



Ethical Procurement and the Living Wage: A Guide for Community Activists

Introduction

This guide contains sector specific guidance for UNISON's Community activists on approaching employers about ethical procurement, with particular regard to employment issues for community members. The guide refers to procurement policies within charities and housing associations, but also the procurement practices of commissioning bodies with whom community employers work.

Many of our members are providing services via contract relationships with public sector organisations who have issued contracts to provide services in a range of areas.

This document signposts our members to the relevant documents.

UNISON has already produced an “ethical procurement guide” for local government members which focuses on supply chains and the provision of goods to public sector organisations. This can be found here:

<https://www.unison.org.uk/content/uploads/2013/06/On-line-Catalogue205623.pdf>

Procurement and transfers of services

One of the biggest issues facing the Community service group is employment transfers. Over the last 30 years, many public services have been transferred to the community and voluntary sector and housing associations, as well as to the private sector.

The majority of these transfers involve significant cost-cutting – either immediately upon transfer, or over the years, as the contract price is reduced. And on top of cost issues, transfers of employment lead to more employment insecurity, as workers are transferred to smaller organisations or those which are less financially stable. Central government public spending austerity since 2010 has made these issues even more acute.

Consequently, transfers have serious implications for UNISON negotiators in our sector, as we seek to defend transferred members' jobs, pay and conditions, as well as those of workers who are employed after transfer. UNISON reps can make significant interventions during this process – whether it is campaigning against the transfer (if this is appropriate) or representing and organising members through the transfer itself.

All of the UNISON guidance on interventions which can be made during the procurement process can be found here:

<https://www.unison.org.uk/get-help/knowledge/contracts/procurement/>

Building the Living Wage into procurement

The Living Wage is an estimate of the minimum hourly rate of pay needed for a worker to cover the costs that most people would regard as necessary for a basic standard of living. Every November, the Living Wage Foundation announces two new Living Wage rates - one for London and one for the rest of the UK.

The UK rate is calculated by the Centre for Research in Social Policy at Loughborough University and is currently set at £8.25 an hour.¹ The London Living Wage is calculated by the Greater London Authority economics team and is currently set at £9.40 an hour.²

Unlike the legally enforceable National Minimum Wage, whether to pay the Living Wage is a voluntary decision for an employer. The Living Wage forms a stepping stone toward UNISON's wider goal of achieving minimum pay rates of £10 an hour across the UK.

Our members in Charities and Housing Associations should bargain and campaign for a Living Wage within their employers. UNISON has achieved these commitments in organisations such as Dimensions and Together. UNISON negotiators should consider inserting the Living Wage into annual pay claims. Community voluntary sector organisation should operate according to robust standards and values, which should include their approach to people working for their organisation. Paying people less than the Living Wage is a dubious practice which should be pointed out to community employers. The moral case against poverty wages should be made, alongside the associated reputational risks to HAs and charities.

Such a policy should include both directly employed and contracted out workers, which is also a stipulation of accreditation with the Living Wage Foundation. Failure to do this can produce a perverse incentive to contract out more services. Further links to negotiating guidance can be found below.

Living Wage: Commissioning by public sector bodies

From the point of view of Community members, a Living Wage policy at a public sector commissioning body (across a nation, in the case of Scotland) can make a huge difference to the terms and conditions of our members.

A successful Living Wage campaign can lock in a long term policy that includes the Living Wage as a factor for consideration in the tendering process.

UNISON's [model organisational change policy](#) shows how the Living Wage can be included as part of a set of "fair work practices" that any contractor has to outline as part of submitting a tender. The contractor's position is then considered as part of the selection process for awarding the contract.

Public sector employers have taken a variety of approaches to inserting Living Wage considerations into contract notices when services are put out for tender.

¹ The methodology used is set out in [Uprating the UK Living Wage in 2015](#), Centre for Research in Social Policy

² The methodology used is set out in [The 2015 Living Wage in London](#), GLA Economics,

Where an employer may be reluctant to follow this example, they can, at least, set out a commitment to the general principle of a Living Wage or require submission of a variety of bids, one of which has to be based on payment of the Living Wage.

UNISON Community branches and Community members within local authority and health branches will need to form alliances to pressurise commissioning bodies to take an ethical approach to the Living Wage.

You can find more technical advice and examples of successful campaigns in the excellent UNISON Bargaining Support guide which can be found here:

<https://www.unison.org.uk/content/uploads/2016/12/Living-Wage.pdf>

To find out more about how UNISON has worked to mainstream the Living Wage into employment practices in Scotland, click here: <http://www.unison-scotland.org/2015/02/08/e-briefing-living-wage-procurement/>

Procurement and employment transfers

UNISON has also produced TUPE Branch Guidance, updated in 2014. This document focuses on how UNISON reps should work around transfers – before, during and after. The guide is a really helpful overview of the various areas you should consider. To read the guide, click here:

<https://www.unison.org.uk/content/uploads/2014/04/On-line-Catalogue223172.pdf>

The period immediately after the transfer is crucial, because this is the time when UNISON might lose members together with structural and organisational arrangements that were in place before transfer. So it is vital that you engage with the new (or potential new) employer prior to the transfer around how they will interact with the union after transfer: Branches should:

1. Confirm the terms of recognition so that new starters are covered by the recognition agreement, not just transferring staff.
2. Confirm DOCAS (deduction of contributions at source) for UNISON subscriptions, or get member to take out direct debits.
3. Ensure a facility time agreement in place.
4. Hold regular meetings with members.
5. Discuss with the employer what the arrangements will be for engaging 'new starters' (see the section on two-tier codes below)

Too often, following transfer, employers attempt to de-recognise UNISON, or let recognition transfer but make it meaningless by not granting any facility time for representatives or setting up any bargaining arrangements. Many voluntary sector employers will have little or no experience of working with trade unions.

This can be a problem, but we can also use it to our advantage: at an early stage it is important that we demonstrate the value to an employer of working with a union. Remember, many of these employers won't have much human resources capacity, so working with a union may be helpful to them.

These arguments and suggestions also apply when members are transferring from one voluntary sector organisation to another. TUPE clearly the most important aspect of employment transfers is the ongoing security of members' jobs, pay and conditions. When voluntary sector organisations take on transferred staff, they have to abide by the TUPE (transfer of undertakings; protection of employment) regulations.

TUPE guarantees that transferred staff keep their pay, conditions (such as annual leave, working hours, redundancy rights), and collective agreements they are covered by – such as trade union recognition. Pensions are not protected in the same way, but the new employer does have to provide a pension scheme which is broadly comparable to the one that the workers were in before being transferred.

There is no set time limit on how long employers have to honour their employees' TUPE rights. TUPE does not expire. If an employer wishes to change the conditions of TUPEd employees, they must have what is known as an ETO (economic, technical or organisational) reason for doing so.

They have to consult with the recognised trade union. UNISON's experience is that many voluntary sector organisations are relatively uninformed about TUPE. Many try not to apply it at the time of transfer, by arguing that they will be providing a new and different service, not the one same as the old one; others try to change it in ways which they're not allowed to do. In all of these situations you should seek advice from your UNISON Regional Organiser, as legal advice may well be needed.

Before the transfer, it is crucial that reps clarify everything that is contractual and should transfer under TUPE. Don't assume that the current employer and the new employer will get this right. And don't assume that the new employer will agree that TUPE should apply at all (if they argue that it should not, find out from them exactly why not, and speak to your Regional Organiser about getting a legal view). You should also check employment contracts prior to the transfer to ensure that current terms and conditions are incorporated into individuals' employment contracts properly.

Employers often do find ways of getting round TUPE. For example, in the current severe financial climate, with the impact the Government's cuts are having on the sector, many employers have made changes to TUPE conditions (in other words removing TUPE rights and putting staff on worse pay and conditions) and claimed that the Government cuts give the employer an 'ETO' justification. When this claim is made, you should seek legal advice through your UNISON region – to check whether, given all the facts of the case, the employer can actually get away with this.

Two-tier workforces

While staff who are transferred from one employer to another receive some protection of their terms and conditions, UNISON has long been concerned about the emergence of two-tier workforces. This is the situation where employers engage 'new starters' to work alongside TUPEd staff, and pay those new starters different terms and conditions – for example lower pay rates, less annual leave, inferior sick and maternity/ paternity arrangements.

For several years, workers in the community and voluntary sector working on public sector contracts received some protection from this, through the various 'two-tier codes' which the last government introduced. These codes stated that new starters should receive pay and conditions which were overall no less favourable than the terms and conditions of TUPEd staff. The codes were not perfect: many organisations were exempt, and the codes were sometimes difficult to enforce. But they did offer some protection against a 'race to the bottom' in which TUPEd staff were removed so that employers could replace them with cheaper staff.

However, the 2010-2015 Coalition Government removed those codes for new contracts, and this means that two-tier (or 'multi-tier') workforces are bound to re-emerge in the employers for whom Community service group members work. As we try to recruit and organise those new starters, it is vital that we campaign and negotiate for better protection for them. In place of the two-tier codes, the Government has introduced voluntary 'Principles of Good Employment Practice'.

Although these principles are not as strong as the two-tier codes, and are not enforceable, they do offer UNISON negotiators and reps some opportunities when engaging with employers. For example, the principles state that employers should consult with recognised trade unions when deciding what terms and conditions to offer new starters. UNISON nationally will continue to argue for full and proper protection and equity in such situations, but in the meantime,

UNISON stewards in Community may find these principles helpful, when negotiating with charities, housing associations and social enterprises for fair treatment for new starters. Outsourcing to such employers is only going to increase, and without statutory protection for new starters, we will need to negotiate locally for good practice to be implemented.