

SMS TUPE Transfer To Central Trust: Key Staff Issues

Senior Management has announced plans to outsource its C&G Specialist Mortgage Solutions operation to a new company, Central Trust.

As a consequence, all staff working for Specialist Mortgage Solutions (SMS) will have their contracts of employment automatically transferred to Central Trust, under the provisions of what is known as TUPE legislation.

C&G has told LTU that it wants to complete the transfer by the end of this month. This will be an ambitious objective, unless we see clear indications that Lloyds TSB and Central Trust intend to commit to Transfer Terms and Transfer Arrangements that closely match what the Union will be seeking on behalf of SMS Staff.

LTU certainly won't be bound by - or 'rail-roaded' into - unrealistically short timescales if we are not convinced that C&G and Central Trust are meeting fully their legal obligations to inform and consult LTU with the genuine intention of reaching agreement on the Transfer Terms.

In this Newsletter we:

- Provide a little background on Central Trust;
- Explain what the TUPE legislation means for staff and in particular its shortcomings.
- Help staff understand what the key issues will be during our negotiations on the Transfer Terms and Arrangements and the 'Key Negotiating

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Principles' to which LTU will be operating.

- Detail just how important negotiations will be and why it is essential that a number of members put themselves forward immediately to act as representatives on behalf of staff.

The coming weeks are going to be very stressful for SMS staff and it will be important that staff can count upon reliable, professional advice, information and representation. To assist our members, LTU will be visiting Chiswell Street regularly, meeting with Management and providing detailed Newsletter updates to our members.

Compulsory Staff Transfer To Central Trust

Under the agreement reached between Lloyds TSB and Centre Trust, the Bank intends to compulsorily transfer all staff currently working for C&G Specialist Mortgage Solutions to work for Centre Trust instead.

The TUPE legislation (see next section) permits the two companies to do this. Therefore, any members of staff refusing to transfer would be in breach of contract ... effectively resigning and forfeiting any right to redundancy pay.

Obviously the transfer will be deeply unpopular amongst staff who, having originally chosen to work for the Lloyds TSB Group, are now being told that they are no longer wanted and must transfer compulsorily to another company instead.

For Central Trust to win the goodwill and commitment of the SMS Staff it wants to inherit, it will be essential that it shows a clear commitment - supported by robust guarantees - that SMS Staff will be no worse off as a consequence of transferring between employers.

It will therefore be LTU's role during negotiations over the coming weeks to secure Transfer Terms that genuinely preserve and protect the existing terms and conditions of staff.

About Central Trust

This afternoon, Central Trust's owner and Managing Director - Andrew Turner - will be making a presentation to staff, providing background on the company and where he sees the Specialist Mortgage Solutions operation fitting in.

The Union understands that Central Trust is a rapidly expanding company with a strong entrepreneurial drive and focus. From LTU's early impression of Central Trust, the key features and considerations for staff would appear to be that:

- **Central Trust commenced trading almost twenty years ago, in May 1988. Its corporate structure consists of a parent company - Central Trust Plc - and 14 further subsidiary companies.**
- **It employs over 600 staff in the United Kingdom and Channel Islands. Of these, the largest single concentration of staff is at its operating base in Watford (270-300 staff) and its Chief Office is in Watford. Only around 20 staff are employed in Guernsey.**
- **Most relevant to SMS Staff, currently Central Trust's broking operations are focused around five brands that it says match different product or market segments. These are:**
 - * 'Debtbuster Loans';
 - * 'Loans4Tenants';
 - * 'Central Capital Commercial';
 - * 'Central Capital Mortgages'; and
 - * 'Debtbuster IVA'
- **It says it has an ambitious growth plan, and intends to recruit over 200 new staff in each of the next five years.**
- **Its objective is to improve productivity rapidly through the application of 'continuous improvement' and 'lean manufacturing' principles.**
- **Central Trust intends to operate Specialist Mortgage Solutions as a separate subsidiary within the overall group. It would for the time being be the only Central Trust function operating from London.**

Once Specialist Mortgage Solutions has transferred to Central Trust, the Union understands that it will have to find alternative premises to continue trading from. We have been told this will remain in Central London.

Legal Protection : TUPE

The Transfer of Undertakings (Protection of Employment) Regulations, more commonly known as TUPE, were introduced in 1981 to help protect the rights of employees where there is a change in their employer.

The main objectives of the law are to:

- **Ensure that the recognised unions of staff to be transferred (i.e. LTU) are informed and consulted fully on the proposed transfer and its impact on staff.**
- **Ensure that the contracts of employment of staff are transferred automatically between employers and their terms and conditions protected.**

The TUPE Regulations provide the following protection for employees transferred between employers:

- Existing contracts of employment transfer to the new employer.
- The period of employment with the Bank is treated as continuous service once staff transfer from the Lloyds TSB Group to Central Trust. Rights and benefits relating to the period of continuous employment remain; such as for redundancy, unfair dismissal, etc.
- Any employees who are dismissed for reasons connected with the transfer can claim unfair dismissal.
- If worse contractual terms and conditions are offered by Central Trust at the time of transfer then Lloyds TSB Group staff may resign and claim constructive dismissal.
- If Central Trust were to attempt to impose new terms and conditions by dismissing employees and re-employing them on new terms, the dismissal will be unfair.

It is particularly important that staff bear in mind that the Bank has argued previously that, in terms of remuneration, only Basic Salary is transferred to the new employer.

It may seek to argue that staff are not entitled to an amount equal to Flavours, Bonuses or participation in the Sharesave Scheme.

Pensions are also not legally protected.

In other words, staff transferring from the Lloyds TSB Group to Central Trust could, unless LTU successfully negotiates proper compensation or protection, suffer significant cuts in their overall income.

Real Protection Needed

It is also important to stress that the protection provided by the TUPE legislation typically only lasts 12 months. After a year, employers have successfully forced through changes in terms and conditions by arguing that these changes are unconnected with the transfer.

Furthermore, TUPE merely takes a 'snap shot' of existing staff terms and conditions - preserving rather than protecting them. So, for example, those benefits that might ordinarily have been expected to accrue over time - such as Basic Salary, Holiday Entitlement, etc - may no longer continue to do so!

It is therefore essential that LTU negotiates robust and effective protection for staff that we can be sure lasts well beyond the first twelve months following transfer.

Negotiations To Begin

The Bank and Central Trust have a legal obligation to negotiate with LTU "with a view to reaching an agreement" on the Transfer Terms.

To date, the Bank has only provided LTU on an embargoed basis with an overview of its plans.

The Union, Bank and representatives of Central Trust will now be meeting on a regular basis over the coming weeks in order to discuss the transfer arrangements, protection for staff and appropriate compensation for the loss of non-contractual benefits when transferring to Central Trust.

Key Issues For Staff

There are a number of key issues and concerns for all the SMS Staff who the Bank intends to transfer to the employment of Central Trust.

Basic Salary

Though the TUPE Regulations provide legal protection of Basic Salary, this does not necessarily give staff long-term peace of mind.

It will be important to consider how the Basic Salaries of SMS Staff compare to those of other employees of Central Trust. After all, if the salaries of SMS Staff are higher - as we suspect is the case - then there is a risk that, over a period of time, the transferred staff would receive lower pay rises than their new colleagues in order 'bring into line' (depress) their salaries.

Until negotiations begin on the Transfer Terms - and full details are provided on Central Trust's Salary Scales and Pay Policy - it is not possible to assess fully how much of a problem this may or may not be.

During those previous TUPE transfers that have proceeded smoothly, LTU has won guarantees protecting salaries over the longer term and we will be seeking similar arrangements during these negotiations.

Total Pay

The Bank repeatedly attempts to persuade staff that it is their Total Pay - not Basic Pay - which is important; at least it does until it intends to transfer staff compulsorily to other employers!

In the past the Bank has sought to argue that once staff are transferred to another employer, they are no longer entitled to amounts equivalent to Flavours, Bonuses or Sharesave.

In other words, it is important that LTU secures guarantees that staff do not face the prospect of cuts in their spendable income upon transfer; as has happened following a number of previous outsourcings.

The benchmark has been set during several previous TUPE transfers, where LTU has succeeded in agreeing Transfer Terms by negotiating compensation equivalent to these lost benefits; in the form of salary supplements and/or Loyalty (or 'Transfer') Bonuses.

LTU will be seeking similar protection for the Total Pay of SMS Staff, ensuring that they receive the full value of those non-contractual arrangements that Central Trust is unwilling or unable to replicate.

Job Security

Another key issue for staff is job security.

LTU has negotiated Severance Terms within Lloyds TSB that are far superior both to the basic legal entitlement and those of many other employers. Though the period of continuous employment in the Bank would read-across to the new company, it is important to ensure that, if staff were made redundant at some stage in the future, this would not be on inferior terms.

During previous TUPE transfers, LTU has secured a guarantee that the current Lloyds TSB Severance Terms would continue to apply for a significant period following the transfer; providing staff with at least some peace of mind.

Pensions

One of the biggest shortcomings of the TUPE Regulations is their failure to properly protect Pension entitlements.

This is an area where LTU will be paying particular attention in order to ensure that SMS Staff do not severely lose out.

LTU will carefully evaluate any Pension Scheme proposals offered by Central Trust and will be pressing the new company to match fully the value of these benefits. Different arrangements may need to be tailored to different groups of staff depending upon whether their pension benefits accrue under the Final Salary or Personal Investment Plan (PIP) arrangements.

During TUPE transfers, typically staff are presented with the choice of leaving their existing pensions in the Lloyds TSB Pension Scheme or transferring the value of their pensions to the new employer's scheme.

Although most Final Salary Scheme staff would benefit most from leaving their Pensions in the existing Lloyds TSB Scheme, the best courses of action may nevertheless differ between staff, depending upon their circumstances. For this reason, it is likely that LTU will be pressing the Bank to provide individual, independent financial advice to staff.

LTU has Trustees representing members' interests on the Bank's Pension Fund Boards and will be able to take advice from its specialist Pension Actuaries where necessary to ensure staff pension entitlements are fully protected.

Other Contractual Terms

Though discussions have not yet started on the Transfer Terms, there will undoubtedly be significant differences between the Bank's and Central Trust's Terms and Conditions of Employment.

These may be in a host of different areas, in addition to those already touched on, such as:

- **Working Hours and Patterns**
- **Holiday Entitlement**
- **Overtime Pay**
- **Car Provision**
- **Bonus and Incentive Arrangements**
- **Salary Payment Arrangements**
- **Maternity Benefits**
- **Sickness Benefit**
- **Shift Pay Arrangements**
- **Staff Benefits Package**

Only once our discussions commence in full concerning the Transfer Terms and Central Trust's existing arrangements, will LTU be able to assess how the two employment packages compare and ensure existing SMS Staff terms and conditions are properly protected.

Preservation Versus Protection

It is important staff understand that, at best, the TUPE legislation merely preserves (or takes a 'snap shot' of) - rather than protects - terms and conditions of employment.

Where Lloyds TSB's arrangements accrue with service - such as Holiday Entitlement and Sick Pay - then there is no guarantee that this will continue to happen. Staff may merely continue on their existing level of benefits indefinitely.

In a similar vein, staff will be aware of how the Market Indicator approach within Lloyds TSB discriminates against staff the Bank believe are paid above the 'market rate'. If, for example, SMS Staff are paid higher salaries than comparable Central Trust staff, there is a very real danger that once SMS Staff have transferred, many would be at risk of receiving no further pay increases for many years to come.

During negotiations, LTU will be pressing for guarantees on future salary increases and service-related benefits.

Contracts Uncertainties

Though the TUPE Regulations are supposed to fully protect the terms and conditions of staff transferred between employers, the reality is that some employers have been able to undermine contractual rights once a period of time has elapsed (typically over one year) following a transfer.

This means that, despite reassurances that will no doubt be provided by the Bank and Central Trust, there is a danger that over the medium-term Central Trust may eventually decide to harmonise - or 'level down' - the arrangements for transferred SMS Staff in accordance with the rest of its staff.

It will therefore be essential that LTU negotiates arrangements to ensure long-term, guaranteed protection of the Transfer Terms.

In the past, this has included full negotiating and representation rights for LTU on behalf of transferred staff specifically in respect of safeguarding and protecting the Transfer Terms.

Key Negotiating Principles

During our negotiations on the Transfer Terms with the Bank and Central Trust, LTU will be guided by a number of 'key negotiating principles' designed to ensure that SMS staff will be no worse off - financially or otherwise - as a consequence of being forced to transfer between companies.

These key negotiating principles will be that:

- **All contractual terms and conditions must be protected for a period of at least five years following the transfer.**

Of course, we would prefer indefinite protection, but the fact is that employment law only recognises protection that is provided over a set, reasonable period of time. Five years protection meets this criteria and would cover the period of the initial contract between Lloyds TSB and Central Trust.

If Central Trust were to refuse to negotiate such guarantees, our obvious question would be **why not?** Would it mean that the new company might consider compromising contractual arrangements - perhaps harmonising these with the company's other staff - some time after 12 months has elapsed!

Of course, if Central Trust were to want to harmonise terms and conditions with its other staff, it would be free to commence negotiations with LTU to do this. But we would have the certainty of knowing when doing so that if the new arrangements being proposed were not satisfactory, existing terms and conditions would remain.

- **The value of arrangements that cannot be replicated in full - such as Final Salary Pensions entitlement and maybe the Sharesave Scheme - must be at least matched.**

If Central Trust is genuinely committed to SMS Staff being no worse off following transfer, this should not be a problem. In the case of Pensions, this might require an actuarial valuation of existing arrangements.

- **Compensation must be provided for the value of 'lost' Benefits either in the form of an enhancement to Basic Salaries, the payment of a 'Transfer Bonus' or a mixture of both.**

Where payment of a Transfer Bonus is preferred, this should be equivalent to the value of three years loss of benefit; grossed up for the loss of any tax benefit.

- **Central Trust should guarantee to continue recognising and negotiating with LTU - as the trade union representing the majority of SMS Staff - for a period of five years following the transfer. This should be in relation to all collective matters concerning the Transfer Terms and Individual Representation.**

We are pleased to report that Central Trust has already committed to ongoing union recognition.

LTU believes that these are all reasonable principles by which all parties - the Union, Bank and Central Trust - should sign up to when entering negotiations on the Transfer Terms and arrangements. Any failure by either the Bank or Central Trust to commit to these should otherwise lead to serious doubts over the future prospects of staff transferring to Central Trust.

Negotiations To Begin

Though the Union has already been briefed under embargo about its intention to transfer SMS Staff to Central Trust, it has not been possible to begin full negotiations until staff have been notified. These negotiations will now take place over the coming weeks.

It is essential that LTU's considerable experience at representing staff being 'TUPE transferred' is combined with the detailed knowledge of representatives of staff working for SMS.

We must now swiftly assemble a team of Representatives to attend these negotiating meetings and help shape the eventual Transfer Terms. Anyone interested should contact me on 01234 262868 or by email at Steve.Tatlow@ltu.co.uk.

Sharesave Scheme

For a number of SMS Staff, the timing of the transfer to Central Trust will be critical in determining whether they can take advantage of substantial payouts under the Sharesave Scheme.

This is because many staff have been saving toward three Share Options - the 2001A (7 yrs), 2003A (5 yrs) and the 2005A (3 yrs) - all of which mature on 1st June 2008. These will result in substantial payouts too many staff.

This is particular so in relation to the 2003A Share Option - into which the most staff invested - since the offer price will be just £2.84 compared to a current share price of around £5.40.

Furthermore, staff who do not exercise these Share Options prematurely will also be entitled to 5.7 months worth of additional free bonus shares.

At today's share price, the value of the 2003A Share Options for members of staff saving £250 per month would be £31,228.20 ... but only if they still remain employed in the Lloyds TSB Group on the 2nd December 2007.

Exercising Your Share Options

By leaving the Bank by reason of a TUPE transfer, technically SMS Staff will be classed as 'good leavers', thereby enabling them to exercise their Share Options straightaway using the full savings pots they have accrued.

However, to maximise the value of their Share Options, staff may make a further five payments into the Sharesave Scheme after leaving the Bank and must then exercise their Option within six months of leaving the Bank's employment.

Therefore, to take full advantage of the 2005A Share Option - and receive the additional 5.7 months free bonus allocation of shares - staff must not be transferred out of the Lloyds TSB Group until Monday 3rd December 2007 at the very earliest.

Members' Advice

Any member wishing to discuss their Share Options further should telephone LTU's Advice Team on 01234 262868.

Commercial Safeguards Required

LTU understands that the initial contract being signed between the Bank and Central Trust will be for five years duration, during which time C&G will be committed to 'feeding' leads to the outsourced SMS operation.

It is important that this commercial contract includes robust commitments on the quality and quantity of leads that SMS Staff will receive upon transferring to Central Trust. Otherwise there is a real danger that staff find that their job security and bonus opportunities rapidly disintegrate.

This was certainly the experience of staff affected

by a previous outsourcing conducted by the Bank; involving the TUPE transfer of Corporate Independent Financial Advisers to another company, Marsh & McLellan.

In this instance, leads from the Bank quickly dried up and therefore the earnings opportunities of the staff that were transferred out of the Bank fell far short of expectations, forcing the staff to investigate taking legal action against the Bank.

LTU has therefore told the Company it would like details of these commercial arrangements between C&G and Central Trust.

Importance Of Professional Union Representation

These will almost certainly be the most important negotiations ever to affect the SMS Staff who are due to transfer to Central Trust.

This is particularly so since in SMS there have previously been serious failings in the management of staff, requiring the intervention of Human Resources and LTU.

Recent Problems In SMS

An important concern for LTU once staff are transferred to work for Central Trust is whether there will be a repetition of the problems that have emerged within the operation over recent months.

LTU has been heavily involved in uncovering and beginning to tackle some of these problems, which have included:

- Concerns about the bullying and mistreatment of staff and poor staff management practices;
- Operational inefficiencies and a lack of adequate communication within the operation;
- An acceptance by management that the Bonus Scheme arrangements operating within SMS have failed dismally and need replacing.
- Poor staff morale and high levels of staff turnover.

Furthermore, we understand that within the next week or so, substantial compensation will almost certainly be awarded to an ex-member of SMS Staff who recently won a claim of Constructive Dismissal at Employment Tribunal.

The key issue for staff will be whether Central Trust has the appropriate structures in place to ensure that these types of problems - in which members of the management team transferring over directly implicated - do not

emerge again and whether it will commit to working closely with LTU if they do.

Experience That Counts

It is essential that staff are represented during the forthcoming Transfer Negotiations by an independent trade union that has an intimate knowledge of Lloyds TSB terms and conditions and considerable experience of successfully representing Lloyds TSB staff who have been transferred to other companies. Clearly only LTU has these credentials.

It is this expertise that will be essential to ensuring that SMS staff are protected and treated fairly when transferred to Central Trust.

Any members needing advice, support or representation should telephone LTU's 24 Hour Advice Line Service on 01234 262868. All contact is treated in strictest confidence.

SMS Staff who are not already members of LTU - or do not join within the next 7 days - will be left to their own devices and refused future membership.

Representatives Needed

During our negotiations on the Transfer Terms and arrangements, it will be essential that SMS members choose from amongst themselves representatives to work closely with LTU's Officials and also to attend negotiating meetings on the Transfer Terms. Only by doing so can LTU be sure of most effectively representing the needs and concerns of SMS Staff.

Anyone interested in taking on this essential role should telephone me at the Union's Bedford Office on 01234 262868 or by email to Steve. Tatlow@ltu.co.uk.

**STEVE TATLOW
Assistant General Secretary**