to increase enterprise income it has now began to recruit its own staff and will mark itself out as an employer which is commercially orientated and innovative in relation to income generation, salaries and terms and conditions of employment reflect this commercial orientation.
- There are currently 11 staff employed by LSBU in activity which is being managed by SBUEL. In order to ensure that line management matters are not "blurred" and to emphasise that all such work is commercially managed the University proposes that these staff are transferred to SBUEL. This would constitute a transfer of employment under the Transfer of Undertakings (protection of employment regulations 2006) (TUPE).
- The Committee is asked to recommend approval of this proposal to the Board.

Matter previously considered by:	N/A	On:
Further approval required?	Board	On: 24 May 2012
Communications – who should be made aware of the decision?	Trades Unions and Staff	

Proposed transfer of LSBU staff to South Bank University Enterprises Limited (SBUEL) under the statutory terms of the Transfer of Undertakings (protection of employment) Regulations 2006 (TUPE)

Introduction

1. The Committee and the Board have previously noted that SBUEL is a wholly owned subsidiary company of the University. SBUEL is the first subsidiary of the University and now forms the main commercial vehicle for the generation of enterprise income for LSBU.
2. To this end an Enterprise Director was appointed in January 2012 in order to plan the future shape and structure of enterprise activity within the University and to lead a focussed, smart, and nimble team that will translate and develop LSBU's capabilities in order to meet the needs of external partners, and act as a catalyst for wider cultural change across the institution.
3. In order to enable the SBUEL team to be more enterprise focussed and competitive it was decided that SBUEL should become an employer in its own right and offer terms and conditions of employment that are more commercial in nature than those which apply in the University e.g. market rates of pay, with aspects of pay linked to achievement of business/financial targets, and different pension arrangements. This will consist of a defined contribution scheme thereby freeing SBUEL's pay bill from the LPFA defined benefits final salary scheme and the contribution the University has to pay for its own staff in relation to the deficit carried by the LPFA.

SBUEL as Employer

4. The Director of Enterprise was the first employee of SBUEL and has since been joined by a Business Development Manager and an administrator. The appointment of a Senior Business Development Manager is currently underway to lead this team.
5. Salaries are competitive and currently staff are offered a cash sum equivalent of 5% of their salary which is paid directly into a pension scheme of their choice. This arrangement is pending the establishment of a defined contribution pension scheme due to be put in place on 1 October 2012 (as per paper HR.13(12) for consideration at today's meeting) subject to HR Committee and Board approval.

Transfer of existing staff to SBUEL

6. In order to bolster the teams of staff engaged in enterprise support and management and in order to ensure that the team are clearly line managed within SBUEL the University proposes to initially transfer up to 11 staff from LSBU into SBUEL.

7. This will constitute a transfer of an undertaking under the TUPE regulations. In essence this means that staff would move to SBUEL on their existing terms and conditions of employment and salaries as at the date of transfer.
8. Occupational pension schemes do not transfer under TUPE hence staff would no longer be in the LPFA pension scheme. This would yield a saving on the salary bill for these staff of on average 10%, which is LSBU's employer contribution associated with the deficit in the LPFA pension scheme.

Risks associated with the transfer of staff

9. The University as transferor has legal obligations to consult with trades unions and the staff affected. It is highly likely that both groups will object to the loss of LPFA pension provision, particularly in the climate of dispute which currently prevails in relation to public sector pension scheme changes.
10. Although SBUEL is not legally required to provide an equivalent pension scheme, if any LSBU member of staff takes the view that their total remuneration package is so materially reduced they could leave the University prior to transfer and claim constructive dismissal.
11. On transfer, salaries for SBUEL and LSBU staff are broadly similar; however the Business Development Managers in SBUEL are eligible for bonuses related to achievement of targets. However, LSBU contractual terms are broadly more beneficial e.g. holidays and sick pay. There is a risk that at some point a directly employed SBUEL employee may make an equal pay claim using a transferred employee as a comparator.

Mitigation of Risks

12. Clarify with transferring staff that there is the possibility for them to earn more in terms of salary than they currently do if they sign up to a bonus scheme.
13. Reduce the risk of an equal pay claim by SBUEL introducing an economic, technical, or organisational reason for the need to change the terms of transferred employees to those originally employed by SBUEL or, alternatively, negotiate a one-off payment which buys out existing terms and conditions and results in agreement to move to SBUEL employment contracts.

Approval

14. To enable SBUEL to enhance its capacity to increase enterprise income and to establish it as its own employer commercially orientated and committed to innovation and income generation, the Committee is asked to approve this proposal for the transfer of LSBU staff to SBUEL on 1 October 2012 when the new pension scheme is in place (or earlier if pension scheme can be brought forward).