



IAN BOONIN

LOCAL GOVERNMENT

TUPE TRANSFERS – MAKE SURE YOU COMPLY

Imagine the scenario. You are asked to transfer 100 employees from your own public sector department to a private sector organisation. Sounds easy? Transfers like this happen all the time. What could possibly go wrong? Quite a lot really!

Take pensions for a start. They rarely stir interest in anyone other than the professionals who look after them..... at least, not until someone thinks they might lose their pension. That's when they do the arithmetic and realise that their pension is – more than likely – their largest source of individual wealth, in capital terms often worth more than their house. So if something is going to happen to it (potentially good or bad), they are very interested.

So let's put your job in context 100 people are transferring from your department to a private sector organisation, and you are arranging the transfer of their largest source of wealth from a comfort zone to an unknown zone. It is starting to sound like you might be in the firing line.

UNDER SCRUTINY

Quite a few people will be watching you as you progress:

- > Those transferring – to seek reassurance that they are getting a fair deal.
- > Your own manager.
- > The new employer – to check that everything is proceeding efficiently.
- > Members' unions – a double check on behalf of those transferring.

Doing it right matters. That is why there are plenty of regulations with which to comply, not to mention specific government policy on staff transfers from the public sector known as *The Fair Deal*. There is one specialist area where GAD expertise can help you – pensions. For the specifics relating to pensions, see the link:

http://www.hm-treasury.gov.uk/d/pensions_bta_guidance_290604.pdf

HOW GAD CAN HELP

- > Explaining the process, discussing the issues and working with you to ensure you comply with government policy.
- > Analysing comparability between the current and proposed new pension schemes. This often means issuing a mandatory Certificate of Broad Comparability (a document that can stretch to over 30 pages)
- > Working with your lawyers on the contractual terms of the transfer that affect pensions.

HOW GAD CAN HELP *continued*

- > Helping to explain the detailed terms of transfer to the new employer.
- > Discussing the finance of the pension transfer with the new employer and then calculating and arranging the payment of money from the existing pension scheme to the new scheme. Sometimes routine, sometimes not. The pension transfer amount can greatly exceed the transferring payroll. If the transfer amount is less than the employer was expecting, then they may re-negotiate their bid as result of the pension transfer shortfall.
- > Communicating with transferring staff to explain what it means to them.

You really should get on top of pensions issues early in the transfer process, preferably at the bidding stage and certainly before contract award. All too often there is no room to negotiate a fair and value-for-money pensions deal for staff because pensions are an afterthought. This can mean very unhappy employees.

NEITHER STANDARD NOR PREDICTABLE

To those involved regularly, these transactions are routine. GAD advises on TUPE transfers frequently, with transactions from any area of the public sector. Some departments see them regularly, but others hardly ever.

GAD has a well-established track record of helping clients navigate their way through the labyrinth of compliance requirements, using our accumulated knowledge and direct practical experience.

GAD can advise what will work and what will not. Even those who see these transactions regularly, and who come to us for a Certificate of Broad Comparability, check with us on the handling of – yet another – new angle to a transaction not seen before. Additionally, we have helped those regularly involved to streamline their procedures.

THE OBJECTIVE

Government policy is to ensure that the pensions of employees who transfer out of or into the public sector (or even within the public sector) are transferred on a fair basis. GAD's objective is to confirm for you and others that your particular transaction is in line with government policy, and that pensions will not be too costly a burden.

Implementing these transactions, while easy in principle, is usually technically detailed, and always subject to scrutiny. GAD will help you through the process to a successful outcome.

WHAT YOU NEED TO DO:

- > ***PLAN WELL AHEAD (CRITICAL)***
- > ***PERSUADE THE KEY PEOPLE TO TALK TO ONE ANOTHER AND TO THEIR ADVISERS***
- > ***DON'T LEAVE ANYTHING TO DO WITH PENSIONS UNTIL THE LAST MINUTE***
- > ***THINK OF THIS AS A PROCESS BUT WITH A LOT TO GET THROUGH. THE SOONER YOU START, THE BETTER FOR EVERYONE***