

Employment Risk Matrix

Assessment of the Secondment, TUPE Plus and TUPE Employment Models

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Amended March 2010 to include TUPE Plus.



(Continuing the work of the Centre for Public Services)

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The **European Services Strategy Unit** is committed to social justice, through the provision of good quality public services by democratically accountable public bodies, implementing best practice management, employment, equal opportunity and sustainable development policies. The Unit continues the work of the Centre for Public Services which began in 1973.

Introduction to the Employment Risk Matrix

Outsourcing via a transfer of staff effectively means that the employer is transferring a series of risks to their existing staff. TUPE transfers and the Best Value Code of Practice on Workforce Matters do not provide any guarantees. There is considerable change occurring in the pensions sector with private sector employers replacing final salary with money purchase schemes and a growing number of under-funded pension schemes.

There are basically three employment models if outsourcing or transfer is proposed:

- 1) Secondment in which staff remain employed by the public sector.
- 2) TUPE Plus transfer to a new employer (see Appendix).
- 3) TUPE transfer to a new employer.

The European Services Strategy Unit has devised an Employment Risk Matrix, which assesses the degree of changes in four categories of risk:

- Risk of changes to terms and conditions of service.
- Pensions arrangements (not covered by TUPE regulations but included in TUPE Plus agreement).
- Risk of changes to staff consultation and representation.
- Risk of problems with secondment agreement.

The Risk matrix identifies and compares the levels of risk borne by employees in secondment, TUPE Plus transfer and TUPE transfer employment models.

The Employment Risk Matrix Summary (Table 1) shows;

- **Secondment - 100% of the risks are in the none/low risk category.**
- **TUPE Plus transfer – 92% of risks are in the none/low risk category**
- **TUPE transfer - only 16% of risks are in the none/low risk category.**

Alternatively, 84% of the risk for employees in a TUPE transfer are in the high and medium risk categories compared with only 8% for a TUPE Plus transfer and none for secondment.

Table 1: Summary of Employment risk

Risk level	Secondment		TUPE PLUS Transfer		TUPE Transfer	
	Number	%	Number	%	Number	%
None	9	36	6	24	3	12
Low	16	64	17	68	1	4
Medium	0	0	2	8	11	44
High	0	0	0	0	10	40
Total	25	100	25	100	25	100

European Services Strategy Unit, 2010.

Employment Risks in Secondment, TUPE Plus and TUPE Models

Risk	Secondment	TUPE PLUS Transfer	TUPE Transfer
Risk of changes to terms and conditions of service			
Risk of changes to staffing levels after transfer without staff agreement.	No risk because of Change Control Procedure in Secondment Agreement	Low risk Contract and Code of Practice on Workforce Matters should prevent it happening.	High risk Code of Practice on Workforce Matters does not prevent changes over time.
Risk of changes to terms and conditions of employment.	No risk staff remain on local authority terms and conditions	Low risk Contract and Code of Practice on Workforce Matters should prevent it happening.	High risk Code of Practice on Workforce Matters does not prevent changes over time.
Risk of not meeting annual pay award in full and on time	No risk staff remain on local authority terms and conditions	Low risk Contract and Code of Practice on Workforce Matters should prevent it happening.	Low risk Code of Practice on Workforce Matters should prevent it happening.
Risk of changes to the composition of pay and benefits such as holidays	No risk staff remain on local authority terms and conditions	Low risk Contract and Code of Practice on Workforce Matters should prevent it happening.	High risk Code allows contractor to change mix of pay, holidays and pension.
Risk of two-tier workforce developing	Low risk only if large differences between transferees and seconded staff develop	Low risk new starters on same terms and agreement not to operate two-tier workforce	High risk staff on different terms and conditions could create two-tier workforce
Risk of no or inadequate redeployment	Low risk commitment to redeployment	Medium risk dependency on resources of private contractor, therefore staff bear the risk	High risk dependency on resources of private contractor, therefore staff bear the risk
Risk of inadequate implementation of family friendly policies	Low risk commitment to family friendly policies	Low risk contract commitment to family friendly policies	Medium risk dependency on private contractors policies

Risk	Secondment	TUPE PLUS Transfer	TUPE Transfer
Risk of changes to pensions			
Risk of not remaining in Local Government Pension Scheme	No risk staff remain on local authority terms and conditions	Low risk agreement to remain in LGPS but contractor could seek to amend	Medium risk requires public sector to make it a condition of contract
Risk of changes to quality and conditions of private company pension scheme	No risk staff remain on local authority terms and conditions	No risk agreement to remain in LGPS	Medium risk Code is 'permissive' with regard to defined benefit/final salary scheme
Risk of reduction in employer contribution and increase in employee contribution	No risk staff remain on local authority terms and conditions	No risk agreement to remain in LGPS	Medium risk Code is 'permissive' with regard to defined benefit/final salary scheme
Risk of closure of final salary scheme by private sector employer	No risk staff remain on local authority terms and conditions	No risk agreement to remain in LGPS	Medium risk Code is 'permissive' with regard to defined benefit/final salary scheme
Risk of changes to workplace conditions			
Risk of changes to trade union facility time	Low risk staff remain on local authority terms and conditions	Low risk guarantee that TUPE lasts for length of contract	Medium risk of private contractor demanding or imposing a reduction
Risk of changes to health and safety policies and practices	Low risk staff remain on local authority terms and conditions	Low risk contract commitment to health & safety	Medium risk based on private contractor health and safety practice
Risk of changes to grievance and disciplinary procedures	Low risk staff remain on local authority terms and conditions	Low risk guarantee that TUPE lasts for length of contract	High risk private sector has own procedures.
Risk of changes to equal opportunities policies and practices	Low risk staff remain on local authority terms and conditions	Low risk Contract commitment to equalities	Medium risk in terms of degree of implementation.
Failure to implement corporate policies and priorities	Low risk some corporate policies not fully implemented.	Low risk some corporate policies not fully implemented.	Medium risk some corporate policies not fully implemented.
Risk of loss of public service ethos	Low risk staff remain council employees.	Medium risk staff will be private sector employees.	High risk staff will be private sector employees.

Risk	Secondment	TUPE PLUS Transfer	TUPE Transfer
Risk of changes to staff consultation and representation			
Risk of lack of consultation with staff over improvement plans and reengineering proposals	Low risk because of Change Control Procedure in Secondment Agreement	Low risk commitment to involvement	Medium risk based on experience of PPP and outsourcing contracts
Risk of lack of consultation with staff in other departments	Low risk because of Change Control Procedure in Secondment Agreement	Low risk commitment to involvement	Medium risk based on experience of PPP and outsourcing contracts
Risk of changes to working practices which have not been agreed with staff and trade unions	Low risk because of Change Control Procedure in Secondment Agreement	Low risk commitment to involvement	High risk based on PPP and outsourcing contracts.
Risk of inadequate training	Low risk because of Change Control Procedure in Secondment Agreement	Low risk contract commitment to workforce development and training	High risk based on PPP and outsourcing contracts.
Risk of changes to the industrial relations framework	Low risk because of Change Control Procedure in Secondment Agreement	Low risk contract commitment to TUPE for length of contract	High risk based on PPP and outsourcing contracts.
Risk of problems with secondment agreement			
Risk of secondment agreement failing	Low risk based on experience in other parts of the public sector	No risk not applicable	No risk not applicable
Risk of legal challenge to secondment agreement re TUPE	Low risk based on experience in other parts of the public sector	No risk not applicable	No risk not applicable
Risk of contractor seeking to reduce or terminate secondment	No risk not applicable	No risk not applicable	No risk not applicable

European Services Strategy Unit, 2010.

Appendix

TUPE Plus

The limitations of TUPE are widely recognised and this has led to the promotion of TUPE Plus. For example, Newcastle City Council's Corporate Procurement Strategy has TUPE Plus as a basic requirement in service contracts.

TUPE Plus contains the following fair employment policies:

- A guarantee that TUPE will last for the length of contract (the regulations do not specify a time period). This is essential to protect conditions of service, existing redundancy payments and early retirement provisions. Any variation to conditions of service would only be introduced following a collective agreement with the appropriate trade union.
- New starters will be on the same/very similar terms and conditions and the company will not operate a two-tier workforce.
- All TUPE transferred employees and new staff must have the option of remaining within the Local Government Pension Scheme.
- Annual local government pay awards will be implemented in full unless otherwise agreed with the recognised trade unions.
- No restrictions on staff promotion, for example, requiring transferred staff to transfer to the employer's own terms and conditions unless absolutely necessary because of nature of the work.
- The contractor will be committed to equal opportunities, work-life balance, whistle blowing and health and safety policies at least equivalent to the Council's employment and corporate policies.
- The contractor will have a workforce development, education and training plan approved by the Council.
- The current job evaluation scheme would be applied for the duration of the contract.
- The current trade union recognition and facilities agreement must be maintained, unless changed by agreement, for the duration of the contract. This should cover new staff who must have equal opportunity to join a recognised trade union.
- The contractor gives an undertaking not to offshore work and not to transfer jobs out of the local authority area.
- No restrictions on the employment status of branch trade union officers in the representation of their members.
- A new employer will be required to provide a check-off facility for the deduction of trade union subscriptions.
- Contractors will be required to make a contribution to the Council's Corporate facility time budget to ensure transferred employees continue to receive support from trade union branches.
- The Council must allocate adequate resources to fully and effectively monitor the employment policies and practices of the contractor as an integral part of the performance management and reporting process.