

Bargaining guide to wholly owned subsidiaries

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Introduction

This guide is intended to assist negotiators faced with proposals by public service employers to establish a “wholly owned subsidiary¹,” frequently as a means to reduce staff terms and conditions.

The guide is structured as a fairly detailed document to help through all the possible phases of dealing with wholly owned subsidiaries. However, what sections are most relevant are liable to depend on the situation you are facing. For example:

1. If an employer has only just come forward with a proposal that might involve creation of a wholly owned subsidiary or widen its responsibilities, your focus will probably be on the steps set out in the **Averting Proposals for a Subsidiary chapter**, which deals with how to offer alternative solutions, push a service review down the least damaging route for staff and organise the workforce to maximise pressure on the employer;
2. Where it has not been possible to entirely avoid creation of some form of wholly owned subsidiary, the **Protecting Terms when a Subsidiary Goes Ahead chapter** runs through all the protections that TUPE can offer and key improvements that can be targeted in discussions on the terms of transfer.
3. Where you already have a wholly owned subsidiary in place, the **Returning a Subsidiary to In-House Provision chapter** goes through the exhaustive planning needed to mobilise staff behind a campaign and win crucial allies to bolster efforts to place services back under the direct control of the contracting authority.

The **final chapter** reflects on the experiences of the sectors with some of the greatest experience of wholly owned subsidiaries and offers a set of case studies showing how the union has achieved successful results in fighting off subsidiaries, minimising any detrimental impact on staff and bringing services back in-house.

Each main chapter of the guide is supported by a quick reference checklist of actions and a set of model documents in the appendices that can be adjusted to local circumstances.

¹ A wholly owned subsidiary is a company in which the entire stock is owned by another company – or in the case of most sectors where UNISON represents members, a public authority or body mostly supported by public funds.

Averting proposals for a subsidiary

The most advantageous outcomes in any procurement process are likely to be achieved if a thorough agreement can be reached with the employer for the procedure to be followed in handling the whole process, prior to the organisation coming forward with any proposal for a wholly owned subsidiary.

Therefore, UNISON's model procurement agreement seeks to provide a template for agreeing union involvement at the crucial decision points and lay down criteria for those decisions which protect staff terms and conditions.

However, once initiated the earlier a UNISON branch can gain involvement in the decision-making processes that usually apply to how an organisation procures its activities the more likely they may be able to avert proposals for a wholly owned subsidiary.

UNISON's guidance for Bargaining on Procurement and TUPE attempts to navigate branches through each step of the procurement process and so may offer branches a more detailed point of reference.

However, the material below seeks to summarise the key considerations in the context of wholly owned subsidiaries.

Service review

The usual first stage of the procurement process is a service review, where an organisation assesses a part of its operations, typically in terms of cost and performance. These are usually set against its previous record and / or baseline information on typical costs and performance indicators among comparable operations.

Negotiators should demand involvement through this critical process to ensure that the judgement made about costs and performance is reasonable. This demand can be backed up by highlighting the knowledge and expertise that staff in the unit can bring to any review, which is liable to be invaluable in making such judgements.

Equally, benchmark costs and performance levels are often highly subjective. Care should be taken that comparisons are like for like, since costs and performance can vary markedly for reasons that are

not connected to efficiency but to such factors as geographic coverage, the size of the organisation or the type of work demanded. Care should also be taken that a narrow set of performance indicators are not being used that paint an unfair picture of the service. For instance, a few mechanical productivity measures such as number of patients seen per day may show a decline, but if the quality of service is measured through patient questionnaires the data shows an improvement as more time is being dedicated to each patient.

Union reps should assess any review to ensure that unfair judgements are not being made that then act as a stimulus for recommending that some form of remedial action needs to be taken. Where a service review judges that some level of remedial action is needed, it may be possible to head off a move to a full options appraisal through the development of an in-house service improvement plan.

A broad template for initiating a service improvement plan is set out in appendix 1.

Options appraisal

When a service review leads to an options appraisal, the organisation must assess the options for addressing the shortcomings identified by the review, addressing their costs and benefits. The employer should be forced to be explicit about what problems they are trying to address, as experience shows that this is not always the case.

In order to offer maximum protections to terms and conditions for staff, consider whether it is possible to get the following options on the table:

- An in-house service improvement plan based on changing the way the individual service is delivered to address shortcomings. This may have been raised at service review, but should again be put forward if it represents a viable option. This option should very clearly not be treated as a "maintain the status quo" option (which is easy for the appraisal to dismiss), but as a serious redesign of operations.
- An in-house service improvement plan based on joining forces with other contracting authorities to achieve "economies of scale" without sacrificing jobs or staff terms and conditions. The case for this option may be backed up by wider policy within a sector – for instance, the NHS has moved toward services that are supposed to be organised at the level of the

“health economy,” rather than individual provider level.

In considering options for a wholly owned subsidiary, it is necessary to be mindful of procurement legislation. Under the Public Contract Regulations 2015², a contracting authority³ can award contracts to a subsidiary without observing the normal rules on inviting and assessing bids where the following specific circumstances apply:

- The contracting authority exercises control over the organisation delivering the goods or services, similar to the control it exercises over its internal departments (the control test);
- The provider derives almost all of its revenue from the delivery of services to the controlling body and any activity undertaken for external bodies is minimal (the function test)

This has become known as the Teckal exemption.

Therefore, to meet the control test, the constitution of a wholly owned subsidiary has to ensure that the contracting authority has decisive influence and control over all decision-making.

The function test normally means that just 20% or less of turnover can be derived from external bodies.

Therefore, where the subsidiary’s work is dominated by providing services to the contracting authority, contracts do not have to be advertised externally and allow for competition. Where the subsidiary is being established to seek substantial work derived from providing services to organisations outside the contracting authority, it cannot award the subsidiary contracts without putting them out to tender, opening up the danger that the subsidiary’s contracts will be insufficient to maintain employment within the subsidiary.

Clarity should be established over what type of subsidiary the contracting authority anticipates

establishing and where unable to avoid some form of wholly owned subsidiary negotiators should press for the form of subsidiary that provides services exclusively to the contracting authority as the most secure form for maintaining employment and the easiest for any subsequent campaign to return services in-house.

In making an assessment of the options, they should be judged against a specified set of criteria, each criterion should be weighted appropriately and each option should then be scored against the criteria. These judgements are highly subjective and once again the input of the union is liable to be invaluable to ensure that the criteria, weighting and scoring is not skewed toward options that aren’t built around in-house provision.

The key considerations in making these judgements are as follows:

Is quality of service given due weight against cost?

The option of a wholly owned subsidiary may appear as low cost because they anticipate attacking labour costs, but would fare less well if the quality of their service delivery is assessed fairly.

Do the criteria take sufficient account of impact on staff morale and motivation?

Though TUPE can protect terms and conditions initially, new employees of a wholly owned subsidiary are not subject to the same protections and services can therefore increasingly be delivered by staff on inferior terms. The government’s own Should Cost Modelling guidance⁴ recommends that staff costs are explicitly stated in an analysis showing the costs of alternative service provision options over their full duration. This can force contracting authorities to expose assumptions about staff pay, terms and conditions over the long-term.

Do the criteria take sufficient account of the impact on the wider community?

There will be a negative economic impact on the local community of moving to a lower pay model and the consequences for service users of a workforce on reduced terms should also be appreciated. Reputational damage to the employer among the local employer can often accompany these factors.

² The Procurement Bill currently passing through Parliament is expected to replace these regulations in early 2024

³ Contracting authorities are defined as “the State, regional or local authorities, bodies governed by public law.” A body governed by public law is a non-commercial body with legal personality that is mainly financed, supervised or appointed by the State, regional or local authorities, or other bodies governed by public law. Universities and FE colleges are liable to be classified as a body governed by public law. Any university or college that obtains a majority of its income from public sources would meet this classification, so for many universities this is dependent on classification of tuition fees coming through the student finance company as public.

⁴ This Should Cost Modelling guidance was produced for central government contracting authorities, but can be used as a basis for arguing that such best practice should be applied to all contracting authorities.

company can make savings by sourcing its own supply chain. This lacks credibility because of the purchasing power that a contracting authority has across its services.

- **Sickness absence** – It is often claimed that a company will have a more commercial ethos and therefore be able to reduce sickness absence, without any real evidence to back the claim up.
- **New business** – It is often believed that companies will be able to gain new business from other local organisations, without any real commitment or detailed researched evidence. Try asking: “Who has the contracting authority spoken to, when and what commitments did they give to ‘buy’ from the subsidiary?” Once established, many companies have struggled to win work from elsewhere – especially when they are competing with large private sector companies which are experienced at tendering, have ready sources of commercial, legal and financial expertise to draw upon, and can afford to submit “loss-leaders.”
- **Employee turnover** – Often business plans are built on the assumption that labour costs will fall as TUPE-transferred employees leave the company and can be replaced by new employees on worse pay and conditions. In reality, there may not be as much turnover as they assumed, leaving costs exceeding forecasts. In addition, companies may experience higher employee turnover among new recruits because of their inferior pay and conditions, which carries a heavy cost in terms of recurring training and recruitment.
- **Access to capital and overheads** – It is often believed that the contracting authority can assist the subsidiary with fixed costs and access to capital, but the authority does not always take account of the regulations on subsidies. The scale of financial support a public authority can give to a wholly owned subsidiary is limited by the Subsidy Control Act 2022⁶ (and in Northern Ireland EU state aid rules still apply to trade). Therefore, a business case that relies on provision of support that protects the subsidiary from commercial rates is liable to be overstating the viability of the proposal. Advice, employee support, intellectual property, assets, use of premises and equipment, access to supplies and start-up loans are

all potential forms of subsidy which should be drawn out in a business case and questioned.

Further important issues under which a business case can be challenged are as follows:

- The governance of a wholly owned subsidiary may involve placing contracting authority figures on the board. However, company directors have a statutory duty to act in the interests of the company, not that of the wider contracting authority. This gives rise to potential conflicts of interest between the needs of the company and the needs of the contracting authority. It means that certain information they may be privy to in the course of their contracting authority role, should not be divulged or acted upon in their company role – a difficult circle to square.

Therefore, legitimate questions for any business case are:

- How would the contracting authority ensure that the company is accountable to the contracting authority and that its objectives are aligned to contracting authority policies?
- How would contracting authority officers and elected members handle conflicts of interest between their contracting authority role and their duty as company directors?
- What safeguards could be put in place to prevent company directors deciding to sell the subsidiary to private enterprise or a private equity owner?
- Will the company have clauses in its constitution guarding against the use of information by directors obtained in their contracting authority roles?⁷
- Subsidiaries can and do get into financial difficulties. A contracting authority should therefore ensure that there is an exit strategy written into the company’s constitution, covering what will happen if the company becomes insolvent.

Therefore, legitimate questions for any business case are:

- Would the contracting authority assume responsibility

⁶ Publications suggest that universities are governed by the Act as bodies that exercise functions of a public nature <https://www.ahua.ac.uk/the-subsidy-control-act/#:~:text=In%20addition%2C%20any%20subsidies%20received,have%20traditionally%20received%20financial%20support>

⁷ A council-owned company had an article in its constitution which stated that the directors must exclude from their minds and not mention at company board meetings, any relevant information which they had obtained in their capacity as council employees or councillors

- for debts that the company was unable to pay?
- Will the contracting authority commit to bringing services in-house if the company fails?
- What assessment of the costs of a company failure have been made by the contracting authority?
- What would the implications for service users be if the company fails and has to cease to trade?

Gaining involvement and extracting information

Where a recognition agreement is in place, it may explicitly refer to “reorganisation” and / or “contracting out” as a subject to be brought before the joint negotiating committee (as per UNISON’s **model recognition agreement**). And even where the scope of recognition is defined in broader terms, it may still offer a basis for arguing for discussions early in the procurement process.

Where an agreement of any kind is not in place, there are limited options for forcing the employer to permit union involvement in pre-procurement processes, as there is no statutory requirement on the employer to inform and consult the workforce until a contract is awarded under TUPE.

The legislation supporting union involvement is mainly confined to local government, with some also extending into the NHS (none of the legislation below applies to Higher Education Institutions).

In Scotland, section 52 of the Local Government in Scotland Act 2003 offers one of the most useful reference points as it states that “there should be consultation with and the involvement of the trades unions at the earliest stages of a review process where staff may transfer to a new service provider.”

Elsewhere, it may be possible to fall back on duties in place in some areas of public services to consult with “stakeholders” or “representatives,” usually in terms of the impact of changes introduced by the employer on the wider community. This can offer a route to argue that the workforce should be classified as a “stakeholder” and so involved in consultation. However, it is more usual for “representatives” to be classified as service user or community groups, so the unions input to such groups through a campaign plan may prove more fruitful.

Such requirements are broadly applied in Scotland and Northern Ireland through community planning sections of

the Community Empowerment (Scotland) Act 2015 and the Local Government Act (Northern Ireland) 2014. In England, such requirements are set out in the NHS Constitution, while Best Value statutory guidance issued in 2015 for England places similar demands on local authorities.

The NHS constitution gives the most explicit reference to involving staff specifically by stating that “the NHS commits... to engage staff in decisions that affect them and the services they provide, individually, through representative organisations and through local partnership working arrangements.”

As always for bargaining where a union is recognised, the primary reference to justify demands for information is the ACAS Code of Practice on Disclosure of Bargaining Information (LRA code in Northern Ireland).

Procurement is not specifically mentioned in the code, but it clearly has implications for all the broad areas highlighted by the code – pay and benefits, conditions of service, manpower, performance and financial. In the case of public sector organisations,⁸ the Freedom of Information Act 2000 may offer an alternative means to extract information and UNISON’s full guidance on making such a request is available at www.unison.org.uk/content/uploads/2017/06/Freedom-of-Information-Act-RV.pdf

Exerting pressure through organising and campaigning

Running in tandem with any work to influence the employer’s decisions as it moves through from service review to options appraisal and business case, it will usually be valuable to consider an appropriate organising and campaigning plan to maximise pressure on the employer.

UNISON’s broad **organising** and **campaigning** guidance provides advice on rallying support among staff and outside the workplace.

This includes UNISON’s Five Phases to Win template, which offers a structured plan for organising toward achieving any campaign goal. The Organising to Win approach is summarised below.

⁸ Higher Education Institutions are specified as subject to the FoI Act under Schedule 1 <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/public-authorities-under-foia/> as are publicly owned companies

Organising to Win

The outcome of any negotiation is in large part determined by the relative bargaining power of the parties involved. The most skilled, experienced, and informed UNISON officer, representative or organiser will only get so far without the backing of an organised and engaged membership and a readiness to deploy tactics designed to influence and persuade the employer.

Ultimately bargaining power is the ability to get an employer to do something they would not otherwise do.

Bargaining on its own is not organising, until there is active engagement with members as a collective. Every bargaining aim must be seen as an organising opportunity, to build the union and achieve better bargaining outcomes. The UNISON 5 Phase Plan to Win sets out the five phases of successful strategic organising campaigns to support a bargaining aim:

1. Research and development
2. Union base building
3. Launch issue-based campaign
4. Resolve the issue (and go to 5) or escalate and create a crisis (for the employer or ultimate decision maker).
5. Win, celebrate, review and sustain

A resourced and credible plan to win shifts the balance of power in negotiations in favour of UNISON. It enables the bargaining team to negotiate with confidence and win for members.

Where the plan requires member participation and supports the identification and development of activists, significant organising outcomes can be achieved to build the long-term strength of the Branch.

Ideally, bargaining goals can be achieved without the need to escalate campaigns to dispute. Where there is member support for escalation to deal with employer intransigence, further advice must be sought from the regional centre.

Further detail is outlined in the 5 Phase Plan to Win guide and template, which is available as one of the resources of the Organising to Win series.

UNISON activists can access the resources via the Organising Space – UNISON's online space for activists. Visit the Organising to Win tile at organisingspace.unison.co.uk or contact your Regional Organiser for guidance and support.

UNISON staff can access the resources via the Organising to Win page on Pearl and can contact the National Strategic Organising Unit for guidance and support.

Had an organising win? Let's learn the lessons and celebrate! Send a summary to WIN@unison.org.uk and we'll be in touch.

However, the specific considerations in the context of proposals for a wholly owned subsidiary are as follows:

- As a starting point, if a wholly owned subsidiary is to involve the transfer of existing staff, establish a clear picture of the staff affected, the members in those areas (broken down by such factors as location and roles) and the activists who may be able to act as the spearhead of organising work;
- Drawing on the experience of staff in the affected areas will be crucial to challenging service reviews and putting forward proposals for remodelling in-house delivery;
- The employer's proposals may well cause a great deal of unease and uncertainty among existing staff, offering fertile ground for recruitment. As always, recruitment will be crucial to building the density of membership that increases the negotiating strength of the union to challenge proposals;
- Branches should notify the appropriate regional organisers at an early point, which in turn will enable escalation as required to national officers, drawing in the assistance of the relevant service group;
- Make contact with other unions representing staff affected to begin assembly of a joint strategy around the proposals;
- Draw up a list of external organisations that have an interest in the proposals and may form suitable allies. These will normally be drawn from the following groups:
 - Service users
 - Community groups
 - Media
 - Contracting authority bodies with responsibility for overview and scrutiny
 - Elected officials such as councillors, MPs and members of devolved governments
 - Contracting authority senior management / governing boards

UNISON's **campaigning guidance** offers advice on how to engage most effectively with these groups, as well as drawing in the support of UNISON's Labour Link where appropriate.

The section of this guide devoted to **Returning a Subsidiary to In-House Provision** offers more detail and templates relating to this dimension of building the strength of a campaign.

- In the best-case scenario, it may be possible to dissuade an employer from creation of a wholly

owned subsidiary through arguments presented at the service review, options appraisal and business case stages. However, it may ultimately be useful to consider the industrial action process as a way to force the employer to backtrack on proposals and therefore plan early for the steps that would be necessary to take this route.

UNISON's Industrial Action Handbook sets out all the steps necessary for lawful industrial action - www.unison.org.uk/get-involved/learning-development/activists/organising-collective-action/industrial-action

- The regional organiser should be involved from an early stage to discuss the advisability of such a strategy and ensure all UNISON processes are observed;
- Consideration would have to be given to accurately defining the set of staff who would be subject to transfer to a wholly owned subsidiary and the nature of the "trade dispute" – most probably built around reduction of terms and conditions;
- One of the most crucial prerequisites for any action would be ensuring the accuracy of membership data and checking records through RMS. As stated by UNISON's industrial action handbook, this can be supplemented by asking "stewards to approach all employees affected by the dispute to confirm their membership or to invite them to join, to check their home mailing address, to explain why we are balloting, and to hear what members and non-members have to say." In addition to the home mailing address, it is crucial to ensure that members' job titles, workplaces and other contact details are up to date in order to be ballot ready;
- This process of liaising and campaigning with members should also enable the branch to gauge the likelihood of achieving any ballot threshold requirement – 50% of members voting in England, Scotland and Wales, with additional thresholds for some health members in England and Scotland. It is always recommended to conduct a consultative ballot to ensure the union is on strong ground for taking action;
- The appropriate timetable for these various steps should be considered, bearing in mind that if permission is granted for industrial action, the action must start within six months of the last voting day of the ballot across England, Scotland and Wales, or

28 days in Northern Ireland. This timetable may also be affected by the need to liaise with other unions to ensure co-ordinated action.

Checklist 1

Seek a <u>procurement agreement</u> with the employer that guarantees involvement of the union throughout the procurement process	
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Service review

Seek input to the terms of any service review and conclusions drawn from evidence	
Challenge any exaggeration of service flaws and delivery costs	
Challenge any dubious benchmarks against which standards and costs are judged	
Seek input of views among members working in the service under review	
Where a service review identifies shortcomings, seek agreement that they are addressed through a service improvement plan (as appendix 1)	

Options appraisal and business case

Ensure appraisal carries no assumption of need to move services out of direct in-house provision and a properly resourced improvement plan for current in-house services is considered as an option	
If appropriate, ensure improvement plan considers provision of services through co-operation with other contracting authority bodies	
Ensure the criteria, weighting and scoring of options appraisal gives due weight to the strengths of in-house options and the weaknesses of wholly owned subsidiaries, most notably: <ul style="list-style-type: none"> ▪ Quality of service; ▪ Morale and motivation of staff; ▪ Local community impacts; ▪ Control and flexibility of service delivery; ▪ Equality impacts; ▪ Inadmissibility of tax justifications. 	
Where a wholly owned subsidiary is put forward as the favoured option, demand to see a thorough business case to enable further challenges to the rationale, particularly in its presentation of costs, revenue and governance	
Assemble a campaign plan that rallies staff support and expertise behind in-house alternatives and brings maximum pressure to bear externally from service users/ students, the media, the local community, elected officials and overseeing contracting authority bodies	
If, in discussion with the regional organiser, an industrial action strategy is considered, develop a timetable that takes into account verification of membership, ensuring strong grounds for lawful action, co-ordination with other unions and meeting regulatory requirements, as per UNISON's Industrial Action Handbook	

Protecting terms when a subsidiary goes ahead

The Transfer of Undertakings (Protection of Employment) Regulations 2006, also known as TUPE, governs the transfer of directly employed staff from one employer to another in the UK. The 2006 legislation replaced the original 1981 regulations and was amended in 2014 with changes that affected any transfer in England, Scotland or Wales. In Northern Ireland there is also the Service Provision Change (Protection of Employment) Regulations (NI) 2006⁹.

The essence of TUPE is that any contract of employment of any person employed by the old employer (the transferor) transfers to the new employer (the transferee) as though the contract was made between the employee and the new employer.

This section of the guide covers the applicability of TUPE to wholly owned subsidiaries and ensuring that staff receive at least the protections it affords, before setting out other dimensions of legislation that may offer a useful supplement.

Enforcing TUPE application

In most cases where a wholly owned subsidiary has been established, any transfer of staff to the subsidiary has taken place on TUPE terms.

TUPE can be applied for staff when a “relevant transfer” takes place in one of the two forms below:

- An undertaking, i.e. an organisation or part of an organisation, is transferred from one employer to another and retains its economic identity;
- A “service provision change” occurs. For example, an organisation engages a contractor to conduct work on its behalf, a contractor is carrying out a service which is then re-assigned to another contractor or work is brought back in house.

In order to decide whether there has been a transfer

of an undertaking, the critical question is whether the undertaking retains its identity and is carried on by the transferee.

A decision in the case of *Henke v Gemeinde Schierke* [1996] IRLR 701 ruled that TUPE does not cover an administrative reorganisation of public administrative authorities or the transfer of administrative functions between public administrative authorities. However, this has never as yet been applied to establishment of a wholly owned subsidiary.

The principle in *Henke* has recently been challenged to a degree, in the case of *Nicholls v London Borough of Croydon and others* UKEAT/0003/18. In *Nicholls*, the EAT considered a decision made by the ET that the transfer of a public health team from a primary care trust to a local authority did not fall within the Transfer of Undertakings (Protection of Employment) Regulations 2006.

On appeal, the EAT remitted this matter for reconsideration. They found that the team’s commissioning services could be offered by non-state actors operating in the same market, which strongly indicated that it was carrying on an economic activity. The tribunal had inadequately explained its conclusion that the team was not carrying on an economic activity but was involved in the exercise of public authority. Essentially, where the activity consisted of providing goods and services, as opposed to merely acquiring them, and there was a market for them, it was an economic activity even if the goods and services were provided free of charge or without a view to making a profit. This means that there are situations where public administrative authorities or the transfer of administrative functions between public administrative authorities **could** fall under TUPE provisions.

Nonetheless, in any situation where a valid legal reason is established for TUPE not to apply by law, there are various codes and regulations that can be utilised by some parts of the public services to make the case that TUPE should nonetheless apply.

In the case of central government bodies, including the NHS, the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector (COSOP) states: “Contracting-out exercises with the private sector and voluntary organisations and transfers between different parts of the public sector, will be conducted on the basis that staff will transfer and TUPE should apply, unless there are genuinely exceptional reasons not to do so.”

“In circumstances where TUPE does not apply in strict

⁹ Please note that some parts of this guidance will be affected by further legal provisions that apply to Northern Ireland in relation to TUPE that it has not been possible to clarify at the point of going to print. This guide will be updated as soon as possible to reflect those provisions but in the meantime please contact Bargaining Support Group on bsg@unison.co.uk for the latest information.

legal terms to certain types of transfer between different parts of the public sector, the principles of TUPE should be followed and the staff involved should be treated no less favourably than had the regulations applied.”

COSOP has no legislative force, but even outside of central government bodies, COSOP states that “The Government expects other public sector organisations to follow this Statement of Practice” and therefore can be used to argue the case for its application from local authorities to Higher Education Institutions.

Where TUPE does not apply according to the usual regulations, a COSOP agreement leads to specification of the staff affected in a Transfer Order or Transfer Scheme, which is made by way of a Statutory Instrument.

The full statement on COSOP can be found at www.gov.uk/government/publications/staff-transfers-in-the-public-sector

Similar provisions are carried in regulations specific to Wales and Scotland. In Wales, the Code of Practice on Workforce Matters applies to councils, NHS trusts / boards and maintained schools (not Higher or Further Education Institutions) and states that “whenever public services are to be outsourced to a third party. TUPE will apply, and if TUPE does not strictly apply, the principles of TUPE will be followed unless there are exceptional reasons for not doing so.”

In Scotland, guidance on Section 52 of the Local Government in Scotland Act 2003 states that “where there is a decision to outsource which may involve a transfer, and even where TUPE does not apply as a matter of law, the local authority should undertake to behave in a manner consistent with the good practice identified in this guidance.”

Enforcing TUPE protections

The broad categories of protection under TUPE are as follows:

- Jobs;
- Terms and conditions;
- Collective agreements;
- Union recognition;
- Accrued pension rights.

The details of these protections, including the exemptions that apply and relevant regulations that supplement TUPE, are as follows:

General protections

- Individuals who are employed by the transferor immediately before the transfer automatically become the employees of the transferee from the time of the transfer on the terms and conditions they previously held with the transferor.
- The transferee inherits the transferor’s rights and liabilities in relation to those individuals.
- If the transferor is criminally liable in any way, this does not transfer to the transferee.

Protections for jobs

- Dismissal of any employee (whether before or after the transfer) for any reason connected with the transfer is automatically unfair unless the employer can put forward a valid economic, technical or organisational (ETO) reason entailing changes in the workforce, in which case the dismissal is fair if it is reasonable in the circumstances.
- Potentially permitted economic reasons may relate to factors such as the organisation’s profitability or changes in demand for their services.

Potentially permitted technical reasons may relate to factors such as new technology changing the organisation’s operations.

Potentially permitted organisational reasons may relate to factors such as the impact of a merger or an organisation wide restructuring.

The phrase “entailing changes to the workforce” refers to changes to the numbers and functions of the workforce. Changes to TUPE legislation introduced for Britain in 2014 added changes of the place of work to that definition.

- Where there is a valid reason, a new employer proposing to make 20 or more staff redundant in a redundancy that will affect some or all of the transferring employees, may elect to consult in relation to those redundancies before the transfer.

However, before pre-transfer consultation can take place, the new employer has to seek agreement with the old employer. The effect of this is that the new employer can consult on post transfer redundancies with the trade union recognised by the new employer.

The new employer may choose to cancel a decision to carry out pre-transfer consultation. If it is cancelled, it cannot later be revived.

The pre-transfer consultation should continue after the transfer if it has not been concluded and it may continue with the same appropriate representatives.

However, any notice of redundancy can only take place after the transfer and not before it. This is because the new employer will not be the employee's employer until after the transfer.

UNISON's full guidance on bargaining over collective redundancy is set out at www.unison.org.uk/bargaining-guides

Protections for terms and conditions

- Terms and conditions are protected unless a change can be justified on the basis of the economic, technical or organisational (ETO) reasons highlighted above. Contracts of employment setting out terms and conditions can be in written form, verbal form or arise out of "custom and practice," but the more that is written down the easier it is to argue for their inclusion in a transfer. Protected terms and conditions typically cover such dimensions as continuity of service, current pay levels, number of hours worked, sick pay, number of days leave and notice periods.
- Where a member of staff gains promotion subsequent to transfer, their terms would not normally be protected, since it is just the terms of the transferred job that is covered by TUPE.
- Attempts to change terms and conditions simply out of a desire to harmonise policies across employees will not be accepted as a valid reason to vary TUPE agreed terms, unless there is an economic, technical or organisational reason entailing changes in the workforce, or if it is unconnected with the transfer.
- However, changing economic circumstances can be accepted by the courts as valid reasons to vary TUPE agreed terms in certain conditions. For example, an employer claimed that austerity inspired cuts imposed by public sector bodies on numerous contracts had hit its revenues to the point that it now faced insolvency. The employer was able to demonstrate that other dimensions of its costs had been minimised following review and the court accepted that its actions to reduce terms and conditions was not done simply to harmonise rates but to ensure economic viability.
- It is also permissible to vary terms and conditions post transfer for equal pay reasons i.e. to equalise pay. For example, if a male employee's pay is brought down to the same level as a lower paid female employee who does work of equal value.
- The passage of time has traditionally not been accepted as a valid argument for changing terms and conditions. However, as already set out below, the 2014 TUPE amendments have introduced the opportunity for employers in England, Scotland and Wales to seek agreement to vary terms and conditions incorporated from a collective agreement a year after the transfer if the new terms are no less favourable than existing terms.
- Terms of conditions of staff who have not been transferred but are brought in by the new employer to work on the transferred service are not determined by TUPE. However, regulations specific to Wales and Scotland do place obligations on the new employer.

By way of illustration, in the case of *Berriman v Delabole Slate Limited* [1986], the new employer required the transferred employee to lose 25% of his pay. Mr Berriman resigned and claimed constructive dismissal. The new employer gave no other reason for harmonisation, so it simply wanted harmonisation for harmonisation's sake. The court found that Mr Berriman had been unfairly dismissed as his dismissal was connected with the transfer.

Guidance on **section 52 of the Local Government in Scotland Act 2003** states that Scottish local authorities "are expected to ensure no two-tier workforce situations arise as a result of contracted-out services where staff transfer. The terms and conditions for any new appointee to the workforce should therefore be no less favourable overall than for transferred employees."

In Wales, the **Code of Practice on Workforce Matters** (applicable to councils, NHS trusts / boards and maintained schools) states that "staff of the service

provider (whether newly recruited or existing staff) undertaking work on that contract will be employed on terms and conditions which are no less favourable than those of transferred staff, with the exception of pension arrangements where reasonable pension provision must be made as indicated in the code.”

- Since the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 were introduced, an employer in Britain has been permitted to seek agreement to vary terms and conditions incorporated from a collective agreement a year after the transfer.

This variation may only take place with the agreement of the individual employee (i.e. not the trade union), and if the terms overall are no less favourable than their current terms. This means that some terms can be less favourable as long as some are more favourable and, considered altogether, the previous terms and conditions and the current terms and conditions balance out.

Terms and conditions not derived from a collective agreement are not affected by these changes and therefore remain subject to the rule that they can only be changed if the reason has nothing to do with the transfer or if there is an ETO reason entailing changes in the workforce.

- The 2014 regulations also explicitly stated that in Britain transferred contracts do not bind the new employer to any term of a collective agreement agreed after the date of the transfer if the new employer is not a participant in the collective bargaining machinery.

For example, if a wholly owned subsidiary takes over a service that was provided by a university, any increase to pay rates applied by the university (possibly applying negotiated New JNCHES pay scales) after the date of the transfer will not apply to the transferred employees.

Protections for pension rights

- Accrued pension rights in a pension scheme operated by the former employer are protected. All occupational pension schemes are excluded from any transfer, though exceptions to this rule are any scheme provisions which do not relate to old age, invalidity or survivors' benefits. These provisions can include rights payable before normal retirement age,

such as an advantageous early retirement scheme.

- However, dimensions of legislation other than the TUPE regulations do impose requirements on the new employer. Under the Pension Act 2004, where employees were entitled to participate in an occupational pension scheme prior to the transfer, the new employer must establish a minimum level of pension provision for the transferred employees.

This means that the new employer must at least offer a defined contribution scheme that matches employee contributions of up to 6% of an employee's salary or a defined contribution scheme that matches the level of contributions of the transferor's scheme, if that was also of the defined contribution type.

- Since 2013, transfers from central government bodies (including the NHS and certain maintained schools (including academies)) to contractors have been covered by new Fair Deal provisions defining the treatment of occupational pensions.

The new Fair Deal specifies that transferred staff must be given continued access to a public service pension scheme.

They can only be offered the former provision of a broadly comparable private pension scheme in exceptional circumstances. (This does not apply in Northern Ireland).

The details of the new Fair Deal are set out on this [link](#)

- Outside of central government, Best Value authorities (defined in [part 1 of the Local Government Act](#)) are still subject to the former Fair Deal rules, which require the new employer to provide either access to the public sector scheme or an occupational scheme that is broadly comparable to the public sector scheme

The original pension directive on which these requirements are based is set out on this [link](#)

For a pension arrangement to be assessed as being “broadly comparable” to a public sector pension scheme, it does not need to offer identical benefits. However, it must offer the same range of benefits, with the same (or greater) overall value. A broad comparability assessment includes both quantitative and qualitative tests.

Greater detail on assessing comparability is set out in the **GAD Statement of Practice**.

- In Scotland, guidelines on **section 52 of the Local Government in Scotland Act 2003** similarly specify that “transferred employees to a contractor’s workforce should have access to the same or broadly comparable pension arrangement to those available to them at transfer.”

It also goes further in stating:

“The service provider should be required to offer new recruits to a contract workforce access to the following levels of pension provision which, where applicable, can be equated as broadly comparable to that enjoyed by originally transferred local authority employees...

- Where prevailing criteria apply, access to the local authority’s scheme through Admitted Body Status, with the new employer making the requisite contributions.
- Membership of a good quality employer pension scheme, either being a contracted out, final salary based defined benefit scheme, or a defined contribution scheme. For defined contribution schemes the employer must match employee contributions up to 6%, although either could pay more if they wished, or
- A stakeholder pension scheme, under which the employer will match employee contributions up to 6%, although either could pay more if they wished.”
- In Wales, the **Code of Practice on Workforce Matters** also places requirements on new employers about pensions for new starters as follows:
 - “The service provider will be required to offer new joiners one of the following pension provision arrangements:
 - Membership of the local government pension scheme, where the employer has admitted body status within the scheme and makes the requisite contributions;
 - Membership of the relevant public services pension scheme where, under the 2013 Fair Deal, the employer has entered into a participation agreement as mentioned in the Fair Deal and

makes the requisite contributions;

- Membership of a pension scheme which meets the auto-enrolment standards under the Pensions Act 2008 (whether or not the Act requires the service provider to offer membership to the new joiner).”

Protections for collective agreements

- Collective agreements between the old employer and the union are automatically inherited by the new employer. Therefore, any collective agreements in force at the time of the transfer are transferred to the new employer and any terms of a collective agreement that are incorporated into the contracts of individual workers are protected in the same way as other individual contractual rights.

As has been noted under the section on terms and conditions, the 2014 TUPE amendments allow for employers in England, Scotland and Wales to seek agreement to vary terms and conditions incorporated from a collective agreement a year after the transfer. Such variations can only take place with the agreement of the individual employee and if the overall terms are no less favourable than their current terms.

This means that some terms can be less favourable as long as some are more favourable, resulting in a balancing out between new and former terms and conditions.

Protections for recognition

- A recognition agreement between the old employer and the union automatically transfers over to the new employer under TUPE. However, this can be a weak entitlement, since as in the case of any employer, there is no legal impediment to the new employer deciding to vary or rescind the agreement after the transfer.

Enforcing TUPE information and consultation rights

Once a contract is awarded under TUPE, both the old employer and the new employer must provide trade union reps (or employee representatives where a union is not recognised) with specified information and an outline of any “measures” that are to be taken which could affect the employees (appendices 2, 3 and 4 offer model letters for ensuring the employer provides this information). In addition to providing information, the

legislation places a statutory obligation on the employer to consult with trade union or elected reps over the consequences of the transfer.

Employers' duty to inform

TUPE states that all employees who could be affected by a change of employer have the right to be informed in advance of what is happening. This includes both employees working for the old employer and those working for the new employer.

Before a transfer takes place, the old employer must inform the trade union or employee rep of the following:

- The fact that a transfer is to take place;
- The reasons for the transfer;
- The date or proposed date that the transfer is to take place;
- The legal, economic and social implications of the transfer for the affected employees;
- Any measure which the old or new employer will take as a result of the transfer, or if no such measures will be taken, this should be stated;
- Details of agency staff working for the transferor

The old employer must provide this information long enough before a relevant transfer to allow time to consult with trade unions and the appropriate representatives of any affected employees. It must be delivered to each representative or sent by post to them and has to be sufficient to enable the representatives to perform their duties.

This information must be provided whether or not the old employer anticipates that there will be any change to the work.

Legal implications of the transfer for the affected employees may include the impact on contractual/statutory rights, such as terms and conditions or continuity of employment.

Economic implications may cover factors such as the effect on pay and career development.

Social implications may cover such issues as pension provision and National Insurance contributions.

Employers' duty to consult

The old employer has a duty to consult union (or employee) reps when it expects to make changes in relation to affected employees in connection with the transfer i.e. where "measures" are proposed.

Such changes are likely to include any proposed change to work practices and change of work location.

Affected employees can include:

- Those who transfer;
- Those who do not transfer but whose jobs might be affected;
- Those already working for the new employer whose jobs might be affected.

A "measure" means an action which the old or new employer intends to implement. The employer's statement of "measures" should be clear and specific, not a vague idea of future arrangements.

Consultation has to be meaningful and therefore the old or new employer responsible for the proposed measure must make every effort to secure the trade union's agreement and accommodate their objections. The old or new employer must consider any representations, reply to them and if they are to be rejected, state the reasons for doing so.

Negotiators need to assess proposed measures very carefully as any ambiguity or doubt is more easily resolved at this stage and failure to clarify can blow up into problems after the transfer is complete.

For example, the measures letter for one TUPE transfer specified that the existing pay and grading structure would be among the terms and conditions transferring without change. The letter also referred to performance appraisal, which it said would in future operate as part of the new employer's performance management framework. The branch had assumed that this related to capability procedure, but after the transfer it became clear that it was about pay and incremental progression through performance related pay. Prior to transfer, staff had received an annual pay award, with separate annual incremental progression.

It is in the detailed discussions over the exact terms to be applied in moving over to the new employer that there may be the greatest opportunity to press for what are often referred to as TUPE Plus terms.

A possible set of TUPE Plus terms and conditions, which build on the legal requirements of TUPE, are as follows:

- A reassurance that TUPE transferred terms and conditions will remain in place for the full duration of the contract;
- A reassurance that any variation to conditions of service will only be introduced following a collective agreement with the appropriate trade unions;
- A commitment that new starters engaged in delivery of the contract will have the same terms and conditions as transferred staff, therefore ensuring that a two-tier workforce does not emerge;
- A commitment that staff will have the option of remaining within or joining the appropriate public sector pension scheme on the basis of admitted body status;
- A commitment that annual pay settlements will continue to align with those agreed at the national negotiating body to which transferred staff were formerly tied unless otherwise agreed with the trade unions;
- A commitment that the new employer will provide a workforce development, education and training plan in partnership with the trade unions;
- A reassurance that the job evaluation scheme in use at the point of transfer will be applied for the duration of the contract;
- A reassurance that the current trade union recognition will be maintained, unless changed by joint agreement, for the duration of the contract;
- A reassurance that the new employer will provide a check-off facility for the deduction of trade union subscriptions;
- A reassurance that transferred employees will continue to be able to receive support from the appropriate trade union branch, the new employer will make a contribution to the facility time budget and provide equivalent facility time for any elected officials who have transferred;
- A commitment that no staff on the contract will earn less than the Living Wage as specified by the Living Wage Foundation;
- A commitment that no staff on the contract will be employed on a zero hours basis;
- A commitment that there will be no offshoring of employment in delivery of the contract;
- A commitment that any sub-contractor commissioned to run any of the services included in the contract will be required to adopt the same employment standards as the new employer.

If the measures put forward by the employer include adoption of significant new automated operations, it will be valuable to press for a **Data Protection Impact Assessment (DPIA)** in accordance with the UK General Data Protection Regulations (UK GDPR). The purpose of a DPIA is to assess the potential risks to the rights and freedoms of individuals and document what the data controller (in this case the employer) will do to address and reduce or remove the potential risk identified.

The TUPE regulations specify that the facilities for reps in dealing with consultation must include access to the affected workforce, alongside appropriate accommodation and equipment.

If the employer fails to meet their obligations under information and consultation rights, the union (not the individual employee) can bring a complaint to a tribunal, within three months, less one day of the transfer, which can then result in a protective award for each affected employee of up to 13 weeks' pay.

Micro businesses (those which employ less than 10 staff) may inform and consult employees directly when there are no existing appropriate representatives.

Employee liabilities information

In defining the information that must be exchanged between new and old employer, the TUPE regulations place an obligation on the old employer to disclose "employee liabilities" such as:

- The age and identity of staff;
- Information contained in their statement of employment particulars (i.e. the information required to be given to employees in writing by the Employment Rights Act 1996);
- Information relating to any collective agreements

which apply to an employee post transfer;

- Information on any disciplinary procedure taken against an employee in the two years prior to the transfer;
- Information on any grievances raised in the two years prior to the transfer;
- Instances of any actual or potential legal claims against the transferor in the previous two years.

A failure to provide this information will result in a financial penalty for the transferor of up to £500 per employer.

The deadline for the old employer to supply employee liability information to the new employer stands at 28 days before the transfer.

Organising within a subsidiary

Once a subsidiary is established, key considerations for the next phase in protecting staff terms and conditions are as follows.

Building membership and activist base

If transferred and new members of a subsidiary are allowed to feel cut off from the union or develop the belief that being a member of the union is no longer worthwhile, that can only lead to an ebbing away of membership and effectiveness in representing the interests of members.

Alongside recruitment work, activist identification and development, consideration should be given to establishing regular two-way communication with the affected workforce to inform the union's response in the opening phase of the subsidiary's establishment and begin to understand the key issues of importance to staff that the union can take up.

Developing union strength in the subsidiary is not just about holding on to existing members but also recruiting among new starters working on the contract. Therefore, establishing the right to access new starters and obtaining new starter lists is an important component. If you have any concerns about employers not sharing new starter lists, contact the Data Protection Team on dataprotection@unison.co.uk.

Inferior terms and conditions for new starters and the injustice of a two-tier workforce are likely to form a critical issue for rallying support among new starters.

However, where existing staff are transferred into a subsidiary, the importance of keeping hold of existing members should not be neglected and will be greatly eased by obtaining absolute clarity about the subsidiary's requirements to continue operating a system for Deduction of Contributions at Source (DOCAS) [appendix 5 provides a letter for ensuring DOCAS arrangements are in place with the employer].

It should be remembered that, as a separate company, if there is no agreement to link pay rises to those of the contracting authority that owns the subsidiary, it will be necessary to lodge annual pay claims on behalf of staff.

UNISON produces a **model pay claim** and regular updates to pay claim guidance on this link www.unison.org.uk/bargaining-guides/ which can be

used in developing claims.

For assistance in obtaining a wholly owned subsidiary's accounts and drawing out useful data to support a claim, contact Bargaining Support on bsg@unison.co.uk

Renewing recognition and facilities agreements

Where it has been agreed that TUPE applies to any staff transferred to the subsidiary, recognition will transfer with them. It may be that it is possible to carry over the terms of the existing recognition agreement, but where that is not feasible the UNISON **model recognition agreement** can form a reference point for discussions.

Negotiators should push for that recognition to cover all staff engaged in the subsidiary, so that it includes new starters and not just transferred staff. The recognition agreement should set out the terms for a joint negotiating committee as the principal forum for future bargaining

Facilities and time off arrangements for union reps will normally form a component of the recognition agreement. Adequate facility time to enable the representation of members and engage in organising can often form one of the most problematic dimensions of a newly formed subsidiary where the activist base is insufficient. Some employers may be cooperative about time off for reps to continue to support members over the transition, but there is no guarantee of employers showing that flexibility. UNISON's **facility time guide** offers advice on assistance that can be sought where facility time problems are acute.

Monitoring protections and performance

Ensuring staff receive TUPE protections is not just a matter for the point of transfer, but for monitoring by the union over the long term. A systematic process for checking against any erosion of rights will be greatly assisted by regular communication with the workforce to identify any challenges.

Alongside monitoring of terms, negotiators should consider how they may monitor performance of the subsidiary to develop the ammunition to rekindle any drive to return services to the parent organisation by pressing for a service review.

Evidence in terms of damage to staff morale, motivation,

turnover, sickness absence, and productivity, can also assist this case.

The union can also play its part in putting monitoring on the agenda of any contracting authorities with overview and scrutiny responsibilities, which can offer a valuable forum for exposing the failure of subsidiaries to live up to their claims.

These issues are set out in more detail over the next section of this bargaining guide.

Checklist 2

Seek confirmation that TUPE applies to transfer of employees to new provider	
Assess whether any grounds to challenge if employer argues that TUPE does not apply	
If there is a valid reason for TUPE not to apply by law, argue the case for application of TUPE principles to contracting authorities under the Cabinet Office Statement of Principles or similar devolved legislation	
Ensure TUPE requirements to inform and consult affected employees are implemented	
Seek clarity on “measures” put forward by new employer to ensure compliance with TUPE rights	
<p>Early engagement with any new employer to go beyond minimum protections with a TUPE Plus agreement that establishes:</p> <ul style="list-style-type: none"> ▪ Recognition continues with new employer and extends across all staff working on the contract; ▪ Facilities and time off enable reps to deliver sufficient support for transferred staff; ▪ DOCAS is set up with the new employer to assist in retaining existing members and access is permitted to new starters on the contract; ▪ Where the contracting authority was part of a national bargaining structure, the wholly owned subsidiary commits to honour future pay increases awarded by that national bargaining structure; ▪ Staff have the option of remaining within or joining the appropriate contracting authority pension scheme on the basis of admitted body status; ▪ Effective bargaining structures are established with the new employer. ▪ The union is allowed access to induction process / new starters lists for recruitment purposes, as well as general access for full time officials and branch officers to recruit new members and talk to existing members 	
To fulfil any agreement on continuation of DOCAS “check-off” arrangements for UNISON members, ensure provision of details in format needed by new payroll department	
An organising plan to build the strength of the membership within the subsidiary to defend staff terms and conditions in the long term.	

Returning a subsidiary to in-house provision

Once the best terms have been achieved in any transfer to a wholly owned subsidiary, the union should be in the strongest position to then turn to considering whether a campaign for return of services to in-house provision is viable and plan the appropriate timeframe and actions for building toward that goal. This section of the guide sets out the key dimensions of planning any such campaign.

Mobilising the workforce behind the campaign

The workforce in any wholly owned subsidiary is clearly going to be a key pillar of any successful campaign.

Therefore, the table below offers an adjustable model for sketching out the work to be done in building union strength through member recruitment and activist development, establishing a dialogue with the workforce and going on to organise campaign activities.

Workforce campaign plan template

	UNISON activists	UNISON members	Non-UNISON union members	Non-union members	Whole workforce
Recruitment					
Activist development					
Gathering views					
Providing information					
Campaign activities					

Recruitment

Assessing the membership density of UNISON and other unions within any wholly owned subsidiary is a crucial first step in gauging whether the union is in a sufficient position of strength to mount a campaign. Where membership is low, the branch may target a certain density level that it believes is necessary before it can take forward an insourcing campaign successfully.

To achieve the density target, a timetable of recruitment work should be assembled, that may include the following dimensions, below:

Recruitment activity template

Activities	Specific actions / timetable
Holding a series of recruitment events, possibly themed around the transfer / insourcing campaign	
Establishing a stock of recruitment materials	
Display of recruitment materials	
Distribution of recruitment materials	
Holding informal discussions with non-members, possibly themed around the transfer / insourcing campaign	

Remember, don't expect potential members to come to you, plan out how, where and when you can meet the workers to maximise engagement. Make time to listen to their current issues and to talk about how the union can work with them to bring about positive change at work, and encourage other union members to do the same. Consider whether more informal activities will create opportunities for recruitment and celebrate any successes to build trust and show how the union makes a difference.

Activist development

Whether there are official union reps working for a wholly owned subsidiary may depend on whether the union is recognised by the subsidiary. Under TUPE, recognition should have transferred at the time that the service was originally contracted out, but the employer may have subsequently moved to derecognise the union if arrangement was voluntary. Where recognised union reps are in place, the structure should offer a strong basis to work from.

UNISON's facility time guide¹⁰ offers important advice on ensuring an agreement with the employer includes provision for a sufficient number of reps and for those reps to have adequate entitlement to time off.

However, even where recognition is in place, activism may be low within a wholly owned subsidiary. Therefore, a timetable of development work should be assembled, that may include the following dimensions.

¹⁰ https://www.unison.org.uk/24744_facilitytimeguidance/

Activist development activity template

Activities	Specific actions / timetable
Talking 1-2-1 with members to ask them and encourage them to stand as general union reps, as well as fulfilling the specialist roles of health and safety reps or union learning reps.	
Where members are reluctant to take on an official branch position, it may be valuable to encourage them to take up a role jointly with a colleague as a job-share, or become a “workplace contact” who arranges meetings, transmits info to members, and communicates the views of members to stewards. Workplace contacts have no statutory right to facility time, but there is nothing to stop a branch seeking an agreement to allow contacts reasonable time off. Now members can become ‘pay contacts’ too, and help out during the pay campaigns.	
Ensuring all activists receive the full training to which they are entitled for discharging any official union position.	
Supporting all new reps or contacts through a buddy or mentor, using the trained-and-active approach set out at www.unison.org.uk/get-involved/in-your-workplace/mentor-buddy/	

Where, despite all efforts, the number of activists within the subsidiary remains chronically low, it may be necessary for branches to consider the option of funding a part of their representatives’ time or obtaining further support by pursuing the options below.

Funding options

Section C of the Branch Funding Formula

Branches facing short term financial problems or continuing exceptional needs can seek assistance and request special funding under Section C of UNISON's Branch Funding Formula. It would be beneficial in such circumstances for a branch to work closely with their region to draw up a plan.

For more information, branches should speak to their regional organiser who will then contact the finance department at the UNISON Centre.

Organising Framework

Since 2020 there has been a question on facility time changes in the annual Organising Framework document completed every autumn by a branch and their regional organiser.

This procedure offers a prompt for a branch and regional staff to discuss their access to (or lack of) facility time and what options there might be available to approach an employer for improved arrangements, take on branch employed staff (BES) or submit a bid to the Branch Support and Organising Fund.

Branch Support and Organising Fund

From 1 January 2022, the new Branch Support and Organising Fund (BSOF) has replaced both the Regional Pool and Fighting Fund. This new fund will receive 2% of national subscription income every year and be apportioned to regions to distribute to branches and any regional Self Organised Groups that bid.

The fund aims to bring together the best of the Regional Pool and Fighting Fund and is focused on building branch capacity. These initiatives may be identified as part of the annual Organising Framework process.

The fund can be used for recruitment materials, physical goods such as upgrades to the facilities in the Branch Office and UNISON staffing resources. A guidance document and application form for the fund has now been developed — The new Branch Support and Organising Fund | UNISON National¹¹

The approval of bids and general management of the projects is overseen by an appropriate regional lay body. Payments are made from National Office once the region has approved the bid.

Branches, or groups of branches, can bid for staff to work on dedicated recruitment and organising projects in areas where there is an identified need through the Organising Framework and regional planning processes. This could also include, for example, bidding to trial a case worker for outsourced members to let the branch assess long term viability.

Bidding bodies may be expected to make a suitable financial contribution to the fund in order to sustain the fund and enable other bodies in the region to benefit from this resource in the future.

For further information and assistance in putting forward a bid to the Branch Support and Organising Fund, please contact your regional organiser.

¹¹ www.unison.org.uk/the-new-branch-support-and-organising-fund

Where dealing with a subsidiary that does not recognise the union, a recognition campaign may offer the ideal point from which to start, since recognition will usually involve a recruitment drive and an activist development programme. Recognition can then act as the basis from which it is possible to forge the insourcing campaign.

UNISON's bargaining guidance on achieving recognition is on this link. www.unison.org.uk/recognition-agreements-guide-03-2019

Gathering views

Getting to understand the views of the staff who work for the subsidiary is a crucial early step in shaping campaign work.

It is easy to make assumptions about the views or knowledge of staff working for the contractor. For instance, where a wholly owned subsidiary has been in place for a long time, many staff may have no experience of ever having worked for the contracting authority that owns the subsidiary and may have built up a loyalty / attachment to their employer. They may not realise the benefits of working directly for the contracting authority. Therefore, their sympathies for seeing the service transfer to direct provision by the contracting authority may initially be quite limited.

Taking the time to gather staff together and listen to their views about working for the subsidiary can help avoid falling into that trap, while uncovering their key grievances, provides solid ground for recruitment work and offers strong pointers for the kind of issues that will rally staff support behind insourcing.

Providing information

Among subsidiary staff, the blatant injustice of terms and conditions that are inferior to those of staff employed directly by the contracting authority is likely to form a central grievance. There are repeated examples of where the anger of staff who earn rates of pay well below national pay scales (such as local authority NJC / SJC or NHS Agenda for Change rates), has been the primary driver in industrial disputes that have played a large role in an employer's decision to bring services in-house.

It will be useful to draw up a table that contrasts the different terms and conditions so that staff can clearly understand the differences. This will help to emphasise what the workforce has to gain from insourcing.

Template for gathering staff views

Activities	Specific actions / timetable
Formal meetings with UNISON members / all staff	
Informal meetings/ 1-2-1s with individual members / wider workforce	
Survey of members / all staff (a model survey is set in Appendix 2 of this guide)	
Establishing forums for discussion through social media/ WhatsApp/ Teams groups	
Request for feedback through UNISON communications	

Template comparing staff terms and conditions

	Staff employed by the wholly owned subsidiary	Comparable staff directly employed by the contracting authority
Pay rates		
Pay increases		
Unsocial hours payments		
Hours		
Leave		
Sick pay		
Pension scheme		
Other terms (e.g. maternity/paternity/parental leave, rest breaks)		

Staff who were transferred to a subsidiary under TUPE may not have seen such an erosion of terms and conditions as staff who have been taken on by the subsidiary since the transfer took place. Therefore, the longer a subsidiary has been established, the wider these differentials are liable to become. This is often referred to as a “two tier workforce.”

Campaigning around terms and conditions, to bring them in line with directly employed staff or improvements such as payment of the Living Wage, have been crucial to many campaigns in persuading a contracting authority against persisting with a wholly owned subsidiary. This decision can be prompted by reduced profitability of the arrangement or concerns about the resources drawn into continual employment relations issues and reputational damage.

Alongside the contrast in terms and conditions, the financial results of the subsidiary can provide staff with further insight into the injustice of their position.

The latest accounts of private companies can be obtained through Companies House at <https://find-and-update.company-information.service.gov.uk/>

However, for any assistance in interpreting accounts, contact the Bargaining Support Group at bsg@unison.co.uk

The type of information that can be gleaned from accounts is as follows:

- Scale of profits made by the contractor;
- Level of dividends handed over to the contracting authority;
- The contrast between staff costs and profits;
- Remuneration of the highest paid employee, such as chief executive officer or vice chancellor / principal, as well as the senior management team as a whole

Campaign activities

After all the groundwork has been done amongst the subsidiary workforce in building membership, encouraging members to get involved as activists, identifying the grievances of staff and helping staff understand the injustice of their treatment when compared to directly employed staff, the campaign will eventually move on to identify a timetable of events for taking forward the insourcing campaign itself.

It will be important for the whole of the branch to know about the campaign and to be actively involved in the campaign to bring the service in-house. All of the activists and members who are employed directly by the contracting authority will have a part to play in the activities that form part of the campaign plan.

The template below is a suggested set of activities, which have been deployed as part of many successful insourcing campaigns. It should be integrated with the next section of the guide considering how key allies can be brought in to strengthen the campaign.

Template plan for campaigning activities

Activities	Specific actions / timetable
Demonstration / march / rally Often held outside an important contracting authority building to maximise attention on the campaign]	
Petition Can be conducted through hard copies or electronically – helps engage staff in campaign, offers vehicle to engage with public and demonstrate scale of support	
Publicity stunt Particularly helpful for attracting media attention to the campaign	
Report launch Analysis of the subsidiary arrangement, covering inadequacies of the procurement process and failures in service delivery / costs can be critical in persuading decision makers engaged in commissioning	
Letter writing campaign In hard copy or email format, letter writing can be deployed to highlight the issue among the local media or to raise pressure on local elected officials	
Lobby May involve attendance at scrutiny committees, cabinet meetings, university boards or councillor / MP / Member of devolved government surgeries	
Equality impact assessment Pressing a contracting authority to conduct an Equality Impact Assessment of the subsidiary arrangement can assist pressure on commissioning bodies by exposing the extent to which low income, women, ethnic minority and possibly disabled staff are damaged by outsourcing. <u>UNISON's template impact assessment</u> ¹² may offer a useful reference	

¹² <https://www.unison.org.uk/unison-eia-guidance-and-flowchart-jan-2022>

Of course, it may be decided that, ultimately, campaigning activity will have to be supplemented by the option of industrial action to maximise pressure on the employer.

UNISON's Industrial Action Handbook sets out all the steps necessary for lawful industrial action www.unison.org.uk/get-involved/learning-development/activists/organising-collective-action/industrial-action

However, early planning may be necessary to cover these key points:

- The regional organiser should be involved from an early stage to discuss the advisability of such a strategy and ensure all UNISON processes are observed;
- Consideration would have to be given to accurately defining the set of staff who would be party to the dispute and the nature of the “trade dispute” – most probably built around inferior terms and conditions;
- One of the most crucial prerequisites for any action would be ensuring the accuracy of membership data and checking records through RMS. As stated by UNISON's industrial action handbook, this can be supplemented by asking “stewards to approach all employees affected by the dispute to confirm their membership or to invite them to join, to check their home mailing address, to explain why we are balloting, and to hear what members and non-members have to say;”
- This process of liaising and campaigning with members should also enable the branch to gauge the likelihood of achieving any ballot threshold requirement – 50% of members voting in England, Scotland and Wales, with additional thresholds for some health members in England and Scotland. It may also be necessary to conduct a consultative ballot to ensure the union is on strong ground for taking action;
- The appropriate timetable for these various steps should be considered, bearing in mind that if permission is granted for industrial action, the action must start within six months of the last voting day of the ballot across England, Scotland and Wales, or 28 days in Northern Ireland. This timetable may also be affected by the need to liaise with other unions to ensure co-ordinated action.

Winning allies to strengthen the campaign

A strong membership dedicated to taking the insourcing campaign forward is a cornerstone of any successful initiative. But the campaign will also need to go beyond the workforce to win influential allies who can exert pressure on the decision makers who will determine whether to continue with a subsidiary arrangement

In order to do this effectively, the campaign team will need to be clear about the arguments it's making for in-house provision and what groups / individuals it is targeting.

The key arguments

The case for in-house services is typically built around the following key arguments.

Template for detailing case

Argument	Evidence
Subsidiary staff are treated unfairly in comparison to those staff directly employed by the contracting authority	Possible source – the template developed under the Providing Information section of this guide / evidence of the turnover rates climbing because of staff discontent / as well as more grievance cases / disputes
Subsidiary staff have lost the right to bargaining collectively over their pay, terms and conditions	Possible source – this should be evident from the loss of a recognition agreement and absence of negotiations over staff terms
The subsidiary has been generating major private profits despite service issues / attacks on staff terms and conditions	Possible source – contact the Bargaining Support Group via bsg@unison.co.uk for details of the subsidiary's financial results
The subsidiary's low wage model has a damaging effect on the local economy	Possible source – obtain details of the number of staff on the National Minimum Wage or wages below the Living Wage to support this point. If not available from any subsidiary source, it may be useful to conduct a short staff survey
The standard of service has declined since the subsidiary took over and / or has not matched promised performance levels	Possible source – key performance indicators monitored as part of service delivery / surveys of staff / surveys of service users
The cost of the service has surpassed the original budgeted cost	Possible source – an FoI to the contracting authority (an authority may try to hide behind commercial confidentiality, though there is a strong case that cost is a matter of public interest)
The contracting authority has lost flexibility in how it manages its business	Possible source – any examples are most likely to come from the experiences of staff working in the subsidiary and / or the directly employed contracting authority staff they work alongside
Outsourcing can have a particularly damaging effect on groups that display protected characteristics under the Equality Act and a contracting authority has a duty to protect staff from discrimination and promote equality under the Public Sector Equality Duty ¹³ [more detail carried in UNISON's Equality and Diversity guide ¹⁴ and Northern Ireland equivalent outlined at Equality Duties ¹⁵]	Possible source – the model survey set out in Appendix 6 to this guide may enable collection of data to support this argument

¹³ The definition of public authorities for the purpose of the Equality Act 2010 and section 75 of the Northern Ireland Act specifies application to Further Education and Higher Education Institutions in the sections below <https://www.legislation.gov.uk/ukpga/2010/15/schedule/19/part/1/crossheading/other-educational-bodies>
<https://www.legislation.gov.uk/ukpga/2010/15/schedule/19/part/2/crossheading/other-educational-bodies>
<https://www.legislation.gov.uk/ukpga/2010/15/schedule/19/part/3/crossheading/other-educational-bodies>
<https://www.legislation.gov.uk/nia/2016/4/schedule/3/crossheading/education-and-training>

¹⁴ <https://www.unison.org.uk/content/uploads/2020/03/Bargaining-for-equality-and-diversity-guide-and-model-policy.pdf>

¹⁵ <https://www.unison.org.uk/get-help/knowledge/discrimination/equality-duties>

All the arguments built around demonstrating a failure in delivering on the promised terms of the contract may be greatly assisted by the commissioning of a report on the subject, where there is ground for believing such a study will produce useful results.

The Association for Public Service Excellence¹⁶ (APSE) has considerable experience in conducting such work. Therefore, the branch may find it useful to approach APSE to explore the opportunities. The APSE unit that deals with insourcing is led by Andy Mudd, who can be contacted on – amudd@apse.org.uk. APSE usually deal with local government cases, but are open to enquiries from other sectors, particularly where the wholly owned subsidiary relates to generic services, such as catering and cleaning, that are bought in across sectors.

Some insourcing campaigns have made an APSE report a centrepiece of their campaign because it is a respected source that is liable to hold some sway over key decision makers.

Branches may seek to consult with their region over a possible bid to the Campaign Fund for resources that would help support campaigns for insourcing and any research/consultancy that would underpin them.

Guidance and an application form for the Campaign Fund are set out on this page of the UNISON website

<https://www.unison.org.uk/about/our-organisation/political-affiliations-and-support/our-political-funds>

For insourcing campaigns in the NHS, contact UNISON's Health Group on h.group@unison.co.uk to check what assistance can be provided.

¹⁶ <https://apse.org.uk/index.cfm/apse/>

The key targets

Once the key arguments have been established, the campaign team must establish a clear picture of who it is targeting with those arguments.

The following table offers a template for identifying the groups to be targeted, the goal of communication with that group and a timetable of actions to exert influence over that group.

Template for targeting external groups

Broad group	Specific group	Target	Timetable of actions
Service users/ (such as patients, residents or students)			
Community groups			
Media			
Contracting authority bodies with responsibility for overview and scrutiny (e.g. council committee/ trust board/governing body/board)			
Elected officials, such as councillors, MPs and Members of devolved governments			
Contracting authority senior management group			
Other			

Service users

Surveys repeatedly attest to the popularity of public authorities providing services directly and a widespread distrust of private company involvement in service delivery.

A survey conducted by Survation on behalf of the Association for Public Service Excellence (APSE) in 2016, which included booster samples across the country to ensure equal regional coverage, found that:

- Six times as many people trusted their local council (60%) to provide services in their local area over a private company;
- 64% of people want to see more services run in-house by councils;
- 61% of the public think that local and central government should try to run services in-house first, before outsourcing;
- 64% of people distrust outsourcing companies, with only 21% of people trusting them.

These sympathies will often appear among the users of the service that has been handed to a wholly owned subsidiary by the contracting authority.

In some cases, the users of a subsidiary's service may be principally an internal audience, while in others the users will be much more directly members of the public.

Service users are most likely to be interested in the arguments that can be made about the deterioration in the quality of service and rising costs.

The union may be able to share with service users the materials that highlight declining standards. If there is some form of service user representative / body (such as an official NHS patient rep), service users may be able, in turn, to feed back their perspective on service delivery.

Community groups

Community groups may overlap with service users, but will frequently have some kind of wider interest in the issues at stake than their personal experience of the service.

For instance, a community organisation for advancing the local economy or a city-wide Living

Wage initiative may have an interest in supporting insourcing because they want to discourage low-paid employment by local employers.

Equally, a local disability rights group may have concerns about the way services have changed for disabled users since the contractor took over and see insourcing as a way to tackle discrimination.

There are clearly a wide array of community groups operating in any local area, so narrowing down the potential groups that may have an interest in supporting insourcing will depend on the knowledge and contacts of the campaign team, and may also benefit from drawing in the contribution of the wider subsidiary workforce.

Community groups can include such bodies as parent teacher associations, resident associations, trade union councils, religious groups, youth groups or student unions.

Media

Local media can be used to amplify any campaign. Local journalists from print, radio and TV have a strong interest in running stories on developments at major contracting authorities, particularly where a service has come in for criticism or a dispute is developing over injustice in the treatment of subsidiary staff.

The media will frequently be most keen to illustrate the story through the personal experience of individuals to grab the attention of readers, viewers or listeners. It is important that members consider whether they are able to provide personal testimony on their experiences. This needs to be managed to ensure that they do not experience detriment from expressing their opinions.

Rallies, demonstrations and marches can offer a valuable focal point for attracting media attention, along with creatively devised publicity stunts.

Writing a news release to initiate any media work is a skill that needs work and **UNISON's general campaigning guide**¹⁷ offers comprehensive advice on all the issues to be considered, alongside moving into the more demanding requirements of providing interviews for the press.

The campaign team's regional staff should be able to

¹⁷ <https://www.unison.org.uk/content/uploads/2013/06/On-line-Catalogue193083.pdf>

draw on the expertise of the regional press contact to ensure the skills are in place to handle media work.

Contracting authority bodies with responsibility for overview and scrutiny

Local authorities will generally have an overview and scrutiny committee, which is required to maintain an ongoing assessment of the performance of wholly owned subsidiaries.

Local authority overview and scrutiny committees can also take on a wider remit that assesses the delivery of health and police services in the local area. Universities will also typically have a scrutiny committee of some kind.

The campaign team should obtain a clear picture of when these committees meet, the members of the committees, the opportunity to obtain copies of the materials under discussion and the scope for a union representative to attend.

These committees can provide a useful source of hard data on the performance of the subsidiary targeted for insourcing, may offer an opportunity to request information on the subsidiary and a chance for the union to input to the deliberations of the committee.

Elected officials, such as councillors, MPs and Members of devolved governments

Targeting councillors, Members of Parliament at Westminster or Members of devolved governments with a case that shows the deteriorating standards of service, poor value for money or the injustice of staff treatment, can form a key part of the campaign.

When constructing a campaigning plan targeting elected officials, consider these points:

- Branches may seek to present their case by writing to elected officials or encouraging members / staff to join a letter/ email writing campaign.
- Personal meetings, perhaps conducted through councillor / MP / Member of devolved government surgeries, are frequently a more effective way to build a relationship with an elected official.
- Making contact with the Labour Link regional contact officer can offer the most effective route for presenting the branch's case to a group of Labour councillors / MPs/ Members of devolved government.
- However, non-Labour councillors / MPs / Members of a devolved government should not always be regarded as a lost cause. Clearly, the representatives of different political parties may have differing ideological views of outsourced or in-house service provision, but some can be persuaded to consider an in-house solution on the pragmatic grounds that a contractor is not delivering value for money or that all options have not been properly considered. Independent studies of these dimensions, such as that conducted by APSE for the UNISON branch at North Port Talbot Council's insourcing campaign, can be crucial for swaying such officials toward an in-house option.
- The timing of campaigning to exert maximum pressure on elected officials can play an important part, so make sure you establish the election timetable they face so that, where possible, they feel the full force of the campaign as election dates approach.
- Co-ordinated action with service users (such as patients, students or residents) and community groups, alongside a media campaign, will ensure elected officials understand the strength of feeling beyond the union among their wider electorate.
- Identifying the relevant councillors / MPs / Members of a devolved government for the area where the contractor delivers services can often be carried out through the local council website. However, these sites may also help
 - <https://members.parliament.uk/members/commons>
 - www.gov.uk/find-your-local-councillors
 - www.parliament.scot/msps/current-and-previous-msps
 - <https://senedd.wales/find-a-member-of-the-senedd>
 - <http://aims.niassembly.gov.uk/mlas/search.aspx>
- Where MPs / Members of a devolved government are supportive, it may be possible to gain further publicity through a written or an oral parliamentary / assembly question, putting down a motion or a contribution in a parliamentary / assembly debate.

Contracting authority senior management

The value of getting a contracting authority's senior management on side in constructing a solid argument for in-house provision should not be underestimated.

Senior managers will frequently have access to information and skills that can turn an in-house option from a vague aspiration to a well-reasoned target, based on a comprehensive business case that is liable to persuade commissioning decision makers.

A business case will typically entail detailing at least the following dimensions of an in-house solution.

- **Benefits** – The standard of service that can be delivered to service users as well as wider benefits to the organisation, such as flexibility in responding to changes and impacts on staff morale, motivation, turnover.
- **Costs** – The cost requirements to meet the specified benefits, in terms of both capital expenditure and staffing costs. In some cases, large contractors can enjoy economies of scale in their operations that make it difficult for an individual public authority to compete. Some local authorities have sought to address this problem by joining forces with neighbouring local authorities to reduce costs through combined functions.
- **Timescale** – Particularly when a service has been with a wholly owned subsidiary for a considerable period of time, putting in place the capacity to deliver the service in-house can take some time. Building the capital requirements and developing the skills among staff to restart in-house delivery has to be factored into a realistic timescale.
- **Risks** – All business cases carry risks that expected benefits, costs and timescales will be thrown off course by unexpected events, but risks will generally be a strength of an in-house option, as it avoids the risk of a subsidiary folding, particularly where the subsidiary competes for work beyond its parent contracting authority and therefore has no guarantee of being awarded contracts.

Alongside the knowledge and skills of senior management, the union is in a strong position to draw on the experience of staff themselves, who can understand better than anyone how a service should be redesigned for effective in-house provision.

Local negotiating bodies (JCC / JNC) may offer a useful means to highlight issues concerning subsidiary staff, service provision and reputational damage. It is important to keep such issues on the agenda in this way, even if the commissioning body is not directly

responsible for the staff. The commissioner is paying for services using public money and therefore ensuring value for money is a legitimate concern¹⁸.

¹⁸ In the case of Higher Education Institutions, funding can be more blurred, with some directly from a form of government grant, but much deriving from tuition fees and funds passing through the student finance companies

Checklist 3

Assess viability of campaign, taking into account membership density, scale of activism, member views and employer position	
Mobilise workforce behind the campaign with clear plans to build strength through: <ul style="list-style-type: none">▪ 1-2-1 conversations▪ Recruitment;▪ Activist development;▪ Gathering members' views and identifying key concerns;▪ Setting out benefits of a return to in-house provision to members;▪ Assembling a programme of campaign activities.	
Win allies to further strengthen the campaign by identifying the key arguments for bringing on board: <ul style="list-style-type: none">▪ Service users (such as patients, students or residents);▪ Community groups;▪ Contracting authority bodies with responsibility for overview and scrutiny;▪ Elected officials, such as councillors, MPs and members of devolved governments;▪ Contracting authority senior management.	

Sector experience and case studies

NHS experience

Following the Health and Social Care Act 2012, it became increasingly common for NHS trusts to establish wholly owned subsidiaries. This process appeared to be partly motivated by VAT benefits, partly by facilitating the option to sell services to other trusts, but also strongly by cost savings in cutting staff terms and conditions. Given the initial constraints of TUPE, these savings were mainly focused on inferior terms for new starters, including the absence of access to the NHS Pension Scheme.

UNISON campaigned strongly against wholly owned subsidiaries, pushing the case through parliamentary work targeting political parties and MPs, as well as generating media attention. UNISON also targeted the NHS itself to intervene against trusts establishing “subcos” and require the backing of staff before any proposals could proceed.

As a result, the NHS put in place a **procedure in November 2018** that meant trusts had to submit plans to NHS Improvement (now subsumed within NHS England) for scrutiny, including a business case to justify implementation.

As part of this regime, it was made clear to trusts that tax avoidance could never provide a valid reason for establishing a “subco,”

In setting out their plans, trusts were forced to address the following questions:

- Has there been a detailed options appraisal of the alternatives for addressing these challenges and is there a clear rationale for selecting the subsidiary transaction?
- How is the trust board assured that the subsidiary will have the ability to attract and retain staff with the appropriate skills and experience to deliver the service requirements both immediately and over the life of the business plan?
- Does the business case outline a robust and comprehensive workforce strategy for the subsidiary?
- Has the trust engaged staff in decisions that affect them and the services they provide as set out in the NHS Constitution?
- Does the business case outline plans to comply with any consultation requirements, including staff consultations?
- Does the business plan demonstrate financial viability for both the trust and the subsidiary over the forecast period?
- Is there a clear commercial strategy for the transaction that is not dependent on any VAT benefits associated with the transaction?

UNISON has produced guidance on using this procedure to oppose subcos in this briefing

www.unison.org.uk/content/uploads/2019/08/Resisting-subcos.docx

One of the recent issues in the NHS has been ensuring that the regulator (in this case NHS England) enforces its own rules. UNISON has challenged several subco decisions – both with trusts and NHS England – on the grounds that they should not have been permitted under the official guidelines.

UNISON also clarified that subco employers could make an application for access to the NHS pension scheme through the NHS Business Services Authority and as long as the organisation was wholly owned and engaged in NHS work the Department of Health expects that the application would be looked upon favourably.

Alongside national initiatives, branch campaigns were resourced and mobilised. Branches were encouraged to attend board meetings where any business case was discussed, to contest any decisions to hold such considerations in private, to expose any attack on terms and conditions in the business case and to highlight the sometimes exorbitant consultancy costs in the process of setting up subsidiaries.

Advice also went out to assess the potential to mount an equal pay challenge where the transferred workforce was predominantly female, since in some circumstances a “subco” could be deemed an “associated employer” that would facilitate a comparison of pay rates between the trust’s main workforce and the “subco.”

Ultimately, a number of branches were forced to

pursue industrial action to force employers to back down on proposals and several branches won the right to remain trust employees after years of determined campaigning work.

Higher Education experience

Universities are one of the other main areas of public services where a push to wholly owned subsidiaries has taken place.

The tax advantages of such subsidiaries appear less clear cut for universities than in the NHS, since universities are classified as educational charities exempt from the payment of corporation tax and exempt from, or able to recover, VAT for its core educational and research activities.

However, universities may see wholly owned subsidiaries as a vehicle for pursuing activities that are not compatible with their charitable status and they can generally still avoid corporation tax by paying any surplus to the parent university as a charitable donation.

Examples of trading activities in which wholly owned subsidiary companies have been established in the HE sector include the following:

- Conferencing facilities and management;
- Catering, entertainment, sporting and recreation functions;
- Management of student residences;
- Provision of consultancy, training, research and equipment;
- Science parks or research spaces;
- Full range of professional services;
- Provision of academic staff.

A 2022 Freedom of Information survey found that around a quarter of universities had established wholly owned subsidiaries to deliver some of their operations. Of those, 25% covered cleaning, 44% catering, 28% security, 31% IT, 28% admin and 66% other support services.

As in the case of the NHS, they offer a backdoor way to attack terms and conditions and universities appear to have focused even more heavily on the cost savings of new starters by avoiding staff transfers and recruiting entirely externally into wholly owned subsidiaries. This has been accompanied in some cases by closure of the Local Government Pension Scheme to new starters or the employer entirely withdrawing from the scheme.

Local authority experience

In local government, wholly-owned subsidiaries are known as “arms-length” or “local authority trading companies” (LATCs). They are often called “arm’s length external organisations” (ALEOs) in Scotland. These operate as separate entities from the council but are wholly owned by them. LATCs do not include companies where councils only own a stake and private companies own the rest. Such joint ventures must be treated as another variant of out-and-out privatisation. Many existing staff are TUPE transferred to the newly established company and a subsequent two-tier workforce emerges where new staff are paid inferior terms and conditions to their colleagues.

The motivations for setting up an LATC vary. There are two broad types of companies that councils may seek to set up: the service delivery model, where the company’s main activity is to do work for the council itself (or a group of councils); and the commercial trading company, which intends to trade more widely with other external organisations and individuals. Where the council’s objective is wider commercial trading, it cannot simply award work to the company. It must put the work out to competitive tender - with the risk that somebody else may win the contract, leaving the LATC without contracts or revenue.

UNISON’s local government team is researching the extent of LATCs - or wholly owned subsidiaries - on the pay, terms and conditions of staff employed. So far, we’ve found over 500 wholly owned companies across the UK, but many of these are property management companies or investment vehicles that do not employ staff. We expect the figure to be nearer 700 in total. There are also housing arm’s length management organisations (ALMOs) that manage council housing on behalf of a local authority. There are **currently 22 ALMOs**, but they are reducing in number. For example, Lewisham Homes in London will be brought back in-house in October 2023. In **2016 there were 37 ALMOs**, but councils have either insourced them or stock has been transferred to a housing association over time.

Trading companies can and do fail, resulting in substantial costs to their parent council. In 2015, Nottingham City Council established Robin Hood Energy (RHE) as a wholly owned not-for-profit company. Over the years, it accumulated substantial debts. **In 2021, it went into insolvency with the loss of 230 jobs. The Council lost around £38m, having invested £43m into RHE and £16.5m in guarantees.**

Another high-profile failure was **Brick By Brick**, a wholly-owned subsidiary of Croydon Council. It went bankrupt, leaving behind it a trail of loans provided by the Council to the tune of hundreds of millions of pounds. **Croydon Council declared itself bankrupt in November 2020 and has been beset by financial problems.**

In 2016, Bolton Council decided to set up its own care company despite the local UNISON branch fighting hard against it. Bolton Cares was set up to make savings, and ultimately these savings came out of the pay, terms and conditions of UNISON members. Members were dismissed and re-engaged on inferior terms and conditions by the trading company.

In fighting moves to establish LATCs, UNISON must ensure that councils carry out a service review and a full options appraisal before attempting to establish a company. There is a tendency for councils to jump into trading activity without being clear about what they are trying to achieve, what the pitfalls might be and whether there are less risky alternatives for achieving the same goals.

Before embarking on a trading operation, a council must satisfy itself that it has considered all the risks of such an undertaking. This includes developing a full business case which covers projected financial performance and risks. Any decision to proceed with a trading company should be accompanied by a full business plan covering how the company will operate.

The council must decide upon the company governance structure, including the composition of the board and how the council will be represented – usually through a mixture of councillors and officers.

In our experience, councils often pay consultants to advise on business cases and plans. There have been many instances where consultants' projections of future revenue and trading opportunities have proved wildly optimistic.

Trading companies can and do get into financial difficulties. Councils should therefore ensure an exit strategy is written into the company's constitution, covering what will happen if the company becomes insolvent.

Most company structures will involve limiting the liability of the company directors. Councils may be under no obligation to meet the company's debts and liabilities should it get into trouble, but political and service delivery considerations may mean they choose to.

Case studies

Northumbria University

Northumbria University established a wholly owned subsidiary called Northumbria University Services Limited (NUSL) in 2016. It covered certain grades of professional staff and enabled the university to side-step the obligation to offer Local Government Pension Scheme (LGPS) membership to all professional support staff.

The proposals provoked a furious response from members and drawing the expertise of UNISON's Head Office Pension Unit, the branch took our arguments to the Board of Governors.

As the impact was principally to fall on future members, it proved difficult to rally support for industrial action against the initial steps to create a wholly owned subsidiary.

However, it was possible to mitigate the damage by securing agreement that:

- Our recognition and facilities arrangements with the university would be extended to include NUSL;
- Only new joiners after a specified future date would be employed by NUSL (which was repeatedly set back);
- University staff who moved to NUSL due to promotion had their right to remain in/or to join the LGPS fully protected;
- The defined contribution pension scheme which NUSL employees would be offered (UCRSS) would be improved (using the support provided by UNISON's Head Office Pension Unit);
- Employer contributions to the pension scheme would be raised;
- The option for an employee contribution rate of zero would be retained;
- The university would match a sliding scale of employee contributions up to a maximum employer contribution of 12%;
- Other than pension arrangements, NUSL employees would maintain the same pay, terms and conditions as university employees.

University of Surrey

In early 2022 the University of Surrey created a wholly-owned subsidiary (WOS), Operate Surrey, with a view to transferring selected professional services to the new employer.

UNISON raised its concerns at several Joint Negotiating Committees (JNC) with the employer, arguing that the setting up of the WOS was privatisation by the back door.

University management argued that the WOS allowed flexibility of reward, to address longstanding issues of retention and recruitment. For this reason management claimed they had selected Facilities Management (FM) Services to transfer to the WOS.

The employer claimed that national pay bargaining restricted their ability to increase pay.

UNISON requested evidence that issues of recruitment and retention were specific to this staff group. No such evidence was presented by management. The Branch suspected that the reason this staff group were selected was because they were one of the lowest-paid staff groups, and in management's eyes, less likely to put up a fight.

UNISON noted that the staff group were the most diverse among the organisation, with a significant number of migrant workers whose first language was not English. The majority of the group were women.

Management proposed to transfer the 220 FM staff to the WOS – including cleaners, porters and some estates staff. The new Operate Surrey terms and conditions were misrepresented by management as enhancements. While there was enhanced pay on offer, there were cuts to sick pay entitlement, annual leave and crucially pensions. In short, they were offering a little more now, for a lot less overall.

Management held consultation meetings with the affected staff. The UNISON branch made sure to send reps to every meeting, supported by organisers from the region. At the end of each meeting we made sure to spend two minutes introducing reps and saying we were there to support.

The branch requested to hold members meetings, covering every shift pattern, to discuss the proposals. Management agreed to allow time off to attend these meetings. Over the course of a day, the branch held

meetings at 7am, 12pm, 4pm and 7pm. It was decided to open these meetings to non-members, to allow the branch to recruit.

It was clear that the staff had not fully understood the proposals from management, in particular the cuts to the other terms and conditions and pensions.

When presented with the financial reality of the proposals, members became angry and agreed to launch a campaign against the transfer to the WOS.

We contacted the Student Union sabbatical officers to gain their support.

At further members meetings it was decided to go into dispute with the University of Surrey over the proposed changes. This allowed us to push pause on the consultation and delay the transfer, pending an outcome under the university's dispute resolution procedure.

A team of UNISON reps, along with the Regional Organiser, attended negotiation meetings where we argued against the proposals, and that this would create a two-tier workforce entrenching inequality in the university further. A written submission was made illustrating the significant pension cuts, which in some cases were projected to be as high as 14%.

During the negotiations the branch conducted a consultative ballot, with a view to be able to deliver the outcome of this ballot during the dispute period, further leveraging our position. 100% of members said that they were prepared to take industrial action, on a turnout of 85%.

Following the result of our consultative ballot, the arguments we had put forward, and increased campaign and trade union activity on campus, the employer finally agreed to cancel the TUPE, and retain the status quo.

Unfortunately the employer has continued with the WOS Operate Surrey model, and have since begun hiring new staff on these terms. As these staff are not yet UNISON members, we have limited power to stop them. However, we also secured improvements to the new Operate Surrey contracts.

For instance, it was proposed to hire staff on statutory sick pay. We made the argument that this was unacceptable and it was agreed to include occupational sick pay for new starters employed by the WOS.

Frimley Health NHS Trust

In spring 2019, Frimley Health NHS Foundation Trust announced its intention to outsource all hard and soft facilities management to a new wholly owned subsidiary (WOS or subco). This involved the proposed transfer of over 1,000, mainly low paid female migrant workers, out of the NHS into a new private company. At the time this would have been potentially the largest subco in the NHS. The subco would have allowed the trust to save millions in VAT and they were upfront from the start about how they would be cutting pensions and other terms and conditions for all staff at the WOS.

This was privatisation of the NHS by the backdoor, a pretty naked tax dodge by the employer, and a clear attempt to save money off the backs of the lowest paid workers in the NHS; the local branch immediately took action to combat the proposal. They dedicated funds to create a campaign budget, moved a motion at the regional health committee and regional council calling for the campaign to scrap the WOS to become a regional priority. Additional organiser capacity was allocated to the campaign from the region's strategic response team and specialist help was sought via UNISON's national office for expertise in NHS finance to help undermine the business case for the subco, and from the strategic organising unit.

There were some significant barriers to the organising campaign. Membership density was very low (below 10%), there were no activists in the affected staff group, workers were split across multiple sites, and most people did not speak English as a first language. However, organisers were able to quickly identify a number of potential activists from staff meetings and floorwalking. Campaign committees were formed in the two main hospital sites who made their first job to get as many people as possible to mass member meetings in all workplaces. We also ensured that all communications were translated into the main first languages of the workers we were looking to organise.

Initial meetings were open to all affected staff and at the meetings, workers heard the union's plan to fight the outsourcing and confidence was built that this could be stopped. Organisers and fledgling activists also heard members concerns about the WOS and these shaped key messages which were used on placards, badges and posters throughout the rest of the campaign. The meetings also helped the union to quickly recruit more members and build up mapping of the 1,000 staff across all locations and shift patterns. By the end, we

joked that UNISON had more idea of where and when staff were working than the employer did!

Affected workers knew from early on that the only way we were likely to build the pressure needed to scrap the WOS would be to have a realistic threat of effective industrial action, but they knew the union had a plan which was realistic and that they were committed to. The employer was trying to move fast and so our window for building to action before the transfer was very limited. Our negotiating team was able to create enough delays in the process to allow the organising work to build our base effectively.

The campaign then went public with lunchtime demonstrations at all sites. Before the first one we weren't certain how many people would take part, and a sudden downpour threatened to make the whole thing a wash out. But we needn't have worried – hundreds of staff turned out to wave flags, blow whistles and make very clear that the WOS needed to go. Delegations of workers attended trust board meetings to put their case directly to senior leaders and questions were asked in parliament about the issue.

Hospital management started to get nervous and began offering concessions over terms and conditions. All developments were put to members in more mass meetings, but this mainly galvanised members who could see that their campaign was working. Throughout they remained resolute that they wouldn't settle for anything other than staying employed by the NHS.

A consultative ballot showed overwhelming support for industrial action to fight the WOS. The formal ballot incredibly got even higher turnout with 99.5% of members voting for strike action on a 72% turnout. Local politicians began to support the campaign, with councillors and Labour MP for Slough Tan Dhesi coming to speak at lunchtime demos and lobbying management over the issues. We built relationships with journalists and received prominent coverage in local media for each of our demos. And we lobbied the NHS regulator to put the brakes on plans which we argued were fatally flawed.

Pressure was building on management to scrap the WOS and on the eve of strike action, they agreed to pause all work on the subco to allow for more meaningful talks. These were facilitated by ACAS and allowed the union to explore more fully the business case management had been trying to keep hidden for months. We were able to systematically and forensically show that the business case was flawed

and used this to further lobby NHS England.

It was at that point that the first lockdown was announced in 2020. This put a pause on structural changes in the NHS. In mid 2021 the employer finally announced they would be comprehensively scrapping the WOS once and for all and apologised to staff for the stress they been put through. A massive victory for the members who had worked so hard, so passionately and for so long!

North Bristol NHS Trust

What happened?

- In 2018, North Bristol NHS Trust suddenly announced that they had employed consultants to carry out a feasibility study for creating a wholly owned subsidiary for facilities management.
- The branch mobilised to fight the proposal and eventually the trust ruled against proceeding.

How was success achieved?

- The branch contacted union reps where the consultants' recommendations had previously been implemented and so was able to establish a clear picture of the inferior terms on which staff working in similar subsidiaries were employed.
- This information formed a crucial plank of the following campaign to explain the consequences of transfer to staff, rally opposition among the workforce and enable members to challenge management.
- The strength of feeling across the workforce against the proposal quickly became apparent to management, who could see that they would face widespread industrial action if they persisted.
- As low-paid facilities management staff, many did not have access to workplace IT and so the campaign effectively deployed face-to-face organising, drop-in sessions to answer staff queries, meetings, recruitment stalls and posters.
- Leading activists came from within the group of staff affected by the proposal who knew their colleagues well and so could offer an influential lead.
- Campaign posters include a simple contrast of Agenda for Change rates against the terms staff would face after transfer, as well as a 16-point listing of actions

the union had taken to challenge the proposals.

- The branch worked closely with other unions at the trust, so establishing a strong and united staff side.
- Letters were sent to MPs who in turn were persuaded to exert pressure on the trust, pressure was maintained on the trust board with regular communications, while the campaign also targeted the health overview and scrutiny committee and the clinical commissioning groups in place at the time.
- A petition was utilised to engage staff and demonstrate the strength of feeling to management.
- Additional data to assist the campaign was gathered through Freedom of Information requests.
- The branch joined forces with the Protect Our NHS to promote the campaign.
- After the trust announced its decision to halt its plans, an event was held to celebrate the success with members.

Any notes of caution?

- In handling the press be wary that they can have an agenda that seeks to paint public sector staff as a privileged group of workers, so avoid issues that might play into hands by emphasising working conditions that may not be widespread among private sector staff.

Wrightington, Wigan and Leigh NHS Trust

The proposals

Wrightington, Wigan and Leigh NHS trust took the decision to establish a wholly owned subsidiary company, WWL Solutions, for the delivery of facilities management for all trust sites and with the intention of competing in the local market to generate income.

Proposals included moving at least 900 staff to be directly employed by the SubCo. The main driver behind the proposal was the money that could be saved by reducing terms and condition of new staff (lower rates of pay, no NHS pension etc) and the savings in tax owing to a loophole meaning that significant savings could be made on VAT.

How success was achieved

The membership in the branch amongst the affected members was low and members were not engaged in the work of the branch. The region deployed three organisers to build density, identify leaders in the workforce earmarked for transfer and gauge the level of support for a campaign and dispute to oppose the proposed transfer.

The initial organising work was crucial and included:

- 32 members meetings over a period of two months;
- Organisers speaking to each individual member about the dispute in person and on the phone;
- Regular newsletters and updates;
- ‘Ward walks’ to talk to members on a regular basis;
- Branch officers setting up a campaign committee with key leaders covering all groups of members affected and charging these activists with key activities to support the campaign;
- Rallies outside board meetings.

Density grew to over 60% – an increase in membership of 30% in the initial two months of the organising work.

The employer remained intransigent, and an industrial action ballot of members was held which resulted in a turnout of 73.3% and an 88.7% vote for industrial action.

Members took 10 days of well supported industrial action which was bolstered by intense campaigning, which included:

- Social media to reach a wide range of supporters;
- Working with local MPs, who wrote to the trust and raised questions in parliament;
- Attending picket lines alongside the General Secretary of UNISON and the TUC;
- Attending meetings of other trade unions and community groups.
- Holding public meetings, marches and rallies in support of the strikers and gained coverage in the

local and national press.

- Lobbied the local Labour Party ward and constituency meetings, who passed motions in support of the action.

All actions were co-ordinated by the Branch Campaign and Strike Committee, and carried out by members, many of whom attended formal meetings or spoke in front of hundreds of people for the first time. We had activity every day of the period during which strike action took place.

Negotiations took place under ACAS, which failed to produce a resolution. We provided a detailed analysis of the flaws in the business case for WWL Solutions, but the trust refused to engage or reconsider. They undertook to protect terms and conditions of workers who transferred for 25 years. However, this fell far short of members' expectations.

The high profile of the campaign and support of local politicians saw Wigan Council intervene to make an offer to the trust regarding front loading of joint funding of public health initiatives in the trust's favour in exchange for the removal of the proposal to establish WWL Solutions.

The dispute was settled and left behind a stronger branch with a more engaged membership and in a better position for future negotiations with the employer

Appendix 1

Service improvement plan template

Scope	
Priorities for improvement	
Objectives	
Results expected	
Period covered	Typically, a plan is set out over a two or three-year period
Management of change	
Action to be taken	
Resources and investment required	
Training, staff recruitment/redeployment	
Corporate action	
Staff/trade union involvement and consultation procedures	
Responsibility and management accountability	
Timetable	
Monitoring and reporting progress	
Scrutiny review	Typically reviews take place on an annual or six-monthly basis.

Source: European Services Strategy Unit, 2008.
Commissioning and Procurement Toolkit

Appendix 2

Model letter seeking information and discussions on proposed transfer

[Name of appropriate manager/name of organisation/address]

[Date]

Dear [insert name]

Re: Proposed transfer

We refer to the proposed transfer of [insert details of the contract to be transferred] to [insert details of where contract is to be transferred] with effect from [insert date if known].

UNISON believe that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply to the proposed transfer. As you may know, under Regulation 13 of TUPE, you are obliged to inform and consult with appropriate representatives of any employees affected by the proposed transfer. As the recognised trade union, UNISON therefore requests that you provide the following relevant information:

- The fact that the transfer is to take place
- The date of the proposed transfer
- The reasons for the transfer
- The number and description of affected employees including those of the transferee
- The legal implications of the transfer for the affected employees
- The economic implications of the transfer for the affected employees.
- The social implications of the transfer for the affected employees
- The proposed measures you and or the transferee propose to take in relation to the affected employees in connection with the transfer
- The number of agency workers working temporarily for and under the supervision and direction of you and the transferee
- The parts of the undertaking in which those agency workers are working
- The types of work the agency workers are carrying out

We should be grateful for receipt of the information above within [insert number] days from the date of this letter and request a meeting on [insert date] to discuss the proposed transfer.

Yours sincerely,

Appendix 3

Model first follow-up on proposed transfer

[Name of appropriate manager/name of organisation/ address]

[Date]

Dear [insert name]

Re: Proposed transfer

Further to my letter dated [insert date of letter], as the recognised trade union, UNISON is yet to receive the information required to be provided under Regulation 13 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

As per TUPE Regulation 13(2), this information must be provided, “long enough before a relevant transfer to enable the employer of any affected employees to consult the appropriate representatives of any affected employees”.

Further, if any measures are envisaged, the duty to enter into meaningful consultation with UNISON arises under TUPE Regulation 13(6). This must be in enough time before the transfer and with a view to seeking UNISON’s agreement to the intended measures.

UNISON is concerned that there has been no meaningful consultation to date and no invitation by [insert name of employer], to enter into consultation with UNISON.

In order to meet your legal obligations under TUPE, please provide the information required by Regulation 13(2), along with your proposed timescales for a meaningful process of consultation prior to transfer, within [insert number] days from the date of this letter.

Should you fail to comply with the statutory duty to inform and consult as above, UNISON will consider the pursuit of Employment Tribunal proceedings in order to secure compensation for those employees affected.

I trust that you will show proper regard for [insert name of employer]’s legal obligation to inform and consult and I look forward to hearing from you as a matter of urgency with the required information and with a view to commencing constructive consultation prior to transfer.

Yours sincerely,

Appendix 4

Model response to measures notification

[Name of appropriate manager/name of organisation/ address]

[Date]

Dear [insert name]

Re: Proposed transfer

I acknowledge receipt of your letter dated [insert date of letter] which contained notification of measures that [insert name of employer] intend to take following the transfer of [insert name of service/department/team] from [insert name of transferring employer] with effect from [insert date of transfer].

[Select text as appropriate from the three suggested sections below as appropriate]

1. UNISON would like to request a meeting at the earliest opportunity to discuss the following concerns:

[List and detail any issues or clarity required on proposed measures]

2. The letter contained proposed contractual changes which UNISON does not agree with. Changes to individual contract terms are void if the sole or main reason is the transfer unless there is a valid economic, technical or organisational reason for the change entailing changes to the workforce as per the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) Regulation 4(4). UNISON believes there is no such reason and therefore these proposed changes are in breach of TUPE.

[List and detail proposed contractual changes that UNISON disagrees with and the reasons why]

3. UNISON would like to request a meeting at the earliest opportunity to discuss the following:

- Confirmation that [insert name of employer] will continue to recognise UNISON post transfer. I have included a draft recognition agreement which may be useful in formulating an updated recognition agreement between UNISON and [insert name of employer]. This has formed the basis of agreements with employers across the UK and has led to constructive mutual recognition. [Include model recognition agreement from UNISON bargaining guides page - www.unison.org.uk/bargaining-guides]

- Facility time and arrangements to be incorporated into an agreement between [insert name of employer] and UNISON. I have included a draft facilities agreement which has also formed the basis of agreements with employers across the UK and may be useful in formulating an updated facilities agreement between UNISON and [insert name of employer].
[Include model facilities agreement from UNISON bargaining guides page - www.unison.org.uk/bargaining-guides]
- Future collective bargaining arrangements between [insert name of employer] and UNISON. We have enjoyed a good working relationship with [insert name of transferor employer] and would like to foster a positive working relationship through effective negotiating arrangements with [insert name of employer] going forward.
- Confirmation and/or set up of DOCAS facilities with [insert name of employer]'s payroll provider to enable UNISON members to continue to pay their UNISON subscriptions as a deduction from their wages post transfer.
- The proposed pension provisions for eligible transferring employees and confirmation that staff will be allowed continued admission to the [contracting authority's] pension scheme or a pension scheme that is broadly comparable to that scheme.
- [Insert name of employer] honouring future annual pay awards agreed at [insert appropriate national or sector-level collective pay bargaining body] for transferred employees post transfer.

I look forward to hearing from you with arrangements to convene a formal consultation meeting to discuss these matters further.

Yours sincerely,

Appendix 5

Model letter on DOCAS arrangements

[Name of appropriate manager/name of organisation/ address]

[Date]

Dear [insert name]

Re: Deduction of Union Contributions At Source (DOCAS)

I am writing in relation to the transfer of UNISON members to [insert name of employer] on [date] under the Transfer of Undertakings (Protection of Employment) Regulations 2006. In order to ensure that union contributions continue to be deducted through the payroll system and therefore members' arrangements transfer as smoothly as possible, could you please confirm whether [insert name of employer] will be able to provide the following:

1. Payment of DOCAS subscriptions by BACS directly to UNISON's bank
2. Monthly electronic DOCAS reports to UNISON's Head Office. This should also incorporate any DOCAS information that you may currently send to UNISON Regional Offices. We would prefer the file to be in ASCII format and to be sent as a CSV (Comma separated variable) file.
3. As a minimum we would like to receive the following information:

▪ Employer code ▪ Payment frequency ▪ Employer PAYE number ▪ Pay period, Employer name ▪ Contribution for the period ▪ Employee national insurance number ▪ Date of first subscription payment ▪ Employee payroll number ▪ Date of last subscription deducted ▪ Employee surname ▪ Date of employee transfer, Employee forename ▪ Date employee cancelled ▪ Employee gender ▪ UNISON subscription ▪ Date of birth ▪ Date of leaving employer ▪ Date payment deducted

I would also ask for any codes, with translations that identify an employee's work location.

I should be grateful if you would let me know whether you are able to meet this request. It may be advisable for UNISON officers to meet your payroll managers to discuss the request in more detail. I look forward to your reply.

Yours sincerely,

Appendix 6

Model survey

UNISON survey

UNISON [branch name] is currently considering a campaign to return the services currently provided by [wholly owned subsidiary name] to direct provision by [name of contracting authority]. However, to understand whether such a campaign would be in line with your experiences and views, we would greatly appreciate it if you could spare the time to complete this survey.

The survey covers just 13 questions and would normally take less than five minutes to complete. All responses to this questionnaire are anonymous and will be treated as confidential.

Your experiences and views

1. How do you see your pay, terms and conditions compared to equivalent staff working directly for [name of contracting authority]?

-
- ☐ Roughly equal
☐ Worse than [name of employer] staff
☐ Better than [name of employer] staff

2. If you see the pay, terms and conditions of equivalent staff working directly for [name of contracting authority] as being significantly better or worse, please briefly summarise the main differences below

3. If you previously worked on the contract when it was provided directly by [name of contracting authority], how have these factors changed since the contract was taken over by the current contractor?

	Better	Worse	Remained the same	Don't know
Quality of service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Staff morale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rate of staff leaving their job	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. What would you describe as the three biggest issues you would like the union to campaign to improve?

1

2

3

5. Would you support a campaign to return the service to direct provision by [name of contracting authority]?

-
- ☐ Yes
☐ No
☐ Don't know

6. If services were returned to direct provision by [name of contracting authority], what changes should be made to the way the service is delivered to achieve improvements for staff and service users?

Profile

These questions help us understand the differing views of the various groups that make up the [name of wholly owned subsidiary] workforce.

7. Did you previously work for [name of contracting authority] before the service was contracted out to [name of wholly owned subsidiary]?

- ☐ Yes
☐ No

8. What income band does your basic salary fall in?

- ☐ Less than £10,000
☐ Between £10,000 and £19,999
☐ Between £20,000 and £39,999
☐ £40,000 or over
☐ Prefer not to say

9. How do you describe your gender?

- ☐ Male
☐ Female
☐ In another way
☐ Prefer not to say

10. How do you describe your ethnic origin?

- ☐ Asian UK
☐ Chinese
☐ Black Caribbean
☐ Bangladeshi
☐ White UK
☐ Black Other
☐ Pakistani
☐ Other mixed heritage
☐ Black African
☐ Asian Other
☐ Irish
☐ Black UK
☐ Indian
☐ White Other
☐ Black mixed heritage

11. Would you describe yourself as a disabled person?

- ☐ Yes
☐ No
☐ Prefer not to say

12. What is your involvement with unions representing staff at [name of contractor]?

- ☐ A member of UNISON
☐ A member of another union
☐ Not a member of any union
☐ An official for UNISON (please detail your post below)

13. Would you be interested in joining or playing a more active role in UNISON?

- ☐ Yes
☐ No
☐ If Yes, please provide your contact details below

Online survey providers

When it comes to online survey providers, UNISON recommends Alchemer (formerly SurveyGizmo) because you can request the data be hosted within the EU, making it compliant with the UK General Data Protection Regulation (UK GDPR) and Data Protection Act 2018 (DPA 2018).

There is a free version of Alchemer which will handle up to 100 responses before extra charges are applied. However, if you wish explore the paid packages which allow for unlimited surveys and responses, while allowing for anonymity in those responses – pricing starts at £45 per month.

You can sign up for Alchemer here: www.alchemer.com
 When setting up an account you need to make sure you choose the appropriate data centre to ensure that data is processed on the EU data centre.

The Alchemer support website carries these useful links:

- Tutorials: www.alchemer.com/tutorials
- Building accessible surveys: <https://help.alchemer.com/help/survey-building-faq>
- Alchemer Support team: <https://help.alchemer.com/help/alchemer-support-hours>
- How to make voting anonymous: <https://help.alchemer.com/help/anonymous-surveys>

For every Alchemer account that contains UNISON member data, a branch elected official must notify their Regional Head.

When collecting personal data, the UK GDPR states:

- You must tell individuals what you are going to do with it;
- You must keep the personal data secure;
- You must only do what you have told individuals you are going to do with the data, you cannot use the data for other purposes once you have it.

When conducting surveys, ensuring the following are clear in the body of the survey will ensure that you meet the standards set by the UK GDPR:

- The purpose of the survey and that it is UNISON collecting the data;
- What data you are going to collect and what you are going to do with it. Only ask for information you need to meet the purpose, do not collect excessive data;
- If you are going to share the data with a third-party i.e. organisation outside UNISON;
- How long you will keep the data.

To ensure that participants know what their rights and have a general understanding of how UNISON uses their data, you must always include a link to the UNISON privacy policy – www.unison.org.uk/privacypolicy

If you need any help making your survey compliant, please contact UNISON's Data Protection Team on dataprotection@unison.co.uk

