# TUPE Policy

**Policy statement**  
Hampshire County Council has a responsibility to protect employee rights during a transfer and is committed to applying the principles of the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2013.

**Scope**  
All employees employed by a Hampshire County Council department (i.e. outside of schools) on the following terms and conditions;  
- EHCC  
- Soulbury  
- Teachers

**Policy outcomes**  
The aims of this policy are to:  
- set out the provisions of the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2013  
- define the mechanism for managing the transfer of employees into and out of the Council

**Check which policy to use**  
Where an employee is going to work for an external organisation on a temporary basis for an agreed period of time, whilst remaining an employee of the Council, this should be managed using the Secondment Policy.
What the law says

The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2013 protect employee rights in connection with the transfer of an undertaking. The main purpose of the Regulations is to preserve continuity of employment and terms and conditions of those employees transferred to a new employer when a relevant transfer takes place.

General Data Protection Regulations (GDPR) 2016 and the Data Protection Act 2018 – aim to protect the rights of living individuals regarding information about them held by other people.

Exceptions

TUPE does not apply where:

- the employer remains the same during an administrative reorganisation, for example:
  - if employees transfer within the Council or to a Council school
  - if there is a shared service where employees are pooled but the employer doesn’t change
- there is a sale of property
- a one-off buying in of services of short duration

Principles

The basic principles of TUPE are:

- assigned employees automatically transfer to the transferee and become their employees
- the terms and conditions of employees who transfer must not be unnecessarily changed by the transferee when the work they were doing previously still exists
- continuity of service and other rights are preserved
- employers are obliged to inform appropriate representatives of the transfer and relevant information
- employers are obliged to consult appropriate representatives of any proposed measures
- a TUPE transfer should have a ‘people engagement plan’ to ensure those affected are engaged in the process and receive regular communication on progress
- the transferee must provide to the transferor employee information in advance of the transfer date
- changes to the terms and conditions of transferred employees can only take place when certain conditions
When does TUPE apply

TUPE applies to a Relevant Transfer in the following two circumstances:

- a business transfer - the whole, or part of a business or undertaking, is transferred from one employer to another as a going concern. This means moving from one legal entity to another.
- a service provision change, effectively:
  - outsourcing - where one organisation engages a contractor
  - second generation outsourcing – re-tendering/re-assigning a contract to another contractor
  - insourcing – taking work back in-house

What transfers

TUPE protects the employment contract and any liabilities associated with the contract, this can include:

- terms and conditions of employment
- continuity of service
- employment law claims made by transferring employees as a result of acts or omissions by the transferor
- collective agreements
- trade union recognition

The transferee must ensure that they adopt current policies that relate to employment. If there are benefits that cannot be matched, for example, bonus schemes or profit share, the option of a buyout can be explored. The transferee must provide a comparable benefit.

What does not transfer

Usually the transferee must provide a broadly comparable scheme, where employees are entitled to a pension with the transferor. The transferee is obliged to make some minimum pension provision but does not need to mirror the previous pension provisions. Old age, invalidity and survivors’ benefits under occupational pension schemes do not transfer.

In public sector transfers, where a new pension scheme is offered, the Government Actuaries Department must confirm that the new scheme is broadly comparable. Alternatively the transferee can gain admitted body status to the Local Government Pension Scheme.
Criminal liabilities (for example under health & safety legislation and liabilities under GDPR and the Data Protection Act 2018) remain with the transferor.

**What does transfer**

The transferee takes over the liability for all statutory rights, claims and liabilities arising from the contract of employment, for example unfair dismissal, equal pay and discrimination claims. All terms and conditions of work and continuity of employment are preserved. This applies to all employees who were employed immediately before the transfer took place, by the entity which transferred.

**Policy stages**

There are five areas of activity:

- planning and preparation
- informing and consulting
- determining which employees transfer
- disclosure of employee information
- post transfer

Regardless of whether the Council is transferring employees in or out of the organisation, the above areas apply. However the responsibilities and tasks carried out under each differ.

The order may vary depending on the TUPE situation and some tasks run simultaneously.

**Planning and preparation**

TUPE is a complex area of law and therefore it is vital any potential TUPE exercise is managed correctly. The manager must contact HR Operations at this stage.

A case by case assessment is required to decide whether TUPE applies to the particular circumstances.

The Council must liaise with the other organisation to assess which employees are likely to be affected, across both organisations. This group is broader than those who ultimately transfer.

The due diligence process may start at this stage.

**Informing and consulting**

For the Council, appropriate representatives are the recognised trade unions. In addition the Council also seeks to inform and consult employees whether individually, as a group or with informal representatives of the group.
The Council recognise the following trade unions in relation to consultation requirements;

- for departments (non schools) - Unison, Unite including CYWU, GMB, AEP, Aspect and RCN.
- teaching – ASCL, ATL, NAHT, NASUWT, NUT and Voice

**Duty to inform**
The Council has an obligation to inform appropriate representatives of:

- that a transfer is to take place
- the reason for the transfer and when it is expected to take place
- the legal, economic and social implications of the transfer for the employees
- the measures that the Council expects to take in relation to the employees, or if none, that fact
- the measures that the transferee expects to take in relation to the employees, or if none, that fact
- information on the use of agency workers

The Council seeks to share information as soon as possible.

**Duty to consult**
The Council, whether acting as the transferor or transferee, also has a duty to consult appropriate representatives regarding any measures it envisages taking because of the transfer itself, in relation to any affected employees. The Council must have an ETO reason for any measures proposed or the measure must not be connected to the transfer.

The Council seeks to allow sufficient time for meaningful consultation ahead of the transfer taking place.

**Determining which employees transfer**
TUPE generally only transfers employees who are:

- employed at the point of transfer and
- assigned to the service / economic entity that is transferring

Where only part of an undertaking is transferring, only those employees assigned to that part transfer.

**Disclosure of staff information**

**Due diligence**
Due diligence is used by the transferee to investigate and evaluate potential costs in relation to employees transferring. As
employees transfer on their existing terms and conditions of employment with their service preserved, this has significant cost implications.

There is no statutory minimum information which must be shared at this stage. Information is anonymous and must comply with data protection legislation. Due diligence information is often shared as part of a tendering process.

**Employee liability information**
The transferor is obliged to provide full and accurate information about each employee who is to be transferred and of their associated rights and obligations.

The information must include:
- the identity and age of the employees
- details as contained within the employee’s Statement of Particulars
- any disciplinary proceedings taken against the employees within the previous two years
- any grievance proceedings taken by the employees within the previous two years
- information of any court or tribunal case, claims or actions brought by the employees within the previous two years
- information of any court or tribunal claims that the transferor has reasonable grounds to believe that the employees may bring against the transferee (this is a matter of judgement and will depend on the facts).
- information on any collective agreement which will continue post transfer

The transferor must provide information in writing no later than **28 calendar days** before the transfer date.

**Post transfer - where the Council is the transferee**

The TUPE Regulations and the protection they offer continue to apply post transfer.

The Council inherits the contracts of employment of the transferring employees, including their terms and conditions.

There may come a time where the Council, in relation to TUPE transferred employees, may need to:
- make dismissals and redundancies
- vary terms and conditions of employment
The Council can make changes to employment terms where the sole or principal reason is either:

- a reason unconnected with the transfer or
- a reason connected with the transfer which is an ETO reason entailing changes on the workforce

In both circumstances the Redundancy Policy or Managing Workforce Change Policy must be followed.

Pay awards

The Council is not bound by a pay increase that is negotiated by the transferor, after the transfer has taken place.

Neither are TUPE transferred employees entitled to any Council pay award, because they remain on different terms and conditions to those receiving the award. However the Council may take a pragmatic approach where employees transferred on lower salaries compared to employees of the Council.

Collective agreements

The Council inherits collective agreements for those employees who have transferred. A subsequent change to a collective agreement made between the transferor, employee and trade unions does not usually have to be adopted by the Council. The exception to this is where a legislative change made after a TUPE transfer has an impact on a collective agreement. The Council is bound to recognise and implement this change

Terms derived from collective agreements can be renegotiated one year after transfer, provided that overall the change is no less favourable for the TUPE transferred employees.

Policies and procedures

Where a policy or procedure is part of the employee’s terms and conditions, it transfers.

Union recognition

Where an undertaking that has transferred to the Council maintains a distinct identity from the rest of the Council’s business, any trade union recognised by the transferor must be recognised by the Council, to the same extent and for the same purpose.

Where a distinct identity is not maintained, the recognition agreement may no longer applies.

Employment checks and right to work in the UK

Evidence of all TUPE transferred employees’ right to work in the UK must be provided to the Council as part of the employee liability information and this information must be reviewed by the
Council.

The passport and visa documentation for any employee who is not a UK or European national must be checked by the Council to ensure the visa is still valid.

The Council conducts a criminal records check for any employee transferring into the Council, where relevant for their role. This is carried out immediately upon transfer and regardless of whether details of a previous check have been provided as part of the employee liability information.

Key definitions

TUPE – is an acronym which stands for the Transfer of Undertakings (Protection of Employment) Regulations 2006. A TUPE transfer is referred to in the Regulations as a "relevant transfer". A transfer takes place at a single point in time, which is the date on which responsibility moves from the transferor to the transferee.

Transferor – refers to the current employer or in particular the person who carried out the activities prior to the transferring out of a business. In circumstances of service provision change, the transferor refers to the client engaging a contractor.

Transferee – refers to the new employer or in particular the person who carries out the activities as a result of buying or transferring in a business. In circumstances of service provision change, the transferee refers to the contractor.

An undertaking - is an economic entity which retains its identity. Economic entity means an organised grouping of resources which has the purpose of pursuing economic activity but not necessarily for profit. A single employee may be ‘an organised grouping of resources.’

Due diligence – this is an information gathering process carried out by a potential transferee at the start of the process to determine and evaluate the costs and risks of a potential transfer. It often involves requesting anonymous information regarding affected employees and their terms and conditions.

Employee liability information (sometimes also referred to as due-diligence) – requires the transferor to provide the transferee with certain information about the transferring employees which is not anonymous and is provided at least 28 calendar days before the transfer. This information is shared during the later
stages of a transfer, once a transferee has been decided upon.

Measures – refers to any action, step or arrangement which the transferor or transferee intends to take and which have implications for the affected employees. An employer must have an ETO reason for any measures proposed.

ETO reason – is an acronym which stands for economic, technical or organisational reason. The ETO reason must also include changes in numbers or functions of employees, although it does not need to entail changes to the whole of the workforce.

Related documents
To help with the application of this policy it may be useful to read the following:
- Managers’ How to Guide – TUPE
- TUPE FAQs
- TUPE Employee Information Hand-out
- Redundancy
- Managing Workforce Change

Support
Employees:
Queries should be directed to your line manager.

Access to free, confidential and impartial Employee Support is available to all employees. Please visit the webpages for further information http://www3.hants.gov.uk/occupational-health/employee-support.htm

Your trade union or professional association may be able to provide you with additional support.

Managers:
Further information is available in the Managers’ How to Guide – TUPE.

Advice on remaining queries can be directed to HR Operations.
Employees of non Hampshire County Council bodies are excluded from this policy and should refer to their own employer’s policies and procedures.