

**Blue route : You are
employed in the NHS
transferring to an
independent provider**



Contents

The legal details
Pay terms and conditions
Pension
Injury allowance
Staff engagement and partnership working
Education and training
HR policies and practices
Useful resources and information



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.

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.

(*this includes private sector companies, charities, not for profit organisations, and social enterprises).

Pay 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 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 transfer affect my pay and terms and conditions?

If you are transferred under TUPE to a non-NHS organisation, which is providing NHS services under a contract, your contractual pay and terms and conditions are protected. TUPE protects your existing NHS pay and terms and conditions of service 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 to 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.

Pension

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

If you are transferred from the NHS to an independent provider you should, under the Government's New Fair Deal guidance, be able to remain a member of the NHSPS as long as you remain wholly or mainly engaged in NHS funded work. You should speak to your trade union or HR representative for more details.

Fair Deal was introduced in 1999 to provide pension protection for staff compulsorily transferred out of the public sector. The approach taken was for staff compulsorily transferred from the public sector to have access, via the new employer, to a pension scheme broadly comparable to their originating public sector pension. New Fair Deal which took effect on 7 October 2013, builds on this principle by removing the requirement for a broadly comparable scheme, and allowing compulsorily transferred staff continued membership of the NHSPS.

It will be for the independent provider to apply to the NHSPS Manager (Secretary of State (SoS) for Health and Social Care) for access to the NHSPS which, subject to the SoS's decision, will be granted via a direction for the 2008 Section of the NHSPS or a determination for the 2015 NHSPS. Details of how independent providers can apply for

access to the NHSPS for eligible staff can be found on the NHS Business Services Authority website. Membership of the NHSPS for eligible staff compulsorily transferred from the NHS to an independent provider should be continuous i.e. as if they had stayed in the NHS.

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 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 under TUPE, from an NHS organisation to an independent provider (this includes private sector companies, charities, not for profit organisations, and social enterprises), and remain on your NHS terms and conditions of service without amendment, you should retain full access to Injury Allowance.

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 in the NHS Constitution 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 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. Not all independent providers will formally recognise trade unions and engagement may be via less formal routes such as employee forums. You can check this with your HR department.

The best performing organisations have staff that are engaged with their employer and empowered to put forward ways of improving how things are done. 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** - Your 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, where applicable, your professional representative body and other stakeholders, as appropriate, about decisions that affect you and the services you provide.

- **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.
- **Staff experience survey** - Currently, independent providers do not participate in the NHS Staff Survey. Your new employer (or the principle commissioning organisation) may undertake a staff experience survey at reasonable intervals and you may be invited to take part. A summary of the survey results and actions in response to the results should be available to staff.
- **Openness** - Your new employer should 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, but these may not be provided by some smaller employers. Independent providers that are providing NHS services under the NHS Standard Contract are expected to provide access for you to local freedom to speak up guardians. See the [National Guardian website](#) to find your freedom to speak up guardian.

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 an independent provider (this includes private sector companies, charities, voluntary organisations, and social enterprises) that is providing NHS services under a NHS Standard Contract or primary care equivalent: Alternative Provider Medical Services (APMS), Personal Medical Services (PMS), General Medical Services (GMS), there is a contractual requirement to provide adequate training and development for their staff to ensure 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. 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. Details should be obtained from your employer's HR department.

HR policies and practices

Staff delivering NHS services can expect to work for an employer of choice. That is, an employer who provides a high quality working environment for their staff, 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, where they are recognised, which have an effect on your employment. Although developed locally, they may be 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.

In the NHS there are a number of good employer initiatives that have been developed nationally in partnership with NHS Employers, the government, arm's length bodies and trade unions. Such initiatives include the Health and Wellbeing framework (2021), Workplace Health and Safety Standards, and part 5 of the NHS Terms and Conditions of Service Handbook – Equal Opportunities.

The SPF's speaking up page signposts resources available to employers to help them put in place policies and practices to enable

staff to raise concerns. This includes a national policy produced to help standardise speaking up procedures across the NHS. The web page also links to [speak up](#), which offers free independent confidential advice on the speaking up process for employers and employees in the NHS and adult social care.

The good practice guidance contained within these key national resources is accessible to both NHS and non-NHS employers to help develop local policies and practices in partnership with staff and trade union representatives.

How will my transfer affect me?

If you leave direct NHS employment to join an independent provider (this includes private sector companies, charities, not for profit organisations, and social enterprises) 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 employee representatives, which may include trade union representatives.

Contractual terms and conditions of employment are protected in a TUPE transfer except in very exceptional circumstances. 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.

Independent providers of NHS services are required through the NHS procurement process to demonstrate good HR policies and practices which, in turn, support a positive working environment where staff

can provide better care and services. In fact, sometimes the benefits and ways of working in independent providers may be more favourable for your own personal circumstances. Regardless of who your new employer is following transfer, you can expect, as a minimum, 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.