

Frequently Asked Questions (FAQs)

Disengagement TUPE Frequently Asked Questions

What is TUPE?

TUPE – The Transfer of Undertaking (Protection of Employment) Regulations was created in 1981 and revised in 2006 and 2014 ('TUPE'). It was brought in to protect employees who employer changes as a result of a takeover, merger, change of owner, or when a contract to provide services transfers from one company to another.

When does TUPE apply?

TUPE applies where there is a 'relevant transfer' which means either:

- a transfer of a business, undertaking or part of a business or undertaking where there is a transfer of an economic entity that retains its identity after transfer (a business transfer); or
- a client engaging a contractor to do work on its behalf, reassigning such a contract or bringing the work in-house (a service provision change)

What does this mean to me?

You have been identified as being part of the group of Bank Doctors who are mainly working for NHS Professionals (NHSP) on a contract that is due to transfer to another organisation (service provision change) and who we believe are eligible to transfer to the new provider under TUPE. This is because the contract you are assigned to will transfer to a new provider.

Your registration will automatically transfer unless you object to doing so, which would have to be in writing. If you transfer, your engagement carries on without a break, giving you continuous service from the date you registered with NHSP (or before if you have transferred through TUPE previously).

It also means that your current terms and conditions of registration will transfer with you.

Do I have to transfer to the new provider?

It is your choice whether you wish to transfer or not. However, NHSP will no longer be the provider of temporary staffing services at the Trust and therefore no shifts will be able to be worked at the Trust via NHSP after the transfer date. However, you are able to opt out of the transfer and to remain registered with NHSP and undertake at other client sites. If you need support in adding other client sites to your NHSP profile to allow you book shifts at them, please contact the National Service Centre on 03332 407 552.

Can I request that my details are not transferred to the new provider?

NHSP is required under TUPE regulations to provide the new provider with certain details relating to the transferring workers. In order to meet this legal requirement, NHSP are intending to transfer your information to them once the formal consultation period has ended.

Should you wish to opt out of the TUPE transfer to the new provider and for your details not to be shared with them, you must inform NHSP in writing by contacting:

HRTransfersandImplementations@nhsprofessionals.nhs.uk

You are able to still opt out of the transfer after the details have been provided, but at this time your details will have already been shared with the new provider. However, please be assured that the new provider

has a duty to hold these details in accordance with the Data Protection Act and not to use any information for the purposes other than the transfer of the services.

Will I still get the same pay and holiday entitlement?

Your terms and conditions of registration will transfer with you to the new provider; the new provider is not allowed to make changes to these if that reason is solely connected to the TUPE transfer. We have asked the new provider if it intends to take any measures (i.e. make any changes) to your registration following the transfer and we have detailed any they have advised us of in appendix 2 of this consultation document. We will inform you of any further measures, if any, once they are known.

I have heard that the new providers pay their flexible workforce more than I am receiving currently, will I get a pay rate increase?

You will transfer over on the terms and conditions that you are engaged on currently whether these are more or less favourable than the new provider's. They may look at the possibility of harmonising your terms and conditions to match that of their other workers, but there is no obligation for them to do so.

How long will my terms and conditions be protected for?

There is no time limit on this, the terms and conditions that you transfer on are protected indefinitely. There are circumstances following a transfer where the new provider may change terms but it will be for them to explain any proposed changes and the reasons why, if that is their intention.

I contribute to a pension through my earnings at NHSP, is this covered by TUPE?

NHSP has two different occupational pension schemes depending on employee's terms and conditions and when they opted to join the pension scheme.

Employees who are on Agenda for Change terms and conditions and already members of the NHS Pension Scheme will, under the 'Fair Deal for Staff Pensions' legislation have their pension protected. Under this legislation, employees who are enrolled into the NHS Pension Scheme and are compulsorily transferred from the NHS under TUPE (including subsequent TUPE transfers), will retain access to their current (or previous employers where they have previously been transferred under TUPE) employer's pension arrangements.

Other occupational pensions are usually exempt from transferring under TUPE legislation; if you are in an occupational pension scheme the new provider has a duty to offer you a similar pension scheme in line with regulations matching employee contributions up to 6%.

I have some queries regarding the transfer, who can I contact?

Should you have any queries, please contact the HR Projects Team via email: HRTransfersandImplementations@nhsprofessionals.nhs.uk