

**Green route: You are employed in the NHS and transferring to a job in a local authority**



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## Transfers to a local authority

This type of transfer typically occurs where NHS staff are transferred as part of partnership arrangements set up between NHS bodies and local authorities and on occasion when whole services are transferred as a result of legislation such as the public health transfer under the Health and Social Care Act 2012. The outcome for you as a member of staff will be substantially the same whatever the circumstances of the transfer but the mechanism and some of the detail may vary.

# The legal details

For the purposes of this guide, it is assumed that compulsory transfers will fall within the Transfer of Undertakings Protection of Employment regulations 2006 (TUPE) definition of a 'relevant transfer'. This means that TUPE would apply and employment contracts would transfer from one employer to the other without any change to terms and conditions, and without a break in continuity of service. In addition, the Cabinet Office Statement of Practice (COSOP) applies across the NHS, as it does in other parts of the public sector. As well as giving guidance on the application of TUPE in the public sector, COSOP provides some guidance on what is expected to happen when TUPE does not apply. The current version of COSOP states that the principles of TUPE should be followed that legislation should be used where possible to effect the transfer and that the staff are treated no less favorably than if TUPE applied. COSOP also states that where TUPE does not apply, and legislation is not used to effect the transfer, staff should be offered the opportunity to move to the new employer on terms that are overall no less favorable than if TUPE applied; and if they choose not to move they should, where possible, be redeployed within the transferring organisation.

It is expected that there will be appropriate engagement and consultation with staff/staff representatives before any potential transfer takes place, regardless of which body you move to or from.

# Pay and terms and conditions

The vast majority of staff employed by NHS organisations receive NHS or equivalent pay and are on NHS terms and conditions of service. Terms and conditions of service include such details as holiday and sick leave entitlement and contractual redundancy benefits. For staff directly employed by NHS organisations these are set out in the NHS terms and conditions of service handbook and for NHS employed medical and dental staff in their relevant terms and conditions of service

These documents may cover more than strictly contractual terms and conditions issues and therefore they may not all automatically transfer under TUPE. Please contact your HR department or trade union representative for further advice.

## **How will my pay and terms and conditions be affected if I transfer?**

If you are transferred to a local authority under TUPE your contractual pay and terms and conditions are protected. TUPE protects your existing NHS pay and terms and conditions at the point of transfer, and this can include any pre-agreed contractual future entitlements (e.g. a three year pay deal negotiated pre-transfer). This, however, does not cover any future changes in NHS terms and conditions of service (e.g. annual pay increases) negotiated **after** the transfer date, unless there is a specific agreement with your new

employer that they will apply. Your rights should be similarly protected at the point of transfer where the principles of COSOP (see legal details as set out above) apply to a transfer. You can expect your employer to discuss the matter with you and, if you are a trade union member, with your union representatives.

# Pension

Most staff employed in the NHS have the right to be members of the NHS Pension Scheme. Pensions under the NHS Pension Scheme include the retirement pension and early payment of pension on grounds of ill health.

If you are transferred from the NHS to a local authority, you may be able to remain a member of the NHS Pension Scheme as long as you continue to be employed on the transferred service or function. You should speak to your trade union or HR representative for more details.

Staff transferred as part of the public health transfer in 2013 maintained their NHS pension rights under a national agreement.

The ability to be a member of the NHS Pension Scheme is not retained if staff subsequently move voluntarily to a non-NHS funded service role in local government.

# Injury allowance

## **What is Injury Allowance?**

Injury Allowance was introduced on 31 March 2013 for new claims and replaced the NHS Injury Benefit Scheme. The function of Injury Allowance is to recompense employees who have temporarily lost income due to injury or illness as a result of work.

The details of the Injury Allowance provisions are set out in Section 22 of the [NHS Terms and Conditions of Service Handbook](#).

## **How will the transfer affect my access to the Injury Allowance?**

If you are compulsorily transferred from an NHS organisation to a local authority under TUPE and remain on your NHS terms and conditions of service without amendment, you should retain full access to the Injury Allowance in accordance with its terms. Where TUPE doesn't apply, COSOP should provide the same effect (see legal details as set out above).

# Staff engagement and partnership working

All staff delivering NHS services should be engaged by their employer in decisions affecting them and the services they provide. This is in line with the commitments in the NHS staff pledges which apply to all providers of NHS services.

## **What do we mean by staff engagement and partnership working?**

Good staff engagement encompasses a range of activities from sharing of information and gathering views from staff on issues that affect them to, for staff who are members of trade unions, working in partnership with their representatives on local workplace issues, adhering to legal requirements in respect of trade union membership and representation.

The best performing organisations have staff that are engaged with their employer and empowered to put forward ways of improving how things are done. They feel that they are fully consulted over issues affecting their work, and that their views are listened to and responded to. This applies equally to both NHS and non-NHS providers of healthcare to NHS patients. Research has shown that high levels of staff engagement have a positive impact on organisational effectiveness, patient satisfaction and contribute to the delivery of high quality patient care. This includes research from Aston University Business School in 2011, research from NHSE in February 2018, and research from NHSE in March 2018.

All organisations should develop an approach to how they will foster staff engagement. Key components of effective staff engagement in the NHS include:

- good leadership and good communication
- valuing staff contribution
- involvement of staff in decision making
- seeking and responding to feedback from staff
- partnership working with staff representatives

### **How will staff engagement and partnership working change when I transfer?**

All providers of NHS services are expected to work closely with their staff, on issues that affect them, whether they are members of a trade union or not, in line with the NHS staff pledges in the NHS Constitution. If you are a member of a trade union, union recognition will transfer under TUPE from your existing NHS employer to your new employer, if following the transfer, the transferring organised grouping of resources or employees retains a *distinct identity* from the remainder of the new employer's undertaking. If you are unsure how this will apply in the case of your transfer you should speak to your line manager, your HR adviser or trade union representative.

Regardless of who your new employer is following transfer, you can expect:

- **Joint working** - Any new employer is committed to the principles of effective joint working as set out in the NHS Constitution. This means that your employer should talk to you, your trade union, your professional representative body and other stakeholders, as appropriate, about decisions that affect you and the services you provide. All local authorities recognise at least UNISON, Unite and GMB for collective bargaining purposes and have their own local consultation and negotiation frameworks and fully consult staff about issues that affect them. Professional bodies also play a vigorous role

in local government. You should discuss the detail of local arrangements with your new employer.

- **Your right to become and/or remain a member of a trade union** - Your employer will respect your right to either remain a member of a trade union or to join one if you wish (regardless of whether the union is recognised by your new employer or not); to be represented by a recognised trade union; and be entitled to other rights set out in employment law concerning information and consultation. The gov.uk website includes information about trade unions and legal rights concerning union membership.
- **Your right of access to trade unions** - If you are a member of a trade union you have a right to access and make use of the services offered by your union, such as advice (including legal advice), support and assistance, at an appropriate time, regardless of whether your trade union is recognised by your employer.
- **Openness** - Your new employer will commit to achieving a climate of openness where you feel able to raise concerns, in a reasonable and responsible manner, on any aspect of service delivery without fear of recrimination. Your new employer should have an appropriate speaking up procedure in place.

# Education and training

Education and training opportunities such as on the job training, in house courses, external courses, National Vocational Qualifications, higher level courses, secondment opportunities etc usually come from staff appraisals, personal development plans and/or regulatory requirements.

## **How will my transfer affect my education and training?**

If you are compulsorily transferred to a non-NHS organisation that is providing NHS services under a contract, it is made clear in the NHS Standard Contract that all providers of NHS funded clinical services are expected to provide adequate training and development for their staff. This is to make sure that staff are up to date with their skills so that they are safe to carry out their day-to-day practice. Such requirements reinforce wider duties for providers to have regard to the NHS Constitution pledge, 'To provide all staff with personal development, access to appropriate education and training for their jobs and line management support to enable them to fulfil their potential.'

Additional training to ensure succession planning of their workforce would be for individual employers to develop in line with their own organisational business objectives and service delivery requirements to meet staff requirements and needs. Some providers of NHS services receive additional funding to provide student placement opportunities. These organisations should provide the necessary

supervisory support for students, as required by the universities and colleges.

All local authorities are committed to staff development and training although the level of resources they can commit to this varies according to financial circumstances.

# HR policies and practices

Staff delivering public services in local government can expect to work for a high quality employer. That is, an employer who provides a good working environment for their staff, an employer who takes the wellbeing of individuals seriously and an employer people choose to work for and stay with.

One way of ensuring a high quality workplace is by having good HR policies and practices. These may include policies and practices developed by your employer in partnership with local trade union representatives, which have an effect on your employment. Although developed locally, they are often based on national initiatives and guidance such as those provided by the Advisory, Conciliation and Arbitration Service (ACAS). Areas covered by such policies include equality and diversity, health, wellbeing and safety, work life balance and flexible working, discipline and grievance, speaking up/raising concerns and whistleblowing and recruitment and promotion. Your new employer will provide you with information on their policies and practices.

Most local authorities have their own whistleblowing policies in place which they should refresh when necessary, to ensure they are effective.

## **How will my transfer affect me?**

If you leave direct NHS employment to join another organisation providing health care services to the NHS, you will not necessarily

continue with exactly the same HR policies and practices you had with your former employer, unless they form part of your existing contractual terms and conditions of employment. You may wish to discuss with your HR or trade union representative in advance of your transfer to confirm which policies and practices will be transferring.

Your new employer may take some or all of your former employer's policies and practices and amend these to reflect the structure and size of the new organisation. Alternatively, they may decide to develop a new set of policies and practices or, they may already have a set of existing policies and practices. These decisions should be subject to discussion with the trade union representatives.

Contractual terms and conditions of employment are protected in a TUPE transfer except in very exceptional circumstances. They should also be protected in a transfer where TUPE does not apply but the principles of TUPE are followed in accordance with the COSOP. If you are unsure what is included as part of your contract of employment you should speak to your HR department and/or trade union representative.

Regardless of who your new employer is following transfer, you can expect the HR policies and practices of your new employing organisation to not only meet the requirements of employment and discrimination law but also, to reflect a commitment to the provision of a high quality workplace and to being a good employer, as stated in the NHS Constitution. Your existing employer should work closely with you, your trade union representatives and your new employer to achieve this.

## **FAQs**

Visit our [frequently asked questions web page](#) for more information.

# Useful resources and information

## Resources

- [NHS Terms and Conditions of Service Handbook](#)
- [Medical and Dental Terms and Conditions](#)
- [New Fair Deal](#)
- [Access to the NHS Pension Scheme for independent providers](#)
- [NHS Business Services Authority](#)
- [NHS Standard Contract](#)
- [The NHS Constitution](#)
- [NHS Staff Survey](#)
- [Speaking up](#)
- [NHS Health and Wellbeing Framework](#)
- [SPF Partnership Agreement](#)
- [Staff Transfers in the Public Sector Statement of Practice](#)
- [Local Government Association: Public health transfer: Working in local government](#)

- [NHS website](#)
- [Gov.uk – joining a trade union](#)

### **Staff engagement and organisational effectiveness**

In 2011, the Aston University Business School conducted [research](#) on behalf of the Department of Health, which provided evidence of the link between good staff experience and good patient experience. More recent research has identified links between engagement and absence levels, [employee engagement, sickness absence and agency spend in NHS trusts](#) (March 2018) and has highlighted the [links between NHS staff experience and patient satisfaction: analysis of surveys from 2014 and 2015](#) (February 2018).

### **Application of the TUPE regulations (The Transfer of Undertakings Protection of Employment)**

TUPE applies when there is a relevant transfer. A relevant transfer may include:

- a transfer of an undertaking, business or part of an undertaking or business where there is a transfer of an economic entity that retains its identity; or
- a service provision change, where a contractor takes on a contract to provide a service for a client from another contractor.

However, the law relating to transfers is complex; TUPE may not necessarily apply so you should contact your HR department, trade union or staff representative to get further advice.

For more information on [TUPE](#) see the gov.uk website.

## **Announcement of the withdrawal of the agreement 'Agenda for Change and NHS Contractors Staff – A Joint Statement'**

On 13 December 2010, the Government announced the withdrawal of the 2005 'Code of Practice on Workforce Matters in Public Sector Service Contracts' (commonly referred to as the Two-Tier Code). The withdrawal of the Code brought into question the agreement 'Agenda for Change and NHS Contractors Staff – A Joint Statement' - which was based on the principle enshrined in the wider code of practice. The Department of Health has withdrawn the Joint Statement with immediate effect.

The Joint Statement was agreed in 2005 and extended Agenda for Change (AfC) terms and conditions to staff that had transferred outside the NHS before the introduction of AfC in 2004. There was an expectation on all sides that the terms of the joint statement would be observed and implemented. These protections went beyond those afforded by the Transfer of Undertaking (Protection of Employment) Regulations (TUPE), as well as the Cabinet Office Statement of Practice.

Where the Joint Statement has already been implemented there should be no need for any action as the pay improvements are now part of employee's terms and conditions and protected by employment law and private contractor company contracts with NHS trusts will have been varied to reflect this ongoing obligation for the life of each contract.

The NHS Standard Contract has been amended to reflect the withdrawal of the joint statement and the two-tier code. NHS contractors are, however, encouraged to adhere to the Principles of Good Employment Practice that have replaced the two-tier code.

Where a contract was signed prior to the introduction of the current revised standard contract, the parties to that contract – the NHS trust and the NHS contractor - will, as part of their contractual commitments, continue to be covered by the obligation to conform with the standards and principles within the Joint Statement and the two-tier code.