[ADVICE TO TRANSFEROR: OBLIGATIONS IN A TUPE TRANSFER]

We recommend reading our separate note "Guidance on a TUPE Transfer" before reading this note.

This advice note aims to provide LPCs with an overview of the obligations placed on a Transferor where there is a potential TUPE transfer and should be read in conjunction with our general guide on a TUPE transfer. Please note that all TUPE template documents are to be used where there are less than 10 employees. In the event an LPC employs more than 10 individuals, please contact Clyde & Co for further advice.

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Where there is a transfer of employment from one employer to another pursuant to TUPE, the former employer is referred to as the "**Transferor**" and the new employer is referred to as the "**Transferee**". These terms are used below.

Where it is currently envisaged that certain and/or all employees of the **Transferor** will be transferring under TUPE to the **Transferee ("Transferring Employees")**, we have set out below a summary of the Transferor's UK obligations and guidance on the process to be followed.

1 Overview of the Transferor's obligations under TUPE

1.1 As a result of the whole or part of an undertaking transferring to another entity, or activities (to which employees are assigned) transfer to another entity as a result of an outsourcing, insourcing or a new provider being introduced, under TUPE the Transferor has obligations to:

(a) inform and (if appropriate) consult with any recognised any trade union or (if none) elected employee representatives of any affected employee(s); and

(b) provide certain basic information about the Transferring Employee(s) ("**Employee Liability Information**") to the Transferee.

1.2 Any failure to comply with these requirements can lead to an Employment Tribunal making an award of up to 13 weeks' actual pay to every affected employee. This is intended as a penal measure and there is no requirement for employees to show any financial loss.

2 Information and consultation obligations

2.1 The Transferor is required to provide certain information to any affected employee(s). The Transferring Employees will be "affected employees", together with any other employees of the Transferor or Transferee who may be affected by the transfer or any measure or step taken in connection with it.

2.2 TUPE does not identify a particular timeframe for information to be provided and consultation (if required) to take place. Rather, the LPC must inform employees of a proposed transfer "long enough" before the transfer for meaningful consultation to take place. How long this is will depend on the extent of any changes which are likely to take place. For example, if there will be no significant changes, in the circumstances we would not expect this to take any longer than 2 to 4 weeks. However, if there are significant issues such as any proposed redundancies, this may be 4 to 6 weeks.

3 Information to be provided

3.1 The information to be provided to the employee(s) includes:

(a) the fact that the transfer is to take place, the date (or proposed date) when it is to take place and the reasons for it;

(b) the legal, social and economic implications of the transfer (what is meant by this is a question of fact in each case);

(c) details of any measures (please see further below) which the Transferor envisages taking in connection with the transfer which will affect the employee(s), or if there are none, confirmation of this;

(d) details of any measures which the Transferor envisages the Transferee will take in connection with the transfer which will affect the employees, or if there are none, confirmation of this;

(e) certain specified information about the LPC's use (if any) of agency workers.

3.2 'Measures' has a very wide meaning, and includes any "action, step or arrangement" taken in connection with the transfer (e.g. any proposed changes to working practices, benefits or terms and conditions of employment such as relocation or a change in pension arrangements, or any restructuring or redundancies).

3.3 As part of this process, the Transferee is required to send the Transferor a "measures letter" setting out details of any measures that they propose taking as a result of the transfer in sufficient time for you to be able to provide this information to the employee(s).

4 Consultation with employee(s)

4.1 If either the Transferor or the Transferee envisages taking any measures in relation to their own employees, they are obliged to carry out meaningful consultation with their respective employee(s), with a view to seeking agreement to the measures. This involves holding meetings with the employee(s) at which they can put forward any representations, considering those representations and responding to them. If their representations are rejected, reasons why should be provided. Where the

measures affect only the transferring employees (e.g. change in pay date to be implemented post transfer) the Transferee may nevertheless wish to participate in and assist with this process, at least informally. Irrespective of whether formal consultation is required, it is good practice to hold a consultation meeting.

5 Overview of communication with staff

5.1 In summary, the communication with employees throughout the process should be as follows:

(a) Explanation that TUPE applies, that the Transferring Employees assigned to the services will transfer to the Transferee on their current terms and conditions of employment, and that all employees affected by the transfer will be consulted about it directly.

(b) Provide employee(s) with the information at paragraph 3.1 above. Confirm that consultation (if required) will involve a discussion of these proposed measures with a view to seeking agreement on them. Hold first meeting with employee(s). The Transferee may wish to attend this meeting.

(c) If appropriate, provide a Q&A document or otherwise write to the employee(s) setting out answers to any questions raised by them and other useful information about the transfer.

(d) Hold second meeting with employee(s), which again the Transferee may wish to attend. Confirm what was discussed in a follow up letter to the employee(s).

(e) Hold a third meeting with employee(s) if required. Confirm what was discussed in a follow up letter to the employee(s).

(f) Possible individual meetings if necessary, e.g. if any of the Transferring Employee(s) decide that they wish to opt out.

(g) Transfer takes place.

6 Provision of Employee Liability Information to the Transferee

6.1 Regulation 11 of TUPE requires the Transferor to provide the Transferee with Employee Liability Information (the "**Information**") in respect of each employee transferring to the Transferee under TUPE.

6.2 The Information should be provided to the Transferee either in writing, or another readily accessible form, not less than 14 days before the transfer. The Information must be accurate as at a specified date, no more than 14 days before the date on which it is provided. Once the Information has been provided, the Transferor must notify the Transferee of any change to the Information. The Information, in respect of every transferring employee, should include:

(a) the employee's name and age;

(b) the particulars of employment for the employee that the LPC is required to provide under section 1 of the Employment Rights Act 1996 (usually these are contained in the current contract of employment and employee handbook and if so, providing a copy of these will suffice);

(c) information about any disciplinary procedure taken against, or grievance procedure brought by the transferring employee(s) within the previous two years, in each case where the Acas Code of Practice on Disciplinary and Grievance Procedures or any other applicable code or statutory procedure applied;

(d) information about any court or tribunal case, claim or action brought by the transferring employee against the Transferor within the last two years or that the Transferor has reasonable grounds to believe that an employee may bring arising out of their employment with it; and

(e) information about any collective agreements affecting the transferring employee which will have effect after the transfer.