Joint Trade Union

Regulatory Services Briefing No 3.

What is TUPE and TUPE Plus ?

TUPE

For those who don't know TUPE is an abbreviation for "Transfer of Undertakings (Protection of Employment) Regulations." It protects your terms and conditions at the moment of transfer. The key word here is 'moment'. Nearly every member facing TUPE always asks how long does it lasts. The honest answer is 'I don't know', because it varies according to the organisation. Case law suggests that the employer is likely to wait at least a year before trying to attack your terms and conditions.

It is because of our experience of TUPE both locally and nationally that we are concerned about the future employment rights of Barnet staff.

It is important that these discussions are based on evidence and not opinion. UNISON has a huge database of evidence to demonstrate attacks on staff terms and conditions once they have been privatised.

What do we know about TUPE for ex Barnet staff?
We have staff working for Barnet who have experience of being TUPED in and out of the Council. We have staff who have been TUPED from other organisations. We have vast data-banks of information on TUPE and the negative impacts on the work-

force; none of it is good news for staff.
Let's start with a few local examples:
Fremantle:
A not-for-profit organisation, where staff terms and conditions were savaged, I mean a 33% cut in actual earnings with a pay freeze of several years. Not only is this having a devastating impact on their earnings but their pension forecast. Where are the Directors and Councillors who told these staff they would be ok under TUPE? They have either left the organisation or they are too ashamed to meet with them.

Building Cleaning – Barnet Council
This service was privatised less than four years ago. Cleaners were already on low pay when they transferred. The Council should have monitored the contract using the **Code of Practice on Workforce Matters.** The Trade Unions chased the Council to follow the Code, however despite the contract being re-tendered and despite promises to the contrary the Code is not being implemented. Cleaners are on as little as £5.83 an hour, 30% less than they were on four years ago!
It is worth noting that the banking sector have all signed up to their cleaners on the London Living Wage along with the London Mayor Boris Johnson.
"When we set up the deal we wanted to ensure that we could recruit and retain quality people, in the same way that we try to do with directly employed staff,"
John Cotton, Barclays' Canary Wharf programme director explained at the time.

But it isn't just the local picture that informs the trade unions of the dangers of privatisation. Here is an example of the realities out there.

"Where private equity houses take over companies that are contracted to provide public services, TUPE no longer applies – allowing private equity firms to cut wage rates and pension entitlement and increase working hours. There is evidence that much
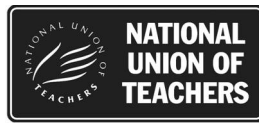
of the reward for private equity investors comes at the expense of workers' pay and conditions."

Paul Gosling –
The rise of "public services industry – A report for UNISON

TUPE Plus

The limitations of TUPE are widely recognised and this has led to the promotion of TUPE Plus. For example, Newcastle City Council's Corporate Procurement Strategy has TUPE Plus as a basic requirement in service contracts.

TUPE Plus contains the following fair employment policies:

1. A guarantee that TUPE will last for the length of contract (the regulations do not specify a time period). This is essential to protect conditions of service, existing redundancy payments and early retirement provisions.
2. Any variation to conditions of service would only be introduced following a **collective agreement** with the appropriate trade union.
3. New starters will be on the same/very similar terms and conditions and the company will not operate a two-tier work force.
4. All TUPE transferred employees and new staff must have the of remaining within the Local Government Pension Scheme.
5. Annual local government pay awards will be implemented in f ull unless otherwise agreed with the recognised trade unions.
6. No restrictions on staff promotion, for example, requiring transferred staff to transfer to the employer's own terms and conditions unless absolutely necessary because of nature of the work.
7. The contractor will be committed to equal opportunities, work-life balance, whistle blowing and health and safety policies at least equivalent to the Council's employment and corporate policies.
8. The contractor will have a workforce development, education and training plan approved by the Council.

9. The current job evaluation scheme would be applied for the duration of the contract.
10. The current trade union recognition and facilities agreement must be maintained, unless changed by   agreement,   for the duration of the contract. This should   cover new staff   who must have equal opportunity to join a recognised trade union.
11. The contractor gives an undertaking not to offshore work and not to transfer jobs out of the Borough.
12. No restrictions on the employment status of branch trade union officers in the representation of their members.
13. A new employer will be required to provide a check-off facility for the deduction of trade union subscriptions.
14. Contractors will be required to make a contribution to the Council's Corporate facility time budget to ensure transferred employees continue to receive support from   t r a d e union branches.
15. The Council must allocate adequate resources to fully and effectively monitor the employment policies and practices of the contractor as an integral part of the performance management and reporting process.

Next steps - Get involved!

- **JTU Future Shape meeting 6th April Training room Building 2**
- **Next One Barnet Programme Board April 1st**
- **JTU's are waiting for a meeting with the Project Manager within next few weeks**
- **Next meeting with PHR Future Shape Liaison Group 24th March**
- **Waiting on details on staff engagement with the Project**