

# TUPE TRANSFERS INVOLVING THE PUBLIC SECTOR

## THE LAW AND COMMERCIAL ISSUES FOR PUBLIC BODIES AND FOR THEIR SERVICE PROVIDERS

16 February 2012 – Manchester | 28 February 2012 – London

One Day Programme 9.30 – 16.30

**TUPE is of key importance to the public sector and those involved in public sector outsourcing. With the withdrawal of the Code of Practice in Workforce Matters in the Public Sector Service Contracts (commonly referred to as the Two-Tier Code), the Coalition Government hopes to encourage SMEs, mutual's, co-operatives, charities and social enterprises to enter the public sector market.**

**This course focuses on TUPE issues affecting the Public Sector, and those bidding for public sector work. It is led by lawyers who day-to-day advise national and local public bodies and private-sector providers about TUPE issues in outsourcing projects.**

The TUPE regulations of April 2006 brought with them a raft of extra challenges for those dealing with TUPE transfers.

This course has been designed for the Public Sector and covers in detail TUPE law and the additional requirements that Public Sector organisations are required to adhere to.

The course also looks at the practical issues that the regulations throw up, and addresses what your organisation should be doing to ensure it is protected: as the client or the provider in an outsourcing situation, or as the outgoing or incoming employer in any other TUPE scenario.

TUPE remains one of the most difficult pieces of legislation to interpret. These issues are particularly complex when outsourcing is involved.

Failure to comply with TUPE can be extremely costly as well as having a detrimental effect on workforce morale, making it imperative that anyone involved in TUPE related issues should be totally up to date.

For example the trainer will look at the *Kimberley Group Housing Ltd v Hambley and ors* and *Angel Services (UK) Ltd v Hambley and ors*, cases which have resulted in an important new approach by the EAT.

### KEY TOPICS THAT WILL BE COVERED IN THE COURSE:

- 9.30 – Overview of the law
  - Focus on outsourcing from the public sector
- When does TUPE apply?
- Who and what transfers
  - Who is an employee?
  - Employees legal rights that must be honoured by the new employer
  - The legal right to object to transferring
- Pensions
  - Special rules about public sector transfers, the Cabinet Office and “A Fair Deal for Pensions”
  - The PCSPS
  - The LGPS
  - Getting GAD approval for a private sector scheme, a “GAD passport”
- Employment liabilities inherited by the new employer
- Which employer is liable for dismissals?
  - Unfair dismissal
  - Constructive dismissal
  - Special protection against dismissals in TUPE transfers
- Consultation and information
  - Unionised workforces
- If the old employer legally recognises a trade union, does the recognition transfer?
- Pre and post transfer redundancy
- Varying employment contracts after a transfer
- Useful protection to include in the contract between the parties – and how to negotiate
- Exit provisions
- HR issues in TUPE transfers
- The Retention of Employment Model – does it still work in light of recent case-law?
- Information to be provided by the transferor; the new rules place tough obligations on the outgoing employer
- Tactics when inviting tenders
- Tactics when bidding in reply to tenders
- Tactics for the incumbent provider, when re-bidding
- Practical considerations and managing transfers
- The so-called “Two-Tier Workforce Code”, the Code of Practice on Workforce matters and the future after Government repeal
- Other Cabinet Office guidance
- Best Value
- 16.30 – Close

This course will be led by:

**Jonathan Hearn**, Legal Director, DLA Piper London and **Mike Burns**, Partner, DLA Piper Manchester

This course can be run in-house;

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