

Question and Answers

Why can I not be made 'at Risk' and slotted into any vacancies that arise?

Your job is not redundant it is moving to another provider, therefore you are not deemed to be 'at risk'. If you wish to stay with the Trust you are welcome and encouraged to secure a post right up until the date of transfer. You are responsible for applying for and securing a role.

What if I don't want to go to the new organisation?

TUPE exists to protect jobs at times of such transfers in 'undertakings', if you object to transferring you are in effect resigning from your post, there would be no rights to redundancy. As above you are welcome to apply for posts that emerge and your manager can help to support you in that process.

What about mileage payments if the base is further away?

Excess Mileage payments would be paid if eligible; this is protected for 4 years under the NHS Terms and Conditions of Service. To establish if you are eligible please contact your manager or HR to discuss.

What does TUPE do?

TUPE is intended to safeguard your interests if you are working in an area – also known as an "undertaking" - which is transferred from Blackpool Teaching Hospitals to another employer.

What is an undertaking?

An undertaking is a distinct area of work – a recognisable economic entity – e.g. the payroll or finance sections, or the medical or security provisions.

What is the transfer of an undertaking?

According to the legal definition, the transfer of an undertaking occurs when there is a transfer of an economic entity that retains its identity after the transfer. That is where the assets of a business or part of it are acquired by another company which then runs the business or entity. The assets transferred can be the staff, or the staff plus equipment.

How big does an undertaking have to be?

TUPE can apply regardless of the size of the transferred undertaking. It can apply to the transfer of a large business with thousands of employees or a small one.

What happens to me if I am transferred under TUPE?

When TUPE applies to a transfer, it means that the contracts of employment of all affected staff employed within Blackpool Teaching Hospitals – that is your terms and conditions of employment at the date of transfer - are automatically transferred to your new employer.

What happens to the service I've built up at Blackpool Teaching Hospitals at the date of transfer?

The transfer does not break your service or continuous employment. The date your continuous employment started with the NHS is the one on which entitlement to statutory employment rights is based.

Can my terms and conditions of service be changed?

The new employer is obliged to honour your contract of employment, which means that they must maintain your existing pay and conditions of service. If however, your new employer were to propose changes to your terms and conditions this must be for a good business reason and through full consultation with yourself. There is no "rule of thumb" used by the courts or specified in the Regulations to define a period of time after which it is safe to assume that the transfer did not impact directly or indirectly on the employer's actions.

What if the new employer dismisses me because of the transfer?

Your new employer cannot dismiss you upon transfer. Following transfer any dismissal could only be for a carefully defined "economic, technical or organisational" reason, which requires changes to the workforce. If your new employer does dismiss you for one of these reasons, they must pay you redundancy compensation at the same level as your original NHS redundancy terms. You can still claim for unfair dismissal against your new employer, if you believe that you have not been treated fairly.

What other circumstances would allow me to claim for unfair dismissal?

If your new employer does not provide comparable overall terms and conditions of service, including pension arrangements, you would have a claim for unfair dismissal.

What does Blackpool Teaching Hospitals have to tell me throughout the Consultation period?

The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1999 mean that Blackpool Teaching Hospitals has to tell you, as an individual, and your representatives – trade unions recognised by Blackpool Teaching Hospitals Trust

- i. that a transfer is being considered and why it is being considered
- ii. about the legal, economic and social implications of the transfer
- iii. that your terms and conditions of service will transfer to the new employer (TUPE applies)
- iv. what differences, if any, it will make to you – changes in pensions etc.
- v. whether you will be moving to new premises to work for the new employer etc.
- vi. about any measures to be taken in connection with the transfer which will affect you
- vii. about any measures likely to be taken by the new employer which will affect you

When does Blackpool Teaching Hospitals have to tell me?

You must have this information in sufficient time for you/your representatives to make meaningful representations to Blackpool Teaching Hospitals and, if any of those representations are rejected, to be given the reasons rejecting them before the transfer takes place.

Can I still maintain my Trade Union membership and rights if I transfer?

Yes. Subscription payments must be made via direct debit.

Who will ensure that I and/or my representatives have this information?

Your managers dealing with the proposed transfer and your local HR Representative will ensure that you/your representatives are kept fully informed about what is happening, as set out above.

Who can I contact if I have any further questions about TUPE?

Please speak initially to your Manager and then contact HR if you need further advice.