



9 Things to Look Out For...

If you're a business owner or HR professional about to face or embark on an acquisition, making sure everything goes smoothly is likely to be a major priority.

Unfortunately, this doesn't always happen, especially if those involved lack the specialist knowledge and/or practical know-how.

In this article, we'll highlight some of the main assumptions to look out for leading up to and during an acquisition and suggest how best to handle them.



Getting TUPE completed properly will prevent major headaches...

In many cases, the main priority of the acquiring company will be to get a return on investment as soon as possible. So, once the deal is signed, this may lead to an immediate restructure to reduce labour costs.

As TUPE (Transfer of Undertakings and Protection of Employees (Regulations 2006, amended 2014) involves two parts (i.e. pre and post-transfer date consultations), it's not possible to have everything completed by the transfer day. That's why getting as much pre-transfer work done before then – as well as preparation for the post-transfer period – is vital.

Otherwise, you're likely to be looking at unwanted and unresolved issues such as:

- gaps, delays and confusion in the TUPE consultation process;
- where to place people in the bigger organisation;
- having several people in the same role or their role becoming redundant;
- staff's terms and conditions not being harmonised (realigned);
- a lack of strategic direction on which office or site to close or expand;
- streamlining and amalgamating teams, pay and training systems.

Because of NDAs and the need to keep everything confidential until the deal has gone through, it is difficult to get everything sorted in advance. And although that usually means a long and urgent 'To Do' list once the paperwork's been signed, knowing what's involved and having a plan on how to tackle it will make it easier to manage.



Not everyone knows what TUPE means – including senior leaders!

In business, as in life, people won't always admit to not knowing something. This can cause leaders to bluff their way through an acquisition, embarrassed to concede they're unsure of the process and what specifically needs to be done.

TUPE (Transfer of Undertakings and Protection of Employees (Regulations 2006, amended 2014) tends to be one of those areas, as there are many employment legislation pitfalls involved when acquiring and transferring employees. Broadly speaking, TUPE looks to safeguard the continuity of employment and the terms and conditions of any employee being transferred from their existing employer (the transferor) to the new employer (the transferee). Once the transfer takes effect, they automatically become an employee of the new employer, on exactly the same (or very similar) terms and conditions (and with the exception of certain occupational rights).

Sometimes there are added complications. Be aware of whether the acquisition is a share sale, owner sale, sale of part of an ongoing concern or a change of employer or franchisee – as these can all impact employees and lead to endless debates on what could or should be done for them. Occasionally, expect some opposition too, either directly or indirectly.

REAL-LIFE SNIPPET

During the pre-transfer consultation stage, the transferee HR Director requested the necessary employee 'measures letter' from the transferor HR Director only for it to be withheld for fear of upsetting the employees. This letter was to inform them of the circumstances, Ts and Cs of their new employment, including the new work location and where to report the day after their current office closed. This not only breached TUPE regulations, it could have caused chaos on relocation day.



Having TUPE know-how is just as important as knowing TUPE legislation.

Reading employment law and all its ins and outs is one way of following the correct TUPE process. However, this doesn't always provide the flexibility to tackle the complex people factors within an acquisition.

Knowing how to adapt your approach to overcome these whilst keeping within the legislation is a much-overlooked skill, such as knowing how to:

- clearly communicate TUPE-related changes;
- facilitate changes in ways of working that may involve systems integrations and accepted cultural behaviours;
- comply with differing legislative requirements, such as post-transfer consultation approaches and practical contractual changes.

To aid how you plan to manage things, and to prevent opposition and circumventions, it's always useful to get key people's buy in as early as possible.

Providing a plan outlining what needs to be done, and how and why – and within the required legislative timeframes – will help to keep the acquisition on track and prevent it turning into a legal minefield regarding the newly-acquired employees. Resourcefulness is key.

REAL-LIFE SNIPPET

For one company about to be acquired, rather than immediately impose new employer contractual changes as soon as the formal post-transfer TUPE consultation had been completed, it instead chose to introduce them gradually. This allowed employees to get used to the changes over time so that when they received their final letter, it was merely to inform them of a pay frequency change and, crucially, give them the opportunity to raise any objections during the final consultation. Consequently, the company received no queries, concerns or fallout and, despite the unconventional way of conducting the TUPE consultation, was deemed to have fulfilled this obligation legally.



The acquired people data won't always be accurate.

Usually, all the acquired people data (detailing the employees' relevant transferring information) is contained in the 'Due Diligence' data packs given to the acquiring (transferee) company by the seller's (transferor) lawyer.

Unfortunately, though, despite 'due diligence' being a term to mean that the information provided is accurate and complete – based on comprehensive checks carried out by qualified professionals – that isn't always the case. In reality, it's usually provided by whomever in the selling organisation has been asked to compile it. This might even be a junior employee who doesn't fully appreciate the importance of the information they're gathering or indeed the implications of omitting critical data or passing on inaccurate records. This really does happen and when it does, things can go seriously awry.

REAL-LIFE SNIPPET

A commercial lawyer for the seller informed the transferee company that the Chairman was not an employee, and nor were his wife and sister-in-law, both of whom had never set foot in the company. As such, it wasn't necessary to take them into account come the transfer date. Yet, the fact that they had each been receiving a small salary meant they were employees... Naturally, the acquiring company's corporate lawyer got a pretty big shock when he then received an Employment Tribunal claim from the former Chairman, his wife and sister-in-law claiming unfair dismissal!



Don't assume that former practices will continue after transfer.

For the company being acquired, just because a certain practice was deemed normal doesn't necessarily mean that it was appropriate or should continue upon transfer. Sometimes, what's reported isn't even accurate. For instance, to help the business appear more attractive to a potential buyer, a company might sometimes exaggerate or embellish how great their people strategies are.

REAL-LIFE SNIPPET

A company boasted about its culture and how it looked after its people; so much so that it was named each year in *The Sunday Times Best Companies to Work For*. However, it transpired that the team celebrations, often held in exotic locations, were reward for only the selected few and, even worse, were unknowingly funded by the staff themselves by using a portion of their customer tips.

Another example includes an acquisition team being told by the selling lawyers that the Tier 2 licence (i.e. the licence allowing the employment of people from non-EU countries) would automatically transfer to the acquiring company. However, unbeknownst to both legal teams (possibly because legislation on immigration isn't a corporate lawyer specialism), this isn't actually possible.

Not only did each company need to set up its own licence (which can take months to finalise), they also needed to have everything completed within 60 days of the transfer date in order to comply with UK immigration legislation. Furthermore, from a business continuity perspective, missing the deadline could then mean that the newly-transferred employees may not be eligible to remain employees of the new company.



Know the true cost of amalgamating everyone.

For many, the true and final cost of an acquisition often comes as a surprise. Why? Because it's not until you start focusing on what really happens in practice that you begin to discover and appreciate the transfer's true implications.

Amalgamating multiple teams can be challenging and, because people are involved, far from straightforward. Commonly, there'll be those that don't want to stay or refuse to move, those that don't like their new colleagues or new way of working and, sometimes, even the colour of their new desk. The list is endless...

In terms of actual costs, remember too that you could also be looking at: additional recruitment needs, team-building events, exiting those that no longer fit (e.g. in the shape of a restructure or redundancy exercise), salary increases to retain key personnel, and red circling (i.e. protecting) terms to not only keep people sweet and avoid a mutiny but keep everything legal. It sounds crazy, but you might even have to budget for different furniture!

REAL-LIFE SNIPPET

A small company working from a shabby office acquired a much bigger corporate-style business whose office was modern and edgy. On transfer, rather than base everyone at the better premises, they chose to relocate the newly-acquired employees to their run-down base – and were then surprised when most refused! This resulted in an extensive and costly last-minute recruitment drive, as well as financial inducements to get key people to change their minds and stick it out for at least a year.



Don't get caught out by the different rules when transferring across countries.

Even within the EU and its easy cross-border movement, each country still has its own employment legislation. This means that employers can't automatically transfer employees to work in a member state using a generic contract. New contracts need to be drawn up, focusing on how to satisfy TUPE terms and conditions before any changes are made. Moreover, employees may not realise the tax and cost of living implications before agreeing to the move.

REAL-LIFE SNIPPET

A UK parent company transferred an employee to one of its European subsidiaries assuming that, by paying the individual from the UK, they remained on a UK contract and therefore wouldn't be affected by the resident country's employment law and tax requirements. However, this only complicated matters as the employer then had to balance legislation from both countries to make it work. Additional complications related to potential tax evasion, along with confusion over the right to work in the resident country and the actual TUPE transfer date – further compounded by the individual having transferred more than once across different companies within the group.



Delivering the right messages is essential.

Clear communication should be a given, yet it may not always occur to the front-line operations team to say anything to the employees being transferred – believing it's not for them to say because they expect it to come from the senior management team or HR department. Or, because they just don't know what to say, are fearful of saying the wrong thing at the wrong time and don't want to drop a legal clanger!

That's why it's useful to have a support script, together with a Q&A factsheet dealing with the most common types of concerns. These usually include:

- What is TUPE?
- How will this affect employees?
- What sort of changes are expected?
- Who's who and what's it like to work here?

It's also worth providing guidance on dos, don'ts and what not to promise, as well as how to escalate queries and concerns. Having something like this prepared ahead of time should help to prevent the majority of sensitive scenarios.

REAL-LIFE SNIPPET

A manager was planning to tell his staff matter-of-factly that: 'a new site was opening soon, their jobs were going to be moved there, and they'd all get a new contract along with a new start date...' Full marks for transparency but not the most tactful (or legal) way to manage things!



Getting people in place is just the start...

Many people assume that once acquisition-planning has covered all the new employees and what their new teams and locations will be, the work is done. Far from it. When this happens, new teams are often left to figure out for themselves how best to work together. And, despite leaders trying to encourage everyone with “We’re one big team working together!”, culture clashes can sometimes arise.

It’s not always easy for the acquired team to learn how to fit into the culture of the established team they’ve just joined. Similarly, neither is it easy for the acquiring team, as they need to adjust to their new colleagues – who may have come from both a completely different work culture and way of doing things (think: “But in our old company, we did it like this.”). Because the leadership’s focus is on onboarding the new team, it can lead to the existing team feeling overlooked, under-appreciated and left wondering: “So, who took over who?”

Being prepared to continue to invest in the acquisition process long after the transfer has taken place and having a plan on how best to manage cultural alignment will not only help everyone integrate better but also ensure a much smoother transition.

REAL-LIFE SNIPPET

At a new team’s first company conference, the leaders knew that the company culture needed to change. They knew they could no longer afford to roll out the same old doom-and-gloom figures and calls to action if they truly wanted to motivate not just their new employees, but their existing ones too.

So, they took a gamble to shake things up... They kicked off the conference in the same old way, spouting the same messages as they’d always done. You could see faces in the audience immediately become despondent... That was until actors planted amongst them jumped up and challenged the presenters on what they were saying. People didn’t know where to look until, to everyone’s relief, the CEO stood up and said: “Only kidding! Let me show you how we’re really going to be!”

The mood changed instantly; and, to prove that the company was deadly serious and committed to the change, the old ways of working were literally ripped up there and then, and existing operations manuals were burnt in front of everyone’s eyes.

The effect was powerful and the gamble most definitely worked. Existing employees felt free of the red tape that had previously held them back and new employees were excited about the future. Better procedures were put in place and a new culture emerged. And best of all, as a united and cohesive team – and to everyone’s amazement – double-digit growth was achieved within 3 months.



A little preparation goes a long way...

If you're facing or about to embark on an acquisition, of course there's a lot to think about. But there are plenty of things you can do to make the process go more smoothly.

So, question everything you read and go through all the people information you have. Make sure you're really in tune with what's going on by spending quality time with front-line staff, rather than merely basing decisions on what you read in company reports. It'll help you be more in the know and less likely to overlook things.

Adopting a 'business as usual' approach throughout an acquisition isn't easy; in fact, it's both highly challenging and time-consuming. Therefore, consider pausing 'non urgent' initiatives, designating BAU (Business as Usual) teams to continue running the business, and having a dedicated support team to deal with the acquisition side of things. Of course, there's also the option to offload some or all of the more complex work to other specialists in the area (that's right, such as The People Factor!).

Really get up to speed with your TUPE law and make the most of expert support – not just to help you with employment legislation but to also provide you with practical solutions for your company.

Finally, don't assume that the new company culture you'd always hoped for will automatically fall into place straight away. Healthy and vibrant cultures take time to build so be visible and present to demonstrate and influence the changes you want to see.

Good luck.

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Call us on +44 (0) 203 0867724
or email hello@thepeoplefactor.org.uk