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| **newLDBS LOGO** | **TUPE Transfers Guidance**  **August 2019** |

**A Brief Guide to TUPE Transfers**

From time to time schools and academies decide to outsource a service like cleaning or catering to an external company, or, decide to take on a service which was previously outsourced, in house.

This guide shows the basic steps required where the school or academy is the outgoing employer (Table 1) or the incoming employer (Table 2)

**What is TUPE ?**

TUPE refers to the’ Transfer of Undertakings (Protection of Employment) Regulations 2006’ as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014’ . TUPE protects employee’s rights when the organisation or service they work for transfers to a new employer. So for example, if you employ cleaners on governor’s contracts, they would have to transfer to a new company on conditions no less favourable than those they are on already. Equally, if you decide to provide a service directly through the school, you will have to employ the staff working at the school through a company on conditions which were no less favourable.

**Table 1 Outgoing Employer**

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| Before preparing for transfer | **Select the new provider** – you should take time to select your new provider before making a commitment. Your staff may be members of the Local Government Pension Scheme so it’s wise to ensure early on that your provider is either prepared to sign up to be part of that scheme or offer something comparable.  The Church of England is committed to the London Living Wage so it’s important that the provider you use is aware of this. Current staff will most likely be paid it already, however, if new staff are recruited you may wish to ensure that anyone working within the school is paid accordingly .  It’s wise to obtain three references and to ensure that they understand about safer recruitment and employing staff in  Schools. Trade unions may be anxious about their role with the new provider  **Inform staff and their representatives –** a change in service provider can be very disconcerting for staff, so early communication with them and their trade union representatives, helps to reassure them and avoid any disputes at a later stage of the process when it may be more difficult to find a satisfactory resolution. |
| Preparing for transfer | **Inform/consult** – you must consult formally with staff and their  Representatives about the transfer and any measures (measures  are any proposed changes like changes to structures, or policies etc)  It is advisable to work closely with the new provider so that the  new employer can start to engage with staff, to help the change  be as smooth as possible, especially if the you and or the new have  indicated that there will be some measures as part of the transfer  **Information –** gather all therelevant information about the staff  who will transfer as part of due diligience, including any outstanding  HR issues like long term sickness absence, live sanctions, copies of all  contracts and HR policies which apply to them. |
| The Transfer | **Other staff –** should be informed and consulted about the transfer and understand the impact of any changes on their role ie the premises manager should be clear about the impact on his relationship with the new provider where cleaners have been transferred.  Any agreements should be signed and the school should have a clear understanding of the SLA with the new company with regular meetings and evaluation  All the staff files and contracts should be given to the new employer. |
| After the transfer | The school or academy should maintain an ongoing dialogue with the new provider and address any problems with performance promptly. Even though staff are no longer employed directly by the school, any connection can still have an impact on it’s reputation |

**Table 2 Incoming Employer**

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| Before preparing for transfer | **Ensure** that careful analysis has taken place around the costs and benefits of bringing the service in house and that Governors have been involved in and agree with the decision. |
| Preparing for transfer | **Request** employee liability and due diligence information. Liaise with the company so that you are very clear about which employees you will be taking on ie the situation with any temporary staff. Make sure that any outstanding HR problems are, as far as is practical addressed by the outgoing employer. Check the terms and conditions of staff, if the company provides cleaning or catering services the conditions may be much less favourable than the conditions offered to other support staff within the school.  Take into account the impact on other staff. For example with the Premises Manager be required to undertake more supervisory or managerial duties which could impact on that salary and job description.  **Determine** any measures ‘changes’ you may take and inform the outgoing employer as these will be part of the consultation. For example you may wish to change working patterns, reserve the right to re-structure or to move over to LDBS policies (which are usually more generous rather than less).  **Inform/consult**  - work closely with the outgoing employer to inform and consult with staff and their representatives. A joint consultation can be more reassuring for staff facing change and you are also clear about the message staff receive about you as an employer if you participate in this process rather than leaving it to the outgoing employer.  **Agree** a timetable for transfer with the outgoing employer and an actual date of implementation. There is no fixed time for the consultation period but it should be ‘reasonable’ and in line with most reorganisation policies, a consultation period of 30 days is appropriate. |
| The transfer | **Inform** other staff about the change especially those who will have to manage or develop a close working relationship with them. Make sure that all files and personal details are forwarded, inform your payroll and pension administrator and make sure that records show their continuous service as well as the transfer date.  A letter from the governors should be sent welcoming them to the school and to make sure that staff understand that in a VA school the governors are their legal employers or the LAT in academy trust schools |
| After transfer | Make sure that any management actions are within carried out within the TUPE agreement and do not breach this. Trade unions are vigilant in this area and it can undermine management if they are not mindful. |