

# TUPE Policy

## Contents

1. Aim.....	1
2. Scope.....	1
3. Vision and Values.....	1
4. What is TUPE?.....	2
5. Key principles of TUPE.....	2
6. TUPE out of the Authority.....	3
7. Consultation.....	3
8. Employees included in a TUPE transfer.....	4
9. TUPE into the Authority.....	4
10. Disclosure of Information to Potential Contractors at Tender Stage.....	5
11. Disclosure of Information to the New Employer After the Award of the Contract.....	5

### 1. Aim

The Cambridgeshire & Peterborough Combined Authority (CPCA) values its employees and is committed to managing the organisation in a manner which results in secure employment for all employees. This document gives more detail about TUPE.

### 2. Scope

This policy applies to all Cambridgeshire and Peterborough Combined Authority employees as far as possible, except where there is a specific local agreement, or a clause within the contract of employment, which is at variance with the provisions as contained within the NJC agreement. This policy does not form part of any employee's contract of employment, and it may be amended at any time.

### 3. Vision and Values

Our vision is for a prosperous and sustainable Cambridgeshire and Peterborough. Driven by our values and using our collective voice and strengths, we seek inclusive good growth for an equitable resilient, healthier and connected region.

Our values define what is important in the way we deliver this vision. At Cambridgeshire and Peterborough Combined Authority our core values are Collaboration, Integrity, Vision, Innovation and Leadership. We are committed to ensuring our culture enables our employees to display these values regardless of their roles within the organisation. Managers and employees alike must ensure our core values are upheld when implementing this policy.

#### 4. What is TUPE?

Cambridgeshire and Peterborough Combined Authority is committed to applying the requirements of 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.

The purpose of the TUPE Regulations is to provide protected employment rights to employees when their employment changes because of a transfer, where services are outsourced, brought in-house, or assigned to a new employer.

Its purpose is to move employees (and any liabilities associated with them) from the existing employer to the new employer, with continuity of service protected and some protection of existing terms and conditions of employment.

HR support and guidance **must** be sought at all times during any TUPE process.

#### 5. Key principles of TUPE

TUPE regulations **may** apply when business transfers and service provision transfers.

For TUPE to apply to a service provision change there must be an organised group of employees whose principal purpose is to carry out the activities in question on behalf of the client; employees must be assigned to the group in question and the activities immediately before and after the transfer should remain primarily the same.

When TUPE applies, the employees of the outgoing employer automatically transfer to the incoming employer at the point the service provisions transfer. Their continuity of service and terms and conditions of employment are preserved (different rules apply to pensions).

The basic principles of TUPE are:

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

- changes to the terms and conditions of transferred employees can only take place when certain conditions are met.

## 6. TUPE out of the Authority

When there is a need to TUPE out of the Authority, any potential external service providers will be required to confirm their support and their commitments to protect the terms and conditions of transferring employees.

They will be asked to confirm the pension scheme arrangements they have in place for transferred employees and their plans regarding the staff and assets used in the service when provided by the Authority.

During the initial stage of the proposal to contract-out the service, managers should assess:

- the proportion of time spent by each affected employee on the individual activities which is in scope for transfer.
- the value of the work and proportional cost.
- contractual documents concerning work duties and location.

The relevant HR Rep and legal team advice and support **must** be sought at the beginning of the process where it is proposed to transfer parts of a service as opposed to a whole service, or a whole service is proposed to transfer to several providers, as a minor reorganisation of the service may be needed at an early stage

If TUPE is deemed not to apply, following legal advice, managers may need to declare staff employed in the service redundant. Where there is likely to be a redundancy situation managers should seek advice from HR to effectively manage the organisational change.

## 7. Consultation

CPCA has a duty to consult all relevant representatives regarding any measures it predicts taking in relation to any affected employees due to the transfer.

The above should be the case whether we are acting as the transferor or transferee.

Managers would consult with employees and trade unions at the earliest possible stage of any such project and communication will be ongoing in line with the Organisational Change policy:

All affected staff should be consulted, even those who will not transfer.

- during consultation employees and trade unions must be informed in writing.
- that a transfer may take place when this might happen and the reason for it.
- the implications of any potential transfer for affected employees on social, legal and economic issues (including at the appropriate time information about the new external provider, where it is based etc., and the potential impact of a transfer on contracts, pensions etc.)

- the measures that CPCA or the external provider propose to take in relation to the transfer.

The consultations will also involve meetings, with the new provider if service provision is to be outsourced.

#### 8. Employees included in a TUPE transfer

In some cases, it is challenging to ascertain who is eligible for transfer when TUPE occurs. Generally, only employees who are:

- Employed by the transferor immediately prior to the transfer; and
- “Assigned” to the relevant grouping of employees who carry out the service activities which are subject to the relevant transfer.

All employees ‘assigned’ to the service will be transferred at the point of the transfer to the new employer (the transferee).

It is imperative to note the ‘assigned’ employee must predominately work in the area that is due to transfer. Though each case will have to be determined individually. In making an assessment the following factors would need to be considered:

- Proportion of time spent on the transferring activities and in other parts of the organisation.
- The amount of value given to each part by the employee.
- Allocation of cost between the different parts (if relevant)
- Contractual documents concerning work duties and location e.g., contract of employment and job description.
- Where an employee has a substantive post elsewhere in CPCA then their temporary contract will cease prior to the transfer date, and they will return to their substantive post.

Generally, if the employee spends less than 66% of their time in the transferring work area, it is unlikely that they will be included on the transfer list.

It is also important to note that if an employee refuses to transfer they will automatically be deemed to have resigned from their current role.

#### 9. TUPE into the Authority

In some instances, CPCA may be receiving employees when services are reorganised. This usually happens when:

- a service which was previously externally provided is brought back in-house
- a service is transferred to the Authority by law
- a service is shared by one or more authorities/statutory bodies and CPCA becomes the employer for "pay and rations" purposes
- the Authority is contracted by another body (e.g., another local authority) to provide a

service already being provided by that body/or another provider.

In the above scenarios, TUPE is most likely to apply and result in the employees transferring to CPCA from an external organisation. In these circumstances, the guidance on assignment and requirements around consultation set out above will still apply, except that CPCA will become the new service provider and, therefore, the new employer.

Employees who transfer to CPCA will be entitled to retain continuity of service and the terms and conditions of employment they enjoyed before the transfer.

#### 10. Disclosure of Information to Potential Contractors at Tender Stage

Where a tenderer submits a TUPE bid, they will need information to enable them to put their bid together. They should receive only as much detail as is necessary for them to be able to prepare their tender. This must not include personal information; therefore, any information listed below should not identify any individuals

- The numbers of staff who are working on the service being outsourced.
- Grade and salary levels and pensions scheme details
- Contracted hours of work (show whether part-time or full-time)
- Percentage of time spent on work included in the tender.
- Length of service and age (not date of birth)
- Notice periods.
- All allowances and contractual overtime
- An example of a specimen contract
- Job descriptions
- Numbers of temporary and permanent staff
- Redundancy entitlement
- Local conditions which would have an impact on the cost of the bid, e.g., maternity arrangements, leave entitlements.

The following information about all Temporary Agency Contractors assigned to the service:

- The total number of agency workers engaged.
- The areas of the business in which they are utilised.
- The type of work they are contracted to undertake.

#### 11. Disclosure of Information to the New Employer After the Award of the Contract

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

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

## Governance – TUPE Policy

References:  
Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014.

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## Document Control Sheet

Purpose of document:	This policy is designed to outline the Procedure to be followed as part of TUPE process.
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Who will review the document (job title):	HR Team
Why is this document being reviewed?	
Mandatory read	Yes

## Revisions

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