



Guide

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

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Background

The aim of this guide is to provide practical guidance and advice on the people management requirements of transfers of staff and services working through business transfer situations. The guide has been written by members of the national HR Group for Substance Misuse Services; however, its content is not exclusive to employers working in that field and most public sector and voluntary sector employers in the UK can use this guide to inform their own work.

The guide provides an agreed minimum set of standards for all involved parties to aid understanding and business transactions during the preparation and transfer of staff. It also provides practical help through tools that can be directly applied (see the Appendices). In addition, the guide lists other sources of available information about TUPE and transfers.

However, it must be stressed that this is not a legal guide. Mention of legal requirements within the guide is correct at the time of writing but the law in this area is constantly evolving and it is therefore essential to take up independent legal advice when undertaking staff transfers.

Substance misuse agencies comprise a plethora of public sector and voluntary sector services. There are between 12,000 and 15,000 employees working for these organisations across the UK, and a large number of volunteers. Services are usually commissioned, and performance-managed, by Drug and Alcohol Action Teams or Safer Community Partnerships. Contracts are usually awarded for a three-year period, at the end of which a full service tendering process is followed to award the next contract.

Employers that deliver drug and alcohol services across the country are therefore continually bidding for new services, bidding to maintain their current service or involved in transferring their staff to a new employer. Likewise, commissioners representing Drug and Alcohol Action Teams (DAAT) are frequently involved in writing tenders for services, assessing bids received for services, and guiding incoming and outgoing service providers on the transfer of staff. With this regular activity, it is often expected there is a core expertise regarding the people management aspects of preparing and transferring services. However, it is sometimes found this is not the case due to the complex legal and practical requirements.

While there is guidance on TUPE (Transfer of Undertaking (Protection of Employment) – the law underpinning business transfers for staff), there is a lack of practical guidance for people managers on this subject. New managers in particular have described their involvement as ‘evolving’ and ‘trial and error’. This is not a healthy business position and one that the guide aims to address.

Commissioning and transferring services

The procurement process is time-consuming and resource-intensive. It is therefore vital to ensure that:

- realistic time is allocated to the process
- there is a dedicated person to take the lead
- there is a core group of people who are committed throughout the process, for example evaluation, shortlisting and the interview panel
- adequate administrative support is available
- there is sufficient funding in the budget to cover associated direct and indirect costs.

In essence, the more money involved, the more rigorous the process and the more time it will take.

A large tender process will usually take a minimum of six months from the point of placing the tender invitation advertisement to awarding the contract. This should be in line with the outgoing provider's contract.

Smaller transfers, such as those that may have a value of less than the current EU threshold, may not need to go out to tender so the timescale may be shorter. However, local procurement arrangements would still apply. There are also the minimum timeframes for staff consultation and notice of change that need to be adhered to.

In many instances those commissioning and transferring services will be employed by a large statutory organisation such as a local authority or primary care trust (PCT). These organisations will have prescribed policies and procedures that will comply with European legislation.

The public sector is required to follow public procurement principles of openness, transparency and equality, which prevents it from favouring any sector when contracting for goods, works or services. Service commissioners need to be aware of the national, and any local, compact between the voluntary and

community sector and the public sector (refer to [Appendix A](#) on how the compact links to the transfer of service/s).

The tender and selection process

Once the decision to re-commission a service has been taken, those involved in commissioning and transferring services will need to work with their legal, contracts or procurement department to put the contract and tender documents together, and ensure the correct procedures are followed. In particular they need to:

- find out what the procedures are, including the roles and responsibilities regarding TUPE
- determine the milestones and timescales involved
- establish the decision-making process (for example, does it have to go to the council members/PCT board for ratification and, if so, what are the dates for those meetings?)
- find out if there is a need for a 'cooling off' period once the contract has been awarded.

A project plan should then be set up to span the whole process and up to the start of the new contract. (See [Appendix B](#) for an example Gantt chart.)

The existing provider will need to be informed of the intention to de-commission and the timescales involved. Also consider developing a risk register (see the example in [Appendix C](#)). The example provided is a contingency management tool and includes potential people management and non-people-management-related risks. The list is not exhaustive and the tool should be developed to suit your own requirements. Whereas it is probably impossible to eradicate all risks to services, a robust project management approach, which includes a risk register, can minimise risk and harm to service users and help avoid unnecessary delay in the service transfer.

It is important to keep all stakeholders briefed – within the outgoing organisation, other providers in the area, service users and other key stakeholders (for example police, probation, PCT). Giving consideration to the wider political picture (for example a joint press release with the outgoing provider) will ensure it is perceived to be controlled and help to reassure clients.

Throughout the process it is important that boundaries are clear (that is, the commissioner's role should be that of facilitator between the outgoing and incoming service providers) and that consideration is also given to the change implications for both clients and staff.

If the de-commissioning is because of the existing provider's poor performance and is required as a last resort, it will be necessary to observe at least the minimum notice period set out in the contract. Where possible, allow the provider more than the minimum notice period to give them adequate time to consult with staff in line with legal requirements and make arrangements internally for those staff who are affected by TUPE.

The tender documentation should state specifically that TUPE is likely to apply to staff in the current service provider agency/agencies. The commissioner's early contact with their personnel or legal departments is advisable to clarify their role and responsibilities regarding TUPE.

Information regarding the staff employed by the outgoing provider will need to be included in the tender documentation so that prospective bidders have an idea of the staff transfer and cost implications from the beginning. Such information will not include names but only information needed to calculate workforce costs such as posts, salaries, pension, and so on. The existing provider should be sent a pro forma to get the information about staff who may be eligible for TUPE (refer to [Appendix D](#) for a sample pro forma). At the same time, a copy of the main terms and conditions of employment should be requested.

The procurement department will be able to assist in the preparation of the required tender documents. (Note: these arrangements may vary depending on local arrangements.) More detailed information will be exchanged between providers once the contract has

been awarded, in accordance with TUPE regulations (see [Appendix E](#) for a sample pro forma).

Transfer from existing to new provider

It may be helpful to set up and facilitate an information group to support the handover.

For example, once the new provider has been selected, those involved in transferring and commissioning services should facilitate regular joint meetings with the incoming and outgoing providers to cover such issues as:

- staffing
- clients
- volunteers
- estates, for example buildings, utilities, IT equipment, and so on
- the transfer of client and staff records, and who will hold archived records
- any impact on the risk register.

Some potential staff issues

Staff struggle with change – commissioners/managers should be sensitive to the fact that there may be an increased number of staff leaving the outgoing provider and an increase in bank/agency staff towards the end of the contract. This can impact on client recovery – as highlighted in National Institute for Health and Clinical Excellence (NICE) guidance.

Maintaining confidentiality of the transfer process is essential. Information leakage that reaches staff working in the outgoing services can cause anxiety or could raise expectation unnecessarily. It can also question the credibility of the commissioning process itself. Services involved in the tendering process should be asked to maintain confidentiality. The outgoing and incoming providers should be asked to prepare and agree with you a clear communication plan for consultation with the workforce. Your procurement department can advise you further on this area.

Public sector terms and conditions regarding annual leave, sick pay and benefits are generally better than those of the non-profit sectors, so commissioners should be aware that there may be some staffing issues that will need to be managed by the incoming provider if the outgoing provider is the NHS, for example.

You should also reference the Code of Practice on Workforce Matters in Public Sector Service Contracts; 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

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.

Implications for service users/clients

There may be an increased anxiety for service users/clients and their families and carers, so service commissioners should support the provider to ensure processes are in place to help manage those anxieties. It is likely that some clients will fall out of services and may not re-engage.

A clear communication plan regarding the tender process will help to eliminate some anxiety experienced by service users.

There are statutory requirements for consulting and involving service users when transferring services – refer to [Appendix F](#) to view the requirements.

The employer's journey – incoming and outgoing service providers

To facilitate a smooth transfer process, it is best practice for an employer to appoint an implementation manager or point of contact who can respond to all queries.

Steps to follow when transferring staff teams

There are two elements in a transfer: transferring out and transferring in. Both parties have responsibilities in the transfer and both organisations need to be mindful of the uncertainty of the situation for the staff team.

Depending on the details of the transfer, all or only part of the team may be transferring. To alleviate anxiety, it is important to clarify as soon as possible who is transferring. Consideration also needs to be given to any volunteers within the service and separate discussions held about their position.

It is important to ensure that communications and transfers of information are accurate, open and as timely as possible so that the transfer process is smooth and transparent for staff. Anxiety from the staff team or volunteers in the service can be transferred to the client group.

Those leading on commissioning and transferring services will have expectations around minimum standards of service delivery and response. For voluntary sector organisations, these should be in line with the Voluntary Compact. Refer to [Appendix A](#) for further information.

Transferring out – decision made to re-tender the service

The following actions are required:

- Provide anonymous information about the staff assigned to the service: job titles, date of joining, contracted hours, employment status, salary, notice period, pension (see [Appendix D](#)).

- Advise staff that the contract is going out to tender and what this means in terms of their employment and rights. This starts the staff consultation period.

It is recommended that consultation with affected staff (and this should include staff who are not transferring) should start at the earliest opportunity following the announcement of the service going out to tender.

Transferring out – the service is not retained

Issues to be addressed:

- Advise trade unions and staff representatives.
- Consider a staff presentation to explain what this means, what staff can expect regarding TUPE and provide a question and answer session (refer to [Appendix G](#)).
- Remember that those in the team are still your employees.
- Respond in a timely manner to requests from the new provider, giving accurate data as requested.
- Obtain signed consent from staff to share personal data with the new employer.
- Collect and provide full details on the staff transferring – including names, dates of birth, contact details, and so on. Make clear the status of those transferring, whether permanent, fixed-term, sessional, volunteer, and so on. An example pro forma can be found in [Appendix H](#).
- Don't forget those on sabbatical, long-term sickness or maternity leave, and so on.
- Only those assigned to the service will transfer – check any staff on secondment and move them back into post/confirm their substantive job is disappearing.
- Delays in the start date of the new contract can occur, so be prepared for this.
- Seek to resolve all existing disciplinary cases, grievances and appeals prior to transfer.
- Staff engaged in training and development

programmes and, in particular, those working towards meeting national workforce competence standards, should continue their training programme and hand over information to the new provider about their status on the course at the point of transfer.

At point of transfer

- Consider completing an exit interview.
- Remove relevant staff from the payroll on final date.
- Send P45s direct to the new provider.
- Transfer staff files as agreed with new service provider. (See below about transfer of records.)

Transferring in

Following the cooling off period (immediately after the award of contract when no action can be taken), the steps to be taken include:

- Operational management should make contact with the exiting provider, including obtaining incoming HR contact details.
- HR lead should contact the outgoing HR lead.
- HR should write to the existing provider to confirm the award of contract and request due diligence (refer to [Appendix I](#) for example letter) information, which includes:
 - an updated staff list with names and holiday allowance (in all likelihood this will have changed since the contract went out to tender)
 - individuals' contracts of employment (not generic blanks)
 - details of any changes to the contracts of employment since signing, for example change in hours, and so on
 - details of any shift patterns and payments
 - individuals' job descriptions
 - details of any grievances within the last two years
 - details of any disciplinary cases within the last two years
 - copy of any collective agreements
 - policies and procedures (which are contractual)
 - confirm details of the salary scale, how salary reviews operate and what happens when an individual reaches the top of their grade
 - confirm any pending salary increases.
- Write 'measures letter' to the existing provider to confirm details of any changes to structure being made for 'economic, technical or organisational' reasons. Where the structure does not have posts for all transferring employees, consider whether this will include redundancies and ensure that these costs are included in the budget. Refer to [Appendix J](#) for an example letter.
- Issue letters to employees of the existing provider to explain transfer and arrange a presentation to the staff team to introduce the new organisation and plans for organisational structure, and so on. See [Appendix K](#) for an example letter.
- Consult with union/staff representatives.
- Arrange one-to-one meetings with incoming staff members.
- Where the service is to be delivered from a different site, this should be discussed with staff in the same manner as it would be for an existing location, but investigate the employees' entitlements under any policy or terms of condition in relation to working in a new location.
- Consider advertising some or all roles (in case staff choose not to transfer or find other employment). Advise staff so they do not see 'their job' being advertised, causing them anxiety. Where transfers include staff from the public sector, the Code of Practice on Workforce Matters is likely to apply, which means new joiners are expected to have a package no less favourable than those of transferred employees (www.ogc.gov.uk/documents/Code_of_Practice_on_workforce_matters.pdf).
- Write and request confirmation from the existing payroll of all payments, salaries and allowances, for example first aid, unsocial hours, and so on, and any deductions, such as union check-off, court deductions, student loans and so on (see [Appendix E](#)).
- Collect employee diversity information.
- Write to all new employees to advise them they are now employed by you.
- Arrange an induction programme.
- Consider whether there is an 'economic, technical or organisational' reason for making any changes to the new staff terms and conditions where there is a change in workforce.
- Consider whether you wish to offer transferring staff the option to harmonise onto your terms

and conditions – consider a comparison sheet explaining the differences between terms and conditions. Remember, staff are under no obligation to change (see section on harmonisation of terms and conditions). Any changes should be within the existing budget.

Those not subject to the transfer

There will be a need to define the status of those who are not subject to the transfer, agree action and communicate to those involved:

- Agency staff – not entitled to TUPE transfer. Consider talking to the agency about cost if you want to continue engaging the individual/using a recruitment agency services.
- Fixed-term contract – will depend on the end date of the contract. If the contract ends on the final day of the existing provider's contract and the role exists in the new contract, they should be transferred over. If the individual has more than one year's continuous service and dismissal is a result of service transfer, then this would automatically be deemed as unfair dismissal.
- Secondments – check if there are any staff on secondment and what is happening with them.
- Check if there are any people on sabbatical leave, long-term sickness, maternity leave, and so on, and agree a communications plan with the existing provider.
- Sessional/bank staff – check their status of engagement, that is, how often do they undertake work for the outgoing provider. This will help inform whether they should transfer or not to the new service. Consider offering your own sessional contract.
- Volunteers are not subject to TUPE transfer. Consider whether you would welcome them to volunteer in your new service.

Other points to consider

If you are going to have to change the pay date, communicate this as soon as possible and consider the impact of any changes and whether an interim payment may be required.

Establish who is in their probationary period – if it is near the end of the probationary period, consider

whether to ask the current provider to confirm staff in post, assuming that performance is satisfactory.

Do not get involved in any decisions regarding disciplinary, grievance or appeal issues within the outgoing service before the transfer. If there are any outstanding issues at the point of transfer, you will need to deal with them once staff have transferred

Transfer of workforce records

Although basic staff information is provided to the new service provider, the outgoing provider will no doubt hold a personnel file for individuals transferring and therefore consideration needs to be given regarding whether to transfer these files. There is not a specific stipulation regarding the transfer of hard copy files but, nonetheless, organisations can and do choose to do so. There are two important things to consider in this respect:

- In line with the eight principles of the Data Protection Act, remove any out-of-date or irrelevant information from the file and destroy this.
- Keep a copy of any core/essential information for the organisation to access at a future point, for example if a reference is requested.

A 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

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

Pensions and staff transfer issues

Introduction

The Pensions Act 2004 provided transferring employees with a minimum level of protection in an event of a TUPE transfer. This is effected by means of Transfer of Employment (Pensions Protection) Regulations 2005 ('the pensions regulations'), which came into force on 6 April 2005, and the details are as follows.

Employees eligible for pension protection

Employees involved in a TUPE transfer will be eligible for pension protection where:

- the employee is (or is eligible to be or would have been eligible to be) an active member of an occupational pension scheme in relation to which the transferor is the employer
- the scheme provides money purchase benefits, the transferor either (a) is required, or (b) is not required but has made one or more contributions, or (c) would be required had the employee been an active member, to make contributions to the scheme in respect of the employee.

Form of protection

In respect of employees who are eligible for pension protection, the new employer will be required to satisfy one or other of the following sets of requirements.

Following the transfer, the eligible employees must be offered membership of either:

- a final salary (that is, defined-benefit) occupational pension scheme which meets the requirements set out in the Reference Scheme Test. Alternatively, the scheme must provide benefits that equate to at least 6% of pensionable pay for each year of employment or the scheme must provide for the employer to make relevant contributions on behalf of their employees. 'Relevant contributions' for these purposes is defined as matching employees' contributions subject to an upper limit of 6% *basic* pay, or

- a money purchase (that is, defined-contribution) occupational pension scheme or a stakeholder pension arrangement, to which the employer must make a matching contribution of up to 6% of actual gross basic pay. This process can be expensive, lengthy and time-consuming.

Duration of protection

With certain exceptions the employees who transfer must be offered this pension provision as soon as the transfer takes place. However, the new employer and the employee are free to agree alternative arrangements at any time after the transfer. As before, an employer's promise to contribute to a personal pension scheme and any *Beckmann* entitlements (see below) will continue to transfer and are unaffected by the pensions regulations. The pensions regulations are designed to protect employees who would otherwise lose their pension rights because of a TUPE transfer.

Beckmann and Martin: early retirement provisions

The European Court of Justice has confirmed that an entitlement to early retirement benefits payable on redundancy does transfer (*Beckmann v Dynamco Whicheloe McFarlane Ltd* [2002] IRLR 578 and *Martin v South Bank University* [2004] IRLR 74 (see below)).

In light of the *Beckmann* and *Martin* decisions, it is recommended that employers facing a potential TUPE transfer should check any early retirement provisions, particularly arising from a contract of employment, employment relationship or collective agreement, because there is a real chance that the courts will hold that any obligation to provide early retirement benefits passes.

Public sector

As mentioned before, where there is a transfer involving a public sector body, then under the Cabinet Office publication 'Staff Transfers in the Public Sector – Statement of Practice' issued in January 2000, 'broadly comparable' pensions should be provided by private sector organisations when public sector staff are transferred to the private sector. The new provider can apply for admitted body status to continue provision of a local authority or NHS pension scheme. You may find this is a stipulated requirement within the new service contract.

Harmonisation of terms and conditions post-transfer

Following the transfer of staff the new employer will be in the position of having one (or possibly more) groups of staff with different terms and conditions, that is, the transferring staff on their protected terms and conditions and the employer's existing staff.

The employer may therefore wish to consider the harmonisation of terms and conditions. The benefits of this would be to remove any disparity between the two groups – for example, one group may have a more generous leave entitlement or pay grades. It may also make it easier in terms of HR management to have one set of terms and conditions that apply equally to all staff.

However, before taking any action, the employer will need to consider the following points:

- As the new provider you should consider the existing employment contracts/terms and conditions and review what (if any) changes this enables you to make.
- TUPE protection is indefinite – there is no fixed time (for example one year) after which the protection ceases and the new provider can freely change terms and conditions.
- Even where an individual employee agrees to change their terms and conditions, be aware that these changes may not be binding. It is possible that the improved terms may be binding while any detrimental terms would not, even where the overall package is greater than previously held. If you as the new provider are considering this route, you may wish to make it clear that any of the new beneficial terms would have to be given up should the employee later seek to rely on the older terms they had given up.

- For any changes to be legally binding the employer will need to demonstrate that there is an ETO (economic, technical or organisational) reason that requires a change in the workforce, that is a reduction in the number of staff or a change in job function. This is unlikely to be the case if the employer is making changes solely to harmonise terms and conditions.

You should also note that where the transfer involves local authority staff, the Code of Practice on Workforce Matters may apply. This requires that all new recruits to the service are employed on terms and conditions that are 'overall, no less favourable than those of transferred employees'.

It is therefore strongly recommended that if you are considering harmonising terms and conditions you seek expert advice. Consider preparing a comparison sheet explaining the differences between terms and conditions. Remember staff are under no obligation to change. Any changes should be within the existing budget.

Troubleshooting and further information

When transferring a service and its staff to a new employer, there are many obstacles that can cause delay and anxiety to those involved. It would be impossible to anticipate all eventualities, but common problems that occur include:

- delays in decisions being made
- delays in availability/suitability of accommodation
- unmet deadlines
- receipt of requested information from outgoing provider delayed
- lack of agreement on staff facing redundancy/funding for this
- poor communication and compliance by disappointed outgoing provider
- delay on receipt of information on employee reps, union reps in a timely manner
- rumours
- leaking of confidential information
- poor service user communication – wait until after transfer joint consultation event
- financial discrepancies due to mismatch of data
- new provider withdraws after contract award
- high staff turnover resulting in insufficient staff to deliver service.

Refer to the risk register in [Appendix C](#) for other possible situations.

Other information sources

- *Employment Rights on the Transfer of an Undertaking: A guide to the 2006 TUPE Regulations for employees, employers and representatives* (June 2009). Published by the Department for Business, Enterprise and Regulatory Reform (BERR). Available at 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.

Appendix A: Notes from the Compact that are relevant to TUPE

The Compact was first published in 1998 and is an agreement between the Government and the voluntary and community sectors to improve their working relationship.

The Compact is reviewed annually. It is a national agreement, but most local authorities will have their own local compacts that set out:

- a shared vision and principles
- undertakings for both sides
- the Government's commitment to respect the independence of the sector, and
- systems to help make sure that the agreement works.

The Compact is backed up with different codes of practice, which include:

- funding and procurement
- consultation and policy appraisal
- volunteering
- black and minority ethnic (BME) voluntary and community organisations
- community groups.

The notes in this document are taken from the Funding and Procurement Code. This replaced the earlier Funding Code (agreed in 2000) following recommendations in HM Treasury's 2002 Cross-cutting Review of the role of the voluntary and community sector in service delivery.

These national codes of good practice inform local codes.

(Chapter and paragraph numbers from the Code are included below for ease of reference.)

Funding and Procurement Code

The section of the Code most relevant to TUPE issues is 'Chapter 7: Concluding a financial relationship', but there are some other areas that it is useful to be aware of.

In summary:

- The voluntary and community sector undertakes to plan in good time for different situations to reduce any potential negative impact on both beneficiaries and the organisation if funding ends.
- The Government undertakes to discuss risks up front and place responsibility with the public sector body or voluntary and community organisation best able to manage them.

Key principles include:

- **Consistency and co-ordination** – funders and purchasers should endeavour to join up or standardise parts of the funding or procurement chain to minimise burdens on organisations and ensure a focus on delivery.
- **Discussion and dialogue** – this helps build trust and can identify and overcome problems before they impact on the delivery of outcomes.
- **Empathy** – understanding each other's needs and requirements should help avoid problems and achieve the desired outcomes.

Chapter 2 (Achieving intended outcomes)

Paragraph 2.6: Voluntary and community organisations should also consider what would happen if or when the financial relationship ends and plan for this at an early stage.

Chapter 3 (The process of inviting, applying for and assessing grant applications and tender bids and giving notice of decisions)

Paragraph 3.8: Information and forms should be clear and accessible and include all relevant information so that voluntary and community organisations can make an informed decision about whether to apply. The process should be proportionate to the amount of money available.

Paragraph 3.10: Assessment needs to recognise it is legitimate for voluntary and community organisations to include the relevant element of overhead costs in their estimates for providing a particular service.

Paragraph 3.11: Applicants should be kept informed of the process.

Chapter 4 (Agreeing outputs and outcomes)

Paragraph 4.7: The Government undertakes to explain and agree terms of delivery (such as success and performance criteria) with the voluntary and community organisation before the contract or funding agreement is entered into. This should include the actions that will be taken if the voluntary and community organisation is failing to deliver. Departments and agencies should be sensitive to the impact which changes in the contract can have.

Chapter 7 (Concluding a financial relationship)

This chapter includes when:

- the grant or contract finishes
- funding ends earlier than the intended closure where delivery targets are not met, and
- funding ends as a result of a review of strategic or development funding.

What we are trying to achieve

Paragraph 7.2: A well-managed process minimises negative impact on beneficiaries, the provider organisation's long-term stability and the relationship between the funder and the organisations receiving funding.

The benefits for the voluntary and community sector

Paragraph 7.3: A well-managed process minimises negative impact of the conclusion of a financial relationship and helps organisations to prepare contingency plans and identify potential alternative income. This will enable beneficiaries' needs to be met and ensure that organisations adhere to their duties as good employers (for example, by giving adequate redundancy periods). A well-managed process will also support the long-term stability and sustainability of organisations.

The benefits for government

Paragraph 7.4: Government benefits from minimising any potential impact on beneficiaries. Government also benefits from maintaining good working relations with

voluntary and community organisations so that they can continue to have a constructive relationship beyond the particulars of the grant or contract. The long-term stability of the sector benefits government in that voluntary and community organisations can continue to make an effective contribution to the achievement of public policy objectives.

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

Paragraph 7.5: The voluntary and community sector recognises that funding may end as priorities change or if outcomes are not delivered. The sector undertakes to plan in good time for different situations to reduce any potential negative impact on both beneficiaries and the organisation.

What government needs to do to achieve this

Paragraph 7.6: Government undertakes to give enough notice of the end of grants or contracts. This should be a minimum of three months. This helps voluntary and community organisations fulfil their duties as good employers and prepare alternative plans. Notices will give the reasons for the end of the funding agreement or contract and allow the provider organisation to respond to proposals to change or end an arrangement.

Paragraph 7.7: If a voluntary and community organisation is not meeting targets, departments and agencies should first discuss with the organisation what action can be taken to improve delivery (for example, the possibility of a revised action plan). Should performance not improve and the effective use of public funding be at risk, it is legitimate for funding to be withdrawn or the contract terminated early. Departments and agencies should consider how the original outcomes might be alternatively met.

Where to look for further information

- Guidance to funders – Chapter 4
- Think Smart... Think Voluntary Sector
- Compact Black and Minority Ethnic Voluntary and Community Organisations Code – Chapter 6

For further information and to download the full document or any other Compact documents, go to the Compact website at www.thecomcompact.org.uk

Appendix B: Sample Gantt chart

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

Appendix C: Example risk register

The use of a risk register during the transfer of services by a Drug and Alcohol Action Team (DAAT)

| Ref | Risk identification | Risk evaluation (1, 2, or 3) | | Risk result 9 = very high 6 = high <6 = acceptable | | Risk owner | Risk responses |
|-----|---|---------------------------------|---------------|---|---------------|--------------------------------------|---|
| | | (c) probability | (d) impact | (e) score c x d | (f) result | | |
| 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. |

| Ref | Risk identification | Risk evaluation (1, 2, or 3) | | Risk result 9 = very high 6 = high <6 = acceptable | | Risk owner | Risk responses |
|-----|--|---------------------------------|---------------|---|---------------|-----------------------|--|
| | | (c) probability | (d) impact | (e) score c x d | (f) result | | |
| 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' | | | | | | | | | | | | | | |
|--|-----------|------------------------|---|-----------------------|----------------|-------------------------|--|-----------------------------|---------------------------------|---------------------|--------------------|---|-----------------------------------|------------------------|
| Name of organisation: | | | Contact details for your employees' union rep | | | | | | | | | | | |
| Name | | | Address: | | | | | | | | | | | |
| Telephone: | | | | | | | | | | | | | | |
| Post details | | | Personal details | | | | | | | | | | | |
| 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 *give end date | 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 |
| | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | |

* by employees relating to potential compensation for matters such as industrial disease, injury or job grading appeals. Attach additional sheet where necessary.

Appendix F: Service user consultation requirements when transferring services

Introduction

Service user consultation during the tendering process and/or the change of service provider is covered by two main pieces of legislation:

- 1 National Health Service Act 2006, Chapter 2, Section 242 (effective 3 November 2008)
- 2 Local Government and Public Involvement in Health Act 2007, Part 14.

Both Acts detail the provision of consultation with service users when considering tendering out health-related services, for example drug services. An abridged version of the legislation is detailed below; full versions can be obtained via Google.

CHAPTER 2 PUBLIC INVOLVEMENT AND CONSULTATION 242 Public involvement and consultation

- (1) This section applies to –
- (a) strategic health authorities,
 - (b) primary care trusts,
 - (c) NHS trusts, and
 - (d) NHS foundation trusts.
- (2) Each body to which this section applies must make arrangements with a view to securing, as respects health services for which it is responsible, the persons to whom those services are being or may be provided, are directly or through representatives, involved in and consulted on –
- (a) The planning of the provision of those services,
 - (b) The development and consideration of proposals for changes in the way those services are provided, and
 - (c) Decisions to be made by that body affecting the operation of those services.
- (3) For the purposes of this section a body is responsible for health services –
- (a) If the body provides or will provide those

services to individuals, or
(b) If another person provides, or will provide, those services to individuals –

- (i) At that body's direction,
- (ii) On its behalf, or
- (iii) In accordance with an agreement or arrangements made by that body with that other person and references in this section to the provision of services include references to the provision of services jointly with another person.

- (4) Subsection (5) applies to health services for which a Strategic Health Authority is not responsible by virtue of subsection (3), but which are or will be provided to individuals in the area of the Strategic Health Authority, and for which –
- (a) a Primary Care Trust any part of whose area falls within the Strategic Health Authority's area, or
 - (b) An NHS trust which provides services at or from a hospital or other establishment or facility which falls within the Strategic Health Authority's area is responsible by virtue of subsection (3).
- (5) A Strategic Health Authority may give directions to Primary Care Trusts falling within paragraph (a) of subsection (4), and NHS trusts falling within paragraph (b) of that subsection, as to the arrangements which they are to make under subsection (2) in relation to health services to which this subsection applies.

Local Government and Public Involvement in Health Act 2007 (c28)

PART 14 PATIENT AND PUBLIC INVOLVEMENT IN HEALTH AND SOCIAL CARE

Local involvement networks

221 Health services and social services: local

involvement networks

- (1)** Each local authority must make contractual arrangements for the purpose of ensuring that there are means by which the activities specified in subsection (2) for the local authority's area can be carried on in the area.
- (2)** The activities for a local authority's area are –
- (a) promoting, and supporting, the involvement of people in the commissioning, provision and scrutiny of local care services;
 - (b) enabling people to monitor for the purposes of their consideration of matters mentioned in subsection (3), and to review for those purposes, the commissioning and provision of local care services;
 - (c) obtaining the views of people about their needs for, and their experiences of, local care services; and
 - (d) making –
 - (i) views such as are mentioned in paragraph (c) known, and
 - (ii) reports and recommendations about how local care services could or ought to be improved, to persons responsible for commissioning, providing, managing or scrutinising local care services.
- (3)** The matters referred to in subsection (2)(b) are –
- (a) the standard of provision of local care services;
 - (b) whether, and how, local care services could be improved;
 - (c) whether, and how, local care services ought to be improved.
- (4)** The Secretary of State may by regulations amend this section for the purpose of adding to the activities for the time being specified in subsection (2).
- (5)** Before making regulations under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

224 Duties of services-providers to respond to local involvement networks

- (1)** The Secretary of State may by regulations impose, on a services-provider, duties –
- (a) as respects responding to requests for information made to the services-provider by a local involvement network;
 - (b) as respects dealing with reports or

- recommendations made to the services-provider by a local involvement network; or
- (c) as respects dealing with reports or recommendations which, in accordance with any requirement imposed in regulations under paragraph
- (b) have been referred to the services-provider by another services-provider.

- (2)** In subsection (1) 'services-provider' means –
- (a) a National Health Service trust;
 - (b) an NHS foundation trust;
 - (c) a Primary Care Trust;
 - (d) a local authority; or
 - (e) a person prescribed by regulations made by the Secretary of State.

Overview

Both pieces of legislation require contracting public sector agencies to consult with patients, or service users, about the provision of services, including any proposed changes to the service provider.

Service providers are required to co-operate with public sector agencies in making arrangements for consultation with their patients or service users and the following actions are therefore recommended:

- 1 Consult with service users about the provision of services to them, ideally via a service user group, as soon as any potential changes to services become apparent.
- 2 Ensure that all service users, so far as is reasonably practical, are informed of potential changes, preferably in writing or verbally if necessary.
- 3 Liaise with the contacting agency to arrange a forum for service users to attend in order that they can raise any concerns about potential changes to their service and question decision-makers.
- 4 When the contract has been awarded, ensure that all service users, so far as is reasonably practical, are informed of the identity of the new provider.
- 5 If the provider has changed, service users should be advised of any changes that are likely to affect the service they receive, for example change of key worker, as soon as possible.

Appendix G: Example TUPE transfer questions and answers

What does this change mean?

NEW SERVICE will deliver the service we are currently providing and they will become your new employer. NEW SERVICE will provide your payslip.

What will happen to my job?

It is possible nothing will change. NEW PROVIDER will have agreed a structure to run the service and you will be transferred over to NEW PROVIDER. They will meet with you over the coming weeks to explain what, if any, changes will happen as part of the transfer. We are communicating with the NEW PROVIDER to ask them what, if anything, they are intending to change and when we have more information we will pass this on to you. NEW PROVIDER will most likely meet with you individually to discuss how any changes will affect you personally. In many cases the employment transfers just as it is now with little or no change.

Will I lose my job?

It's unlikely. NEW PROVIDER will confirm their structure and will meet with you over the next few weeks to explain where you fit into the structure. They will advise you if there is no job for you. In this case they will still follow a fair process, including consultation and payment of any redundancy monies that you would otherwise be entitled to.

Will my terms and conditions change?

No. The transfer is covered by legislation called 'TUPE'. This stands for Transfer of Undertakings (Protection of Employment). This means that your terms and conditions – pay, holiday allowance, occupational sick pay, pay review, and so on – are protected and can only be changed in certain circumstances. It is unlawful to change terms and conditions solely as a result of the transfer and, if the change is for a reason connected with the transfer, then there must be an 'economical, technical or organisational reason' entailing changes in the numbers or functions of the workforce. So the opportunity for

NEW PROVIDER to change your terms and conditions is fairly limited. However, the new provider may offer you the option of moving onto their terms and conditions, 'harmonising' with the rest of the organisation's staff team. They will explain what their terms and conditions are and you should compare both before making a decision. You have no automatic right to choose the best from both providers – it generally needs to be one or the other. You cannot be made to change – it is your choice. There is no time limit in which this happens.

What about my pay increase?

If you stay on our terms and conditions, this will not change because it will be protected. If you harmonise onto NEW PROVIDER's terms and conditions you will move to their salary review process.

What about the holiday I have booked?

If you have booked holiday/time off, this will usually be honoured by the new provider.

What about car parking?

Your car parking is a [contractual/non-contractual] benefit and therefore [is/isn't] part of your terms and conditions and so [will/will not] transfer.

Will pay date be the same?

It may not be the same. The new provider will advise you when the pay date will be. You may need to consider changing the date of direct debits/standing orders

What if I don't want to transfer?

Your role with us will end on DATE and be transferred to NEW PROVIDER. You can choose to seek another role outside the organisation or with us, but we cannot guarantee being able to offer you another job. You can choose not to join the new provider but will be without work – you will not be compensated for choosing not to join the new provider and it will be as if you have resigned.

I am in my probationary period. What does this mean for me?

Your probationary period will continue as normal. If you are near the end of your probationary period, we will talk to the new provider to see if they wish us to carry out your final review before you transfer.

I am on a temporary contract. What will this mean for me?

It is most likely to continue to its end date, but see also questions above regarding changes to terms and conditions and losing your job. As part of the consultation NEW PROVIDER will meet with you and confirm whether they will have a job for you in their new structure.

I am doing an NVQ (or other learning). What will happen now?

We will advise NEW PROVIDER of your NVQ/other learning and the support that we are providing so that they can continue this support if they so wish.

I am off sick. What will this mean for me?

We will advise NEW PROVIDER that you are off sick. They will still invite you to a one-to-one meeting to explain about the transfer. You will transfer to them. They will look to support you back to work if you have not returned by the date of transfer.

I am pregnant. What will this mean for me?

The transfer will not affect your maternity pay and benefits. You will be invited to a one-to-one meeting with NEW PROVIDER, who will ask for details of your maternity leave dates and confirm a role for you on your return.

NOTE: you will be able to ask all of the above questions and raise any other relevant matters or queries at your individual meeting with NEW PROVIDER.

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

General

| | |
|--|--|
| 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 | |

Hours and pay

| | |
|---|---|
| Total hours per week | |
| Standard working week – days included (please delete as appropriate) | Mon / Tue / Wed / Thu / Fri / Sat / Sun |
| 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 | |

Holidays/leave

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

Travel

| | |
|--------------------------------------|--|
| Mileage payments for business travel | |
| Travel allowances in place | |

Sickness

| | |
|---|--|
| 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 | |

Pensions

| | |
|---|---|
| Details of pension provision (final salary/money purchase) | Please provide full details – preferably a pension pack of information. |
| Employer/employee contribution | |
| Is this member of staff in the pension scheme? | Yes/No |
| Is the pension scheme pre- or post-tax deductions for the employee? | |
| Is the scheme contract in or out of SERPS? | |

Death in service

| | |
|---|--------|
| Death in service entitlement (Please provide details.) | |
| Is the death in service entitlement attached to the pension scheme? | Yes/No |

Employee relations

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

Other

| | |
|---|--|
| 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 | |

Appendix I: Example due diligence letter

Dear

[name of service] SERVICE

I am writing following the award of the above contract to [organisation] with effect from [date]. So that the transfer can go as smoothly as possible and we can engage in consultation with those who are affected by the transfer, please provide the following information as soon as possible.

Employee information

- 1 The profile of all employees employed by [name] who are likely to transfer to [organisation] and all the details of the contract on which they are employed
- 2 Details of employees (organised by location), showing the employee's:
 - employee number
 - location
 - name
 - address
 - date of birth
 - status of contract, for example permanent, fixed-term (including end date)
 - date of commencement of employment
 - date of continuous employment, job title, salary – frequency and rate
 - pay grade, including spinal column
 - overtime
 - commission
 - bonus entitlement
 - other earnings
 - participation in employment benefit schemes
 - pension schemes (identifying which scheme)
 - notice entitlement – either way, holiday
 - normal hours of work, that is number of hours per week and times of work
 - details of any shift working or other working that takes place outside the above normal hours of work
 - details of any job-share arrangements or other flexible working arrangements
 - sick pay entitlement, how much has been taken so far and how much is there outstanding, including any DDA assessments
 - holiday year, entitlement and any outstanding or carried over
 - pay day and method of payment
 - mobility clause
 - retirement date and age
 - personal protections applying to individuals.

- 3 Details of all individuals on training, work experience or similar schemes.
- 4 Details of any employee who is about to exercise, who has been given notice to exercise or who has exercised a right to maternity, adoption, parental or paternity leave and who may elect to return to work after such leave.
- 5 Details of all employees who have been off sick or otherwise absent for more than two weeks, including periods of maternity, paternity, parental or adoption leave; and return-to-work arrangements.
- 6 Details of any employee who has resigned in the last year.
- 7 Details of any employee who has been dismissed in the last year and the reason for the dismissal.
- 8 Details of any employee who is currently attending any college or university course which is supported by you, either by way of course fees, day release and/or study leave.
- 9 Details of any employee who is currently going through a performance management exercise.

Terms and conditions

- 10 Copies of all employees' employment contracts and/or written statement of terms and conditions of employment and details of any other orally agreed terms of employment applicable to any of the affected employees.
- 11 Particulars of employment in relation to each employee as required to be supplied by an employer pursuant to Section 1 of the Employment Rights Act 1996.
- 12 Job role, job description and person specification for each individual and role.
- 13 The salary/wage, other benefits and hours of work of each employee, including statement about overtime and if it is contractual or voluntary.
- 14 Details of salary progression and cost-of-living awards.
- 15 All other fringe benefits in relation to each employee, whether they are believed to be contractual or otherwise, including any arrangement or facility granted to an employee that is believed to be collateral to the contract of employment (for example season ticket loans, housing assistance, pay enhancements).
- 16 Details of all salary, wage or other remuneration arrangements whether contractual or discretionary, in relation to any employee.
- 17 Details of any changes to terms and conditions in relation to any employee introduced over the past three years (including changes to salary or job specifications) and the reasons for said changes.
- 18 The notice required to terminate each employee's contract of employment.
- 19 Details of any employees who work under two or more employment contracts and copies of those other employment contracts, together with details of time spent on each contract.
- 20 Details of any employees who are required to work more than 48 hours per week and details of any arrangements in terms of which the employees agree that the 48-hour week does not apply to their employment.

Redundancy

- 21 Copies of all redundancy agreements and details of any redundancy arrangements or understandings with trade unions or practices, procedures or policies. Details of redundancy pay terms.

Pension/life assurance

- 22 Please provide full details of any pension arrangements in place for staff.
- 23 Specify the employer's and employees' contribution rates over the last three years.
- 24 Please provide a copy of the current schedule of contributions (to comply with PA 1995) and confirmation that contributions have been paid in accordance with the schedule.
- 25 Provide details of when contributions are paid.
- 26 Are any contributions outstanding?
- 27 Are any changes in rates of contributions currently proposed or recommended?
- 28 Details of any discretionary increases granted to pensions in payment and in deferment over the previous three years.

- 29 Other discretionary practices, redundancy, early retirement, long-service bonus, and so on.
- 30 Any benefit augmentations or special terms granted.
- 31 Details of life assurance provision, including a copy of the policy document if not self-insured.
- 32 A list of any employees who are covered by life assurance, only showing date of birth, NI number, basic salary and sex, and including a copy of the policy document.
- 33 Practice in relation to benefits for executive employees.
- 34 Full details of any benefit expectations that members may have other than details given in standard scheme documentation.

Policies and procedures

- 35 Please provide copies of all workplace policies and procedures and staff handbooks, stating whether contractual or not, to include:
 - redundancy/severance
 - maternity/adoption/parental/domestic emergency and paternity leave
 - recruitment/promotions
 - disciplinary
 - grievance/dignity at work/harassment
 - equal opportunities/diversity
 - flexible working
 - health and safety
 - grading structure
 - retirement
 - overtime
 - car
 - whistleblowing
 - career breaks
 - capability
 - performance management
 - computer/IT Internet/data protection
 - training and development
 - communication
 - dress code/uniform/equipment
 - any other policies and procedures.

Trade unions

- 36 Provide identities of all recognised trade unions and a copy of all relevant collective agreements with any recognised trade union (for example UNISON) and workforce agreements.
- 37 Details of trade union facilities provided.
- 38 Summary of all official and unofficial disputes in the last 12 months including details, for example, of cause of disputes, employees and union(s) involved, type of industrial action taken.
- 39 Details of arbitration of mediation awards affecting transferring employees and details of whether the awards have been implemented or are still in effect.
- 40 The names of all relevant trade union or other employee representatives.
- 41 Details of current or anticipated dispute with the trade unions, including which unions are involved, the nature of the dispute, details of negotiations, concessions made to date to the union during negotiations and proposed settlement plans.

Inquiries, disputes, litigation

- 42 Details of any current dispute with any affected employee, whether brought under the company's disciplinary or grievance procedure or otherwise, and matters that might give rise to such a dispute occurring within the last two years.
- 43 Details of any current appeals against dismissal.
- 44 Details of any litigation threatened, pending or ongoing against you, including any county court claims, High Court claims, Employment Tribunal or arbitration claims within the last two years, or any matters which might give rise to such claims.
- 45 Details of any inquiry, correspondence or contact between you and the Commission for Racial Equality, the Equal Opportunities Commission and/or the Disability Rights Commission within the last two years and the outcome.
- 46 Details of any inquiry, correspondence or contact between you and the Health and Safety Executive and the outcome, as well as employee liability insurance cover, levels of claim over the past three years, and any current claims or reported accidents.
- 47 Details of any inquiry, non-routine correspondence or contact between you and HM Revenue & Customs concerning any of the affected employees within the last two years and the outcome.

I look forward to your prompt response and thank you in anticipation.

Yours sincerely

HR Manager, etc

Appendix J: Example measures letter from new provider to existing provider

Dear

RE: Change of Organisation Providing X Service

I write following the award of the contract for the [Name] service, which is currently provided by EXISTING PROVIDER, to NEW PROVIDER with effect from TRANSFER DATE.

I confirm that NEW PROVIDER agrees that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) applies and staff currently employed by EXISTING PROVIDER who are assigned to the above service and whose work is wholly or mainly on that work will transfer to NEW PROVIDER.

Currently NEW PROVIDER are not in possession of all the information relating to existing employees. However, on the basis of the information we do have, I provide, below, information on measures NEW PROVIDER envisage taking in relation to staff. Please note that the situation is fluid and could be subject to change when we are in possession of all the information.

The measures include a very small number of roles that are at risk and any final decisions will only be made after the consultation process has been completed. We expect that there will be redeployment opportunities for all those whose roles are at risk.

1) Summary of the NEW PROVIDER service, including main differences:

As per the service specification as outlined in the tender document and subject to finalisation.

2) Main differences between current and new service arrangements

The new service is designed in accordance with the specification drawn up by the DRUG ACTION TEAM and as per the service specification, which impacts on the way the services are currently provided. Under NEW PROVIDER's proposed staffing structure, draft copy enclosed, the main differences are:

X
X
X

3) Staffing implications for the EXISTING PROVIDER team of the service change

NEW PROVIDER will consult with all employees and will follow proper processes in respect of the potential redundancies and will discharge all obligations should any employee need to be dismissed for ETO reasons.

4) Pension arrangements

NEW PROVIDER provides a broadly comparable pension scheme, which will be available to transferees.

5) Indemnities

NEW PROVIDER will require indemnity from EXISTING PROVIDER against the possibility of any employee other than those identified by your organisation, transferring and asserting TUPE rights against NEW PROVIDER. NEW PROVIDER would expect any such indemnity to include liability arising from dismissals of such employees.

NEW PROVIDER would also require indemnities for all existing liabilities pre-transfer including, but not limited to, claims that may be brought at the Employment Tribunal, county court or High Court.

If you have any queries at all, please do not hesitate to contact me.

Yours sincerely,

NEW PROVIDER

Enc Draft Structure

Appendix K: Example letter to employee from new provider

Dear Colleague

I am writing following the award of the [Name] service to NEW PROVIDER with effect from DATE.

As you are assigned to the current contract, this will have some implications for your future employment. You will be consulted formally on any such matters and I am writing to inform you of the proposed changes and implications for employees currently employed on the contract and also to invite you to a consultation meeting.

First of all, NEW PROVIDER has agreed that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply. As an organisation we commit to acting fairly and with regard to TUPE.

In the most straightforward and simplest of cases, TUPE involves the service transferring to the new provider in its current state, with staff contracts being taken on by the new provider. The legislation then provides that individuals' terms and conditions of employment must stay the same unless changes are made on the grounds that there is an 'economic, technical or organisational (ETO) reason entailing changes in the workforce' allowed by the legislation.

For economic, technical and organisational reasons NEW PROVIDER proposes to make some changes, including to the structure of the service. Models of the new structure are enclosed. This has some implications for individuals currently assigned to the service and the main ones are:

X

You will have a full opportunity to raise any representations in relation to the situation and to this end consultation meetings will take place as follows:

X

I understand that this may be an uncertain and difficult time for you and can assure you that NEW PROVIDER will do everything it reasonably can to ensure this process goes smoothly and is conducted as fairly as possible.

Yours sincerely

NEW PROVIDER

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