

**TUPE**  
**The UNISON Experience**

**Institute of Employment Rights**

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# TUPE - an organising issue

1. **TUPE matters**
2. **TUPE limitations**
3. **TUPE plus**
4. **TUPE lessons**

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# 1. TUPE matters

**A. Market for public services**

**B. Life before TUPE**

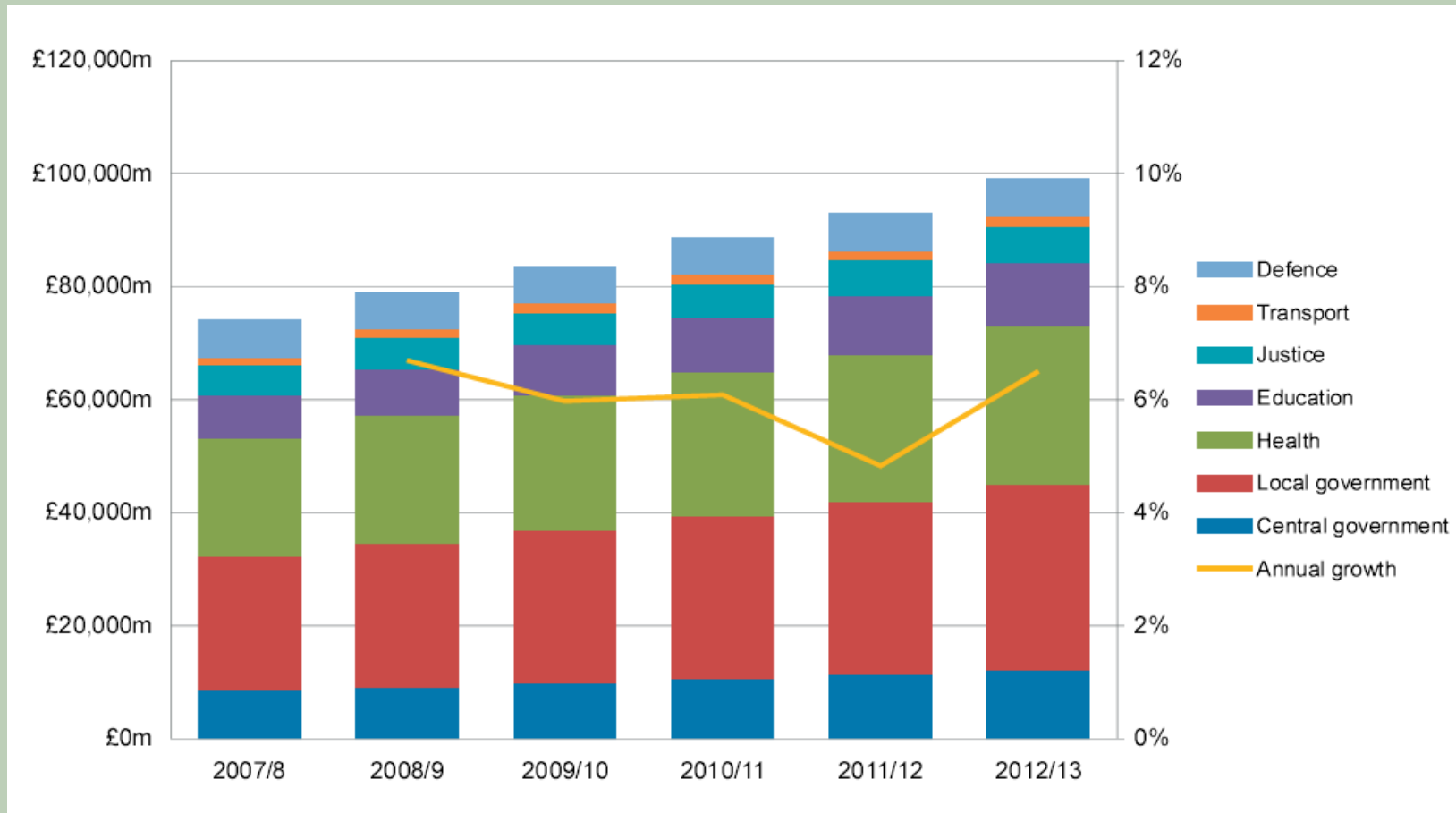
**C. Early intervention**



# 1. TUPE matters

## A. Market for public services growing

Total outsourcing expenditure by sector (2007/08 - 2012/13). Source: Kable



# 1. TUPE matters

## B. Life before TUPE - a race to the bottom

“Most of the savings from contracting out arise because contractors offer poorer conditions of employment ..... they eliminate costly bonus schemes and overtime working, provide little or no sick pay, and avoid national insurance payments by means of more part time working. The difference in total labour costs may typically be of the order of 25%. Pensions are the main single element in it.”

**1986 HM Treasury Report: Using Private Enterprise in Government**

# 1. TUPE matters

## C. Early intervention

### i) Before outsourcing is considered

- **Service review and commissioning**
- **Procurement agreement**
- **In-house options/bids**

### ii) Alternatives to transfer

- **Secondment (Retention of Employment)**

## 2. TUPE limitations

**A. Exclusions**

**B. Application**

**C. Unintended consequences**

**D. Public service reform**

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## 2. TUPE limitations

### A. Exclusions

- **Excludes pensions**
- **Does not cover all staff**
- **Does not cover all transfers**
- **Excludes new starters and other employees  
(Two tier workforce)**



## 2. TUPE limitations

### B. Application

- **Employer inexperience and failures**
- **TUPE time limits**
- **Economic, technical and organisational reasons**
- **Enforcement**

## 2. TUPE limitations

### C. Unintended consequences

- **Multiple tiers**
- **Inflexible job progression**
- **The TUPE union**

## 2. TUPE limitations

### D. New models of public service reform

- **Shared services**
- **Integrated services**
- **Mutuals**

## 3. TUPE plus

**TUPE plus = additional terms and conditions**

**A. Govt TUPE supplements – going fast**

**B. TU additions during procurement**

## 3. TUPE plus

### A. Lost and under threat - Government TUPE supplements

- **TUPE**– Cabinet Office Guidelines
- **Pensions** - A fair deal for Staff Pensions
- **Two tier codes**

## 3. TUPE plus

### Two tier code

**"We want to ensure that when services are contracted out, it is not done on the basis of poorer terms and conditions of employment for the staff...."**

**Tony Blair  
Hansard, 17 October 2001**



### New starters :

- terms and conditions which are, overall, no less favourable than those of transferred employees
- broadly comparable pension scheme

## 3. TUPE plus

### B. TU additions during procurement

- **Maximum t&c in individual contracts**
- **Two tier codes**
- **Pensions**
- **Links to public sector pay and conditions**

## 3. TUPE plus

### Case study Newcastle City Council Schools PFI

- **Procurement Protocol**
  - Review tender documents
  - Interview contract bidders
  - Trade Union to evaluate each bid by:
    - - level of service
    - - terms and conditions
- **TUPE plus Agreement**
  - TUPE applies to all staff transferred
  - For the life of the contract
  - Transferred staff maintain council pay and conditions
  - New employees - same t&c, pay
  - NJC conditions apply to all staff
  - Union recognition



## 5. TUPE Lessons

### LESSONS

- 1. Take action BEFORE transfer inevitable**
- 2. Get the TUPE additions**
- 3. TUPE alone is not enough**

**organise and recruit non-TUPE staff**