

## RPA CODE OF PRACTICE: STAFF TRANSFERS

### 1. Introduction

- 1.1 Further to the acceptance of the Public Service Commission's 3<sup>rd</sup> and addendum to the 3<sup>rd</sup> Guiding Principle, Staff Transfers and Selection of Staff for Transfer respectively (copies attached at Annexes 1 and 2), this code of practice has been developed in response to the requirement in the 3<sup>rd</sup> Guiding Principle. This code of practice is issued to inform Departments and public sector employers in the RPA Affected Group (see RPA Circular 1/2009) about recommendations from the Commission *in its third and addendum to the third Guiding Principle*, which have been accepted. Its purpose is to assist in the practical implementation of the guiding principle. **Departments and public sector employers are expected to comply with this code of practice.**
- 1.2 The purpose of this code of practice is to ensure that arrangements are put in place to safeguard the interests of staff who transfer to a new or different organisation as a result of RPA decisions.
- 1.3 In particular the code of practice outlines:
- a) The Key Principles to be applied (paragraph 2);
  - b) A Model Legislative Framework (paragraph 3);
  - c) Transfer Schemes (paragraph 4);
  - d) RPA Independent Third Party Dispute Resolution: non-pension (paragraph 5)
  - e) RPA Independent Third Party Dispute Resolution: pensions (paragraph 6).

## 2. Key Principles

2.1 The following principles should be applied when staff transfer to new or different organisations:

- All staff in the RPA affected group who will move to a new or different organisation as a result of RPA decisions will have the statutory protections of the Transfer of Undertakings (Protection of Employment) Regulations 2006. All primary legislation being prepared to implement the RPA will provide that such transfers shall be relevant transfers for the purposes of those regulations.
- Staff will transfer to the organisation which is taking over the functions on which s/he is assigned<sup>1</sup> immediately before the transfer of functions. Employers should consult with the relevant trade union and other staff representatives and, where practicable, the receiving organisation before advising individuals of their designated employer.
- Should a decision on assignment for transfer be required, where possible, employee preferences and circumstances (e.g. welfare, health etc) should be taken into account for all such decisions in addition to the primary consideration of the business need. Employers should take such a decision in consultation with the relevant trade union and the receiving organisation<sup>2</sup>. In order to minimise the instance of a decision on assignment being required, employers should consider, in consultation with the relevant trade union and where practicable the receiving organisation, whether to initiate the reorganisation of functions and posts prior to transfer.

---

<sup>1</sup> This excludes those “temporarily assigned”. Temporarily assigned under TUPE relates to a person (on a temporary contract or a permanent contract) who is temporarily moved to other duties e.g. to cover someone’s summer holiday or maternity leave, but is expected to return to their own duties afterwards.

<sup>2</sup> Where the receiving organisation does not yet exist in law, arrangements should be made to consult with the Chief Executive Designate of that receiving organisation.

Where this cannot be achieved, a degree of flexibility should be retained.

- Employers should ensure that they put in place adequate training and support for staff who take on new roles and or responsibilities as a result of the transfer.
- Where a transfer gives rise to a surplus of staff, employers should, as appropriate, use a range of mechanisms to deal with this, for example suitable alternative employment, internal competition, voluntary severance schemes etc. This list is neither prescriptive nor exhaustive, for example the possibility of employment in another organisation should also be examined. Employers should have due regard to the provisions of the PSC 5<sup>th</sup> Guiding Principle as accepted by the Executive.
- Statutory provision must be made to ensure that any pension scheme into which an employee is transferred will, in the opinion of a professionally qualified actuary, provide benefits that are no less favourable taken as a whole than those provided by the pension scheme of which that employee was a member on the day before transfer. The actuarial assessment will include all benefits in respect of old age, invalidity and survivors' benefits arising from their occupational pension scheme membership. Further guidance is outlined in Fair Deal for Staff Pensions – the original guidance published by HM Treasury in June 1999<sup>3</sup>; and Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreement and Related Issues – Guidance Note by HM Treasury, June 2004<sup>4</sup>.

---

<sup>3</sup> See Annex A of the Cabinet Office Statement of Practice *Staff Transfers in the Public Sector*: <http://www.civilservice.gov.uk/documents/pdf/employment/stafftransfers2.pdf>

<sup>4</sup> [http://www.hm-treasury.gov.uk/media/E/B/pensions\\_bta\\_guidance\\_290604.pdf](http://www.hm-treasury.gov.uk/media/E/B/pensions_bta_guidance_290604.pdf)

- RPA implementing legislation will require employers to develop a transfer scheme. Further details in this regard may be found in the model legislative framework which is referenced at paragraph 3.
- Statutory provision must also be made for independent third party resolution processes for dealing with disputes arising uniquely from the implementation of the RPA – the RPA Independent Third Party Dispute Resolution Procedure. The effect of such provision will be to resolve disputes, and where appropriate, provide for compensation for actual loss where there is material detriment to existing terms and conditions. Details of the procedures that will apply for disputes arising in relation to matters not including occupational pensions are outlined at paragraph 5 below. The procedures that will apply in respect of disputes on matters of pensions are detailed at paragraph 6 below.
- Employers should examine current consultation arrangements to ensure that they are adequate and, where necessary, take action to put in place appropriate joint employer and trade union arrangements to ensure the effective management of HR issues following transfer.

2.2 Employers should refer to the PSC 6<sup>th</sup> Guiding Principle to ensure that they comply with their obligations in relation to informing and consulting with employees, their representatives and trade unions both pre and post transfer. The importance of this is stressed, in particular, in relation to the measures in connection with the transfer which are envisaged to be taken in relation to any affected employees (Regulation 13 of the Transfer of Undertaking (Protection of Employment) Regulations 2006 refers).

### **3. Model Legislative Framework**

3.1 An illustrative model legislative framework (the Libraries Act (NI) 2008, Schedule 2, paragraph 4), containing the provisions outlined at paragraph 2, can be found at the following link: [www.opsi.gov.uk](http://www.opsi.gov.uk). This framework will be used as a guide when requesting legislation containing staff transfer arrangements.

### **4. Transfer Schemes**

4.1 Written transfer schemes should be developed, *well* in advance of the transfer dates, in consultation with recognised trade unions, and should contain the following elements:

- identification of staff transferring from the existing organisation to the new or different organisation, either by business unit or, if appropriate, on an individual basis or otherwise;
- the date of transfer, the grade and/or post into which the employee is to be placed and the location of the post within the new or different organisation on that date;
- confirmation that contractual terms and conditions will be protected in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- where employees are not remaining as members of the pension scheme of which they were members before the date of transfer, up-to-date details of the arrangements by which occupational pensions are to be protected<sup>5</sup>;

---

<sup>5</sup> “pension protection” is defined as follows: “pension protection “ is secured for a transferring employee (“T”) if after the change in T’s employer T has, as an employee of Y, rights to acquire pension benefits and those rights are the same as or (taken as a whole) not less favourable than those T had as an employee of X.

- details of the arrangements for dispute resolution in relation to the application of this Code of Practice which comply with the guidance as set out in paragraphs 5 and 6; and
- provision for the payment of compensation where staff can demonstrate actual loss where there is a material detriment to their existing terms and conditions.

4.2 This list is not exhaustive; employers in consultation with employee representatives may also include in the staff transfer scheme supplementary, incidental, transitional and consequential provisions.

## **5. RPA Independent Third Party Dispute Resolution: non-pension matters**

### **Interpretation**

- 5.1 This guidance applies to all employees in the RPA Affected Group, who will move to new organisations or to a new employer as a result of decisions on the Review of Public Administration.
- 5.2 This guidance applies in cases where there is either a claim of non-adherence to the transfer scheme associated with the transfer of functions, a dispute against the designated employer or in the case of a dispute in relation to a change in workplace location which has been made as a result of the implementation of Review of Public Administration decisions.
- 5.3 This guidance does not apply to the handling of RPA disputes in respect of pension provision. The handling of such disputes is outlined separately at paragraph 6.

5.4 Individual employers are reminded that they are required to operate an **internal** dispute resolution procedure which complies with statutory obligations including the statutory right of accompaniment<sup>6</sup>. To facilitate a speedy resolution, employers are asked to ensure that RPA disputes relating to non-adherence to the transfer scheme associated with the transfer of functions, disputes against designated employer or disputes in relation to a change in workplace location which has been made as a result of the implementation of RPA decisions are dealt with by a decision making authority<sup>7</sup>.

5.5 Employers are required to inform employees of their additional right of appeal to the RPA Independent Third Party Procedure as well as their right to be accompanied by a work colleague or represented by a trade union representative to the RPA third party procedure. **Employers are reminded that the RPA Independent Third Party Procedure does not replace internal dispute resolution and all of the principle requirements of the internal process must continue to be met. Internal dispute procedures are to be exhausted before appeal to the RPA independent procedure.**

In organisations where grievance/dispute resolution procedures include a final stage which is independent/external, this final stage would be replaced by the RPA Independent Third Party Dispute Resolution Procedure

5.6 Employees must be advised that the implementation of these procedures does not affect their right to lodge a claim with the Industrial Tribunal or Fair Employment Tribunal.

5.7 At the first stage of the internal dispute resolution procedure employees are required to indicate either:

---

<sup>6</sup> Subject to change following DEL review of dispute resolution procedures in NI.

<sup>7</sup> This could be either an individual or panel within the organisation.

**A**

- i) if and why they believe that their dispute relates to:
  - a) non-adherence to the transfer scheme associated with the transfer of functions; or
  - b) a change in workplace location which has been made as a result of the implementation of Review of Public Administration decisions;
- ii) what they consider would resolve the dispute; and
- iii) what they consider their material detriment to their existing terms and conditions to be; and, give an indication of their actual loss.

or:

**B**

- i) if and why they believe their dispute relates to designated employer;
- ii) what they consider would resolve the dispute; and
- iii) whether they consider that there is material detriment to their existing terms and conditions, and if so, give an indication of their actual loss.

Employers must indicate to employees whether they consider a dispute fulfils the above criteria and thus can be taken to the RPA Independent Third Party Dispute Resolution. The employee may appeal an employer's decision, including appealing ultimately to the RPA Independent Third Party Dispute Resolution Procedure, in this regard.

**RPA Independent Third Party Dispute Resolution: non- pension matters**

- 5.8 The model for the RPA Independent Third Party Procedure is drawn from the principles applying to the Procedural Arbitrations provided by the Labour Relations Agency (LRA) for a range of public sector bodies together with the good practice elements of the statutory arbitration schemes. The RPA Independent Third Party Dispute Resolution Procedure will be a three person panel procedure; the Chair will be provided by the LRA, wing members will be nominees from public

service employers and trade unions who will be trained through the LRA. For further information please refer to [Annex 3](#). [DN: to be attached; under consultation with the Trade Union Side]

- 5.9 Where a complaint is upheld, the panel will make a determination to the employer to remedy any deficiencies found. If the deficiencies cannot be remedied, the panel will fix an amount of compensation which reflects actual loss incurred. Employers will implement the panel's determination.
- 5.10 Employers must make employees aware that the LRA must receive their appeal within six weeks from the date of conclusion of internal dispute resolution. If an appeal is received by the LRA which is outside this time limit, the matter will be referred to an arbitrator who may extend the time limit if it is concluded, in all the circumstances of the case, that it was not reasonably practicable to lodge the appeal in time. The appeal will follow the process set out at paragraph 5.11 below.

**RPA Independent Third Party Dispute Resolution Procedure for non-pension matters**

- 5.11 The key features of the RPA Independent Third Party Dispute Resolution Procedure for non-pension matters are outlined below:
- i) the employee notifies the LRA and the employer, in writing, of the decision to appeal to the RPA Independent Third Party Dispute Resolution Procedure within the time limit outlined at paragraph 5.10
  - ii) both parties send to the LRA Arbitration Secretary all relevant correspondence;
  - iii) the LRA appoints the panel who determines whether the appeal is within time, and that internal grievance/dispute resolution procedures have been exhausted;

iv) if the appeal fulfils the above criterion, the LRA Arbitration Secretary fixes a hearing date and the case is scheduled to be heard within six weeks from the date of conclusion of the internal dispute resolution;

v) if the appeal does not meet the criteria as set out in iii) above the LRA will notify both parties;

vi) written statements from both the employer and the employee must be submitted to the LRA Arbitration Secretary at least 2 weeks before the date of the hearing; and

vii) the case is heard and the panel's determination is sent to both parties within 10 working days of the hearing. This constitutes the end of the process and there is no further appeal through this mechanism.

## **6 RPA Independent Third Party Dispute Resolution: Pensions**

### **Interpretation**

6.1 This guidance applies to all employees in the RPA Affected Group, who will move to new organisations or to a new employer as a result of decisions on the Review of Public Administration and whose pension provision is transferred to another pension scheme as a result of that move.

6.2 This guidance applies in the handling of RPA appeals in respect of pension provision.

6.3 Individual employers are reminded that, by virtue of the Pensions (Northern Ireland) Order 1995, their pension schemes are required to operate an internal dispute resolution procedure for pensions – this is normally a two stage process. They should ask pension scheme trustees or managers to ensure that arrangements in place are capable

of dealing with RPA related appeals and that scheme members have access to information on these arrangements.

- 6.5 Individual employers should ensure that arrangements are in place to provide for individual pension schemes to inform scheme members of their right of appeal to the RPA Independent Third Party Dispute Resolution Procedure for pension-related disputes as well as their right to be accompanied by a work colleague or represented by a trade union representative to the RPA third-party procedure by a work colleague or trade union representative. **The RPA Independent Third-Party Dispute Resolution Procedure is in addition to internal dispute resolution for pensions (see 6.3) and all the principle requirements of the internal process must continue to be met. Internal dispute procedures are to be exhausted before appeal to the RPA Independent Third Party Dispute Resolution Procedure**

#### **Third-Party Dispute Resolution Procedure: Pensions**

- 6.6 In line with current statutory provisions, claims of maladministration, if unresolved during internal dispute resolution, may be referred to third-party dispute resolution in the form of the Pensions Advisory Service. If it still remains unresolved the dispute can be further referred to the Pensions Ombudsman. This will therefore include claims in respect of maladministration where the claim has arisen as a result of RPA. **The procedure detailed at paragraph 6.12, therefore, provides for RPA Independent Third Party Dispute Resolution Procedure where claims do not meet the criteria as laid down by the Pensions Ombudsman.**
- 6.7 Scheme members should be made aware that the Pensions Ombudsman will normally only investigate a complaint within three years of the relevant act or omission or within three years of the date the scheme member knew or reasonably ought to have known of the act or omission happening.

## **RPA Independent Third Party Dispute Resolution Procedure: Pensions**

- 6.8 The model for the RPA Independent Third Party Procedure is drawn from the principles applying to the Procedural Arbitrations provided by the LRA for range of public sector bodies together with the good practice elements of the statutory arbitration schemes. The RPA Independent Third Party Dispute Resolution Procedure will be a three person panel procedure; the Chair will be provided by the LRA, wing members will be nominees from public service employers and trade unions who will be trained through the LRA. For further information please refer to Annex 4. [DN: to be attached; under consultation with Trade Union Side]
- 6.9 Where a complaint is upheld, the panel will make a determination to the employer to remedy any deficiencies found. If the deficiencies cannot be remedied, the panel will fix an amount of compensation which reflects actual loss incurred. Employers will implement the panel's determination.
- 6.10 Employers must make employees aware that to bring forward an appeal they must do so within three years of the relevant act or omission or within three years of the date the scheme member knew or reasonably ought to have known of the act or omission happening.

Employers must also make employees aware that the LRA must receive their appeal in writing within 6 weeks from the date of conclusion of internal dispute resolution. The parties will do all things necessary for the proper conduct of the appeal hearing. This includes complying with any orders or directions of the Panel and co-operating with the arrangements of the hearing.

- 6.11 The RPA Independent Third Party Process outlined at 6.12 does not cover disputes in respect of maladministration which are within the

remit of the Pensions Advisory Service and the Pensions Ombudsman. For further information in relation to third party dispute resolution in this regard please see paragraphs 6.6 and 6.7 above.

### **The RPA Independent Third Party Dispute Resolution Procedure: Pensions**

- 6.12 The key features of the RPA Independent Third Party Procedure for pensions are outlined below:
- i) the employee notifies the LRA and the employer, in writing, of the decision to appeal to the RPA Independent Third Party Dispute Resolution Procedure within the time limit outlined at paragraph 6.10;
  - ii) both parties send to the LRA Arbitration Secretary all relevant correspondence;
  - iii) the LRA appoints the panel who determines whether the appeal is within time, and that internal grievance/dispute resolution procedures for pensions have been exhausted;
  - iv) if the appeal fulfils the above criterion, the LRA Arbitration Secretary fixes a hearing date and the case is scheduled to be heard within 6-8 weeks. Where necessary, the panel will appoint an actuary to independently assess the case and to provide them with a report and, where necessary, an assessment of the actions required. The cost of the actuary will be met by the respondent employer;
  - v) if the appeal does not meet the criteria as set out in iii) above, the LRA will notify both parties;
  - vi) written statements from both the employer and the employee must be submitted at least 2 weeks before the date of the hearing; and

vii) the case is heard and the panel's determination is sent to both parties within 10 working days of the hearing. This constitutes the end of the process and there is no further appeal through this mechanism.

## **7. Action Required**

7.1 All Departments preparing primary legislation should apply the key principles in paragraph 2 above in accordance with the provisions in the legislative framework the Libraries (NI) Act 2008 which can be found at the following link: [www.opsi.gov.uk](http://www.opsi.gov.uk). All relevant organisations and employers, in consultation with recognised trade unions, are required to implement the provisions in paragraphs 5 and 6 at an appropriate stage in implementation plans.

## **RPA CENTRAL UNIT**

**MAY 2009**

### **Annex contents**

Annex 1 - Public Service Commission's 3<sup>rd</sup> Guiding Principle, Staff Transfers

Annex 2 - Public Service Commission's addendum to the 3<sup>rd</sup> Guiding Principle, Staff Transfers

Annex 3 - RPA Independent Third Party Dispute Resolution Procedure: non-pension matters\*

Annex 4 - RPA Independent Third Party Dispute Resolution Procedure: pension matters \*

**\*both documents are under consideration with Trade Union Side and will be issued in due course**

## **THIRD GUIDING PRINCIPLE AND ASSOCIATED RECOMMENDATIONS**

### **STAFF TRANSFERS**

#### **Introduction**

- The Commission's role is to safeguard the interests of staff and to ensure their smooth transfer to new organisations established as a consequence of Government decisions on the Review of Public Administration, taking into account statutory obligations, including those arising from Section 75 of the Northern Ireland Act 1998.
- In pursuance of that role, the Commission's position in relation to staff transfers is represented in the Guiding Principle and associated recommendations described below. In formulating the Guiding Principle and associated recommendations, the Commission has also had due regard to the Secretary of State's commitment, as set out in his statement of 22 November 2005, that "Every possible effort will be made to avoid redundancies."
- The Public Service Commission has consulted Government, employers in the RPA Affected Group, the sectoral Staff Commissions and NIC/ICTU about the most appropriate way to effect staff transfers. This is part of a wider set of arrangements which will be required to achieve the Secretary of State's commitment of making every possible effort to avoid redundancies in bodies affected by RPA, safeguard the interests of staff and ensure their smooth transfer into new organisations.

#### **Guiding Principle**

- The Public Service Commission recommends that:
- Government make statutory provision for staff transfers, which is fully consistent with domestic and European legislation, for all those employees, in the RPA Affected Group, who will move to a new or different organisation as a result of decisions following the Review of Public Administration. The wording of the statutory provision should be replicated consistently in all relevant legislation in order to ensure fair and equitable treatment for all staff in the RPA Affected Group.
- The Transfer of Undertakings (Protection of Employment) Regulations 2006 shall apply to all transfers arising from the Review of Public Administration and, to ensure certainty, Government should declare that all such transfers are relevant transfers for the purposes of those

regulations. The Government should ensure the statutory provision puts beyond doubt that no employing authority will have the right to challenge or limit the determination by the Government that the transfer is a relevant transfer so as to prevent or restrict the protection of continuity of staff rights under such a transfer.

- Any pension scheme, into which an employee is transferred must, in the opinion of a professionally qualified actuary, provide benefits that are no less favourable taken as a whole than those provided by the pension scheme of which that employee was a member on the day before transfer. The actuarial assessment will include all benefits in respect of old age, invalidity and survivors' benefits arising from their occupational pension scheme membership.
- Government should make statutory provision for independent third party resolution processes for dealing with disputes arising uniquely from the implementation of the RPA. The effect of such provision will be to provide for compensation for actual loss where there is material detriment to existing terms and conditions.

### **Associated Recommendations**

- The Public Service Commission recommends the following actions be taken by Government:
- The preparation, in consultation with the Public Service Commission, relevant public service employers and the relevant trade unions, of an RPA Code of Practice, which would establish the key principles for statutorily- based staff transfer schemes and transfer arrangements, including pensions provision and independent third party resolution processes. The RPA Code of Practice should reflect statutory provisions and be prepared and promulgated well in advance of the proposed transfer date.
- Ensure the development, well in advance of the proposed date of transfer, of written statutorily-based staff transfer schemes which are compliant with all relevant statutory obligations and the RPA Code of Practice, which should be the subject of established consultation and negotiation arrangements.
- The setting up of appropriate joint employers and trade union arrangements to ensure the effective management of HR issues following transfer and which would complement the already established Central Joint Forum.

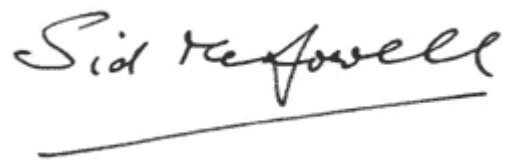
6.The Public Service Commission also **recommends** that Government should require from employers:

- Implementation of the policies and practices as detailed in the written statutorily-based staff transfer scheme.

### **Commentary**

7.While this Guiding Principle deals with a number of significant core issues in relation to safeguarding the interests of staff and ensuring their smooth transfer to new organisations, the Commission is mindful that there are a

number of other HR issues, including for example redundancy provisions, which may be the subject of future Public Service Commission Guiding Principles and Recommendations.

A handwritten signature in cursive script that reads "Sid McDowell". The signature is written in black ink and is positioned above a solid horizontal line that serves as a separator.

**SID McDOWELL**  
**CHAIRMAN**  
**PUBLIC SERVICE COMMISSION**  
**04 12 2006**

**SELECTION OF STAFF FOR TRANSFER  
ADDENDUM TO THIRD GUIDING PRINCIPLE - STAFF TRANSFERS**

1. An employee should transfer to the organisation which is taking over the functions on which s/he is engaged immediately before the transfer of functions. Where, however, a decision on an assignment for transfer is required, a range of factors including the preferences and circumstances of the employee and the needs of the business will be taken into consideration. Any decision will be taken in consultation with the relevant trade union and the receiving organisation. Management should consult with the relevant trade unions and other representatives of staff before advising individuals of their designated employer.
2. If an individual member of staff wishes to appeal against his/her designated employer or a change in the location of his/her workplace, this should be made in accordance with the provisions for third party resolution of disputes.
3. The implementation of the Review of Public Administration decisions may provide an opportunity for management to consider personal preferences of staff in respect of location, working patterns etc. and to minimise hardship/domestic disruption for individual staff. Initially such consideration should be given within each sector, but Government should ensure that arrangements are set up for cross sector co-operation. Individual decisions will be dependent on business need. If staff take on new roles and or responsibilities, as a result of the transfer, adequate training and support should be provided.
4. Where the transfer gives rise to a surplus of staff, employers should deal with this, as appropriate, by using mechanisms such as the offer of suitable alternative employment, by internal competition, employment in another organisation, or voluntary severance schemes.

**SID McDOWELL**

**CHAIRMAN**

**PUBLIC SERVICE COMMISSION**

**October 2007**