

WORKSTEP to Work Choice Transition events November 2009

HR/ Transfer of Undertakings (Protection of Employment)

In November 2009 DWP ran a series of "WORKSTEP to Work Choice Transition events" in Edinburgh, Leeds and Cardiff. The following is a summary of responses to questions raised during sessions on TUPE and HR considerations.

	Question	Response
1	Do employees have to TUPE transfer to the new employer?	No. Employees can object to the transfer. The effect of objecting is that they have terminated their employment because their employment is continuing under TUPE with the new employer, and they lose their rights to redundancy payments. An employee who does not want to transfer would need to think carefully about their position, and take advice from their employer and employee representatives before confirming their objection.
2.	I have employees whose work may be transferring to a new employer, but I can offer them alternative work. Do I have to transfer them?	No. TUPE operates to protect employment where work transfers to a new employer, but if an employer can offer alternative work you can agree with the new employer that the work will transfer, but you will redeploy your employees. This has to be with the agreement of all parties, including the affected employees, because they do have the right to transfer with their work.
3.	Do people on Fixed term or temporary contracts transfer under TUPE?	People on Fixed term contracts should be treated in the same way as permanent staff. The end date of their contract will determine whether they are in scope for transferring. Good practise is that end dates should not be aligned to the TUPE transfer, but to the requirements of the work they are doing. The same consideration in terms of work requirements should be given to temporary staff. The new employer would then be responsible for deciding whether they require the FTAs/temp workers to continue in employment or whether to end the contract for an Economic, Technical or Organisational (ETO) reason.

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4.	We have not made a bid for Work Choice but some of our staff administer Workstep provision for our employees. Would they have to transfer to the new Work Choice provider?	See Answer to question 2. In this situation a TUPE transfer can happen, but if you wish to offer alternative work to your employees you could do so. This has to be with the agreement of all parties, including the affected employees, because they do have the right to transfer with their work.
5.	I have employees who administer Workstep but it only takes up part of their time. Do they have to transfer?	This depends on the amount of time your employees spend administering Workstep. If the majority of their time is spent administering Workstep then they could be in scope for transfer. But see Answer to Q2 on whether they do actually transfer. If you wish to offer alternative work to your employees you could do so. This has to be with the agreement of all parties, including the affected employees, because they do have the right to transfer with their work.
6.	My employees work may be split between two or more providers. Who do they transfer to and who decides this?	It is possible for work to be split between more than one employer. It is the responsibility of the old and new employers to agree a sensible split of work, including subsequent employee transfers.
7.	Will my employees TUPE transfer to Prime or Sub contractors?	Employees transfer to the employer taking over their actual work, even if the work is delivered differently. This means it could be a transfer to either Prime or Sub contractors. Work Choice Prime and Sub contractors need to work with existing Workstep providers and employers to ensure transfers are arranged.
8.	Some employees who may transfer to us are in the Local Government Pension Scheme. What do we do with their pension?	Government Actuary Division (GAD) requirements are that these people should be allowed to remain in their current scheme. You will need to apply for Admitted Body Status to the Local Government Pension Scheme. If this is not possible you will need to provide a pension scheme that is broadly comparable to their current scheme, and make arrangements for transfer of accrued benefits on a preferential basis to the new scheme. The new scheme will need GAD certification.