

How TUPE protects when employees transfer

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A property management company ran into a brick wall when they tried to boost their benefits package before transferring to a new employer under the TUPE employment protection regulations.

TUPE (The Transfer of Undertakings (Protection of Employment) Regulations 2006) is designed to protect jobs and safeguard contractual terms for employees when a business transfers to new ownership, or a contract is placed with a new service provider. While it has been clear that the new employer must not change terms to disadvantage an employee, now the Employment Tribunal has ruled that changes made solely for the transfer should not advantage an employee either.

The case involved Lancer Property Asset Management, which provided estate management services to Berkeley Square Estate, who decided to move to a new service provider. As a result, the directors of Lancer were to become employees of the new provider, Astrea Asset Management Ltd under the TUPE regulations.

In preparing for the transfer, the directors decided to award themselves a salary increase and generous new terms for bonus and termination payments, together with a 24-month notice period. The new employer disputed the terms, sacking two of the directors for gross misconduct and refusing to pay the enhanced benefits to the other directors. The resulting dispute ended up at the Employment Appeal Tribunal (**EAT**) with the directors arguing that the TUPE regulation regarding pre-transfer variations was for situations where the change was detrimental to the employee.

Employment partner [Karen Cole](#) explains:

“TUPE is about ensuring fairness and continuity, so it’s no surprise that anything that makes an employee worse off would not be allowed but being better off hasn’t been tested in this way before.

The EAT said that all contract variations which are connected to a transfer are void, whether they are detrimental to the employee, and the objective of TUPE is to protect, not enhance. The EAT also highlighted that no legitimate commercial purpose could be demonstrated for the changes, meaning they infringed the general abuse principle of EU law and were unenforceable.”

For further advice and information on TUPE, whether you’re an employer or an employee, contact Karen Cole today.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

