

APPENDIX E

TRANSFER AGREEMENT

1 INTERPRETATION

1.1 Terms defined in the main body of the Agreement have the same meaning in this Appendix, save where expressed to the contrary.

1.2 The following words and phrases shall where the context so admits have the following meanings for the purposes of this Appendix:

“Transferring Employees”

shall mean those persons who immediately prior to 1 May 2011 were employed by IOACC and who on and after 1 May 2011 are employed by GC the names and related employment details of which persons are set out in Schedule 1 of this Appendix;

“Parties”

shall mean the parties to the Agreement;

“Undertaking”

shall mean the undertaking as defined in TUPE of IOACC’s Planning Policy Unit which is transferred to GC pursuant to the provisions of this Agreement.

2 STAFF TRANSFER

2.1 GC hereby acknowledges and undertakes to IOACC that with effect from and including 1 May 2011 that it is the employer of the Transferring Employees by virtue of TUPE and the Parties hereto further agree and acknowledge that the transfer of staff under this Agreement falls within the statement of practice entitled “Staff Transfers in the Public Sector”.

2.2 Save as disclosed in Schedule 2 of this Appendix, IOACC hereby warrants to GC as at the 1 May 2011 in respect of all the Transferring Employees that:-

2.2.1 it has disclosed in writing to GC all material facts and matters relating to or concerning the employment of every Transferring Employee (other than Sensitive Personal Data where IOACC has been unable to obtain the necessary consents under the Data Protection Act which consents IOACC has used its best endeavours to obtain) including but not limited to their respective ages, length of service, notice periods, personnel files including all on-going disciplinary records, grievance details, requests for flexible working, opt out agreements and working hours records under the Working Time Regulations, details of all deductions from salary/wages, training records, health and safety records, loan agreements, car leasing and car loan agreements, tax records, any policy of insurance in place to cover liability for the personal injury of Transferring Employees, consent forms under the

DPA and all terms and conditions of employment (whether or not consolidated into the Councils general terms and conditions for Staff), pay enhancements, pension arrangements, benefits and including but not limited to retirement benefits policies and employment policies and procedures applicable to the Transferring Employees or other agreements in respect of each of them IOACC's general terms and conditions and employment policies are set out at Schedule 3 of this Appendix;

- 2.2.2 it has complied with its obligations under Regulation 11 of TUPE;
- 2.2.3 it has disclosed in writing to GC all material facts and matters relating to all or any collective agreements recognition agreements workforce agreements and any other written or minuted understandings which IOACC has with any trade union, staff association or other body representing any of the Transferring Employees;
- 2.2.4 it has disclosed in writing to GC copies of any material written representations or statements (whether written or transmitted by electronic or other medium) and disclosed in writing details of any material statements including oral statements made by the IOACC's Panning Department to any of the Transferring Employees or their unions or other representatives in any way connected with or concerning employment with GC within the period of 12 months preceding 1 May 2011;
- 2.2.5 the Transferring Employees are the only employees (as defined by Regulation 2(1) of TUPE) engaged or working in the Undertaking as at or immediately before 1 May 2011 and no other person has or has had a contract of employment or any contract for services with IOACC relating to the Undertaking which would entitle them to bring claims against GC under TUPE;
- 2.2.6 save in respect of the Transferring Employees the IOACC has not in relation to the Undertaking offered a contract of employment, a secondment agreement or a contract for services to any person, company or other business entity and no person, company or other business entity has accepted an offer of employment, an offer of a secondment agreement or a contract for services by the IOACC but whose employment, secondment or contract for services has not yet started;
- 2.2.7 none of the Transferring Employees have given notice or are under notice terminating their contract of employment;
- 2.2.8 none of the Transferring Employees and no other person previously working in the Undertaking who has or may have a statutory or contractual right to return to work in the Undertaking are on maternity paternity adoption or parental leave or are absent on grounds of disability, sickness (such sickness having lasted for a consecutive period of 6 weeks or more as at 1 May 2011) or other leave of absence;

- 2.2.9 there are no enquiries or investigations existing and having made all reasonable enquiries the IOACC has no notice of and is not aware of any pending or threatened enquiries or investigations into the Undertaking by the Equal Opportunities Commission, the Health & Safety Executive, the Commission for Racial Equality National Disability Council or the Disability Rights Commission or the Equality and Human Rights Commission or the Pensions Ombudsman, the Pensions Regulator or similar authority;
- 2.2.10 the IOACC will by the next staff payment day following the date of this Agreement in respect of the Transferring Employees discharge fully its statutory and contractual obligations in relation to the Transferring Employees in respect of all salaries, wages, expenses claims, insurance contributions, commissions, bonuses overtime pay, PAYE National Insurance and pension contributions (at the rate applicable immediately prior to 1 May 2011), holiday pay (including any rolled up holiday pay), sick pay and other payments and/or benefits of employment including expenses claims and any backdated cost of living increases awarded but not paid in respect of the period to 23.59 hours on the day immediately preceding 1 May 2011 whether or not such sums are due for payment at such time, and the IOACC is not aware of any liability for any such matters which may thereafter fall upon the GC in respect of the Transferring Employees or any employee or former employees of the Undertaking for any period prior to 1 May 2011;
- 2.2.11 it has not dismissed any person by reason of the transfer effected by this Agreement or for a reason connected to the transfer (except for an economic, technical or organisational reason entailing a change in the workforce);
- 2.2.12 it has complied with its obligations under Regulation 13 of the Regulations and Section 188 and Section 193 of the Trade Union and Labour Relations (Consolidation) Act 1992 where applicable except to the extent that it has been unable to do so as a result of a breach by the GC of its obligations under Regulation 13(4) of TUPE;
- 2.2.13 it has not varied terms and conditions of employment of any of the Transferring Employees by reason of or for a reason connected to the transfer effected by this Agreement or in the nine months preceding 1 May 2011 save for an economic, technical or organisational reason entailing a change in the workforce and there is no agreement or arrangement between it and any of the Transferring Employees to vary terms and conditions of employment;
- 2.2.14 there is no existing and the IOACC having made all reasonable enquiries is not aware of any pending or threatened litigation or claim (including any industrial action or complaint to the Pensions Ombudsman) relating to or concerning all or any of the Transferring Employees or former employees of the Undertaking and there is no circumstance, matter, act or omission which could give rise to any legal claim, right of action or dispute whatsoever or create other liability in respect of such persons against the IOACC and/or the GC;

- 2.2.15 there is no existing and the IOACC having made all reasonable enquiries is not aware of any threatened or pending litigation or claim relating to or concerning any trade union staff association or other body representing any of the Transferring Employees or former employees of the Undertaking and there is no circumstance, matter, act or omission which could give rise to any legal claim, right of action or dispute whatsoever or create other liability in respect of such persons against the IOACC and/or the GC;
- 2.2.16 it has complied fully with the National Minimum Wage Act 1998 and the National Minimum Wage Regulations 1999 and its obligations under EC Directive 93/104 and the Working Time Regulations 1998 (together the Working Time Regulations);
- 2.2.17 it has forwarded to the Transferring Employees every notice provided to it by the administrators of the Superannuation Scheme for distribution to IOACC employees and all contributions due as at the 1 May 2011 to any applicable pension scheme have been paid;
- 2.2.18 it has complied fully with all duties and obligations required to have been performed by it in relation to the Transferring Employees whether arising under contract, statute or common law;
- 2.2.19 it has complied in all respects with all statutory provisions, rules, regulations, orders and directions in relation to the Undertaking and the Transferring Employees concerning PAYE and National Insurance contributions including the making on time of accurate returns and payments and the proper maintenance and preservation of records, and the IOACC has not been given any penalty, notice or warning regarding the same.

2.3 The IOACC shall indemnify and keep the GC indemnified from and against each and every cost claim liability expense or demand which may be suffered by the GC (including all reasonable legal costs and expenses properly incurred and associated therewith) in connection with or arising out of any act or omission by the IOACC up to 1 May 2011 in respect of any contract of employment or collective agreement concerning any Transferring Employee relating to or arising out of:

- 2.3.1 any breach of the warranties set out in Clause 2.2 above;
- 2.3.2 any claim made by any trade union for an award or any claim made on behalf of a Transferring Employee or in respect of any such trade union's entitlement for an award under TUPE or in respect of any breach of TUPE relating to circumstances occurring prior or on 1 May 2011; and
- 2.3.3 any claim by any Transferring Employee or former employee of the Undertaking that the identity of the GC gives rise to a detriment to any Transferring Employee including any claim for constructive dismissal on such grounds.

PROVIDED THAT no payment shall be due from the IOACC in respect of any single claim under Clause 2.3 the value of which does not exceed one thousand pounds (£1,000) unless the aggregate of such claims at or below one thousand pounds (£1,000) exceeds ten thousand pounds (£10,000) in which case a claim may be made in respect of any breach of the said warranties (including claims making up the aggregate value of £10,000) AND PROVIDED FURTHER THAT no payment shall be due from the IOACC in respect of any single claim under Clause 2.3 which has not been notified to the IOACC within three years of 1 May 2011 (save that no such time limit will apply for any claims advanced in relation to pension rights accrued prior to 1 May 2011 AND PROVIDED ALSO THAT no payment shall be due from the IOACC in respect of any claim under Clause 2.3 to the extent that such claim has arisen as a result of any breach of any of the GC's warranties set out in Clause 2.7.1 or 2.7.2 AND in the event of any claim being made the GC shall forthwith notify the IOACC and no agreement or settlement shall be reached or entered into by the GC without the prior written consent of the IOACC such consent not to be unreasonably withheld or delayed.

2.4 The IOACC shall indemnify and keep the GC indemnified from and against each and every cost claim liability expense or demand which may be suffered by the GC (including all reasonable legal costs and expenses properly incurred and associated therewith) in connection with or arising out of any act or omission by the IOACC (for the avoidance of doubt whether arising before, on or after the 1 May 2011) in respect of any contract of employment or collective agreement concerning any Transferring Employee relating to or arising out of:

2.4.1 any failure on the part of the IOACC to undertake a pay and grading review exercise in accordance with the NJC Local Government Services Implementation Agreement 2004 and to implement a pay structure that complies with the Equal Pay Act 1970 including for the avoidance of doubt any omission;

2.4.2 any claim made against the GC by a Transferring Employee in relation to such employment related matters as occurred prior to the 1 May 2011 including a claim for personal injury;

PROVIDED THAT no payment shall be due from the IOACC in respect of any single claim under Clause 2.4 the value of which does not exceed one thousand pounds (£1,000) unless the aggregate of such claims at or below one thousand pounds (£1,000) exceeds ten thousand pounds (£10,000) in which case a claim may be made in respect of any breach of the said warranties (including claims making up the aggregate value of £10,000) AND PROVIDED FURTHER THAT no payment shall be due from the IOACC in respect of any claim under Clause 2.4.1 to the extent that such claim has arisen as a result of any breach of any of the GC's warranties set out in Clause 2.7.3 AND in the event of any claim being made the GC shall forthwith notify the IOACC and no agreement or settlement shall be reached or entered into by the GC without the prior written consent of the IOACC such consent not to be unreasonably withheld or delayed.

2.5 The IOACC shall indemnify and keep the GC indemnified against each and every employment related cost claim liability expense or demand which may be suffered by the GC (including all reasonable legal costs and expenses properly incurred and associated therewith) by or in relation to each and every employee or former employee in the Undertaking who is not a Transferring Employee on 1 May 2011

whether or not such is now or was immediately prior to 1 May 2011 employed by the IOACC in the Undertaking including but not limited to any claim liability cost or demand arising out of:-

- 2.5.1 any breach of contract of employment, deduction of wages, wrongful dismissal, unfair dismissal, discrimination, claim under the Employment Rights Act 1996 or any other statutory provision or other employment related claim; or
 - 2.5.2 any claim made by any trade union for an award or in respect of any such person's entitlement to an award under the TUPE; or
 - 2.5.3 any such person's contract of employment, employment relationship or any termination of such contract of employment with the IOACC including any claims brought under TUPE; or
 - 2.5.4 any personal injury.
- 2.6 For the avoidance of doubt, all wages and salaries and other emoluments, including backdated salary awards, overtime sick pay, tax and national insurance payments and other similar social security payments and contributions to retirement benefit schemes, private health insurance scheme relating to the Transferring Employees in respect of service up to but not including the 1 May 2011 shall be borne by IOACC and all payments in respect of service thereafter shall be made by the GC and all necessary apportionments shall be made accordingly.

GC'S WARRANTIES

- 2.7 The GC warrants to the IOACC that it:-
- 2.7.1 has complied with its obligations in respect of the Transferring Employees under Regulation 13 of TUPE;
 - 2.7.2 has not made any representations or omitted to make any representations to any of the Transferring Employees or any trade union or staff body that might reasonably result in a claim by or litigation between any/all of the Transferring Employees and the IOACC/GC; and
 - 2.7.3 the results of the job evaluation exercise being carried out by the IOACC and referred to at Clause 2.4.1 will be implemented in respect of the Transferring Employees as soon as practicable after implementation by the IOACC in respect of its own staff.
- 2.8 The GC shall indemnify and keep the IOACC indemnified against each and every employment related cost claim liability expense and demand which may be suffered by the IOACC (including all reasonable legal costs and expenses properly incurred and associated therewith) relating to or arising out of:-
- 2.8.1 any breach of the warranties set out in Clause 2.7;

- 2.8.2 any claim made against the IOACC by a Transferring Employee in relation to any personal injury claim arising on or after 1 May 2011 and which relates to and arises out of circumstances occurring on or after 1 May 2011;
- 2.8.3 any claim made against the IOACC by the Transferring Employee in relation to such employment related matters as occur after the 1 May 2011;
- 2.8.4 any claim made by any trade union for an award or in respect of any such Transferring Employee's entitlement under an award in relation to any failure by the GC under the TUPE relating to circumstances occurring on or after 1 May 2011;
- 2.8.5 any change made by the GC to any Transferring Employee's terms and conditions of employment;
- 2.8.6 any other claim made against the IOACC by a Transferring Employee in relation to such employment related matters arising on or after the 1 May 2011 and which relates to acts or omissions by the GC which occurred on or after the 1 May 2011; and

PROVIDED THAT no payment shall be due from the GC in respect of any single claim under this Clause 2.8 the value of which does not exceed one thousand pounds (£1,000) unless the aggregate of such claims at or below one thousand pounds (£1,000) exceeds ten thousand pounds (£10,000) in which case a claim may be made in respect of any breach of the said warranties (including claims making up the aggregate value of £10,000) AND PROVIDED FURTHER THAT no payment shall be due from the GC in respect of any single claim under Clause 2.8 which has not been notified to the GC within 3 years of the 1 May 2011 (or three years of the date of knowledge of the complaint in the case of personal injury). PROVIDED ALSO THAT no payment shall be due from the GC in respect of any claim under this Clause 2.8 to the extent that such claim has arisen as a result of any breach of any of the IOACC's warranties set out in Clauses 2.2 AND in the event of any claim being made the IOACC shall forthwith notify the GC and no agreement or settlement shall be reached or entered into by the IOACC without the prior written consent of the GC such consent not to be unreasonably withheld or delayed.

Schedule 1: Transferring Employees

Full Name	Linda Lee	John Michael Evans	Nicholas Williams	Eirian Harris	Robert Thomas
Address	89 Bryn Meurig Llangefni Ynys Mon LL77 7JE	The Coach House Trefor Ynys Mon LL65 4TA	25 Tanllwyfan Old Colwyn Colwyn Bay, Conwy LL29 9LQ	Ty Newydd Lon Gefn Rhosybol Amlwch Ynys Mon LL68 9TS	Bwythyn Yr Allt Porthaethwy Ynys Mon
Date of Birth	28/11/1976	07/03/1956	19/03/1977	23/10/1967	01/05/1969
NI Number	JE924764A	YZ935204D	JH828645B	NP245643C	NR827215C
Annual Salary	£23,708.00	£28,636.00	£19,126.00	£15,444.00	£28,636.00
Job Title	Planning Officer	Senior Planning Officer	Planning Assistant	Technician	Senior Planning Officer
Type of Contract	Permanent	Permanent	Permanent	Permanent	Permanent


















Schedule 2: Disclosures





















[Mewnosod yma manylion unrhyw addasiadau gweithio hyblyg, addasiadau oherwydd anabledd, unrhyw warchodaeth, unrhyw gwynion, materion disgyblu ayyb msul aelod staff – angen I Mon ddarparu'r wybodaeth yma. Os na ddaw unrhywbeth I law oddi wrth Mon, cadwer y darn yma'n wag.]

None of the above information was confirmed by Môn

Schedule 3: Terms and Conditions of Employment

[Mewnosod telerau ac amodau enghreifftiol swyddi sydd yn trosglwyddo]

Cynllun Absenoldeb Mabwysiadu Adoption Leave Scheme	 cynllunabsenoldebma bwysiadu.pdf	 adoptionleaveschem e.pdf
Polisi Bwyd o'r Fron Breast Feeding Policy	 polisibwydoorfron.pd f	 breastfeedingpolicy. pdf
Polisi Bwilio Ymddygiad Bygythiol Bullying Harassment Policy	 polisibwlioymddygiad bygythiol.pdf	 bullyingharassmentp olicy.pdf
Cynllun Cydraddoldeb Corfforaethol Coporate Equality Plan	 cynllun_cydraddolde b_corfforaethol.pdf	 corporateequalitypla n.pdf
Cynllun Absenoldeb Mamolaeth Materinty Leave Scheme	 cynllunabsenoldebma molaeth.pdf	 maternityleaveschem e.pdf
Cynllun Cydraddoldeb Gender Gender Equality Scheme	 cynlluncydraddoldeb gendercyh12007.pdf	 genderequalityschem eiss12007.pdf
Cynllun Iaith	 cynlluniaith.pdf	
Disability Awareness		 Disability_awareness .pdf
Disability Equality Scheme		 Disabilityequalitysche me1.pdf
Y Drefn Ddisgyblu Disciplinary Procedure	 Y_drefn_ddisgyblu.p df	 Disciplinary_procedur e.pdf

Polisi Absenoldeb Domestig Domestic Incident Leave Policy	 polisiabsenoldebdom estig.pdf	 domesticincidentleav epolicy.pdf
Polisi Alcohol a Chyffuriau Drug and Alcohol Policy	 polisialcoholcyffuriau 2009.pdf	 drugalcoholpolicy200 9.pdf
Early Retirement Policy		 earlyretirement_polic y.pdf
Equality Diversity Policy		 equalitydiversitypolic y2008.pdf
Fit Note Guidance		 Fit_Note_Guidance1. pdf
Flexible Working Policy		 flexibleworkingpolicy. pdf
Polisi Dychwelyd yn Hwyr i'r Gwaith Late Return to Work Policy	 Late_Return_to_Wor k_Cymraeg12.pdf	 Late_Return_to_Wor k1.pdf
Polisi Absenoldeb Rhiant Parental Leave Policy	 polisiabsenoldebrhian t.pdf	 parentalleavepolicy. pdf
Proses Gwella Perfformiad Performance Improvement Procedure	 Proses_gwellau_perf ormiad.pdf	 Performance_Improv ement_Procedure.pdf
Polisi Rheoli Absenoldeb Policy Managing Absence	 polisirheoliabsenolde b.pdf	 policymanagingabsen ce.pdf
Polisi Gwahaniaeth Crefyddol Religious Discrimination Policy	 polisigwahaniaethucr efyddol1.pdf	 religiousdiscriminatio npolicy.pdf
Polisi Cydraddoldeb ac Amrywiaeth	 policydraddoldebac amrywiaeth2008.pdf	
Polisi Gweithio Hyblyg	 polisigweithiohyblyg1 .pdf	

Polisi Straen
Stress Policy


polisistraen.pdf


stresspolicy.pdf

Polisi Tueddiadau Rhywiol
Sexual Orientation Policy


polisituueddiadaurhyw
iol.pdf


sexualorientationpoli
cy.pdf

Polisi Ysmygu
Smoking Policy


polisiysmygu.pdf


smokingpolicy.pdf

Positive about Disabled People


positiveaboutdisable
dpeople.pdf

Race Equality Scheme


raceequalityscheme1
.pdf

Trefniadau Recriwtio a Detholiad
Recruitment Selection Procedures


trefniadaurecristiod
etholiad.pdf


recruitmentselection
procedures.pdf

Rhannu Pryderon


rhannupryderon.pdf

Polisi Tywydd Garw


Severe_Weather_Pol
icy_Cymraeg.pdf

Special Leave Arrangements


Special leave
arrangements.doc

The Grievance Procedure


Y_Drefn_Datrys_Cw
ynion.pdf


The_Grievance_Proc
edure.pdf

The Statement of Fitness for Work


The_statement_of_F
itness_for_Work1.pdf

TOIL – Time Off in Lieu


timeoffinlieucymraeg
.pdf


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Whistleblowing


whistleblowing.pdf