

Wiltshire Council Human Resources

TUPE Guidance for Managers

This guidance can be made available in other languages and formats such as large print and audio on [request](#).

What is it?

TUPE stands for the Transfer of Undertakings (Protection of Employment) Regulations 2006. The purpose of TUPE is to protect employees if the business in which they are employed changes hands. It preserves an employee's continuity of employment and terms and conditions of service.

An employee has the legal right to transfer to the new employer on their existing terms and conditions of employment and with all their existing employment rights and liabilities. This includes any outstanding claims such as claims for unlawful discrimination, unpaid wages or personal injury.

Its effect is to move employees and any associated contracted liabilities from the old employer (known as the transferor) to the new employer (known as the transferee).

There are three situations where TUPE might apply:

- Contracting Out or Outsourcing – where a client ceases to carry out activities for itself and assigns them to a contractor to perform.
- Contracting In or Insourcing – where the client stops the activities being carried out by a contractor and brings them back in house.
- Contractor to Contractor – where the contract ends and is awarded to a new contractor on subsequent re-tendering.

Each of these is explained further on.

Go straight to the section:

-
-
-
-

Who does it apply to?

This policy applies to all Wiltshire Council employees (with the exception of teaching and non-teaching staff employed in locally managed schools).

When does it apply?

A relevant TUPE occurs when there is a business transfer or a service provision change (see toolkit, managers guidance for definitions - [link](#)). When a service review is being considered it is your responsibility to seek guidance from HR and Legal to determine if TUPE applies or not.

When does it not apply?

There are certain exemptions to a business transfer or a service provision change which are detailed in the managers' guidance toolkit ([link](#)).

The Process for contracting out- where Wiltshire Council is the transferor.

Planning

1. TUPE may be one of a range of possibilities being considered as part of a service review and you may find the [Organisational design toolkit](#) helpful in determining your service needs.
2. It is advised that the responsible Director (or nominee) sets up a Project Group comprising of representatives from Finance, Human Resources, Legal, Commissioning and the relevant Business managers to make sure that all options and proposals are considered. The Project Lead will be the nominated officer from the service area under review and Human Resources will act as the point of contact to drive the process forward.
3. Letters of intent need to be sent to the trade unions and they must be included in this preliminary planning stage so they can feed into the options being considered.
4. An announcement needs to be made to staff by the Project Lead explaining that their service is subject to a service review and they will be kept informed of any implications this will have for them. Further information on the legal duty to consult is given in the toolkit, managers' guidance ([link](#)).

Scoping

5. A preliminary scoping exercise for contracting out needs to be conducted

by the project group to determine the extent of the review and what positions may be affected and assigned to the transfer and the cost implications. The results of this exercise need to be included in the report that goes to cabinet or CLT (see points 12-14 below).

6. The scoping exercise information and instructions sheet should be used as a tool ([link to toolkit](#)) by the Project Group to identify all affected employees and to determine which employees fall within or outside of scope. It is an objective exercise to ascertain fairly those employees who are assigned to the economic entity that is being considered for transfer and to what extent they are employed on the activities of this economic entity.
7. The regulations do not quantify what percentage of time is required by employees working on the specific duties that are transferring for them to be included on the list. What is important is if there is a deliberate organisation of employees whose main purpose is to carry out the client's work. Discussions will need to take place to determine which employees are working on the dedicated duties that are transferring for the purpose of carrying out the client's work. Factors to be considered include:
 - what is written in employee's individual contracts on what their duties are.
 - what the management arrangements are for the service.
 - how the cost of employees services are allocated between different parts of the business.
8. This exercise will involve reviewing statements of particulars or contracts of employment, Job Evaluation Questionnaires (JEQ) and Job Descriptions (JD). The actual work undertaken will also need to be reviewed if this differs from the contents of the JEQs and JDs.
9. The spread sheet ([link to toolkit](#)) needs to be completed with the results of the scoping exercise. For data protection purposes the names of affected employees cannot be revealed at this stage but details of the numbers involved and the job titles can be given to members of the project group and the unions.
10. If an employee has a substantive contract of employment (or a contract of apprenticeship) immediately before the transfer and their role is earmarked as one to be transferred they are deemed to be 'assigned' for TUPE transfer and will be informed of this in writing.
11. It is essential that a clear audit trail is maintained of all decisions and actions taken by the Project Group so that any queries or challenges can be backed up with this supporting material.

Recommendation of a TUPE transfer

12. If the service review's decision is to recommend a TUPE transfer the Director needs to prepare a business report for cabinet or CLT which details the case for this and includes financial information that has been fully appraised by Finance. The results and financial implications from the scoping exercise will need to be included in the report.
13. The report must remember to identify any hidden costs or knock on effects such as:
 - staff who are separate from the main group of affected employees but their main role includes providing support to the affected group. This means they need to be included in the scoping exercise and could include administrative, finance, procurement or other support personnel. Remember to include any staff affected that may not be at work because they are on secondment, maternity leave, sickness absence etc.
 - payments that staff transferring-in may not be in receipt of from their old employer (the transferor) but are part of the terms and conditions of the new employer (the transferee). This would have an effect on the wages bill if harmonisation subsequently occurs making the transferred-in staff eligible to receive these payments. Examples could include enhanced rates of pay for working evenings, overtime pay etc.
14. All TUPE transfers need to be approved by either cabinet or CLT depending on the number of staff affected. Transfers involving 50 + staff require cabinet approval.
15. Once approval is obtained the project group will oversee the staff transfer and ensure legal and procedural compliance is met for the TUPE transfer.

Informing and Consulting with Trade Unions

16. There is a legal duty to consult with unions and individual employees about a TUPE transfer and also if any measures are envisaged. Details of what consultation involves and what needs to be included is given in the toolkit, managers' guidance (link).
17. As previously stipulated the unions should be included in the preliminary stage when the project group is considering a service

review. Once a decision is made that TUPE applies formal consultation commences.

Points to be aware of - other considerations

Secondments and TUPE

18. With increased partnership working amongst the public services secondments have sometimes been used when a service is transferred from one organisation to another with the intention that the employees remain as employees of the original organisation rather than be TUPE transferred.
19. However, owing to a recent employment tribunal these secondments are now risky and viewed as ineffective and the employee/s has indeed TUPE transferred which means the TUPE transfer policy, including consultation, needs to be followed.

Right to Opt Out of the Transfer

20. Under TUPE all assigned employees have the right to opt out of the transfer. You should obtain their written objection at the earliest opportunity and advise them of the consequences. ([template letter with advice on the consequences of their actions](#))
21. As TUPE protects an employee's continuity of employment and contractual entitlements opting out will mean that the employee's employment comes to an end at the transfer date and they have no right to be redeployed or to receive a redundancy payment. They have in effect terminated their contract of employment.
22. However, if an employee objects to the transfer and resigns because they feel the transfer will result in a substantial and detrimental change in their working conditions they may have the right to bring a claim for constructive dismissal if they have the necessary minimum continuous service of 1 year for employees employed before 6 April 2012 and 2 years for employees employed after 6 April 2012.

Disclosure of Employment Information required for Due Diligence

23. If the TUPE transfer is definitely to proceed a due diligence exercise needs to be undertaken where the old employer (the transferor) gathers and discloses employment information to the transferee (new employer) prior to negotiation of the transfer contract. This will ensure the transferee (new employer) will know exactly what it is liable for as they will inherit the contracts of employment of the transferred employees and all associated rights and liabilities.

24. Much of the information required can be gathered beforehand as part of the bidding and consultation process which will help when the official due diligence exercise must be done. However, any information provided before the 'official due diligence' exercise must, for data protection purposes, be anonymous. ([link to checklist 1](#))
25. The due diligence information must be provided by the old employer (Transferor) to the new employer (Transferee) 14 days before the transfer takes place. The provisional information already gathered and passed to the Transferee (new employer) as part of the bidding and consultation process will need to be finalised and updated and no longer has to be anonymous.
26. The due diligence questionnaire covers a wide range of information relating to the business and employees. ([link to checklist 2](#)).
27. Failure to supply the correct information required under TUPE regulations could make the transferor liable to fines of a minimum £500 per employee
28. The information received as part of the scoping and due diligence exercises may result in wanting to re-negotiate the contract and might involve a re-structuring, an alteration to the price or adding a particular warranty or indemnity which is why Commissioning and Legal need to be involved in the Project Group.

In-Sourcing a Service Provision or Business Transfer to the Council

29. If it has been agreed to bring a service back in-house or to take on a new service which will involve a TUPE transfer of staff to the council and cabinet/CLT approval has been obtained (refer to points 12 – 15 above) the relevant Service Director/Departmental Manager will need to make contact with HR, Legal and Commissioning to make sure the process is followed correctly.
30. The Service Director/Departmental Manager with the assistance of the HR lead and Legal is legally required to write to the existing provider with information on the service review/restructure. The letter will also contain information on any measures (changes) that are envisaged to the structure or terms and conditions for economic, technical or organisational (ETO) reasons post transfer (see points 47– 51) or, that no measures are envisaged.
31. Although, an employer is only required to consult with appropriate representatives of its own workforce in TUPE transfers both the transferor and Wiltshire Council will be held liable for any award of

- compensation made by an employment tribunal for failure to inform and consult properly. Therefore joint consultation with the appropriate representatives of the transferor (old employer) to ensure that the process runs smoothly is advisable or at the very least HR will need to ensure that the transferor (old employer) arranges for consultation to take place and attend with the Service Director or Departmental Manager any consultation meetings as appropriate with the transferor (old employer).
32. When arranging either collective or individual consultation meetings consideration should be given to ensuring meetings are accessible and that any reasonable adjustments are made.
33. Meetings should cover:
- letters to be sent to the assigned employees by the transferor explaining the transfer. The council's Service Director/HR Lead will need to check this is done.
 - a presentation by the Service Director/Head of Service to the affected employees with the opportunity for questions and answers which should be recorded for future reference.
 - consultation with both the existing providers' Trade Union representatives and the council's Trade Union representatives.
 - one to one meetings with assigned staff by the relevant manager and HR giving employees the opportunity to ask questions which need to be recorded along with the responses.
 - writing to any staff who did not attend consultations to keep them informed of the TUPE transfer process.
 - HR will need to investigate and consult with employees, or their employee representative, to see if a change in place of work amounts to a material detriment or not and for the decision to be conveyed to the affected employees.
 - discussions with affected staff on what entitlements they may get under their transferring terms and conditions of employment.
 - liaison with Pensions to provide pension information and maybe a presentation to affected employees to explain the provisions of the LGPS.
34. If there are not sufficient posts for all of the transferring employees consideration will need to be given to a redundancy exercise after the transfer has taken place. The redundancy policy and procedure followed will be the one according to the terms and conditions that the employees have transferred in on. Any costs involved with a redundancy exercise need to be taken into account in the service area/departmental budgets.
35. The Service Director/Departmental manager and HR need to check if

any recruitment is required if not all the employees are transferring. Make sure, however, that employees are kept informed and reassured that any advertising and recruitment will not affect their positions.

36. The HR Lead will liaise with Legal about contacting the existing provider with a due diligence letter confirming that the transfer is covered by TUPE and requesting the required information at least 14 days prior to the transfer date. The information required will include all payments, salaries and allowances (e.g. unsocial hours) and any deductions made. ([link to checklist 2](#))
37. Liaison with the SAP team will be necessary to build the new posts and structure into Wiltshire Council's payroll.
38. CRB checks will need to be undertaken if required.
39. Once the transfer has taken place HR should confirm with all transferred employees, via a transfer letter, that they are now employees of Wiltshire Council and arrange for them to attend an induction programme.
40. Payroll and starter forms will need to be completed.

Contractor to Contractor TUPE Transfer (Service Provision Changes)

41. The TUPE 2006 Regulations under the service provision changes allows for contractor to contractor transfers for which the responsibility for ensuring TUPE regulations are complied with rest with the respective contractors.
42. The project team should ensure that efforts are made to find out the numbers, grades, salaries etc. of outgoing contractor staff assigned for transfer to the new contractor ([refer to sample letter](#)).
43. Prior to the end of the initial contract the outgoing Contractor should be asked to supply information about the number of employees wholly or mainly employed to undertake the contract requirement. If it is apparent from the information provided that there may be a TUPE transfer then this information needs to be included in any subsequent tender documentation.
44. Wiltshire Council's commissioning expertise in this field along with the advice of Legal will be able to determine if a TUPE transfer is involved or not so that they can judge the accuracy of the proposed contract and pricing.

45. Wiltshire Council must be careful not to impose its own view of the application of TUPE on a third party and it will not guarantee any information received from an outgoing Contractor which is passed on to the incoming contractor. The information provided is for tenderers to form their own opinion and to price accordingly.
46. Wiltshire Council will not provide any indemnities for a Contractor's failure to comply with the requirement of the TUPE regulations.

Variation to terms and conditions of employment

47. A variation to terms and conditions of employment by either the transferor or transferee which is connected to the transfer is automatically unfair unless there is an ETO (Economic, Technical or Organisational) reason entailing changes in the workforce or a reason unconnected with the transfer. Any other variation will be void.
48. There is no statutory definition of an ETO but examples of an ETO reason are:

Economic reasons – where the demand for output has fallen and profitability is unsustainable without dismissing staff.

Technical reasons – where the transferee wishes to use new technology and the transferring employees do not have the required skills.

Organisational reasons – where it is not practical to transfer employees due to the location of the transferee.
49. The ETO reason must relate to the transferor's future conduct of the business and be relevant after the transfer. It must be an objective of the employer's plan and not just a possible consequence of it.
50. For an ETO reason to be valid the transferee must establish the need for a change in the workforce which normally means a workforce reduction or a change in the job function of the employees.
51. Changes to terms and conditions of employment in anticipation of a TUPE transfer are automatically void.

Possible Options of variations to terms and conditions

52. The harmonisation of terms and conditions of service on a transfer is a difficult issue and the options are very limited. The possible options listed below need to be viewed cautiously and are by no means safe.

These options must be discussed with HR and Legal before being considered and implemented.

53. Current case law indicates that the transferee can change terms and conditions of employment which are to the benefit of the employee. Harmonising up is, therefore, a potential option.
54. An agreement between parties to vary the contract involving detrimental changes could mean that there is less chance of a challenge although this would not be definite. It may be possible, however, if something else can be provided in return or it can be proven that owing to economic circumstances a more favourable settlement isn't possible without recourse to making job cuts.
55. Application for another position

An employee who has transferred but subsequently applies and is appointed to another position can be offered the new position on revised terms and conditions of employment.
56. Buy Out

Although not watertight it is possible for local authorities to buy out terms and conditions and to reach agreement to vary a contract and to write this into any agreement which may limit the chances of any challenge being brought.
57. Equal Pay claim

If a TUPE transfer results in a two tier system of terms and conditions of service that could potentially lead to an equal pay claim a tribunal may accept this as a defence argument.
58. Delaying the harmonisation

By delaying (for a considerable period of time, which is not defined) a harmonisation review of terms and conditions an ETO reason may develop during the intervening period which would mean the harmonisation is not connected to the TUPE transfer.

Pensions

59. There are special provisions for dealing with occupational pension schemes.
60. If the transferor (old employer) provided a pension scheme the

transferee (new employer) must provide some form of pension arrangement for members of the old employer's scheme and for employees who are eligible to join. It does not have to be the same as the arrangement provided by the old employer but will need to be of a minimum standard as specified under the Pension Act.

61. All employees transferring into the Council will become members of the Local Government Pension Scheme (LGPS) unless they actively decide to opt-out of the scheme. Contact will need to be made with the administrator of the Wiltshire Pension, [andrew.cunningham](#), fund prior to the transfer to make arrangements and to determine that there are no problems with transferring staff accessing the Wiltshire pension fund.
62. Under LGPS provisions employees being TUPE transferred from the council have entitlement to an LGPS pension or comparable 'good quality' pension under which they can continue to earn pension benefits through their future service. Contact must be made with the Wiltshire Pension Fund to ensure that the statutory obligations are fulfilled and to find out how the [new employer](#) can apply to become an admitted body to the LGPS scheme

Roles and responsibilities

Employee responsibilities

Line manager responsibilities

HR responsibilities

Frequently asked questions

- 1.
- 2.
- 3.
- 4.

Definitions

Equal Opportunities

This policy has been Equality Impact Assessed ([link to EIA for policy](#)) to identify opportunities to promote equality and mitigate any negative or adverse impacts on particular groups.

If appropriate:

Managers will make any necessary adjustments to ensure that all employees are treated fairly. For further information see the guidance on equal opportunities in ([link to equal opps guidance](#))

Legislation

Note any specific pieces of legislation relied on

This policy has been reviewed by an external legal organisation to ensure compliance with (the above legislation and) our statutory duties.

Advice and guidance

If you require help in accessing or understanding this policy [[or completing any of the associated forms](#)] you should contact your line manager or trade union representative if you are a member.

If, due to the nature of your query, it is not appropriate to contact your line manager you should contact your head of service who will nominate an appropriate manager or colleague to help you.

See [guidance for managers – giving advice on policies](#).

Further information

There are a number of related policies and procedures that you should be aware of including:

There is also a [toolkit](#) including manager guidance and supporting documents to use when following this policy and procedure.

For further information please speak to your supervisor, manager, service director or contact your [HR advisor](#).

Policy author	HR Policy and Reward Team – (Initials)
Policy implemented	DD-MM-YYYY
Policy last updated	DD-MM-YYYY

TOOLKIT

DEFINITIONS

MANAGER GUIDANCE

TUPE or not TUPE – What is a legal TUPE transfer?

Relevant Transfer:

63. The TUPE regulations apply when a 'relevant transfer' takes place.

A relevant transfer refers to either a business transfer or a service provision change. In some instances both are involved.

64. The regulations apply regardless of the size of the transferred business. They apply equally to a large business involving the transfer of hundreds of employees or a very small one transferring just one or a few employees. The new employer (the transferee) cannot choose which employees will transfer they will inherit all the employees affected by the TUPE transfer.
65. A relevant transfer can still apply when there is a temporary cessation in the provision of the contract when one service finishes and the new one starts.
66. Transfers in the public sector are covered by the Cabinet's Office statement of practice 'Staff Transfers in the Public Sector' which guarantees TUPE equivalent treatment for any employees transferred.

What is a Business Transfer?

67. A business transfer is where a business undertaking or part of one is transferred from one employer to another as a going concern. This means that the identity of the employer will change and there will be the transfer of an 'economic entity' which retains its identity.
68. An economic entity means an identifiable set of resources, including employees, assigned to a business. The set of resources retains its

identity after the transfer. It can also apply when just part of a business is transferred. The business must have its headquarters in Great Britain.

69. The following factors are taken into account when deciding if TUPE applies to the business transfer:
- if the type of trade or business being conducted by the transferee (incoming business) is fundamentally the same as the transferor's (outgoing business)?
 - what tangible assets (buildings, moveable property) or intangible assets (such as goodwill) are transferred as part of a going concern.
 - whether the majority of the employees are taken on by the new employer.
 - whether any customers or service users are transferred.
 - the degree of similarity between the activities carried on, before and after the transfer.
70. If the answer is yes to the majority of the above it is safe to assume that there will be a transfer of an economic entity meaning TUPE applies and the TUPE policy and procedure needs to be followed. The Council's default position is that TUPE applies unless proved otherwise.

Exemptions to a business service provision?

71. Where resources are applied in a variable pattern over several parts of a business there is less likelihood that a transfer of any individual part of a business would qualify as a business transfer. If the transfer just involves the transfer of shares or the sale of equipment alone then it is unlikely to be a TUPE transfer.
72. The default position is that TUPE applies unless proved otherwise.
73. TUPE is complicated and, ultimately, if the economic identity test is challenged it would be a matter for the tribunals or courts to determine in each case whether there has been a TUPE transfer or not.

What are Service Provision Changes?

74. Service Provision Changes provides TUPE protection to employees where the undertaking in question is a service such as collecting rubbish or a maintenance one. There are three possibilities:
- Outsourcing or Contracting Out – where a client ceases to carry out activities for itself and assigns them to a contractor to perform.
 - Insourcing or Contracting In - where the client stops the activities being carried out by a contractor and brings them back in house.

- Change of contractor - where the contract ends and is awarded to a new contractor on subsequent re-tendering.
75. The regulations only apply where immediately 'before the service provision change there is an organised grouping of employees which carry out activities on behalf of the client' and 'the client intends that the activities will, following the service provision change, be carried out by the transferee'. Employees do not need to work exclusively on these activities to be affected but their principal purpose is carrying out the activities concerned for the client and they are deliberately organised and assigned to do so.
76. TUPE still applies if there is a temporary break in the continuity of the contract from when the contract finishes with the transferor (old employer) and begins with the transferee (new employee).
77. To determine the exact extent and effects of a change in service a scoping exercise needs to be conducted.
78. Once it is determined that a group of employees is covered by a service provision change all of those employees will transfer under TUPE to the new service provider irrespective of whether or not the group subsequently maintains its identity.

Exemptions to a Service Provision Change

79. Where there is no identifiable group of employees there is no service provision change and TUPE will not apply e.g. a contractor is engaged to provide a courier service but the collections and deliveries are carried out each day by various different couriers on an ad hoc basis.
80. If the contract is wholly or mainly to supply goods for the client's use it is not a service provision. For example if a client arranges a contractor to supply sandwiches and drinks to be sold in its staff canteen this would not be a service provision. However, if the contract was to run the client's staff canteen TUPE would apply.
81. When the client engages a contractor to provide a single specific event or a task of short-term duration such as organising a specific event e.g. a conference, it is not a service provision.

Informing and Consulting with Trade Unions

82. Wiltshire Council will enter into consultation with recognised Trade Unions and individual employees affected by the TUPE transfer as a

matter of course. (link to agreement between Wiltshire Council and the Council's Recognised Trades Union (Unison, GMB, Unite)

83. TUPE transfers trade union recognition agreements as long as the transferring group of employees maintains a distinct identity from the rest of the transferee's business.
84. Trade Union representatives of affected employees have the right to be informed about a prospective transfer and the service is subject to review. They must also be consulted about any measures which the transferor or transferee employer envisage taking with the affected employees. Envisaged means those measures that can be anticipated or foreseen as likely to happen. Measures are changes that will affect employees and can be of a major concern such as a possible major reorganisation or a minor change such as a change in pay arrangements.
85. There is no set time limit specified for consultation to take place other than the legislation states it must be meaningful. The consultation process should be planned and managed with full and proper discussions.
86. Both the old employer (transferor) and new employer (transferee) need to consult prior to the transfer with the trade unions of their respective employees who may be affected by the transfer. Wiltshire Council has recognised trade unions but this might not be the case for employers we are transferring services into or employers that are transferring services to us. These employees must be given the opportunity to elect their own representative (see points 86 - 88). The HR Lead of the project group needs to check who this person is, that consultation takes place and what measures, if any, are being taken. In the event that the employees do not elect an elected representative the employees may choose a nominated person.
87. All affected permanent, temporary, casual and apprentices should be included in the consultations plus any staff affected who are not currently at work owing to a career break, sabbatical, secondment, maternity leave, sick leave etc.

Agency Workers

88. Agency workers working temporarily in the service that is being transferred will not transfer with the employees of the transferor who are assigned or mainly assigned to the business and they do not have the right to participate in the election of employee representatives

89. However, the Agency Workers Regulations 2010 (AWR) requires the unions to be given information in the consultations about the use of agency workers by the transferor including:
- the number of agency workers working temporarily for the transferor and under its supervision.
 - the type of work those agency workers are carrying out and where they are working.

Election of Representatives

90. An employee representative can be an existing employee elected representative who may have been elected for other purposes or the employer invites the affected employees to elect one or more of their number to represent their interest in consultations.
91. The employer will need to check:
- there are enough representatives to represent the number of affected employees and the classes of employees.
 - the number of employees a nominee has to be proposed by.
 - that the candidates for nominated election are employees affected by the TUPE proposal.
 - that the workplace ballot for the election of employee representatives is conducted in secret and all affected employees are given the opportunity to put their name forward for election and to vote in the ballot.
92. Advice will need to be taken from Legal and HR to make sure a fair and legal election procedure is followed.

Good practice guidelines

For consistent consultations with the trade unions these should include:

93. Early Involvement for better understanding and transparency. Discussing key issues with the unions and the reasons why they are being considered giving the unions an opportunity to influence matters.

This will include:

- Checking which trade unions represent the affected staff.
- Determining what contact will be made with the trade unions prior to producing the briefing material.
- Deciding if the unions can be involved in the TUPE scoping brief.

- Looking at what are the likely key issues from the TUPE scoping review and how these can be raised at an early stage with the trade unions.
 - Responding to any views made by the trade unions at this early stage.
94. Making sure the unions have an understanding of the service being reviewed, how it is currently operating and why TUPE is being proposed rather than other options and if any support can be given to help their understanding of the situation. Making sure they comprehend the whole process and how the scoping, review and execution of the project will be undertaken.
95. Briefing meetings and consultation meetings should be properly organised with agendas and papers circulated in advance to ensure all parties are involved in full discussions of the key issues. Meetings with the relevant trade unions should be minuted and attended by the project lead, human resources and the other members of the project group.
96. Trade union representatives attending staff collective briefing sessions and being able to use these meetings to talk to their members. Any assistance that can be provided to help contact between the trade unions and their members affected by the TUPE transfer should be facilitated for instance they should be included in meetings between the transferee and staff.
97. Information provided to the trade unions is given in a timely manner. Consideration needs to be given to when information is released, how detailed it is and how best it can be summarised. The information provided shouldn't contain any surprises; a verbal 'heads up' can be given prior to the release of written documentation, particularly if there is a delay in preparing it. The trade unions should receive information in advance or at the same time as the employees and any issues regarding confidentiality of the information provided must be raised with them.
98. The trade unions contributing to the consultations by challenging the project milestones, suggesting alternatives, providing background research etc. Any feedback, suggestions and proposals made must be considered, responded to and recorded.
99. Sharing final arrangements with the trade unions if the transfer goes ahead and giving them the opportunity to respond but keeping in mind the legal and Wiltshire Council deadlines. Final comments from the trade unions should be addressed, responded to and recorded.

Information to be provided

100. The following information on potentially affected employees will be needed for the consultations to take place:
- employees who will be transferred
 - those who may be transferred
 - those who are not transferring but their jobs may be affected by the proposed transfer
 - those whose job applications within the organisation are pending at the time of the transfer
 - existing employees of the transferee who will be affected by the transfer.
101. In addition the following information will need to be provided so that meaningful consultation can take place:
- the fact that the transfer is to take place.
 - the date of the transfer (approximately if no specific date).
 - the reasons for the transfer.
 - details of the economic entity to be transferred.
 - any legal, economic and social implications of the transfer i.e. the effect on employment contracts, statutory rights and collective agreements, any effect upon pay and other benefits in the employment package.
 - the measures the old employer (transferor) envisages that the new employer (transferee) will take in connection with the transfer.
 - the measures that the new employer (transferee) envisages taking with transferring employees. They must tell the transferor whether it is planning to dismiss any of the employees, alter their terms and conditions after the transfer or take any other measures in relation to their employment. Although, the changes that can legally be made as a result of a TUPE transfer are extremely limited.
 - if no measures are envisaged.
102. For all potentially affected employees information on terms and conditions of employment, policies and procedures, location and timescales will also need to be available.

Consultation Process

103. The process of consulting with trade unions and employees involves:
- an initial letter to affected employees outlining the plans.

- a letter of intent to the Trade Unions starting consultation.
 - discussions with employees to determine the full extent of their job role in relation to the completion of the scoping exercise.
 - provision of scoping exercise results to TUs with names removed for data protection.
 - an initial letter to affected employees earmarked by the scoping exercise outlining the transfer plans.
 - one to one discussions with employees regarding the outcome of scoping and the right of appeal against selection or non-selection.
 - a formal announcement by the Head of Service at a consultation meeting outlining further details to affected staff. Affected staff should be given the chance to ask questions and a record of these questions and the responses should be taken for future reference and records.
 - notification to the Transferee (new employer) giving an anonymous list of the affected employees with their terms and conditions of service and policies and procedures.
 - arrangements of a meeting between Transferee (new employer), TUs and affected staff.
 - provision of a measures letter confirming what changes will be made which will affect the staff or if there will be no measures.
 - regular updates for affected staff either verbally or in the form of a newsletter.
 - copy/copies of employee transfer letter(s).
104. Consultation should be taken with a view to obtaining agreement on how the transfer will be carried out and how the effects on employees will be managed.
105. The transferor and transferee must consider any representations made by the appointed or elected representatives and reply to those representations. If the representations are to be rejected reasons must be given for doing so in writing.
106. After the consultation period affected employees and trade union representatives must be informed in writing and given:

- the outcome of the consultation process
- the date the transfer will take place (if it goes ahead)
- further details of the new employer
- reassurance of future terms and conditions
- details of pension arrangements.

Penalty

107. Failure to inform and consult can lead to an Employment tribunal complaint and if successful the award can be up to 13 weeks pay per affected employee. The transferor and the transferee are both liable for any award of compensation made by an employment tribunal for failure to inform and consult.