



Homecare Association

Homecare Association response to DBT Call for Evidence: Transfer of Undertakings (Protection of Employment) Regulations

Executive Summary

The Homecare Association welcomes the opportunity to respond to this Call for Evidence on the Transfer of Undertakings (Protection of Employment) Regulations (TUPE).

The Homecare Association supports the purpose of TUPE in protecting employees during organisational change. In homecare, successful TUPE processes also support continuity of care by maintaining trusted relationships between care workers and people drawing on care and support.

One overriding insight has guided our response: TUPE cannot be considered separately from the wider environment in which homecare transfers take place. The challenges experienced within homecare usually arise not from the principle of TUPE itself, but from how transfers operate in practice within a publicly commissioned care market.

Providers are often operating within systems where commissioning decisions influence transfer timescales, available information, contract funding and workforce sustainability. Incoming providers may have limited control over employment practices that existed before transfer, while also being responsible for maintaining safe, continuous services.

Members highlighted that successful transfers require:

- realistic mobilisation periods
- accurate and timely employee liability information
- cooperation from outgoing providers
- clear understanding from commissioners

- recognition of lawful employment costs within commissioning arrangements

Protecting employees, supporting responsible providers and maintaining continuity of care are interconnected aims. Future reform should ensure TUPE continues to provide strong employment protections while addressing the practical barriers that prevent the process working effectively.

The aim should be a system where employees remain protected, people receiving care experience continuity and responsible providers can continue delivering sustainable services.

About you

Please indicate whether you are responding as:

A business representative organisation or trade body

The Homecare Association is the UK's membership body for homecare providers, with over 2,100 members nationally. Its mission is to ensure society values and invests in homecare, so we can all live well at home and flourish in our communities. The Homecare Association acts as a trusted voice, taking a lead in shaping homecare in collaboration with partners across the care sector. It also provides hands-on support and practical tools for its members. The Homecare Association's members agree to abide by the Association's Code of Practice.

What sector or industry do you operate in?

Human health and social work activities.

If responding as an employer, business, business owner or business representative, what is the size of your business? If responding as an individual or worker, what size workplace are you employed in?

Small (10 to 49 staff)

Q1. To what extent do you agree or disagree that the current TUPE regulations strike the right balance between supporting employer needs and protecting employees' employment rights? Please explain your answer.

Response: Agree

The Homecare Association believes the current TUPE regulations broadly strike the right balance between supporting employer needs and protecting employees' rights.

TUPE provides important safeguards for workers and supports continuity when services transfer between providers. In homecare, this continuity is particularly important because stable employment arrangements help maintain relationships between care workers and people receiving support.

The challenges identified by members generally relate to the practical operation of TUPE rather than the purpose of the regulations themselves.

Members highlighted that incoming providers can inherit risks relating to previous employment practices which they did not create and had limited opportunity to identify before transfer. This is particularly challenging where providers operate within publicly commissioned services and contract values have already been agreed.

The aim should be to maintain employee protections while ensuring responsible providers are not discouraged from accepting transfers because of uncertainty or unmanaged historic risks.

Q2. To what extent do you agree or disagree that the current TUPE regulations sufficiently protect employees' employment rights when a transfer takes place? Please explain your answer.

Response: Agree

Members support the principle that employees should be protected when services transfer.

However, the most significant concern raised relates to inherited liabilities from previous employers.

In homecare, this can include historic issues relating to:

- payment for travel time
- waiting time between calls

- training time
- wider national minimum wage compliance

Members noted that compliant employers can become responsible for liabilities created by previous providers, despite having had no involvement in those decisions.

The concern is not about reducing employee protections. It is about ensuring the system supports responsible providers to continue delivering services while protecting workers.

Where excessive unknown liabilities discourage providers from accepting transfers, the unintended consequence may be provider withdrawal or instability, leaving employees and people receiving care worse off than through a well managed transfer process.

Q3. To what extent do you agree or disagree that the current TUPE consultation requirements are sufficient to ensure employees are informed and consulted with when a transfer takes place? Please explain your answer.

Response: Agree.

Members generally consider that the consultation requirements provide appropriate protections.

Where challenges arise, these are often linked to implementation rather than the requirements themselves.

In publicly commissioned homecare, mobilisation periods following contract awards can be short. This can reduce the time available for:

- meaningful engagement with employees
- reassurance during periods of uncertainty
- effective information sharing
- due diligence

Improved commissioning practice and clearer expectations around transfer processes would help ensure consultation requirements work effectively.

Q4. To what extent do you agree or disagree that collective agreements are sufficiently protected under a TUPE transfer? Please explain your answer.

Response: Neutral.

Members recognise the importance of protecting existing employee rights during transfers.

However, maintaining different employment arrangements across a workforce can create operational complexity, particularly where services have transferred multiple times.

Any future reform should maintain employee protections while recognising the practical challenges employers may face in managing integrated teams.

Q5. To what extent do you agree or disagree that employee pension rights are sufficiently protected under a TUPE transfer? Please explain your answer.

Response: Agree.

The Homecare Association does not have sufficient sector wide evidence to suggest existing pension protections are not operating effectively.

However, members highlighted that transfers involving employees moving from public sector employment can create additional complexity.

Public sector pension arrangements may differ significantly from those typically available in the independent homecare sector. Any future changes that increase pension obligations should consider affordability and ensure associated costs are reflected within commissioning arrangements.

Q6. To what extent do you believe that it is clear when a 'relevant transfer' has taken place and TUPE regulations apply? Please explain your answer.

Response: Mostly clear, but improvements could be made.

Members reported that uncertainty can arise when applying TUPE within complex homecare commissioning arrangements.

Examples include:

- services being recommissioned in a different form
- packages of care moving between providers
- fragmented contracts involving multiple providers
- uncertainty about whether workers are linked to a clearly identifiable service

Members also described situations where commissioners and providers have held different views about whether TUPE applies.

Clearer guidance and practical worked examples aimed at both commissioners and providers would support more consistent understanding and application.

Q7. If you have previously been involved in a TUPE process, in your view, what aspects of the process worked well? Please explain your answer.

Members reported that where TUPE processes work well, they provide important benefits for employees, providers and people drawing on care and support.

Effective transfers are supported by:

- early engagement between outgoing and incoming providers
- accurate and timely employee information
- sufficient mobilisation periods
- clear communication with affected employees

When these conditions are in place, TUPE supports continuity of employment and helps retain experienced care workers.

In homecare, this also supports continuity of care. Maintaining relationships between care workers and the people they support can be critical to quality, trust and wellbeing.

Q8. If you have previously been involved in a TUPE process, in your view, what aspects of the process did not work well? Please explain your answer.

Members identified several practical challenges experienced during TUPE transfers.

The most significant issue raised was the risk of inherited liabilities from previous employers. Members highlighted examples where incoming providers may become responsible for historic employment issues that they did not create.

These include potential liabilities relating to:

- unpaid travel time
- waiting time between calls
- training time
- National Minimum Wage compliance

Members highlighted that this has become a greater concern as employment costs have increased and compliance expectations have developed.

Members also raised concerns around:

- incomplete or inaccurate employee liability information
- limited time to undertake due diligence
- inconsistent cooperation from outgoing providers
- disputes about whether TUPE applies
- legal costs required to navigate complex situations

Greater accountability for providing accurate information would help ensure TUPE works as intended.

Q9. If you have previously been involved in a TUPE process, were there any unexpected issues or consequences? Please explain your answer.

Members identified unexpected historic liabilities as one of the most significant challenges.

Incoming providers may only become aware of previous employment practices after transfer has taken place. This can create financial and operational risks which were not visible during the transfer process.

Members highlighted that the challenge is not the transfer of employment rights themselves, but uncertainty about liabilities resulting from previous non-compliance.

Where these risks become too significant, there is a concern that responsible providers may be less willing or able to take on transferring services. This could undermine the purpose of TUPE by creating greater instability for employees and people receiving care.

Q10. Are there any other issues you have experienced during TUPE transfers?

Members highlighted that TUPE can be particularly complex within homecare because services do not always transfer in a straightforward way.

Examples include:

- services being recommissioned differently
- contracts being divided among several providers
- care packages moving between providers
- provider exits the market

Members also highlighted challenges where outgoing providers do not fully engage with the transfer process or where employee information is incomplete.

In some circumstances, misunderstandings about whether TUPE applies can create uncertainty for both employers and employees.

Clearer guidance for commissioners, outgoing providers and incoming providers would support more consistent application.

Q11. To what extent do you agree or disagree that the TUPE process can be challenging for employers to navigate? Please explain your answer.

Response: Agree.

Members reported that TUPE can be challenging to navigate, particularly for smaller and medium sized providers who may not have extensive internal legal or HR resources.

Although the principles of TUPE are understood, applying the regulations in complex circumstances often requires specialist advice.

Challenges include:

- understanding whether TUPE applies
- assessing employment liabilities
- managing information gaps
- understanding pension implications
- managing transfers involving sponsored workers

International recruitment is now an important part of adult social care. Transfers involving sponsored workers create additional considerations because sponsorship responsibilities and immigration compliance requirements need to be managed alongside TUPE obligations.

Members would welcome clearer practical guidance and worked examples.

Q12. In your view, how do you think the TUPE process could be made more efficient for employers?

The Homecare Association believes efficiency could be improved without reducing employee protections.

Improvements should focus on making the process clearer, more consistent and easier to implement.

Members suggested:

- clearer expectations around employee liability information
- improved accountability where information is incomplete or inaccurate
- practical examples showing when TUPE applies
- guidance aimed at commissioners as well as employers
- clearer guidance around complex homecare scenarios

Worked examples would be particularly helpful in areas such as:

- recommissioning
- provider failure or withdrawal
- fragmented care delivery models
- sponsored workers

- transfers involving public sector arrangements

This would help ensure employees receive consistent protection while reducing uncertainty for providers.

Q13. In your view, how do you think the TUPE process could be strengthened to provide greater protections for employees' employment rights?

The Homecare Association believes strengthening TUPE should focus on ensuring existing protections work effectively in practice.

Members support the principle that employees should retain important rights when services transfer.

However, effective protection also relies on a transfer process that works well. Employees can be negatively affected when transfers are delayed, disputed or avoided because risks are unclear.

Strengthening protections could include:

- improving information sharing before transfer
- supporting compliance by outgoing providers
- ensuring realistic mobilisation periods
- providing clearer guidance on complex scenarios

In homecare, effective TUPE processes protect both employment continuity and continuity of care for people receiving support.

Q14. In the process of undergoing TUPE, what support, if any, did you use?

Members reported that specialist legal and HR advice is often required when managing TUPE transfers.

This creates additional cost and complexity, particularly for smaller providers.

While existing guidance is helpful, members highlighted the need for more practical sector-specific examples to reduce reliance on legal interpretation wherever possible.

Q15. How helpful do you believe the guidance (GOV.UK and Acas) currently available on TUPE is? Please explain your answer.

Response: Somewhat helpful, but improvements could be made.

Members recognise that existing TUPE guidance provides useful general information about employer responsibilities and employee protections.

However, members highlighted that the complexity often comes from applying the regulations to specific circumstances rather than understanding the broad principles.

In homecare, providers would welcome practical worked examples covering situations such as:

- recommissioning of services
- contracts being divided between multiple providers
- provider failure or withdrawal
- changes to care packages
- transfers involving sponsored workers
- transfers between public sector and independent sector employers

Members also highlighted that guidance should be aimed at commissioners as well as employers. Commissioners play a significant role in shaping the conditions in which transfers take place, including mobilisation periods and information sharing.

Clearer guidance would support better outcomes for employees, providers and people receiving care.

Q16. To what extent do you agree or disagree that the current circumstances that an employer can change the contractual terms and conditions of an employee (e.g. ETO reasons), strikes the right balance between supporting employer needs and protecting employees' employment rights? Please explain your answer.

Response: Agree.

The Homecare Association believes the current framework broadly strikes the right balance.

Members recognise the importance of protecting employees from changes to terms and conditions simply because a transfer has taken place.

At the same time, there needs to be appropriate flexibility where genuine economic, technical or organisational reasons exist.

Any flexibility must continue to protect employees and should not be used to undermine employment rights or compensate for wider issues such as underfunded contracts.

Q17. In your view, to what extent do you agree or disagree with the reasons, as outlined above, for being able to vary employment contracts (ETOs)? Please explain your answer.

Response: Agree.

Members consider that the current ETO reasons provide a reasonable balance between employee protections and the need for employers to respond to genuine organisational circumstances.

The ability to make changes in limited circumstances is important, but these circumstances should remain clearly defined.

The focus should remain on ensuring that employees are protected during transfers while recognising that organisations may need to adapt where genuine operational requirements exist.

Q18. To what extent do you agree or disagree that the circumstances where employers can change the contract terms and conditions of an employee (for example using ETO exemptions), following a transfer, are sufficiently clear and specific? Please explain your answer.

Response: Agree.

Members have not identified the current ETO framework as the main area of concern within TUPE.

The greater challenges identified relate to:

- uncertainty about whether TUPE applies
- inherited liabilities

- information sharing
- implementation within commissioning processes

Members would support continued clear guidance to ensure ETO provisions are understood and applied appropriately.

Q19. If answered strongly disagree, disagree, or other to question 18, what further guidance/clarifications do you think will be most beneficial and why? Please explain your answer.

Not applicable.

Q20. To what extent do you agree or disagree that the overall cost of TUPE-protected transfers is too high for businesses? Please explain your answer.

Response: Neutral.

The costs associated with TUPE vary significantly depending on the circumstances of the transfer.

Members do not consider that employee protections themselves should be viewed simply as a cost burden. TUPE provides important protections and supports workforce stability.

However, members highlighted that unexpected costs can arise where there are unknown historic liabilities or incomplete information before transfer.

The greatest concern is where responsible providers inherit liabilities created by previous employment practices that they could not reasonably identify or influence.

This can be particularly challenging in publicly commissioned care services where funding levels and contract values are set externally.

Q21. Please provide information on the types of costs that businesses need to consider during a TUPE-protected transfer and where in the process these costs occur.

Members identified several types of cost associated with TUPE transfers.

These include:

- legal advice and HR support
- management and administrative time
- due diligence processes
- communication and consultation activity
- potential pension considerations
- managing differences in employment arrangements
- inherited liabilities from previous employment practices

The most significant concern raised by members was the risk of unexpected costs becoming apparent after transfer.

Examples included historic issues relating to:

- travel time
- waiting time between calls
- training pay
- National Minimum Wage compliance

Greater transparency before transfer would help providers better understand and manage these risks.

Q22. If have been through a transfer process, please provide an estimate of the total cost of the transfer for your business.

The Homecare Association does not hold sufficient evidence from members to provide a reliable estimate of total transfer costs.

Q23. In your view, have the TUPE regulations resulted in any unintended consequences for individuals with a protected characteristic under the Equality Act 2010 or different socio-economic background? Please explain your answer.

The Homecare Association has not collected evidence demonstrating direct unintended consequences for specific groups with protected characteristics.

However, it is important to consider the profile of the adult social care workforce when considering the practical impact of TUPE.

The homecare workforce includes significant numbers of:

- women
- lower-paid workers
- international recruits
- workers with caring responsibilities outside of work

Where TUPE processes do not work effectively, disruption may therefore affect groups who are highly represented within the workforce.

Effective transfers that maintain employment, provide certainty and protect continuity are important for supporting this workforce.

The focus should be on ensuring TUPE works as intended so workers experience stability and protection during periods of organisational change.

Q24. Is there anything else you would like to share your reflections on, that was not covered by the previous questions?

TUPE cannot be considered separately from the wider environment in which homecare transfers take place.

The Homecare Association supports the purpose of TUPE in protecting employees during organisational change. In homecare, successful TUPE processes also support continuity of care by maintaining relationships between care workers and people receiving support.

However, publicly commissioned care services create specific challenges. Providers are often operating within systems where commissioning decisions influence:

- transfer timescales

- available information
- contract funding
- workforce sustainability

Members highlighted that successful transfers require:

- realistic mobilisation periods
- accurate and timely employee liability information
- cooperation from outgoing providers
- clear understanding from commissioners
- recognition of lawful employment costs within commissioning arrangements

Protecting employees, supporting responsible providers and maintaining continuity of care are interconnected aims.

Future reform should ensure TUPE continues to provide strong employment protections while addressing practical barriers that prevent the process working effectively.

The aim should be a system where employees remain protected, people receiving care experience continuity and responsible providers can continue delivering sustainable services.