

Getting the Best out of Outsourcing: Current Hot Spots



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Getting the best out of outsourcing: agenda

- **Multi-sourcing models**

- pros, cons, contract considerations

- **'Value for money' provisions**

- benchmarking
- continuous improvement and gainshare

- **Termination and exit**

- lessons learned from earlier generation outsourcings

- **Employment trends in outsourcing**

Sourcing models: sole source or multi-source

Multi-sourcing: benefits/drivers

- access to 'best of breed' suppliers and solutions
- greater competition between suppliers
- greater flexibility
- lowers supplier dependency and operational risk
- increased sophistication of customer procurement teams

Multi-sourcing: issues/risks

- no single point of responsibility
- customer retains integration risk
- increased management overhead
- greater risk of service gaps
- service delivery dependent on supplier co-operation

Multi-sourcing: contract considerations

- Achieving supplier co-operation
 - cooperation and assistance obligations
 - multi-supplier governance framework
 - joint service credit/bonus pools
- Cross-licensing and sublicensing rights
- Ability to force through contract changes
- Terms to avoid supplier lock-in
 - checks/balances on use of proprietary tools
 - up-to-date process database/manual
- Reducing supplier interdependency risk
 - 'fix first, argue later'
 - impact on liability provisions
 - multi-supplier dispute resolution procedure
- Use of 'operating level agreements' (OLAs)
- Achieving supplier 'buy-in'

Ensuring value for money in longer term deals

- 'VFM' contract tools
 - **audit rights** (measuring supplier performance/pricing against contract terms)
 - **MFN provisions** (measuring supplier pricing against its other deals)
 - **market-testing** (esp important in exclusive arrangements)
 - **benchmarking** (measuring supplier performance/pricing against peer group)
 - **continuous improvement and gainshare**

Ensuring value for money in longer term deals

Benchmarking – preliminary considerations

- **Difficult (and expensive) to negotiate and implement**
 - is benchmarking required – consider contract term
 - when can it be triggered
 - contractual status – binding or non-binding?
- **What is being benchmarked?**
 - comparing ‘apples with apples’ – price and service levels
 - all services or discrete service lines?
 - impact of cross-subsidisation
- **What is the benchmark target?**
 - consider in context of services, geographical scope etc

Ensuring value for money in longer term deals

Benchmarking – implementation

- **Appointing the benchmarking advisor**
 - process for agreement and dealing with disputes
- **Include outline terms of reference in outsourcing contract**
 - benchmark target
 - peer group and comparison sample – industry sectors, geographic issues etc
 - ‘normalisation’ issues
- **Include key obligations in outsourcing contract**
 - information disclosure, co-operation etc
 - appointment of benchmarking representative
- **Status of benchmarking report**
 - if binding, from when?
 - if trigger for negotiations, what happens if failure to agree?

Ensuring value for money in longer term deals

Continuous improvement and gainshare

▪ **Earlier-generation outsourcing contracts**

- *“Supplier shall use its reasonable endeavours to make economies in the provision of the Services and to the extent that it does it shall pass [50%] of the benefit of these on to Customer by way of a reduction in the Charges”*

▪ **Current contracting mechanisms**

- joint venture arrangements
- open book and profit share arrangements
- binding targets e.g. for charges reductions (normally limited in time)
- automatic ratchet mechanisms e.g. for service level improvements
- annual reports/recommendation obligations
- gainshare frameworks

Ensuring value for money in longer term deals

Gainshare frameworks

- **What savings qualify**
 - avoid customer/supplier 'double-dip'
- **What initiatives qualify**
 - distinguish between customer and supplier initiatives?
 - 'in-flight' projects
- **How will project be funded**
- **How will savings/benefits be shared**
 - percentage splits
 - consider impact of early termination of agreement
- **Scoping & capturing project terms**
 - key supplier and customer obligations
 - other key terms – termination rights, consequences of breach etc
- **What if savings/efficiencies don't materialise**

Termination and exit

Lessons learned from 1st generation contracts

- 90% of retenders awarded to incumbent (Source: TPI Index Report, EMEA Q1 2010)
- Experience from 1G outsourcings: customers not fully equipped to deal with exit/transition
- **Inadequate exit plans**
 - failure to observe contract terms
 - regular reviews and audits
 - dealing with 'hostile' incumbents
- **No agreed parameters on exit costs**
- **Inability to provide level playing field for other bidders**
- **Avoiding 'black-box' outsourcings**
- **Inadequate service continuity arrangements**
- **People considerations**

TUPE - Overview

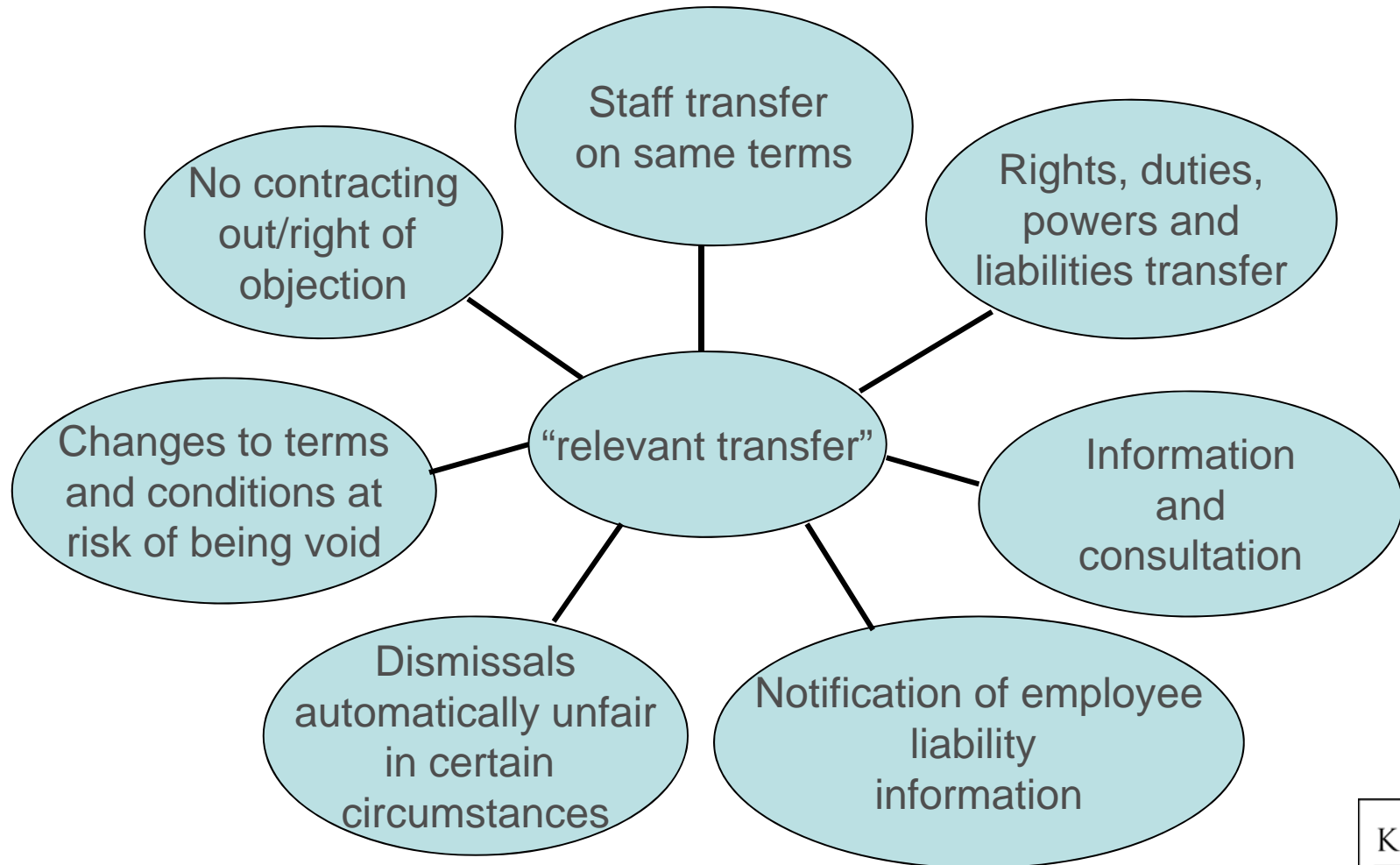
1. Employment trends in outsourcing - avoiding an application of TUPE
2. Implications of application of TUPE – reminder
3. Exit considerations

Employment trends in outsourcing – avoiding an application of TUPE

- a) Where no work in process transferred:-
 - Ward Hadaway Solicitor v Love
- b) Fragmentation:-
 - Kimberley Group Housing Ltd v. Hambley & others
 - Thomas–James and others v. Cornwall County Council
 - Clearsprings Management Limited v. Ankers & others
- c) Change to services
 - OCS Group UK Ltd v. Jones
- d) Offshoring?
 - Holis Metal Industries Ltd v. (1) GMB
(2) Newel



Implications of application of TUPE



Exit considerations

	Client (C)	Outgoing contractor (OC)	Incoming Contractor (IC)
Due diligence	<p>Understand costs and level of risk that IC will accept</p> <p>OC to provide employment - related information to IC</p>	<p>...will prefer no interference</p>	<p>Identify:</p> <ul style="list-style-type: none"> ▪ transferring liabilities ▪ human stock ▪ terms and conditions and ▪ benefits
C O N T R A C T	<p>OC to provide back-to-back protection in respect of protection that C is obliged to offer IC</p> <p>IC to provide back-to-back protection in respect of protection that C is obliged to offer OC</p>	<p>C:</p> <ul style="list-style-type: none"> ▪ liable for post-transfer acts and omissions ▪ to oblige IC to provide details of any measures and be liable for claims that arise ▪ apportionment ▪ termination costs if TUPE does not apply 	<p>C:</p> <ul style="list-style-type: none"> ▪ liable for pre-transfer acts and omissions ▪ obliged to procure that OC avoids changes to personnel and terms and conditions during the period leading up to the transfer ▪ liable for costs if too many/too few employees transfer ▪ to provide warranties backing up due diligence/adjustment to ▪ charging mechanism ▪ apportionment

Questions?

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