TrellisMeriden . Governed First-Outsourcing series

TUPE done well

The workforce case for governed first-outsourcing

White paper 4 of 5 . For NHS Chairs, Chief Nurses and Directors of People

30 August 2026

Executive summary

First-outsourcing conversations in NHS trusts almost always stall in the same place. Not at the finance case. Not at the operating model. At the workforce concern. Trust chairs, chief nurses and staff-side colleagues are right to be careful. TUPE done badly damages people, damages culture and damages the trust's next recruitment cycle. TUPE done well protects people, protects the service and materially improves retention on the transferred workforce.

This paper sets out what TUPE done well actually looks like. It draws on the current UK position after the February 2026 Employment Appeal Tribunal ruling on transferring employees' terms. It uses the external cleared case study CS-014 showing ninety-six percent retention on a three hundred and forty-strong soft-FM transfer. And it recommends five clauses a trust should insist on in any first-outsourcing contract to make the workforce case defendable at board, at staff-side and in the annual report.

96%	340	Feb 2026	ETO
Retention on CS-014 transfer (12 months post-transfer)	Staff in the CS-014 transfer scope	EAT ruling on TUPE parity	Reason required for any T&Cs change

TUPE done well is the workforce case that lets the trust make a governance decision without putting culture in the line of fire.

1. What TUPE actually requires

The Transfer of Undertakings (Protection of Employment) Regulations 2006 protect the terms and conditions of employees when the business they work in transfers to a new operator. For an NHS soft-FM transfer, the practical protections are as follows.

- Employees transfer on their existing terms and conditions of employment.
- Continuity of service is preserved. A ten-year NHS colleague transfers as a ten-year employee.
- Pension provisions apply. The Cabinet Office New Fair Deal or Broadly Comparable Scheme mechanisms preserve pension parity in almost all NHS transfers.
- Any change to terms and conditions after transfer requires an ETO reason. Economic, technical or organisational, entailing changes in the workforce. Employees must be given the choice to agree.
- Consultation is a statutory duty, not a courtesy. Failure to consult properly exposes the trust and the incoming operator to protective awards.

The February 2026 EAT ruling on new-hire parity

In February 2026 the Employment Appeal Tribunal ruled on the question of whether transferring employees must be paid the same as new hires the operator recruits into the same role post-transfer. The court declined to impose a mechanical parity duty. The practical position is that operators can, and often do, choose to pay new hires the same as transferring employees to keep the workforce stable, but they are not required to. This has an important implication for NHS trusts. A well-drafted contract can require that operator to hold new-hire parity as a matter of contract, even where the law does not require it.

2. Where TUPE goes wrong

The transfers that harm workforce fall into three patterns. Each of them is avoidable and each of them is contract-driven.

Pattern one. Consultation as a compliance line, not a conversation

In some transfers, the trust and the incoming operator treat consultation as a series of meetings to attend rather than as a genuine dialogue. Staff-side representatives are given materials on the day. Questions are logged but not answered. This produces the exact workforce fracture the trust fears, and it produces a legal exposure. A well-run transfer runs consultation for a minimum of eight weeks, with weekly staff-side check-ins, published questions and answers, and a named accountable trust executive.

Pattern two. Silent divergence on pension and pay

Even when day-one T&Cs are preserved, some transfers see silent divergence over the first twelve months. New hires paid less than transferring employees. Overtime rates recalculated. Uniform allowances withdrawn. Each individual change is small. Cumulatively they signal to the transferred workforce that the trust and the operator did not really mean day-one protection. A contract clause on parity for the first three years fixes this.

Pattern three. No route back to the trust for the transferred colleague

Colleagues who transfer under TUPE sometimes see it as a one-way door. That perception is a governance choice. A trust can, and often does, keep the transferred workforce visible in trust-wide colleague engagement, in staff-survey reporting and in the trust's own recognition programmes. The transferred colleague is still an NHS colleague in every practical sense that matters.

3. Case reference. CS-014 ninety-six percent retention

External cleared case study CS-014 describes a soft-FM transfer of three hundred and forty colleagues from a district general to a governed operating model. Twelve months after transfer, ninety-six percent of transferred colleagues were still in post. Sector benchmark for equivalent transfers in the same year sat between eighty-four and ninety percent.

Three things drove the ninety-six percent retention.

Design decision	What it looked like in practice
Consultation as dialogue	Ten-week consultation window. Weekly published questions and answers. Named trust executive attending every staff-side meeting.
Contractual parity	New-hire parity clause locked for the first three years. Overtime rates and uniform allowances written into the contract, not the operating manual.
Colleague visibility retained	Transferred workforce included in trust-wide colleague engagement, in the trust staff survey, and in the trust's recognition programme. Trust ID badges preserved.

Retention is the evidence. Ninety-six percent twelve months after transfer is what TUPE done well looks like.

4. The five clauses a trust should insist on

A first-outsourcing contract that protects workforce should contain, at minimum, these five clauses. Each of them is drafting the trust can require, and each of them makes the workforce case defendable to staff-side, to the annual report and to the CQC well-led review.

1. Consultation window. Minimum eight weeks, with weekly published questions and answers, and a named trust executive as sponsor.
2. New-hire parity. New hires into any transferred role paid at the same rate as transferring colleagues for a minimum of three years post-transfer.
3. Pension continuity. New Fair Deal or Broadly Comparable Scheme, with the trust retaining the right of audit.
4. Trust-wide colleague visibility. Transferred workforce remains inside trust staff survey reporting, inside colleague engagement, and inside recognition programmes.
5. Governance rhythm. Quarterly people-committee reporting between the operator's HR Director and the trust's Director of People, closed out with published actions.

5. New Fair Deal in practice

Pension continuity is the single most-asked question in every consultation session, and it is the question the staff-side is right to press hardest on. The Cabinet Office New Fair Deal for staff pensions and the Broadly

Comparable Scheme framework are the two mechanisms that preserve pension parity for transferring NHS colleagues. In almost every NHS soft-FM transfer, the applicable route is New Fair Deal, and the operator opens Access Agreements with the trust's local NHS Pension Scheme so that transferring colleagues retain access to the NHS Pension.

How Access Agreements work in practice

Step	What happens
Pre-transfer	Operator opens an Access Agreement with the local NHS Pension Scheme, or activates an existing one where the operator already has NHS soft-FM contracts locally.
Transfer day	Transferring colleagues remain in the NHS Pension Scheme. Employer contributions continue at the same rate. Employee contributions unchanged.
Post-transfer	Colleague continues to accrue NHS Pension service. Payslips carry the same deduction lines. Colleague can retire on the same terms as if they had never left the trust payroll.
Audit	Trust retains right of audit over the operator's pension contribution reporting. Reviewed quarterly at the people committee.

For a small proportion of NHS soft-FM transfers where a New Fair Deal Access Agreement is not practicable, the fallback is the Broadly Comparable Scheme certificate. This is a Government Actuary's Department assessment that the operator's occupational scheme is broadly comparable to the NHS Pension. The certificate is time-limited and reviewed. A well-drafted contract requires the operator to reopen the assessment every three years and share the outcome with the trust's people committee.

> *Pension continuity is auditable, contractual and reviewable. Colleague trust in the deal rests on all three being visible.*

6. How to answer the staff-side question

The staff-side question that stops most first-outsourcing conversations is not really about the operator. It is about trust. Whether the trust executive is genuinely willing to protect colleagues over time, or whether outsourcing is a mechanism for degrading terms and conditions over the medium term.

The honest answer to that question is not a promise. It is a set of contractual protections the trust has put in place, and a governance rhythm that makes those protections visible. The five clauses above, plus quarterly people-committee reporting, plus staff-survey visibility, are the answer.

> *Staff-side is not the barrier to first-outsourcing. Weak drafting is. Give staff-side the clauses to inspect, and the conversation moves on.*

7. What a Director of People should ask before signing

- How long is the consultation window, and who is our named executive sponsor?
- Do the terms and conditions of transferred colleagues match new hires for a fixed period, and how long?
- How does pension continuity work under this contract, and do we retain the right of audit?
- Will transferred colleagues appear in our trust staff-survey results, colleague engagement, and recognition programmes?
- What is the quarterly reporting rhythm between the operator's HR Director and the trust's Director of People?

Sources and notes

All figures verified 30 August 2026. Where a figure is illustrative or derived from a case study, this is stated inline.

• Legislation.gov.uk, Transfer of Undertakings (Protection of Employment) Regulations 2006. https://www.legislation.gov.uk/uksi/2006/246/contents/made

• Lewis Silkin, TUPE takeaways. Do transferring employees need to be paid the same as existing employees? (February 2026). https://www.lewissilkin.com/en/insights/2026/02/10/tupe-takeaways-do-transferring-employees-need-to-be-paid-the-same-as-existing-employees

• Cabinet Office, New Fair Deal for staff pensions. https://www.gov.uk/government/publications/fair-deal-guidance

• NHS Employers, TUPE and the NHS. https://www.nhsemployers.org/

• External evidence base, Case study CS-014 ninety-six percent retention on transfer (cleared external, on request). TrellisMeriden. Available on request.