Dear Ms Law

TUPE CALL FOR EVIDENCE

Acas welcomes the opportunity to respond to this call for evidence. TUPE is an issue that we receive many enquiries about. Last year our helpline dealt with some 30,000 calls on the subject and the page on our website about TUPE was visited around 200,000 times.

TUPE is clearly an issue that many people need help in understanding and anything that can be done to simplify the rules surrounding it are to be welcomed.

In responding to your call for evidence we have not attempted to answer all of the questions posed but rather have concentrated on those where we feel we can contribute some useful insights from our own experience.

Yours sincerely

Ed Sweeney
Question 16: Is the provision on 'Economic, Technical or Organisational reason entailing changes in the workforce' sufficiently clear? Would additional guidance be helpful and if so in what form?

The issue of harmonising terms and conditions and the changes allowable under ETO reasons is one that we find many employers struggle with. It is certainly an issue that we have lots of questions about at the training courses we run on TUPE. In view of this we feel that some additional guidance on ETO reasons for making changes would be helpful. In particular it would be helpful if the guidance could include some clear definitions of what constitute economic, technical or organisational reasons and perhaps give some examples drawing on existing case law.

Question 19: Have you experienced problems from the interaction of TUPE with other areas of employment law?

We know from the training courses we run on TUPE that many delegates find a problem with regard to ensuring that they meet the separate requirements around information and consultation that is required under TUPE Regulations and collective redundancy consultation rights under TULRA. As TUPE transfers usually result in some post-transfer restructuring and/or redundancy some businesses struggle to understand where one process ends and another begins. Some clarity about the interaction of these separate information and consultation requirements may be helpful. - particularly in situations where the transfer may be hostile and the changes that the transferee may be wanting to make (perhaps around redundancy post-transfer) are difficult to communicate with the workforce that remains under the control of the transferor.