

## TUPE FREQUENTLY ASKED QUESTIONS

**TUPE is an acronym for 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 employees’ terms and conditions when a business or undertaking (or part of one) is transferred to another employer and/or when the provision of a service is transferred from one employer to another.

Individuals employed by the incumbent organisation automatically become employees of a new organisation on the same or no less favourable terms and conditions. It is as if their employment contracts had originally been made with the new organisation. Employees’ continuity of service is preserved.

Employers involved in the transfer of services are required to inform and consult with affected employees. Consultation will be direct with affected employees and via trade union representatives.

The answers below are in response to questions that are typically raised by employees where their employment is likely to transfer under the TUPE regulations.

### **HOW TO CONTRIBUTE TO THE FAQs:**

To submit a new question or to request further information about a question that has already been raised, please email your manager or

[info@firstforwellbeing.co.uk](mailto:info@firstforwellbeing.co.uk)

The FAQ document will be updated on a regular basis and the addition of new Q&As will be highlighted accordingly. The latest version of this document can be found on the NCC intranet, search for ‘First for Wellbeing’ /

<http://intranet.northamptonshire.gov.uk/services/tss/wellbeing-clc/Pages/default.aspx>

**We ask that all questions are submitted by no later than 21<sup>st</sup> February 2016.**

In addition you can also access the Cabinet papers at:

<https://cmis.northamptonshire.gov.uk/cm5live/MeetingsCalendar/tabid/73/ctl/ViewMeetingPublic/mid/410/Meeting/2460/Committee/399/Default.aspx>

DATE: 19 <sup>th</sup> January 2016		VERSION: 6	AUTHOR: HR ADVISORY
No	QUESTION	ANSWER	
1	What is TUPE?	TUPE is an acronym for the Transfer of Undertakings (Protection of Employment) Regulations (2006), updated in 2014. In short, the aim of these regulations is to provide protection to employees when their employer changes following a “transfer of an undertaking”.	
2	What does TUPE mean?	TUPE preserves the terms and conditions of employees who are transferred to a new employer and ensures continuity for employees, i.e. their continuity of service is preserved.	
3	I hear words such as transferor and transferee being used - who is the “transferor” and who is the “transferee”?	<p>“The transferor” is the current employer (NCC) and “the transferee” is the proposed new employer (Wellbeing CIC *)</p> <p>*company name to be confirmed in December 2015, for the time being it is referred to as the Wellbeing CIC.</p>	
4	What are the legal obligations for the transferor and transferee when a TUPE situation occurs?	<p>Both organisations have a responsibility to provide data to the appropriate representatives.</p> <p>Generally, the transferor will have recognised trade unions to consult with, but if the new provider subsequently awarded the service has no trade union or union representatives, then representatives must be elected by the affected employees for the purposes of consulting over the transfer.</p>	
5	Who does consultation apply to and what does it involved?	<p>Both the transferor and transferee should consult in relation to:</p> <ul style="list-style-type: none"> <li>• those employees who are to be transferred, and</li> <li>• those employees who will not transfer but whose job may be affected.</li> </ul> <p>The following information must be provided:</p> <ul style="list-style-type: none"> <li>• That a transfer is to take place</li> <li>• The reason for the transfer and when it is expected to take place</li> <li>• The legal, economic and social implications for the employees</li> <li>• The measures that the new employer expects to</li> </ul>	

		<p>take in relation to the employees</p> <p>Both employers must consider any representation made by employee reps or individuals during the consultation period, and if any proposals are rejected, the employer should give a reason for the rejection.</p>
6	Is there a minimum period for the information and consultation exercise?	The law in terms of TUPE consultation does not define a minimum period, only that the parties are obliged to provide information in good time and that consultation should be conducted with a view to seeking agreement.
7	When will formal consultation commence?	<p>Consultation commenced following the outcome of cabinet on 10<sup>th</sup> November and the Employee Consultative Forum on 17<sup>th</sup> November. Group consultation meetings will be held during November and December 2015 and individual consultation meetings will be offered after this.</p> <p>Questions/comments should be submitted by 21<sup>st</sup> February 2016.</p>
8	When will my individual consultation meeting take place?	Individual consultation meetings will be arranged upon request following your group consultation meeting. These would normally be with your line manager and you should make your request directly to them.
9	Can I be accompanied?	Yes – you may be accompanied by a Trade Union Representative or a work colleague.
10	Can the new provider/employer alter my terms and conditions once transfer has taken place?	<p>The new employer may not unilaterally worsen the terms and conditions of employment of any transferred employee.</p> <p>Prior to or following a transfer, an employer may wish to change the terms and conditions of transferring staff, however, any changes where the sole or principal reason for the change is the transfer will be void. However, contractual variation is permitted in certain circumstances.</p>
11 UPDA TED	Can the new employer dismiss me as a result of the transfer?	<p>The new employer cannot dismiss any employee upon transfer unless the employer can establish an “economic, technical or organisational” reason which requires changes to the workforce and further, that the new employer must be acting reasonably in treating that reason as sufficient to justify a dismissal.</p> <p>So should changes to the workforce be required following transfer, employees and trade unions would be consulted in the usual way i.e. any such proposals would be subject to a separate period of consultation.</p>
12	Can the employee refuse to transfer?	<p>Yes although this will be deemed to be a resignation. There are provisions which deal with what happens when the objection is motivated because of a substantial change made to employees working conditions, which is to their detriment. Advice should be sought by you if you believe this to be the case.</p>

		<p>If an employee objects to the transfer then they should inform the transferor or the transferee that they refuse to become employed by the new organisation prior to the transfer.</p>
13	How long are terms and conditions protected under TUPE?	<p>Terms and conditions can be changed in line with the provisions included in your current terms and conditions (in the same way as they might be by the transferor prior to transfer and where permitted by the regulations), but TUPE ensures that all staff transfer under the same terms of employment and working conditions. There is no specific time limit which applies to TUPE regulations.</p>
14	You have said all my terms and conditions of employment will be protected? Can you provide a list of these?	<p>You should refer to your contract of employment for your terms and conditions.</p> <p>Please be aware that non-contractual policies do not transfer. To provide an example, maternity and paternity pay will be protected, as too will annual leave and contractual sick pay entitlement, however, how the new employer manages situations in relation to maternity or, attendance may differ.</p> <p>Representatives will be informed about which policies will transfer and those which will not as part of the consultation exercise referred to above.</p>
15	What details get shared with the transferee in relation to the TUPE transfer?	<p>There is a duty on the outgoing employer (the transferor) to supply information about the transferring employees to the incoming employer (the transferee). This information is known as the employee liability information.</p> <p>The following information must be provided:</p> <ul style="list-style-type: none"> <li>• the identity and age of the employees who will transfer</li> <li>• information contained in the written statement of terms of those employees</li> <li>• details of any disciplinary action taken against an employee in the last two years</li> <li>• details of grievances raised by an employee in the last two years</li> <li>• instances of legal actions taken by employees against the outgoing employer in the last two years (any court or employment tribunal claims)</li> <li>• information regarding any collective agreements</li> <li>• any legal action taken by those employees against the transferor in the past two years or anticipated in the light of the transfer</li> </ul> <p>Further information is provided as part of best practice.</p> <p>This information should be given in writing at least 28</p>

		days before the completion of the transfer. However, both outgoing and incoming employers must comply with data protection when handling personal information.
16	Do pension rights transfer under TUPE?	Under the TUPE Regulations, occupational pension arrangements do not transfer but the new employer must ensure that a minimum level of pension protection is offered to transferring staff. It is intended that all transferring staff will be able to remain in the Local Government Pension Scheme upon transfer.
17	I am currently a member of the Teachers' Pension Scheme or the NHS Pension Scheme, will I be able to remain in this?	For NCC employees who are existing members of the Teachers Pension Scheme at the date of transfer, it is anticipated that the CIC will apply for continuation of TPS membership. For NCC employees who are existing members of the NHS Pension Scheme at the date of transfer, it is anticipated that the CIC will apply for continuation of NHS Pension Scheme membership through the Directions Order.
18 UPDA TED	Will my salary still be paid on the same date that I currently receive it?	Yes, for the majority of staff the pay date will remain the same (25 <sup>th</sup> ), however there are a small number of staff in scope to transfer who are currently paid on the Schools Teaching N6 payroll. The N6 pay day is currently the end of the month but it is proposed that the pay date moves to 25 <sup>th</sup> to bring all First for Wellbeing employees in line. This measure will be formally communicated by letter later in January.
19	Does sick and holiday entitlement transfer as part of TUPE, including the 5 extra day's annual leave for continuous service?	Yes.
20	What happens to an employee's unused holiday in a TUPE transfer situation?	In a TUPE transfer situation, most rights arising out of an employment contract transfer to the transferee (the new employer). This includes holiday entitlement.  If an employee who is transferring under TUPE has accrued more holiday than they have taken at the date of the transfer, the general position is that the holiday will transfer with them, subject to their line managers agreement and they should be able to submit requests to the new employer to take it up until the end of their holiday year.  The new employer will therefore authorise and pay for holiday that was accrued whilst the employee was working for the transferor.
21	If a member of staff is made redundant by the new employer, after a period of time, will all service (i.e. my service with my current employer and the new	Yes

	employer) count for redundancy payment purposes?	
22	If a member of staff is promoted or offered a different position after transfer does this mean that they would lose all their current terms and conditions and take on new terms and conditions?	It may be the new employer will offer the promotion on new terms, however it is anticipated that in the first instance any new roles will be continue to be offered on NCC terms and conditions.
23	If someone is on a temporary contract and transferred to the new employer, what happens on the expiry of that contract?	They will be treated in the same way as they would have been had their employment remained with the transferor.
24 UPDA TED	Can the new employer become a member of the Redundancy Modification Order?	A new employer can apply to be added to the order and First for Wellbeing will be making the application. The application will only be successful if it can show a strong connection with local government, e.g. it is wholly or partly funded by NCC (or another local authority) or provides a service that used to be entirely provided by a local authority.
25	Are roles and responsibilities protected in the same way as terms and conditions of employment?	In relation to job roles there is no protection period. Should there be a requirement to make changes to a role this can be done at any time. In the majority of cases, such changes will be minor or will relate to changes in processes or systems. Where more significant changes are required, staff will be consulted with regarding any proposed changes.
26	Will I be issued with a new contract or asked to sign a new contract of employment?	As your employment automatically transfer to the Wellbeing CIC you will not be issued with a new contract, however, around the time of the transfer you will receive a letter from the Wellbeing CIC confirming the protections under TUPE, any measures (changes) to be made in connection with the transfer and welcoming you as a transferring employee.
27	Will my line manager change?	It is not envisaged that there will be any immediate changes to the reporting structures.
28	I understand that my continuous service is protected under the TUPE Regulations, but what happens if I voluntarily leave the Wellbeing CIC to take up a position with NCC or another Local Authority employer (or another organisation covered by the Redundancy Modifications Order)?	Where an employee is transferred under TUPE and returns voluntarily to local government within five years, continuity of service for contractual purposes is preserved. However under statute this will be considered as a break in service for redundancy purposes, the calculation of which starts afresh under the new employer.  For further information on this provision see NJC Circular 1/03 for Local Government Services Staff.
29w	Will employees have access to learning and development opportunities?	Yes - It has been assumed that there will be a significant programme of learning and development for employees delivering newly integrated services.

30	Who can I contact if I have further questions regarding TUPE or if I need support?	Please contact your Line Manager in the first instance or email <a href="mailto:Epit@northamptonshire.gov.uk">Epit@northamptonshire.gov.uk</a> You can also contact your trade union representative if you are a member of a trade union.
31	Will staff 'in scope' to transfer still be allowed to carry untaken annual leave over from March to April 2016 given that this will also be into the Wellbeing CIC?	The current NCC policy is that in <b>exceptional circumstances</b> a max of 5 days can be carried forward to the new leave year, subject to sign off from the manager (and it must be used within 2 months). The 2016/17 leave year will not be any different and leave can be carried over, however this will still by exception as annual leave should be used by 31 <sup>st</sup> March.
32	Will we become private sector employees rather than public sector?	First for Wellbeing is a community interest company with three founding partners, the University of Northampton, Northampton Healthcare Foundation Trust and the University of Northampton, public sector employers. It does not have private shareholders and any profit made does not go to one individual. Employees within the company will be delivering wellbeing services to the general public and will be based in the local community.
33	Where will the money come from to pay us and who will do the actual payroll?	The money will come from NCC to pay employees that are working on delivering services that NCC have contracted with First for Wellbeing to deliver.  LGSS will continue to administer the payroll.
34	Will Unison still be recognised/represented in the CIC?	Yes there will be a trade union recognition agreement in place.
35	Will the customers attending courses be customers of NCC or customers of the CIC?	The income from products or services delivered as a managed service for NCC will flow straight to NCC, whose name would be at the top of any invoices, for example. While our customers will deal with employees of First for Wellbeing CIC Ltd, we recognise the importance of this distinction in terms of impact on taxation, regulatory oversight etc. and we will bear it in mind, particularly in terms of how our products and services are advertised, described and branded.
36	At the moment the more income we attract, the more we need to spend. Will there be an agreed proportion of all income available to run the events that cause the income, in particular towards the end of any financial year?	Budgets will be managed in the same way that they are now.
37	Is there somewhere we can go to in order to read more about the way that	The set of cabinet papers provide all of the relevant information (cabinet meeting 10 <sup>th</sup> November 2015). Go

	the CIC will be a better financial future that the way it all works now?	to <a href="http://www.Northamptonshire.gov.uk">www. Northamptonshire.gov.uk</a> - click on A – Z of services – C – Cabinet – cabinet meeting papers  <a href="https://cmis.northamptonshire.gov.uk/cm5live/MeetingsCalendar/tabid/73/ctl/ViewMeetingPublic/mid/410/Meeting/2460/Committee/399/Default.aspx">https://cmis.northamptonshire.gov.uk/cm5live/MeetingsCalendar/tabid/73/ctl/ViewMeetingPublic/mid/410/Meeting/2460/Committee/399/Default.aspx</a>
38	I previously transferred into NCC from another organisation under TUPE, will my current non NCC terms and conditions continue to be protected following this latest transfer?	Yes
39 NEW	Will the Microsoft Home Use Program continue once staff transfer out of NCC?  <a href="http://www.microsoft.com/hupuk/home.aspx?country_id=GB">http://www.microsoft.com/hupuk/home.aspx?country_id=GB</a>	This is currently under investigation
40 NEW	Will there be new generic email addresses in the new format, replacing the current @northamptonshire.gov.uk ones? E.g. Individual libraries, AnswersPlus, RegistrationService@ and so on?	Yes
41 NEW	In respect of the Local Gov Pension Scheme what will the Employer Contribution rate be for First for Wellbeing?	This is not known at present as pensions actuaries have to calculate this based on the cohort of staff who are transferring. This work is currently ongoing. For information the present NCC employer contribution rate is 22.6%