

12CP BARRISTERS EMPLOYMENT

FACT 12

TUPE TRANSFER

The TUPE regulations apply to the sale of businesses. A TUPE transfer is described in law as a transfer of an economic entity which retains its identity.

An economic entity can be loosely described as the employees & assets carrying out the work of the business or the part being looked at.

In considering whether the business is still being carried on a Tribunal will look at a number of things including:

- ⇒ The type of business;
- ⇒ What assets transferred;
- ⇒ The value of the business assets at the time of the transfer;
- ⇒ Whether the majority of staff transferred;
- ⇒ Whether the customers transferred;
- ⇒ Whether the business is carried on in the same or similar way;
- ⇒ Has there been an a deliberate attempt to avoid TUPE;
- ⇒ Was the business shut down and for how long.

It should always be remembered that no one factor is decisive and in some cases even where neither assets nor employees are taken on by the new business a transfer can occur.

Confused? You are entitled to be, TUPE is complicated and we would always advise employees and employers alike to seek expert advice.