

Preparing and transferring services in the public and non-profit sectors

[www.ogc.gov.uk/documents/
Code_of_Practice_on_workforce_matters.pdf](http://www.ogc.gov.uk/documents/Code_of_Practice_on_workforce_matters.pdf)

Redundancy is possible when transferring services, depending on the new provider's staffing structure, and clearly there is a cost associated with this. The cost of this is usually met by the incoming employer, but they may well want to ascertain whether the commissioning manager could contribute towards the costs. Either way, legal advice is essential for individual circumstances and such issues are dealt with between outgoing and incoming providers.

Where staff are engaged in training and development programmes and working towards meeting the National Treatment Agency's (NTA) workforce competence standards, it would be in the incoming provider's interest to let staff complete these.

Information about grievances and disciplinary action needs to be passed on as part of the TUPE arrangements to the incoming provider.

Those not subject to the transfer

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Other points to consider

Transfer of workforce records

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www.ico.gov.uk

Pensions

Please refer to the next section for full details on pension transfers, but also note:

- The new pension needs to be 'broadly comparable'.
- If the current provider is local authority/NHS, then the Code of Practice on Workforce Matters is likely to apply. This document outlines the minimum expectations when transfers take place from the public sector into the private or voluntary sector. You can view this document at: www.ogc.gov.uk/documents/Code_of_Practice_on_workforce_matters.pdf

Troubleshooting and further information

Other information sources

- www.berr.gov.uk/files/file20761.pdf
- The following link gives access to the HM Treasury document, *Improving Financial Relationships with the Third Sector: Guidance to funders and purchasers*: <http://www.hm-treasury.gov.uk/d/guidncefunders1505061v1.pdf>
- The recommendations within this document are based upon good practice, following two successive Treasury cross-cutting reviews, the Gershon Efficiency Review and a National Audit Office report.
- The Compact website at www.thecomcompact.org.uk
- Good practice note on the transfer of personal records during the TUPE process is available on the Information Commissioner's Office Website at www.ico.gov.uk

Case studies

Case study 1

Following award of the contract from one voluntary provider to another, senior members from the operation and the HR adviser met with the commissioners to swap information and discuss the process.

An internal manager was appointed as the implementation manager for the transfer and they met with the outgoing providers, attended their sites and met their staff. Representatives from both the operation and HR met with their counterparts for an early exchange of information.

The operations director, implementation manager and HR gave presentations to all incoming staff. The meetings were open and honest and gave a full opportunity for questions. At the meetings, the email addresses of all potential transferees were collected. Transferees were then sent regular newsletters containing news of any developments and other relevant information. Due-diligence information was requested early on and a measures letter was provided based on the information received.

At the start, contact was made with the two unions involved and they were kept up to date with proposals.

The planned service had previously been run by two different organisations so the structure looked quite different, and for 'economic, technical or organisational' reasons redundancies were proposed.

All employees were consulted on an individual basis prior to the transfer and during these meetings TUPE transfer forms were completed with all relevant basic information. Immediately post-transfer consultations began with the small number of people who were potentially redundant, including looking for redeployment opportunities elsewhere within the organisation.

Prior to transfer, contact was made with the payroll department of the outgoing providers for any deductions/payments for each individual (how much and to whom). It was also requested that employee P45s should be sent directly to the new provider.

An early induction was arranged to take place on the first day of transfer off site at a hotel venue. Training was organised to assimilate new employees into the organisation.

Case study 2

A charity won a tender to provide clinical services that were being provided by the NHS and a number of non-profit providers. At the outset they realised that, should they win the tender, they would need extra resource to facilitate an effective implementation. They immediately appointed a consultant familiar with the organisation to oversee the management of the transfer.

On the initial list of transferees provided by the outgoing organisations, there were significantly higher numbers than there were roles in the new structure. So the starting position was that, for an 'economic, technical or organisational' reason, there would be a need to make redundancies. This was notified to the existing providers in the measures letter along with other relevant information. The implementation manager liaised closely with managers and employees from the outgoing services and together they arrived at the final information, which meant that much smaller numbers were due to transfer, so removing the need to make redundancies.

Very soon after the award of the tender, the operations director and HR director gave presentations at three different sites for all potential transferees to attend and so opened up the line of communication with staff and trade union representatives at the start. All transferring employees were offered individual consultation meetings. The union was fundamentally opposed to the transfer and the situation became extremely political.

It was soon established that the Code of Practice on Workforce Matters applied in this case and, following a number of constructive meetings with the main unions involved, some action points were agreed to prevent the creation of a two-tier workforce and agreement around pension provision.

As this was their first move into clinical services and the manager in the current structure was not to transfer, the role was advertised for an external candidate with the right expertise for the role.

The charity applied for and achieved admitted body status of the NHS pension scheme for the transferring employees who were already members.

They ensured that the salaries of those transferring in from the voluntary organisation were in line with the same band on Agenda for Change as those from the NHS. They also applied the same principle for their new recruits.

This particular transfer provided a steep learning curve for the organisation and that learning has since been successfully applied to other transfers involving larger numbers of staff. The learning included that the appointment of a dedicated implementation manager was critical and, unsurprisingly, early open, honest and continual communication with all parties, including meeting with all unions involved at the start, contribute to the success of a transfer.

Initially there were some teething problems in assimilating the new employees who came from a number of organisations into the new culture and ways of working. Training was organised to assimilate the new employees into the organisation. With patience and commitment to the success of the project from both sides, 18 months down the line this is an award-winning project and the staff survey shows significantly increased engagement of all employees.

Case study 3

The charity was given notice that the contract had not been retained. The contracts had been awarded to two new providers, who contacted the charity to arrange meetings at which it was planned to formally request the measures letter.

The charity had kept staff informed all the way along about what was happening and the official notification was received that the contract had not been retained. A group meeting was held to update everyone and answer any questions or concerns. Basic information on TUPE and some frequently asked questions were provided. These informal meetings continued on a regular basis. The project manager kept staff up to date even when there was no news to tell.

As there were two new providers and the employees were not totally dedicated to one part of that service, it was established what percentage of their work was spent on each part of the service. A couple of employees worked 50/50 for each part of the service; the rest were more clearly aligned to one or the other.

At meetings with the new providers it was agreed which employees would have the automatic right to transfer to their employment under TUPE. The elected employee representative was invited to attend these meetings.

The charity then met with the employees individually in formal consultation meetings and asked for their preferences and discussed any options together with the legal, social and economic implications. When they had their formal meetings with the incoming providers, there was an HR presence on site and each team member had a consultation meeting with them before they went into their other meeting.

A temporary worker from an agency and three workers on fixed-term contracts, who were not strictly entitled to transfer, were made offers by one of the incoming providers.

One of the biggest challenges in this situation was keeping the project going at a time when employees were feeling very uncertain and unsettled. This was exacerbated by the fact that the transfer date was delayed by three months to allow one of the incoming providers to finalise their arrangements. Predictably, there were a number of leavers and temporary and agency staff had to be used to plug the gaps pending transfer.

It is easy for those leaving an organisation to feel overlooked and excluded from the rest of an organisation. The perception of outgoing employees is often that they are being put in a position that is not of their choice or making and, rather than seeing it as protecting their employment, they see it as detrimental in many ways. By ensuring that there was constant open communication, it was hoped that they would leave the organisation feeling as valued as all the time they were employed and that the transition should go as smoothly as possible.

What the voluntary and community sector needs to do to achieve this

What government needs to do to achieve this

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What we are trying to achieve

The benefits for the voluntary and community sector

Where to look for further information

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The benefits for government

www.thecompact.org.uk

Appendix B: Sample Gantt chart

www.cipd.co.uk/subjects/emplaw/tupe/tupe_gantt_chart to download the Gantt chart in Excel spreadsheet format.

Appendix C: Example risk register

1	Contract not awarded and/ or signed off by (date new contract starts)	3	3	9	Very high	DAAT	Outgoing provider has agreed to continue delivering services beyond ... on an interim basis if necessary. Procurement process to be re-initiated if required.
2	Client data not transferred	1	3	3	Acceptable	DAAT/outgoing and incoming providers	Working group set up to identify risks and processes to ensure transfer of data (electronic and paper) takes place within requirements of Data Protection Act and within required timescale. New providers will be invited to join this process once contract has been awarded.
3	Suitable buildings not available or not fit for purpose	3	3	9	Very high	DAAT	Approach outgoing provider regarding the use of their premises, alternatively contact commissioning partners to see how they could help.
4	Delays in procurement process due to non-engagement of outgoing provider regarding TUPE information	1	3	3	Acceptable	DAAT	Ensure relevant and appropriate TUPE information is obtained from outgoing provider. DAAT support from council's Legal and HR Dept arranged.
5	Loss of user-led services and initiative	1	3	3	Acceptable	DAAT and new provider	Ensure the active engagement of new providers with service-user-led projects and activities via the procurement process.

6	Tender amounts exceed funding allocation for financial year	1	3	3	Acceptable	DAAT	Strong financial scrutiny of tender applications. May require re-pricing exercise.
7	Post-April an additional funding request is received	1	2	2	Acceptable	DAAT and new provider	Review financial position and agree risk management plan.
8	New provider gives notice/ withdraws after contract award	1	3	3	Acceptable	DAAT	Comprehensive scrutiny of tender applications, checking of references and regular monitoring meetings with new provider.
9	Mismatch of resource allocation to modality and locality due to poor data received from current provider	1	2	2	Acceptable	DAAT and new provider	Reset/review contract value against activity levels.
10	Inability to deliver services due to high staff turnover post [start date of new provider's contract]	1	2	2	Acceptable	DAAT and new provider	Scrutiny of tender applications to ensure a robust workforce strategy and HR support is in place. Evidence of ability to recruit, induct and retain staff required from shortlisted candidates.
11	Loss of confidence in services or commissioner	1	3	3	Acceptable	DAAT	Ensure regular stakeholder briefings updating on procurement process and transitional arrangements. Prompt response to any queries raised regarding service delivery issues to ensure correct information is in the public domain.
12	Unsafe service delivery post [date of new provider's contract] due to non-compliance with legislation, regulatory and contractual requirements	1	3	3	Acceptable	DAAT and new provider	Contracts contain audit requirements to ensure compliance. Performance monitoring to include audit. Reporting requirements specified in contract for finance and activity returns.

Appendix D: Example staffing schedule request

Please return to service commissioner no later than [date]. Clearly marked 'Private and Confidential to be opened by addressee only'														
Post reference	Job title	Grade inc salary range	Current Salary	Standard hours worked	Overtime rates	Continuous service date	Employment status: Permanent, Temporary*, Fixed Term*, Seasonal/ Bank	In pension scheme yes/no	Employer pension contribution %	Holiday entitlement	Other entitlements	Redundancy entitlement – Statutory/ Enhanced* *give details	Nature of any unresolved claims *	Employer notice period

Appendix E: Example pro forma to transfer payroll information

PAYMENTS		DEDUCTIONS										
Surname	First name	E/ee no	First aid payment	Essential car user	Telephone allowance	Other payment	Student loan deduction	Personal contribution to lease/company car	Court orders	Union deduction	Other deduction	
						Amount	Reason			Amount	Reason	
										Amount	Reason	

Please provide full details of where any deductions have to be paid over to:

Appendix H: Sample individual TUPE information required for each member of staff TUPE transferring

Name	
Home address	
Telephone number	
Mobile telephone number	
Date of birth	
National Insurance number	
Job title	
Date continuous service began	
Fixed-term contract or permanent?	
Contracted weekly hours	
Registered Disabled	
Job description (please attach a copy)	
Place of work/department	

Total hours per week	
Standard working week – days included (please delete as appropriate)	
Hours of work (if shift work, please confirm hours that are covered)	
Contractual overtime if worked	
Grade	
Rate of pay	
Rate of overtime	
Incremental scales	
Increment date	
Annual cost of living rise date and amount	
Any job evaluation/grading relevant to post	
How paid? Bank/BACS	
Pay date in month	
Pay negotiations outstanding	

Annual entitlement	
Annual leave taken to date	
Any special/parental leave taken to date	
Study leave in progress or agreed in future	

Mileage payments for business travel	
Travel allowances in place	

Sick leave allowance/sick pay arrangements	
Sick leave taken in last 12 months (Please provide exact dates and type of sickness.)	
Long-term sick leave taken/currently on	

Details of pension provision (final salary/money purchase)	
Employer/employee contribution	
Is this member of staff in the pension scheme?	
Is the pension scheme pre- or post-tax deductions for the employee?	
Is the scheme contract in or out of SERPS?	

Death in service entitlement (Please provide details.)	
Is the death in service entitlement attached to the pension scheme?	

Outstanding disciplinary warnings	
Outstanding disciplinary investigations	
Outstanding grievance cases (any involvement)	
Outstanding claims of harassment	
Outstanding employment tribunal claims	
Outstanding health and safety litigation	

Notice period	
Terms and conditions negotiations outstanding	
Copies of contract of employment	
Protected by previous TUPE transfer?	
Outstanding loans/debts/litigation	
CRB check completed? When? Outcome?	
On or due to take maternity leave	
On or due to take unpaid leave	
On or due to take a secondment	

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