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**in association with**

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**present their Voluntary  
TUPE Protocol**

## IPA/ISBA Voluntary TUPE Protocol

### Why have the IPA & ISBA developed a TUPE Protocol?

When an agency wins an account, it may inherit the staff working on the account. This comes about because of the law on transfers of undertakings (TUPE).

If TUPE applies, staff, their contracts and any claims transfer from the incumbent agency to the new agency. The new agency will take on staff it does not know and employment claims that arose before it became involved. In extreme cases, the value of the claims could be more than the value of the relationship with the client.

A pitching agency will want information on staff and protection against the risk of claims. But how can it find out about them? Although its main relationship will be with the client, clients generally know little about the terms on which an agency's staff work and less about any outstanding claims. And, of course, the existing agency may not want to help a competitor.

In an effort to resolve this problem, the IPA and ISBA have created a TUPE Protocol following consultation with their members. Applying the protocol involves the incumbent agency and an agency that has been short-listed on a pitch exchanging a simple letter. By doing that, they enter an agreement on the terms set out in the Protocol.

The Protocol has been prepared for us by Steve Lorber of Lewis Silkin LLP. It is designed to strike a fair balance between the interests of the two agencies and to provide a basic level of protection. The Protocol has been approved by both ISBA and the IPA. Our expectation is that when pitches occur, clients will ask agencies to enter the Protocol.

### But does TUPE matter?

In practice, TUPE is likely to apply to an employee of the incumbent agency who is dedicated primarily to the client's work. In general, this will only arise on big accounts. If staff work across a number of accounts, TUPE is not likely to apply.

Even if TUPE applies in theory (which it does more often than you might think), it is quite possible that neither the incumbent agency nor its staff nor the new agency will want TUPE to apply. The incumbent agency will want to keep its staff; the new agency will not want to take them on and the staff themselves will probably want to stay where they are. If so, it may be safe to ignore TUPE.

### Can we give feedback on the Protocol

The Protocol is a living document. Both IPA and ISBA recognise that they will need to develop it in the light of experience. We are keen to receive feedback. Please send feedback to [juliet@ipa.co.uk](mailto:juliet@ipa.co.uk) and [debbiem@isba.org.uk](mailto:debbiem@isba.org.uk). The latest version of the Protocol will be available on our websites ([www.isba.org.uk](http://www.isba.org.uk) and [www.ipa.co.uk/employment](http://www.ipa.co.uk/employment)).

### Should we take legal advice?

TUPE creates rights and obligations for both incumbent and new agencies. Although we have designed the Protocol with a view to simplifying the process and reducing the cost of dealing with TUPE, it does not aim to cover every risk and is not a substitute for proper legal advice. Agencies should consider taking their own advice in their particular circumstances.

## Protocol in action

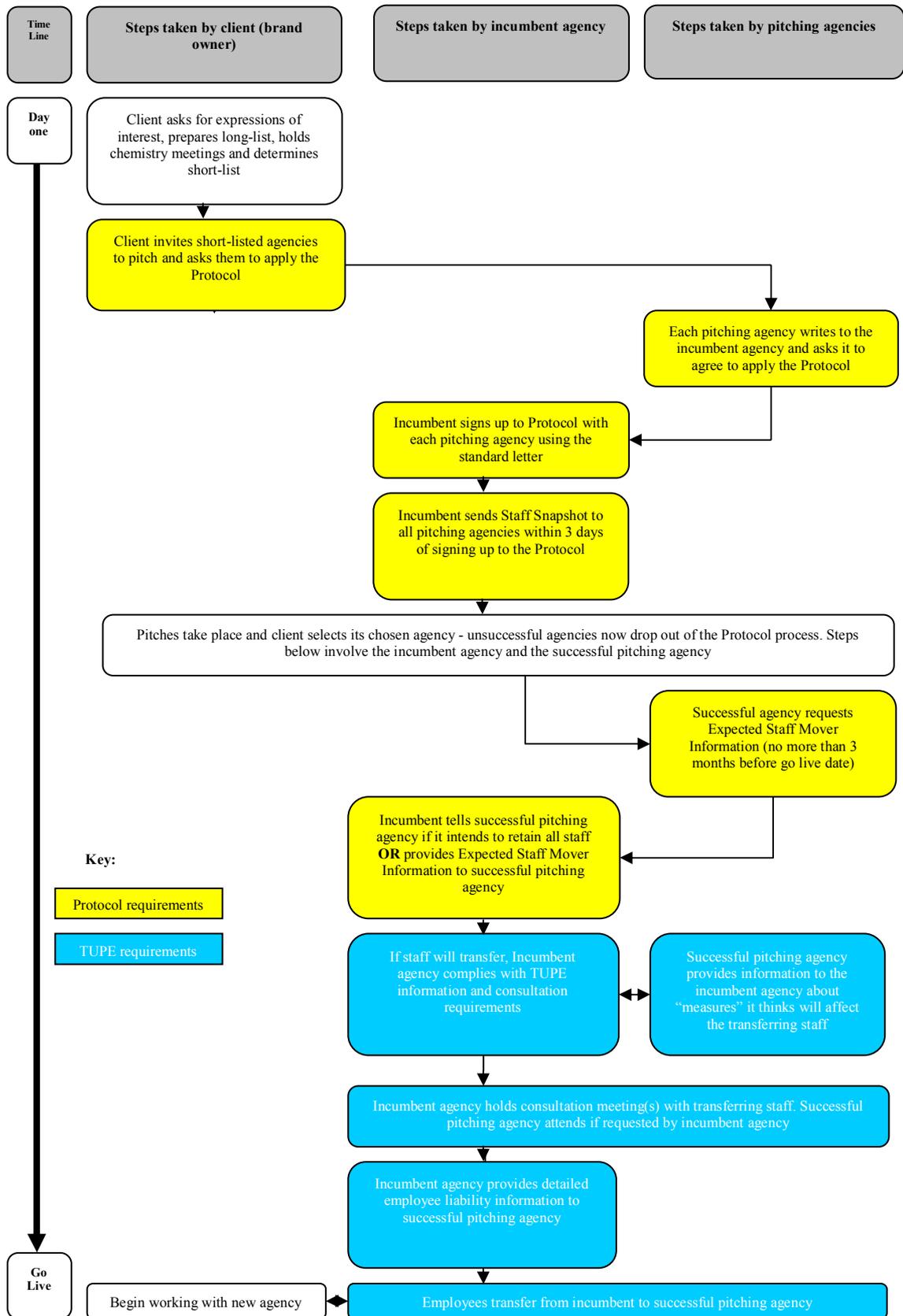
### How does the TUPE Protocol work?

In outline, using the Protocol involves the incumbent and pitching agencies exchanging letters to enter a legally binding agreement. The key elements of the agreement involve provision of information, co-operation over any transfer and protection in case of claims.

In more detail, the Protocol works as follows:

- A client inviting agencies to pitch will recommend that the Protocol be applied.
- The client will give the incumbent agency's contact details to short-listed agencies.
- Agencies pitching will fill out the names in the skeleton letter in the Appendix and send it (with a copy) to the incumbent agency.
- The incumbent agency will sign the copy letter and return it to the relevant agencies.
- The incumbent agency will then prepare a Staff Snapshot and send it to each pitching agency. The Staff Snapshot is a simple form setting out anonymous information on the staff working on the account. The form has been designed to be easy to complete. The incumbent agency does not need to decide whether or not staff will transfer under TUPE. Agencies pitching agree to keep the Staff Snapshot confidential.
- Once the client has identified a preferred agency (assuming it is not the incumbent), that agency and the incumbent will discuss whether TUPE is likely to apply in practice and whether staff are likely to want to transfer.
- The preferred agency may then ask the incumbent agency for Expected Staff Mover Information: information on the staff that the incumbent agency expects to transfer, their roles and salaries. In providing the Expected Staff Mover Information, the Incumbent Agency has to complete a simple form identifying who (if anyone) it expects will transfer. That may change. If it does, the Incumbent Agency should update the information.
- If TUPE applies, both agencies will have information and consultation obligations. The Protocol requires them to co-operate.

## Protocol in the pitch process



### Where do we stand legally if TUPE applies?

The Protocol sets up an arrangement under which agencies co-operate over TUPE. In the interests of ensuring a smooth process, information is provided earlier than strictly necessary under TUPE. But what's the strict legal position?

- The incumbent agency must make employee information available, including information on staff and their terms of employment. The penalty for failure to do this would typically be £500 per employee – but could be more if the new agency suffers loss as a result.
- The incumbent agency must organise a secret ballot under which staff elect representatives. It then gives information to the elected representatives and, in general, consults them. This normally happens after a preferred agency has been identified. That agency must tell the incumbent agency of any proposed changes to working arrangements. There is a penalty of up to 25% of the annual payroll cost (13 weeks' pay per affected employee) for non-compliance.
- Staff assigned by the incumbent agency wholly or mainly to the client's work transfer automatically to the new agency on their existing contractual terms.
- Liabilities in respect of transferring staff (e.g. for unpaid bonus or holiday pay or claims for injuries or harassment) transfer to the new agency.
- If the incumbent agency dismisses employees in connection with the transfer (other than by reason of redundancy or reorganisation), those employees will have unfair dismissal claims against the new agency – even though the new agency has never met them.

### Use of the Protocol without a pitch

Although the Protocol is designed mainly for use where there is a pitch, there will be times when a client moves its account without any formal pitch taking place. Even if there isn't a pitch, you can still use the Protocol and it may still be in the interests of the incumbent and new agency to sign up to it.

The easiest way to use the Protocol without a pitch is for the two agencies to exchange the normal letter but the new agency would first add a sentence to the letter asking the incumbent to agree that instead of the usual Protocol timelines, it would provide the Staff Snapshot and Expected Staff Mover Information within, say, 7 days.

## What does a pitching agency get from using the Protocol?

### What's in it for us?

The pitching agency gets:

- The Staff Snapshot: information on the staff working on the account.
- If it is successful (but only then), the Expected Staff Mover Information: information to help it plan for any staff transfer.
- An agreement that the agencies will co-operate and work together on consultation.
- An agreement that the incumbent agency will not change the account staff or employment terms unless the client requires it.
- Protection against claims by transferring staff related to employment with the incumbent agency.
- Protection against claims by persons other than transferring staff which it may inherit under TUPE.
- Protection against the incumbent agency failing to comply with consultation obligations.

### What if we don't want the staff?

Of course, the new agency may well not want staff to transfer. The client is likely to want different creatives and account teams...that may be why it has decided to change. The new agency could tell the client or the incumbent agency that if any staff transfer, it would want to terminate their employment at the client's or incumbent agency's expense. But that would be very expensive! The new agency may well ask the client for an indemnity in these circumstances.

In most circumstances, reaching an agreement will be difficult; we do not think it is possible to deal with this in a standard protocol. However, we hope that by using the channels of communication created by the Protocol, there will be constructive discussion between the two agencies as to managing issues such as this.

## What does the incumbent agency get from using the Protocol?

### What's in it for us?

The incumbent agency gets:

- An agreement that the agencies will co-operate and work together on consultation.
- The right to get the new agency to come to a staff consultation meeting to explain its plans and the implications for staff.
- Protection against claims by transferring staff related to employment with the new agency.
- Protection against the new agency failing to comply with consultation obligations.

### But why would we enter an agreement that gives protection to a competitor?

Because of the way TUPE works, the incumbent agency gives more than it gets under the Protocol. So why would it enter an agreement that gives protection to a competitor?

- *What goes around comes around*

Agencies win accounts and lose accounts. If the Protocol is accepted by most agencies, the incumbent agency will get the benefit of the Protocol when it is successful another time.

- *Agencies compete – but not over making life difficult for their staff*

Although agencies compete with each other, they generally compete on services and not by making life difficult for their staff. If staff are going to transfer, it's as well that it happens smoothly.

- *Clients will encourage compliance*

Clients will encourage agencies to comply with the Protocol. The protocol establishes a level playing field and promotes fair competition.

- *Taking responsibility is reasonable*

If staff are injured or bullied, it is only fair that the employer at the time of such incidents picks up the tab.

*This guide is a general description of the Protocol. It is not legal advice. Neither the IPA, ISBA, nor Lewis Silkin LLP (nor officers, members or employees of any of them) accept any responsibility or liability for any loss or damage (whether arising from negligence or otherwise) from use of the Protocol and information supplied regarding it.*

## FREQUENTLY ASKED QUESTIONS

## Frequently Asked Questions – incumbent agency's perspective

### Why should we sign up?

TUPE transfers the incumbent agency's staff and any claims they have to whoever takes over the account. Although an incumbent agency is less exposed to risks arising from TUPE than the pitching agencies, there are reasons to go along with the protocol:

- *What goes around comes around*

Agencies win accounts and lose accounts. If the Protocol is accepted by most agencies, the incumbent agency will get the benefit of the Protocol when pitching for new business in other circumstances.

- *The Protocol helps most agencies most of the time*

All agencies pitch more often than they are the incumbent. The Protocol helps most agencies most of the time.

- *Clients will encourage compliance*

Clients will encourage agencies to comply with the Protocol. The Protocol establishes a level playing field and promotes fair competition. If the incumbent agency is pitching, presumably it hopes to win based on the quality of what it can offer. Sharing information on labour costs creates a level playing field and promotes fair competition.

- *Providing protection is reasonable*

Although TUPE shifts responsibility for claims by employees, it is reasonable that the incumbent agency bears the costs if the claims relate to a period when it was employer. For example, if staff are owed salary or a bonus from when they were working for the incumbent agency, that agency should pay. Similarly if a member of staff has been sexually harassed while working for the incumbent agency, it is reasonable that it takes responsibility. This is what it would have to do if TUPE did not apply.

### What do we get from the Protocol?

The incumbent agency gets protection from claims relating to employment with the new agency after the transfer. Although not likely, such claims are sometimes made, particularly where the employee is not sure who is employing him or her. There is also protection if the agency short-listed fails to play its part in the consultation process.

### What are our obligations under the Protocol?

In brief, the incumbent agency's obligations are as follows:

- To provide the Staff Snapshot to pitching agencies. Providing the Staff Snapshot simply involves completing a form with factual information. It has been deliberately designed to avoid the incumbent agency having to make any judgements on whether or not TUPE applies to particular staff.
- If a pitching agency is successful, the incumbent agency may

also be required to provide what is called Expected Staff Mover Information. Again, this can be provided by completing a form. This is information on the staff that the incumbent agency expects to transfer.

- Not to change or increase the number of staff working on the account before the transfer unless that is required by the client. The incumbent agency also agrees not to change terms of employment other than normal pay increases. This is mainly designed to avoid inclusion of “poison pills” – non-commercial terms that kick in after the transfer which increase the new agency’s costs.
- To co-operate with the new agency over the transfer and TUPE consultation process.
- To indemnify the new agency against
  - Claims by transferring staff arising from employment with the incumbent agency. These do not normally arise but would include claims based on a failure to pay salary or other money due or based on personal injury or discrimination occurring while the incumbent agency was employer.
  - Claims by anyone else which the new agency picks up under TUPE. This would include claims by a member of staff who does not transfer because he or she is dismissed by the incumbent agency for a reason related to the TUPE transfer.
  - Claims arising from a failure by the incumbent agency to comply with TUPE consultation obligations.

**We don't know who is transferring: how can we provide information?**

The Protocol has been deliberately designed so that it is not a problem if agencies do not know who will transfer. The Staff Snapshot is simply information relating to staff who spend 70% or more of their time on an account. The Expected Staff Mover Information is information on what an agency expects will happen. An agency may expect to re-assign all staff and that no-one will transfer. If so, that is all it need say. Although the agency needs to provide the best information that it can, it is not essential that it is accurate.

Note however that under TUPE (but not under the Protocol) there is an obligation to provide certain information at least 14 days before a transfer on staff who will transfer. An incumbent agency should not forget to provide that.

**But we want to keep our staff!**

Whether TUPE applies or not, most agencies keep their staff. They don't want to lose them. If the staff want to stay and the incumbent agency wants to keep them, there is no problem. If the incumbent agency wants to be sure of keeping them, there is a process whereby staff can formally object to transferring – but it's not really necessary to follow it. If the incumbent agency can motivate them with the opportunities they'll have even if it loses the pitch: it is pretty safe in assuming staff will stay on.

## Frequently Asked Questions – pitching agency’s perspective

### What does TUPE mean for us?

Assuming TUPE applies, staff employed by the incumbent agency transfer to the new agency on their existing terms. If they have any claims related to their employment with the incumbent agency, the new agency picks those up. The Protocol is designed to ensure pitching agencies know what they may take on and to provide a reasonable level of protection against such claims if they win the pitch. It is intended to provide basic “just in case” protection even if the incumbent agency agrees to keep its staff and everyone (including the employees affected) ignores TUPE.

### What do we get from the Protocol?

In brief, the incumbent agency agrees:

- To provide a Staff Snapshot.
- If the agency is successful, to give the agency Expected Staff Mover Information.
- Not to load the account with excess staff or to change staff terms for example to include “poison pills” – non-commercial terms that kick in after the transfer which increase the new agency’s costs.
- To co-operate over the transfer and TUPE consultation process.
- To indemnify the new agency against claims by transferring staff arising from employment before the transfer and other claims which may be inherited under TUPE together with claims arising from its failure to comply with TUPE consultation obligations.

### The incumbent agency is ignoring the Protocol, what can we do?

The Protocol is voluntary. However, there are advantages for all parties if the incumbent agency plays ball. The obligations on the incumbent agency are designed to strike a fair balance. This can be brought to the attention of the incumbent agency by the client and the new agency.

Although ISBA and the IPA take the view that adopting the Protocol is in the interests of the industry as a whole, there is ultimately nothing that can be done if an agency refuses to co-operate.

### We don’t want the staff!

Whether TUPE applies or not, most agencies keep their staff. They don’t want to lose them. So there may be no issue. But TUPE does give staff a right to transfer – even if neither the new agency nor the client want them. TUPE aims to protect employment by ensuring that it continues.

A change in staff may well be driven by the client. In these circumstances, on staff transferring to the new agency, the agency has two options: to redeploy the staff or to end their employment (or a combination of both). Of course, redeployment may not be practicable. And if the agency ends their employment (or refuses to take them over), that may well result in an expensive unfair dismissal claim. In these circumstances, the agency is likely to look to the client to agree to cover the costs. It may be appropriate for the client to offer an indemnity to the agency.

Possible wording for an indemnity might be:

“If any person (an “unwanted employee”) transfers to the Agency under TUPE and the Client indicates that that person should not work on its account, the Agency will use reasonable efforts to redeploy the unwanted employee. If the Agency does not redeploy the unwanted employee and terminates his or her employment, the Client will indemnify the Agency against all liabilities, costs and expenses which the Agency may incur arising from a claim by the unwanted employee relating to such termination.”

## Frequently Asked Questions - client's perspective

### When does TUPE apply?

TUPE is only likely to apply if the incumbent agency has staff who are dedicated primarily to the client's account. In practice, this depends on how much business the client is giving the agency and how the agency organises things.

### Why is TUPE our problem?

TUPE is generally not a direct issue for clients unless it takes its marketing in-house. The thrust of TUPE is to switch staff, their terms and liabilities from the incumbent agency to the new agency. So TUPE is mainly a risk for a new agency. Although it could approach the incumbent agency and ask for information and protection against risks, it may find the incumbent agency unenthusiastic about helping a competitor who could win the account.

If the incumbent agency does not co-operate, the new agency will approach the client. Although the client could take it upon itself to approach the incumbent agency, it may not get much further than the new agency. Although the new agency may ask for contractual protection from the client, that is normally refused. In these circumstances, a pitching agency is likely to price for the uncertainty and what it sees as the risks that may transfer under TUPE. This increases the client's costs.

### Our agency contract already covers TUPE

Your agency contract may include a TUPE clause. If so, this needs careful checking. Many agency contracts focus only on the client's own position but do not confer rights on a pitching agency in relation to information or claims by staff transferring. Terms in agency contracts will not be enforceable against pitching agencies .

### Should we include anything in our agency contract?

A client will not be directly liable for TUPE costs unless it takes the work of an agency in house, and even then TUPE will not apply if no staff are dedicated to the particular account, for example on a small account. Clients sometimes try to get around TUPE by saying agencies must dismiss staff who transfer and install a new team. Doing that may lead to claims of unfair dismissal against one or both of the incumbent and pitching agencies. This is potentially very costly.

Some clients are including lengthy TUPE clauses in their agency agreements. Others simply try to "opt out" of TUPE (something that cannot be done). Many of these clauses are misguided. We hope that clients will consider referring to the Protocol using a short clause inserted in the recommended ISPA/IPA terms of business along the following lines:

"If the Client notifies the Agency in writing that it intends to re-tender some or all of the services provided under this Agreement and the Agency subsequently receives a letter from an agency which is pitching to the Client (a "pitching agency") asking the Agency to agree to be bound by the ISBA/IPA TUPE Protocol (as amended by ISBA and the IPA from time to time) (the "Protocol"), the Agency will agree with the pitching agency to be bound by the Protocol."

**Why should we encourage agencies to use the Protocol?**

Pitching agencies will want protection. The protocol provides pitching agencies with basic protection against risks arising from TUPE. If the incumbent agency agrees to provide that protection, most of the risks are covered. This should avoid the problems identified above.

The protocol also requires the two agencies to co-operate. This facilitates a smooth transition. Although the agencies are competitors, they usually compete on marketing services – not on causing problems for each other's staff.

**Asking agencies to apply the Protocol? What do we have to do?**

The client should:

- Alert the agencies invited to pitch to consider and apply the Protocol;
- Tell the incumbent agency that it is encouraging it to apply the Protocol and ask it to prepare the staff snapshot – summary information on staffing.
- After short-listing, write to the short-listed agencies giving them contact details for the incumbent agency. When doing this, the client could attach the skeleton letter and TUPE Protocol although the agencies will be able to access it on the IPA and ISBA websites.
- Ask the agencies to let the client know if there are any difficulties over signing up to the Protocol.
- The agencies should exchange letters agreeing to apply the protocol. This creates a binding agreement.

**Supposing the incumbent agency refuses to apply the Protocol?**

Ultimately, the incumbent agency can refuse. The Protocol is voluntary.

It is in the client's interests that the incumbent agency co-operates because it makes the process run more smoothly. Also, there will be a fairer competition if all agencies have information on staff costs. The client will tend to get a better result if there is a level playing field.

**We don't want the new agency to have the same staff – we want a change**

TUPE aims to protect employment by ensuring it continues. If staff are dismissed, the dismissal is likely to be unfair. Bucking TUPE by dismissing is expensive.

A change in staff may well be driven by the client. In these circumstances, on staff transferring to the new agency, the agency has two options: to redeploy the staff or to end their employment (or a combination of both). If the agency ends their employment (or refuses to take them over), that may well result in an expensive unfair dismissal claim. In these circumstances, the agency is likely to look to the client to agree to cover the costs. It may be appropriate for the client to offer an indemnity to the agency.

Possible wording for an indemnity might be:

“If any person (an “unwanted employee”) transfers to the Agency under TUPE and the Client indicates that that person should not work on its account, the Agency will use reasonable efforts to redeploy the unwanted employee. If the Agency does not redeploy the unwanted employee and terminates his or her employment, the Client will indemnify the Agency against all liabilities, costs and expenses which the Agency may incur arising from a claim by the unwanted employee relating to such termination.”

# PROTOCOL

**APPENDIX – Letter and TUPE Protocol**

**[On letterhead of Pitching Agency]**

Dear [*Incumbent Agency*]

**Pitch to** [*client*]

We are seeking to provide/have agreed to provide marketing services to [ ]. We understand you currently provide those services.

We seek your agreement that we and you should be bound by ISBA/IPA TUPE Protocol 2006 (the “Protocol”). Although we do this so we both have appropriate legal protection if TUPE should apply, we are not making any assumption that it does apply.

In the Protocol:

- Client means [ ];
- Incumbent Agency means [ ];
- Pitching Agency means [ ].

Please would you sign the attached copy of this letter to confirm your agreement to the above and return it to us as soon as possible. This will create a legally binding agreement.

Yours sincerely

[ ]

**Agreement to application of the Protocol**

We agree to be bound by the ISBA/IPA TUPE Protocol 2006 read with the letter above.

*signed*..... *position*.....

for and on behalf of [*Incumbent Agency*]

*date*.....

## ISBA/IPA TUPE Protocol 2006 (the "Protocol")

### 1. Staff Snapshot

- 1.1 Within 3 working days of agreeing to the Protocol applying, the Incumbent Agency will give the Staff Snapshot to the Pitching Agency.
- 1.2 The Pitching Agency will keep the Staff Snapshot confidential and will use it only in connection with seeking to provide services to the Client and complying with TUPE.

### 2. Expected Staff Mover Information

- 2.1 If the Pitching Agency gives written notice to the Incumbent Agency that it has been successful in its pitch and requests Expected Staff Mover Information, the Incumbent Agency will give the Pitching Agency the best Expected Staff Mover Information that it reasonably can within 7 working days of the request (or at a date 3 months before the Transfer Point if that is later).
- 2.2 If the Expected Staff Mover Information changes, the Incumbent Agency will tell the Pitching Agency promptly.
- 2.3 The provision of information under the Protocol does not affect the Incumbent Agency's responsibility under TUPE to provide employee information.

### 3. Staffing changes

- 3.1 During the period between agreeing to the Protocol applying and the Transfer Point, the Incumbent Agency will not
  - (a) assign additional or substitute persons to provide services for the Client such that those persons become Transferring Employees (unless the assignment or substitution is required by the Client); or
  - (b) vary or promise to vary the terms of employment of any Transferring Employee (other than pay increases in the normal course of business).
- 3.2 Nothing in the Protocol shall prevent the Incumbent Agency retaining any person who would otherwise be a Transferring Employee.

### 4. Co-operation and consultation

- 4.1 The Incumbent Agency and Pitching Agency will in good faith seek to agree whether TUPE is likely to apply and whether any staff are likely to transfer to the Pitching Agency under TUPE. The Incumbent Agency and Pitching Agency will take reasonable steps to co-operate with each other in relation to any transfer of staff.
- 4.2 The Incumbent Agency and the Pitching Agency will, promptly and in a co-operative manner, comply with their obligations (if any) under TUPE relating to the provision of information and consultation. If the Incumbent Agency requests, the Pitching Agency will send an appropriate representative to a consultation meeting with Transferring Employees or their representatives.

### 5. Protection of Pitching Agency

The Incumbent Agency will indemnify the Pitching Agency against all Losses which it may incur on account of or arising from:

- (a) any claim by a Transferring Employee in respect of any fact or matter to the extent that such claim concerns or arises from employment before the Transfer Point;
- (b) any claim by any person (other than a Transferring Employee) in respect of which the Pitching Agency incurs responsibility or liability as a result of the operation of TUPE.

- (c) any claim arising from the failure by the Incumbent Agency to comply with its obligations under regulations 13 and 14 of TUPE (*information and consultation*) save to the extent that such Losses arise or are increased by reason of the Pitching Agency's failure to comply with those regulations.

## **6. Protection of Incumbent Agency**

The Pitching Agency will indemnify the Incumbent Agency against all Losses which it may incur on account of or arising from:

- (a) any claim by any Transferring Employee in respect of any fact or matter to the extent that such claim concerns or arises from employment with the Pitching Agency after the Transfer Point;
- (b) any claim arising from the failure by the Pitching Agency to comply with its obligations under regulation 13(4) of TUPE (*provision of information on measures affecting Transferring Employees*).

## **7. Conduct of claims**

- 7.1 If a party becomes aware of a claim that may give rise to it (the "beneficiary") having a claim for indemnity under this Protocol against the other party (the "indemnifying party"), it will promptly tell the indemnifying party and provide such information and assistance as it may request.
- 7.2 At the expense of the indemnifying party, the beneficiary will take such action as the indemnifying party requests in relation to the claim and, if the indemnifying party requires, will entrust the conduct of any litigation or negotiation to the indemnifying party. Indemnity under the Protocol is conditional on the beneficiary not admitting liability or settling any claim without prior written authority from the indemnifying party.

## **8. Definitions and application of Protocol**

### **8.1** In this Protocol

"Expected Staff Mover Information" means information regarding those staff working on the Client's account who the Incumbent Agency expects will transfer to the Pitching Agency under TUPE in the form annexed to the Protocol;

"Losses" means losses, damages, liabilities, claims, penalties, costs and expenses (including legal and other professional expenses);

"Protocol" means the ISBA/IPA TUPE Protocol 2006

"Staff Snapshot" means information regarding staff working on the Client's account in the form annexed to the Protocol;

"Transfer Point" means the point in time at which the Transferring Employees transfer to the Pitching Agency (or, if the context allows, would transfer if TUPE were to apply);

"Transferring Employees" mean the employees who transfer (or, if the context admits, would transfer) to the Pitching Agency on a transfer under TUPE;

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time.

### **8.2** Rights of a party may be exercised as often as appropriate or necessary.

### **8.3** References to "working day" mean Monday to Friday (but not public holidays).

**Staff Snapshot**

Table should be completed for each member of staff working on Client's account for 70% of their time or more

<i>Job title of each person working on account 70% of time or more</i>	<i>Approximate percentage of time working on account (ignore less than 70% and tick appropriate box)</i>	
	<b>70% to 90%</b>	<b>90% or over</b>
<i>Example: Account manager</i>	✓	

**Note:** The information to be provided on this form is factual. Inclusion or omission is not in itself an indication that TUPE applies or does not apply to a particular member of staff.

