

Cabinet Scrutiny Committee – 19 January 2011

4. Ask the Managing Director, Kent Adult Social Services, that additional information be provided about ongoing protection of terms and conditions for any staff transferred under Transfer of Undertakings (Protection of Employment) Regulations to new providers, and how long staff would enjoy this protection.

BERR's (Department for Business Enterprise & Regulatory Reform) guidance on the matter states the following:

Q Is there a time limit after the transfer where it is 'safe' for the new employer to vary contracts because the reason for the change cannot have been by reason of the transfer because of the passage of time? (it is worded like this because no change can be made if that change is associated with the transfer. The 2006 Act deemed that things like harmonising terms and conditions after the transfer is covered by this but it could be argued a number of years down the track the transfer is not the reason for the change).

A. There is likely to be a time when the link with the transfer can be treated as no longer effective. However, this must be assessed in the light of all the circumstances of the individual case, and will vary from case to case. There is no rule of thumb used by courts or specified in the Regulations to define a period of time after which it is safe to assume that the transfer did not impact directly or indirectly on the employer's actions.

As has always been the case there is no set period of time if the change is linked to the transfer, however, the regs don't offer indefinite protection. All our terms change over a period of time so it would be unreasonable for an employer after a satisfactory period of time not to be able to change terms. That said if the change is for an Economic, Technical or Organisational reason the employer can make a change soon after transfer if needs be. Examples may be:

- **Economic reasons** - where the demand for output has fallen to such an extent that profitability of the entity is unsustainable without dismissing staff.
- **Technical reasons** - where the transferee wishes to use new technology and the staff employed by the transferor in the entity do not have the requisite skills.
- **Organisational reasons** - where the transferee operates at a different location and it is not practical to transfer staff.