



## Belfast City Council

<b>Report to:</b>	Strategic & Policy Resources Committee
<b>Subject:</b>	<b>Consideration of Contractual Provisions in Tender Evaluation – The Bobbin Coffee Shop</b>
<b>Date:</b>	19 <sup>th</sup> August 2011
<b>Reporting Officer:</b>	Ciaran Quigley, Town Solicitor and Assistant Chief Executive
<b>Contact Officer:</b>	Dympna Murtagh, Divisional Solicitor-ext 6041

<b>Relevant Background Information</b>	
	<p>Members will recall that the Strategic Policy &amp; Resources Committee at its meeting on 17<sup>th</sup> June 2011 agreed to defer consideration of a report in relation to the invitation of tenders for the Bobbin Coffee Shop to enable a further report in relation to the terms and conditions of contractors to be submitted to the Committee. The Committee agreed also that, given that the review of the management at the City Hall could have an impact on the operation of the Bobbin and the fact that the matter had been deferred, the current contract should be extended for a maximum period of nine months to enable the procurement process to be completed and a new contract to be put in place. This report provides clarification of the issues raised by the Committee at its meeting on 17<sup>th</sup> June 2011.</p>

<b>Key Issues</b>	
	<p>At the Committee's meeting of 17 June, a query was raised as to whether the Council could contractually require a successful contractor to pay a particular rate of pay to its employees. The position is regulated by the provisions of Article 19 of the Local Government (Miscellaneous Provisions (NI) Order 1992, as amended by, the Local Government (Best Value) Act 2002, which specify a list of 'non-commercial matters' which cannot be considered by a council when awarding public supply or works contracts (which expression includes contracts for the supply of services). Article 19 further provides specifically that the terms and conditions of employment by contractors of their workers is for the purposes of the legislation a non-commercial matter and a matter, therefore, which cannot be considered by a council in the award of contracts.</p>

	It should be noted, however, that the effect of the Transfer of Undertakings (Protection of Employment) Regulations 2006(TUPE) and/or the Service Provision Change (Protection of Employment) Regulations (NI) 2006(SPC) is to preserve the continuity of employment and terms and conditions of those employees transferring to a new employer when a relevant transfer takes place in accordance with the Regulations. Any outgoing contractor's powers, duties, rights and liabilities under any contract of employment therefore transfer automatically to any incoming successful contractor.
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	<b>Resource Implications</b>
	<u>Human Resources</u> There are no human resource issues as all staffing matters will be the responsibility of the successful tenderer.

	<b>Equality and Good Relations Implications</b>
	N/A

	<b>Recommendations</b>
	It is recommended that the Committee notes the position regarding the application of the Local Government (Miscellaneous Provisions) (NI) Order 1992 as amended by the Local Government (Best Value) Act (NI) 2002 and further notes the provisions of TUPE and the Service Provision Change (Protection of Employment) Regulations (NI) 2006 regarding continuity of employment and terms and conditions of employment.

	<b>Decision Tracking</b>
	N/A

	<b>Key to Abbreviations</b>
	The Transfer of Undertakings Regulations 2006 (TUPE) The Service Provision Change (Protection of Employment) Regulations (NI) 2006(SPC)

	<b>Documents Attached</b>
	None