

# Social Dynamics During a TUPE Transfer

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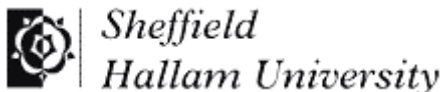
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## **Abstract**

This paper explores social dynamics during a TUPE transfer of 200 staff from one public sector organisation to another after a strategic health authority switched suppliers for nursing education contracts. Using data from the study, a model is proposed that views behaviour as the outcome of 'uncertainty management'. Hirschman's 'Exit, Loyalty, Voice' construct is revisited and updated to accommodate inter-personal rather than individualistic concepts. The study also finds that there are contradictions between rationalist assumptions in project management practice and the social dynamics that characterise TUPE transfers. As a result, the model reflects a more recursive, non-linear heritage and questions the efficacy of change management theory that adopts a linear rationalist outlook.

## Introduction

Transfer of Undertaking regulations (TUPE) were introduced in 1977 after an EU directive instructed member states to protect workers' terms and conditions during transfers of employment (Personnel Today, 2006; DTI, 2007). Initially, there was concern over public sector workers' employment rights and whether these would be protected if governments pursued programmes of privatisation (Kerr and Radford, 1994). Following a series of minor revisions, the regulations were consolidated and clarified to cover all forms of transfer that resulted from outsourcing / insourcing and the reassignments of contracts, whether these occurred in private, public or charitable enterprises (DTI, 2007).

In 2003, a Strategic Health Authority (SHA) issued an invitation to tender for a contract to deliver diplomas and degrees in nursing for the National Health Service (NHS). Three universities, including University O (who held most of the existing teaching contracts) and University N (who held a few of the existing contracts) were short-listed. In mid-July 2005 the award of contract was announced. Initially, both University O and University N were awarded an equal share of new contracts but when University O withdrew, University N was awarded the entire contract.

The transfer was politically sensitive for a number of reasons. It involved taking degree-level teaching and research activities from an 'old' (pre-1992) university to a 'new' (post-1992) university. As it drew attention to the way 'new' universities were advancing into territory normally the preserve of 'old' universities, the award of the contract provoked controversy and comment throughout academic and health communities<sup>1</sup>. For the institutions

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<sup>1</sup> Sources have been omitted from this document. The initial (internal) evaluation report dated March 2007 contains sources for the press stories.

themselves, it involved one of the biggest transfers of staff and students in the history of both institutions, presenting significant risks at both a logistical and political level.

The universities had a year to make arrangements for the transfer of 200 academic and support staff running courses for approximately 3,000 students. During this period, the 2006 Transfer of Undertaking (Protection of Employment) Regulations (TUPE) came into force. This article sets out findings from Phase 1 of the transfer (up to 1<sup>st</sup> September 2006) and focusses on two themes: *risk assessment* and *cultural change*. These themes have been selected to illustrate and theorise social dynamics during a TUPE transfer.

In the next section, there is a brief overview of the change management literature and TUPE research to date. Of particular note here is the contradiction between the stated aim of change management (to adapt to uncertainties in the operating environment) and the uncertainty that change programmes introduce. A section following this outlines the methodology adopted, the process by which key themes were identified and tested, and the limitations of the research. In the section on findings, focus group and interview transcripts are used to set out narratives that illustrate the lived experiences of those involved. One narrative illustrates contradictions over the effectiveness of critical path analysis and the friction created by the internal accountability systems linked to project management. Two further narratives explore links between social status, power, and competition for influence. The narratives are then discussed and analysed from a critical perspective to theorise social dynamics during a TUPE transfer.

## Literature

A great deal has been written about change management, particularly after Coch and French (1948) published a provocative study suggesting command and control approaches were less effective than participative approaches. This presumed wisdom has been challenged a number of times by authors highlighting the role of 'change agents' (Kanter, 1983, 1989; Hutton, 1994). In the literature, there is a tension between a focus on planning and control, and the uncertainty that change programmes bring. In particular, there is a collision between 'back-stage' and 'front-stage' worlds as different stakeholders compete to reduce levels of uncertainty (see Pettigrew, 1985, 1987; Buchanan and Boddy, 1992). At its core, therefore, change management has a paradox. It involves both a vision ("the plan") and an ongoing planning process that must respond to internal and external events outside the plan (Mintzberg et al, 1998). Understanding how differences between plan and process evolve (and are reconciled) provides a context in which to make sense of the social interests and values that drive change processes.

The mechanics of change are hotly debated. Firstly, there are commentators who view change management as the outcome of rational thinking enacted using linear models to guide the change process (see Lewin, 1951; Lippett et al. 1958; Kotter and Schlesinger, 1978; Kanter, 1983; Ahituv and Numann, 1986; Eccles, 1994; Kotter, 1995). The counter-argument is expressed in theories that argue that simplistic change models not only fail to explain case study data, but actually contribute to the failure of change projects. Firstly, there is the view that 'bounded rationality' (Simons & Hawkins, 1949) results that decisions that favour, perhaps unintentionally, any interest group that has control over information and resources (Williamson, 1975).

In the 1980s, a series of authors talked up the extent to which managers can bring about change by managing cultural values rather than reward systems (Ouchi, 1981; Peters & Waterman, 1982; Kanter, 1983). These views, however, have been moderated by subsequent studies showing the impacts on organisation members (Kunda, 1992; Willmott, 1993; Thompson and Findlay, 1999) and the divergent interests that compete with corporate goals for the hearts and minds of organisation members (Ridley-Duff, 2005, 2007). While this article does not claim to resolve the debate, it does provide insights into the way cultural differences are noticed, understood and managed, and the influence that social networks and professional identity plays in change processes.

More recently, there has been a focus on the proactive and political nature of change processes (and change agents) after more critical readings of organisational life started to influence organisation theory (see Willmott, 1993; Egan, 1994; Watson, 1994; Thompson and Findlay, 1999; Darwin et al, 2002; Wilson, 2003). As Wilson (2003) and Marchington (2005) points out, becoming a 'champion' of successful change not only helps advance the profile (and financial stability) of an organisation, but also assists individuals seeking to establish their careers and gender identities.

TUPE transfers involve high levels of uncertainty and provide opportunities to establish a new literature on changing power relations and organisation dynamics in modern organisations (particularly within the European Union). The question is whether traditional theory regarding the dependency of stakeholders, and the various resources at their disposal, still influence final outcomes (see Thompson, 1967; Pfeffer & Salancik, 1978; Venkatraman & Prescott, 1990). Surprisingly, there is relatively little research on the effects of TUPE at the level of the individual enterprise. Most discussion to date has focussed on the development of TUPE in European and national parliaments, and legal debates on the

purposes, applications and definitions of TUPE concepts in case law (Personnel Today, 2006; Sargeant, 2006; CIPD, 2007; Marco and Vallauri, 2008). An examination of 37 peer-reviewed articles found only two case studies based on primary data from transferees. The first focussed on insolvency situations (Armour and Deakin, 2002) and this provides little guidance for situations when solvent enterprises compete for public sector business. The other study by Cooke et al (2004) found that the nature of the employment relationship changes after transfer, even where the terms and conditions of employment remain the same on paper. This study, therefore, provides a rare opportunity to build the empirical base from which theory about TUPE processes can be developed.

## **Methodology**

Data collection took place over a four-month period (December 2006 to March 2007).

The approach taken was a pragmatic implementation of grounded theory (Glaser and Strauss, 1967; Locke, 2001) that seeks to develop and deepen understanding using the narratives of participants as the primary source for theory development. The research went through four distinct phases: background reading/interviews; focus group meetings; semi-structured 1-to-1 interviews; writing/presenting an evaluation report. Background work involved reading scoping statements, public web-sites, project board agendas and minutes and conducting five 'off-the-record' interviews (each 45-60 minutes long). A copy of an 'internal' auditors' report (Uniac, 2006) into project governance arrangements was obtained.

From these sources a "narrative" was written and discussed by the research team to develop research instruments for the focus groups and interviews. In total, there were 25 participants (12 academic and support staff plus 13 faculty and university executives who worked directly on the transfer). Two focus groups were held (involving 11 staff) followed by 16 one-to-one interviews (50-90 minutes each). Following the grounded theory

approach, early interviews were investigative and involved extensive listening to establish core concepts and relationships. Later interviews became more conversational as “theoretical sampling” took place (testing out concepts identified and triangulating accounts of particular events to test the robustness of various claims).

In all cases, recordings were made. Occasionally, during interview, participants went ‘off-the-record’ to provide background information that they felt was too sensitive to be recorded. Each interview was summarised then sent to the participants for checking. Participants suggested amendments if they felt their transcript was inaccurate. Alternatively, they commented on material that was selected for quotation. Two participants requested a further meeting to clarify sensitive issues. Four participants amended (or negotiated) changes to interview quotations.

A series of narratives (the ‘Key Themes’) were developed and discussed by a group of researchers. Concurrently, the author worked on a theoretical model that was inductively derived from the findings. The recommendations of Ward and Werner (1984) were observed in this process, primarily that for research to be maximally useful, attention should be given to contradictory accounts of events. This enables participants to move beyond the “who”, “what” and “where” questions to the underlying dynamics of “how”, “why” and “when”.

There are three limitations to be considered. Firstly, all the interviews are conducted with staff now employed by University N. This did, in some cases, inhibit people from speaking freely. Secondly, staff were still being transferred during and after the study. For this reason, some staff were reluctant to divulge details of the relationship that had developed between the two HRM departments. Lastly, one occupational group did not attend a focus

group organised for academic staff. This means that perceptions of their motives are limited to those affected by their actions.

## Findings

The first narrative presented illustrates how University N set about establishing an internal system of accountability. It established a 'project board', comprised of a group of senior executives, which met monthly to consider 'well-structured' data on progress. To facilitate this, a small project team (meeting weekly/fortnightly) was appointed. A project manager and assistant prepared a monthly report for the project board.

The purpose of this team – under the guidance of a project manager and assistant – was to co-ordinate 'academic delivery' with 'infrastructure'. Six streams of activity were organised and these were operationalised through 16 'task teams'. A 'scoping statement' was written for each task team identifying activities and responsibilities that should be reported using a 'status report'. These reports used a traffic-light colour coding system combined with a short narrative. The traffic-light system was an innovation of the project manager to quickly communicate at board and governor meetings: each stream of activity was colour coded with a red light to indicate a priority item.

The project board invited auditors to comment on governance arrangements early in the project (Uniac, 2006), not least because of governor level concern about risks. A decision was taken to involve project management specialists for critical path analysis. Project team members reported that specialists suggested it was 'too late' and 'too complex' to determine a critical path for the whole project. As a result, critical path analysis was limited to those parts that were manageable in the timescales. Those assisting with project management remember advising project team members to focus on the reporting and monitoring of

'milestones'. They identified resource issues (i.e. understaffing) rather than complexity as the reason for scaling down critical path analysis.

The Uniac (2006) report also recommended an exhaustive risk log. This was rejected in favour of a more human approach that was more reliant on human judgement. The project manager devised a method whereby the level of risk was assessed (low, medium, high), as well as the impact of the risk (e.g. team level, faculty level, university level). This assessment took place with project and task team leaders each month. A task with 'high risks' with the potential for a 'high impact' triggered a red traffic-light and went to the project board. This process was continuous and formally reported monthly to the project board in the status report. Other risks were managed within the project team and faculty executive.

The narrative shows how tensions develop between two views of project management: the first, embracing a linear view of change; the second, recognising the multiplicity of interests involved in the process. The UNIAC report (2006) articulates the prescriptive, linear thinking perspective:

*Scope statements detail the headline terms of reference and the responsibilities of each task team in the context of the implementation plan for delivering the contract. Task teams are also required to define and divide their activities into component process steps, with accompanying inputs and outputs. Ultimately this information is fed into the Gantt Chart to facilitate the monitoring of project progress.*

Uniac (2006: 13)

The critical path analysis was important to senior staff as it provided reassurance regarding the organisation's ability to deliver the contract. However, it required the collection of additional information to establish dependencies between groups, and a fuller assessment of how long each task would take. Two members of a staff group report the way this impacted on student services:

*Suddenly more categories were thrown into the table. At first it was Task No. 1, it needs to be completed by this date, and it is the responsibility of this person. Then we had to start including start date, end date, length of time it would take, who it was dependant on, who we had to liase with...It is really hard to say how long a task will take before you have started it. It is really hard to say what the dependencies are, or who is dependant on you. People didn't lose interest, they just ran out of energy.*

Faculty Staff

*So somebody would be told 'by the way, can you do [Task] 6, 7 and 14'. And then they would say 'Fine'. That didn't really work. Those responsibilities would have fallen naturally without having to be written down. Eventually they fell naturally to the people who had the capacity, the skills, or the volition to get them done. It didn't really matter what you wrote down in the list, it naturally fell in a different way.*

Faculty Staff

It is questionable, therefore, whether the upward reporting of data was reliable. Despite these operational difficulties, the project team felt that they did establish and verify the key risks. The balance of opinion at project team / project board level was that the techniques were helpful in terms of building confidence that it could be delivered. As one experienced manager commented:

*I thought there was a lot of care taken. This is probably the best process I have been exposed to, very complete, very comprehensive, very focussed on risk. I was forced to make a judgement in financial terms or percentage terms. Any future comments were measured against the earlier comment. It didn't feel that hard or heavy - there would be an expectation that I would refer back to the benchmark that I had set myself... if my judgement is wrong I have to say so'.*

Faculty Manager

In May/June 2006, the input of detailed data to calculate the critical path was scaled down. Two reasons were put forward by members of the project team. Firstly, time and resources were at a premium (i.e. it was believed that resources were better directed at tasks once the risks had been formally validated). Secondly, the environment was changing so fast that the information coming out of the project management system ceased to be useful for *anticipating* risks. One participant made an analogy to management accounting. Data was input after the event, typically running 'one to two months behind'. It came to be viewed as backward looking, more useful for the purpose of reflection and the development of strategic

thinking, than operational management. As the deadline for delivery approached, the priorities had to change.

In the second narrative, attention switches to the emotionality of working under TUPE regulations and the shocks that this created for those closely involved with it:

*There was an individual...you can't predict whether they are going to be happy or sad...some were very anxious. This person came in and we said 'we have made a decision with your skills and knowledge that you will be coming to [us]. They started to cry. We asked 'how did that feel?' Well, they were absolutely appalled. They said 'I'm horrified, absolutely horrified' and proceeded to cry and was in shock. We closed down the interview. We did what we could to comfort them and they left. Subsequently, they came and asked 'why have you chosen me?'...it seemed they hadn't been chosen for very much before. They had been marginalized in terms of the group dynamic and because of hierarchical assumptions. I said 'we know you quite a bit better because you've come across to the events we've organised. You showed a lot of interest'. Then we had a third meeting. They said 'I'm having the time of my life'. I'm with a group of students - never seen such a diverse group. She looked at me and said 'Thank you for bringing me over.'*

Project Team Member

Some insights into the changing feelings of transferees is provided by an interview in which it became clear that evaluations of skills and abilities were different in the two institutions:

*The researchers have always been the key people really, always been more important than the teaching - suddenly it was reversed. All the people who had been doing technical teaching, suddenly they were important people. We needed foot-soldiers. Those people were very happy and suddenly saw themselves as being part of a cohesive team.*

Faculty Manager

The depth of feelings emerged again and again in discussions of the TUPE process:

*The cliché is to say you need more information but the reality is that you just can't take the information in sometimes. If you do take it in, it is contradicted by rumour and so on...At the end we are just employees...there is no such thing as 'an academic' and that was a huge blow to people... this experience was so threatening and emotionally exhausting, you didn't follow through.*

(Academic) Focus Group Discussion

*The psychological effect on people was disgusting. People had no control over this. Eventually, I thought there wasn't any point getting stressed out. Other people were managing my destiny and you give up eventually. It broke a lot of people down. It was like a juggernaut.*

(Support) Focus Group Discussion

*[University N Manager] It was legal. We had to tell people about the TUPE process. There were definite things we had to say. There was an effort to make it informal as well. There was a huge sense of 'God this is awful. We're planning people's lives. It's a horrible job - we've got to try and make it comfortable.*

*[Former University O Manager] . On the receiving end was a sense of 'Am I being interviewed?' I didn't know. The TUPE issues were huge and incomprehensible to a lot of people. I don't think there were any experts on TUPE on either side. Some people were consulting independent lawyers...everyone had their bit to protect - there was no-one in the TUPE process who was independent.*

*[University N Manager] It was like a juggernaut that carried you along whether you liked it or not. Every time we talked about TUPE, it was 'we can't tell you anything about this'.*

Focus Group Discussion

The above accounts highlight that however positive the final outcome, the journey is deeply emotional and disempowering in the initial stages. One reason for this was not the transfer process *per se* but also the environments at University O and University N. For example, University O staff were told by colleagues 'not to be naïve' about the likelihood of keeping their existing terms and conditions of employment. However, the reports of staff – with the exception of minor differences in bank holiday entitlements – indicate that existing terms and conditions were respected. As a result, staff selected for transfer often felt they were being rejected or misled by their existing employer (University O). To complicate matters further, University O pursued an initiative whereby it could offer potential transferees alternative jobs within their own university. This left those not offered jobs feeling even more isolated, and some wasted no time seeking employment elsewhere. Later tensions developed when some, but not others, were offered transfers to University N in September 2006 rather than September 2007.

*There were lots of inter-personal tensions around 'how did you get to go in September [2006]?' You had the creation of in-groups/out-groups. The thing I found was that I'd been part of something, and now I wasn't. The minute it was discovered a small group was going, we [stopped having] lunch with colleagues who needed to talk about what we were not part of any more. We very rapidly split off. We developed much more contact with lecturers in other disciplines – it is eroding now – but that was a support group and still remains.*

(Academic) Focus Group Discussion

Amongst support staff participating in a focus group, most were happy or 'okay' about the eventual result (6 of 8). A minority remained unhappy, particularly one person in a temporary post seconded back to University O to fulfil their existing contracts. Nearly everyone (including those submitting views by e-mail) reported that they were paid on time, and almost all terms and conditions were respected (on paper). The views of one senior member of the HR department indicates why this was the case:

*I have a very basic approach to TUPE which is 'whatever people are on the day before the transfer, they are on when they transfer'. Once you start to tamper with that it is fraught with danger and I don't think the benefits are necessarily that great...so don't try to manipulate it.*

University Manager

Overall, there is evidence that University N staff did much to ease the transfer process for staff (both in one-to-one interviews and putting on semi-formal events). The involvement of senior staff was particularly appreciated.

*I remember we all applauded afterwards because we had such a good welcoming session. That was the first time. I'll know I'll feel comfortable when I first get to physically meet the people I'm going to work with. It was on that day. From being in an isolated position, all of a sudden you were in a group, which was hugely useful.*

Focus Group Discussion

Whilst transferring staff felt their concerns were gradually addressed, anxieties grew amongst the staff at University N. Firstly, academic staff felt overwhelmed by the surge in student numbers and the transfer of more experienced and more qualified staff. Secondly, relations within the student support service were affected by the huge growth in applications

for new courses. While there was consensus regarding a deepening of problems, participants understood the situation in different ways. Opinion was split as to whether difficulties arose because of a 'clash of personalities', a 'clash of cultures', a clash of 'management principles' or issues of 'management competence'.

*The question I would ask is whether a person coming back from [long-term] illness being thrown into this was good for that person. How can I put this? You can put the right person into a role, make the role too big and too heavy and it makes them ill. Or you can put the wrong person into a role so they never cope from the beginning and it makes them sick. If you then throw them back into something even bigger, you don't have to wonder too long why it doesn't work well... I'm not suggesting there was a personality clash, I just think there was an ineffective person at that level.*

Faculty Executive

*There were factions already working on a process of integration, which was a difficult change management. We were a new set of people who were already struggling and then had this huge chunk of new business dropped from a height...We didn't have any more resource to make preparations - it was just too difficult.*

Faculty Staff

One participant talked about attempts to get staff to see the transfer as an opportunity, to sit down and 'work out what is best for the service'. From this perspective, it was argued that responses should be 'driven by a central requirement' and those who could not see this were viewed as having 'personal problems'. The above interviews, however, express the situation as a legacy of multiple mergers with too few skilled staff able to cope. One manager describes how the situation was exacerbated by constraints in the TUPE process:

*We thought we would be requesting the number of staff to do what we thought was needed. It turned out to be exactly the opposite. Under TUPE...we had to have all the staff that were associated with the contract. We had to have them on 1<sup>st</sup> September...our busiest month. Loads of staff unable to use our systems because they were unfamiliar.*

Faculty Manager

A further dimension to the change was the clash of expectations created by different cultural norms at the two universities. Tensions of this kind only surfaced once staff from the two universities started to meet each other at welcoming events:

*It was one of the days they all came over for a buffet lunch. We were sat downstairs and somebody said something about flexitime or something like that. I said, we're busy all the time...one of the girls said something like "Oh – you get that busy? I'm going to have to get rid of my TV then...". I laughed as if it was a joke and the girl that sat next to me said 'She's not joking'. At [University O] she had a TV on her desk. Then I had a separate conversation on the same day with somebody else and she asked 'are you allowed to have the radio on in your office?' And me going [shakes head to indicate 'no'], and she says 'Oh God. That's rubbish'. I went away from that day thinking 'what on earth are we getting ourselves into?' I know that sounds horrible because you shouldn't judge people on things like that but I remember thinking 'What are they coming from? How have they worked?'*

University N, Faculty Staff

For groups in favour of transfer, the issue was 'the quality of the move' rather than the move itself. However, one large occupational group opposed to the transfer adopted clear strategies to prevent it. As two executives pointed out:

*There was the old boys network - in some cases the old girls network - and the Council of Deans. There was sabre rattling from the professional bodies...'stop this outrage kind of thing'.*

Faculty Executive

*This [occupational] community is very small. They talk to each other. It is a strong political community. They know how to politic. There was potential for us to lose the validation.*

Project Team Member

The validation process became a battleground in the transfer process. Failure to validate a new curriculum at University N posed a substantial threat to the transfer. The final stages of the validation were particularly fraught:

*Participant: They gave us a bloody hard time. Every time [University N's manager] tried to open [their] mouth, they said 'I don't want to hear it from you, don't want to hear what you've got to say. I want to hear it from [the occupational specialist], will you shut up?' You have to bear in mind that these are University O's staff at this time.*

Project Team Member

Members of University N met the SHA to discuss problems in the validation process.

Participants would not talk on the record about the backstage activity that took place to secure validation. The presence of this activity, however, expresses the high level of concern that this occupational group could block the validation process and prevent the

TUPE transfer. The 'resistance' was understood as an issue of power, motivated by a desire to retain high status through association with an 'old' university. University N's approach to inter-professional learning posed a threat to the group's autonomy and required them to integrate with other nursing professionals. The level of opposition led to a collective view that the group would not transfer to University N, with rumours circulated in advance of the validation panel that the group would stay at University O. Consequently, when the group learnt that they would transfer it created a particularly emotional series of meetings:

*Go back to the 167 individual interviews. There was a consistency between [all of us involved in interviewing]. In the second interview, we had to inform them of the decision if they were coming here or being seconded back. It was like breaking bad news 167 times.*

Project Team Member

From the interview and focus group interviews, a series of themes were developed in analysis. In the discussion section, the emergent themes are clarified through use of the academic literature. After this, a model developed to theorise the social dynamics of a TUPE transfer.

## **Discussion**

The interview data on risk management and internal accountability presents a paradox. Attempts to assess the critical path of the *overall* project failed while those for sub-parts of the project were more successful. There are two possible explanations, each rooted in the different perspectives outlined earlier. Firstly, insufficient resources were applied to the task. This view comes from the rationalist view that a critical path can be established if the steps to be followed can be established and entered into project management software (Ahituv and Numann, 1986; Eccles, 1994; Kotter, 1995). Any failure here will be attributed to a lack of resources or experience. This certainly was the view taken by some senior staff with prior experience of project management techniques.

Alternatively, and more controversially, it may be that a project of this scale is too complex for critical path analysis. The data shows the disruption caused to team meetings when additional data was collected for critical path analysis, and also the way that data passed to managers was inherently unreliable because day-to-day pressures led to modification of management decisions. These findings lend support for the view that simplistic models contribute to the failure of change projects because they cannot factor in the ambiguity and circularity in relationships that influence corporate change (Martin, 1992; Darwin et al., 2002). Embedded in this narrative is evidence that lateral (and recursive) relationships increase exponentially as the scale of a project increases. As a result, the failure to find a critical path is attributed to the incongruence between linear thinking and the recursive nature of social life.

Nevertheless, risk assessment (and associated project management techniques) did prove to have *social* value by reducing the uncertainty of senior managers and governors. Whilst it did not reduce uncertainty amongst other stakeholders, it did successfully build confidence amongst key executive groups. Paradoxically, without this confidence, senior executives made interventions that added to project risks. Effective use of project management techniques, therefore, does serve a useful purpose by enabling those charged with responsibility to talk with greater confidence about the problems they face. The benefits, therefore, may be more political and social than rational and economic.

Views of conflict in the support services department can be illuminated using Fox's frames of reference for industrial relations (see Fox, 1966, 1973; Salamon, 2000). From a unitary perspective, the needs of the organisation (as perceived by the management group) are taken as paramount and incontestable. Management failures, or failures to meet management objectives, are therefore understood as issues of poor communication (i.e.

managers own fault) or competence and personality (i.e. others' fault). When problems started to surface in support services, several managers cited personality issues, poor communication and the 'personal problems' of 'awkward' staff as the root issue. The data illuminating the situation, however, shows clear competition between occupational groups, and differences in understandings of the situation. Conflict manifests as a legitimate response to resourcing problems, cultural differences and competition for power: Fox's 'pluralist' framework is a more useful and realistic conceptualisation of the findings.

This is particularly evident in the validation process where theories of power can help to explore events. Many theories (see French and Raven, 1958; Hirschman, 1970; Mintzberg, 1983; Dowding et al, 2000) stress the importance of authority and legitimacy (i.e. formal power) and politics/expertise (i.e. informal power). In this case, the validation process and panel became a focal point in the competition for power. Both stakeholder groups sought to influence what could be discussed, who could argue the case, and who could make decisions. At one point, attention was directed more to the legitimacy of the people than the strength of the parties' arguments.

Hirschman's (1970) framework of 'exit, loyalty and voice' is helpful in unravelling the process. From a University O perspective, one occupational group felt 'in decline'. Those employed by University O faced three choices: support the new SHA policy (**loyalty** to the change process); leave (**exit** from the change process); try to change the process (**voice** alternative courses of action). The sense of occupational identity and status in the competing groups was strong. The determination of the group at University O to maintain their status was matched by a group at University N equally committed to equalising the status of different nursing groups within the broader profession.

As Mintzberg (1983) points out, there is a power that comes from having access to those who have the other forms of power. In this case, University N's (indirect) access to the panel provided an opportunity to persuade decision-makers that the skills and knowledge developed during revalidation of the curriculum were of considerable value. This did enough to convince the panel. Legitimate (formal) power then transferred to those supporting the change process.

The narrative, however, also suggests that people felt disempowered by the complexity of the change process. Actions (both individual and collective) therefore, can be viewed from the perspective that they provide ways to manage uncertainty. In place of notions of resistance, there is a focus on competition for influence (informal and formal power) as a way of **managing uncertainty**. This allows each group to see the other party's behaviour as a legitimate response to uncertainty rather than deliberate opposition to change.

**Stakeholders in a change process take time to work out their interests and who will assist in maintaining them.** During this period, both individuals and groups are reluctant to enter into firm commitments. For example, some academic teaching staff at University O would not take up job offers to stay until they had finished meetings at University N. University governors were reluctant to approve expenditure whilst they considered auditor recommendations on risk. Parties need a period of time to work out which interests need to be defended and which not.

Another theme to emerge is the tendency of parties losing power (or status) to punish and show hostility to those that are gaining it. On the basis of the data, the reverse was not the case. In the validation process, attempts were made to marginalise those who might successfully argue for and against change. Considerable hostility was shown to those

perceived as not having professional standing or legitimacy. The motive to punish, however, was not uniform and depended on perceptions of status. The reaction of staff involved in mental health services shows that resistance is not inevitable and that the opportunity for inter-professional learning was viewed positively if this raises the status of the professional group.

Overall, therefore, there is a process of *de-coupling* and *coupling* as people withdraw and engage with the change process. At points in the process where common interests cannot be agreed, there is a *cycle of disruption, resistance and punishment*. Hirschman's (1970) theoretical position is that people choose between exit, voice and loyalty strategies when faced with uncertainty and negative perceptions about the future. However, there are two problems with Hirschman's argument. Firstly, as Dowding et al (2000) point out, loyalty is a complex rather than singular concept. People can be loyal to products, services, achievements and social identities as well as other people and social groups. The second problem is the individualistic nature of Hirschman's theoretical model, reliant on assumptions of free choice and rational calculation (Friedman, 1962; Rawls, 1999). Whilst acknowledging the usefulness of the exit, voice and loyalty framework, the terms that emerged from this study reflect the inter-personal character of social change:

- Exclusion and Self-Exclusion
- Compensation and Accommodation
- Coupling and De-Coupling

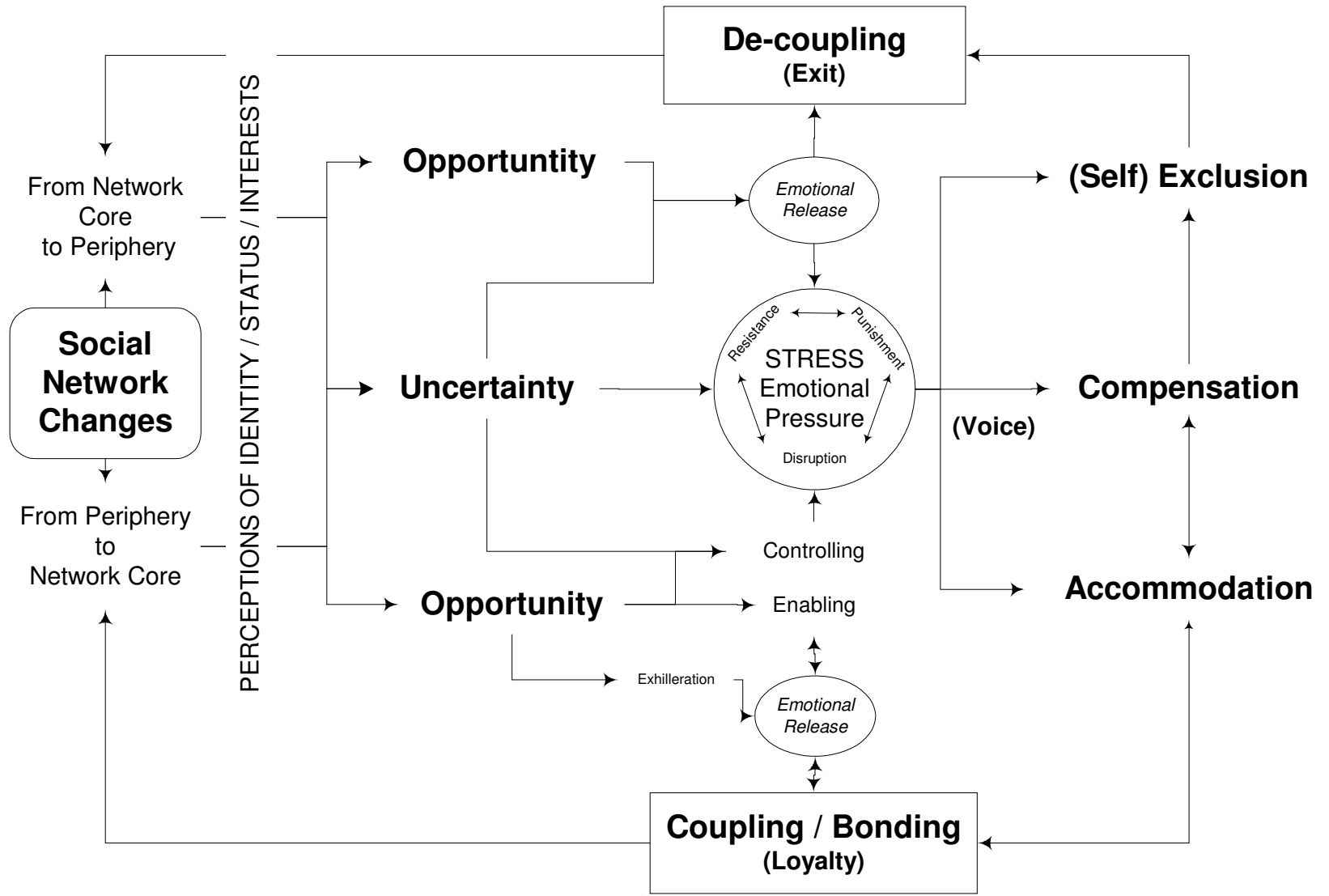
All of these concepts have social interaction, rather than autonomous thinking, embedded in their meaning. *Exclusion* and *de-coupling* are roughly equivalent to Hirsch's concept of *exit*. However, *exclusion* recognises that exit can be a proactive reaction to others' intentions or a

passive outcome of others' actions. For example, those not offered a new job at the University O felt excluded/rejected whether they wished to leave or not, and regardless of the job security offered by TUPE. Those selected for transfer were excluded socially before transferring physically (and contractually). The same is true of University O as a whole with regard to the award of the contract: they were excluded from part of it and proceeded to *self-exclude* from the rest of it.

The voice concept from Hirschman's theory does not adequately recognise potential social outcomes when voice is exercised. Firstly, a person exercising 'voice' may be *excluded*. Secondly, they may be *compensated*. Thirdly, they may be *accommodated*. In this paper's model, therefore, the notion of *accommodation and compensation* represents two additional outcomes that can occur attempt when voicing concerns creates *listening* by the other parties to change.

Loyalty (the decision to stay within a group, or support a change process) also has a dual character. It can be either passive or active. In this research, some participants gave up trying to influence change and put their trust in the process. Although they remained loyal in terms of Hirsch's model, in the model presented below it is theorised as *de-coupling* (emotional, rather than physical or contractual) and *coupling* (which can also take these forms). Emotional *de-coupling* does not imply a person is physically withdrawing from the group, they simply move to the periphery of that group in terms of current social activity. Later, their attitudes may change leading to coupling or resistance as they reassert their interests. Figure 1 represents these conceptual categories diagram form.

# Figure 1 - Social Dynamics During a TUPE Transfer



The resulting theory establishes a more communitarian outlook (Tam, 1999) than the individualist heritage in Hirsch's work. Figure 1 shows how individuals (privately) and groups (publicly) reflect on whether they are moving into, or away from, the centre of their social networks. In this process they assess the potential change to their social identity, status and interests. Perceiving opportunities or uncertainty, their behaviour follows various pathways until they de-couple / couple. During periods of uncertainty, disruption, punishment and resistance, will occur. The greater the perception of uncertainty, the more likely they are to occur. Where stakeholders negotiate compensation and/or accommodation, it is possible to draw them back into the social network. On other occasions, individuals and groups move to the periphery or leave the network. They sometimes do this of their own volition, sometimes as a result of being excluded by others.

The model illustrates the recursive and continuous nature of change and its grounding in issues of emotional security, social identity and group bonding (see Goleman, 1995; Hochschild, 1998; Fineman, 2000; Collinson, 2003). This suggests there will be periods of stability and instability associated with groups *de-coupling* from existing social networks and *coupling* to others. However, unlike the certainty offered by linear theories (for example Kubler-Ross, 1969; Toffler, 1970) no particular outcome is conceived as inevitable. If there is the appearance of acceptance, this is largely because people self-exclude, are proactively excluded, or 'give up' so that the only voices heard are those who accept the changes. Applied to a TUPE transfer, the model shows how instability and disruption to established social networks creates an environment where conflict-handling skills will be at a premium.

## Conclusions

This study invites further investigation of TUPE transfer processes. One key difference between TUPE and other forms of organisation change is that employees individually, and as a group, experience the ending of their association with one organisation and a transfer to a new entity. The emotional bonds to an institution have to be severed and re-established with a new employer. For some, the sense of betrayal is so great that they transfer their allegiance to a new third-party. The evidence from this case suggests that the psychological reaction is similar to rejection in a close relationship in that it affects social identity, as well as both work and family interests (see Ridley-Duff, 2005, 2007). The impact of TUPE bears comparison to redundancy situations rather than other internal change management programmes, even if jobs are protected. Knowledge might be usefully transferred to help develop best practice.

In contrast to prescriptive theories of change management that focus on overcoming resistance, the findings in this study suggest there is a dynamic, and sometimes conflictual process, through which all stakeholder groups and individuals manage (and gradually reduce) levels of uncertainty. Evidence is repeatedly found (from governor level, through project board and team members, academic and support staff, and finally students) that there are different strategies deployed to reduce and manage uncertainty. While these actions create temporary conflicts, with associated emotional and behavioural outcomes, there are clear pathways out of conflict that can be considered by each party. High levels of disruption can be seen as normal, and therefore can be planned into the change process. While stakeholders work out their interests and adjust to new social relations, there is a continuous process of disruption, negotiation, accommodation and withdrawal.

The project board resisted the use of full-scale Prince methodology in favour of a more pragmatic approach. Even so, this study produces contradictory findings regarding the impacts of project management techniques when they are highly formalised. In some cases, this was welcomed and there is evidence that their use reduced uncertainty and facilitated delivery of the contract. In other cases, there is evidence that the data collection requirements and administrative overhead disrupted the work of teams to the point that information became unreliable, adding to project risks. Information reported to project managers did not always reflect the reality on the ground due to high levels of change and uncertainty at team level. This raises some questions about the efficacy of project management techniques, as well as their underlying purposes and usefulness.

The psychological dynamics of a TUPE transfer, when added to legal and contractual issues, explain why it was traumatic for both managers and employees alike. This is not to suggest, however, that there were major regrets on either side after the first phase of transfers. Those who made the transition, generally, were content with the final outcome. The journey, however, has left an indelible mark on the understandings of those affected by the process. Principal amongst these was a more highly developed sense that no matter how experienced or established a person is in a particular profession or institution, they remain an 'employee' who temporarily loses any meaningful voice in the business decisions that affect them. Given that the Information and Consultation Regulations (2004) are incorporated into the new TUPE rules, this is a counter-intuitive finding that should alert the concerns of policy-makers. This study, therefore, supports the findings of earlier studies that the culture of secrecy that characterises periods of commercial tendering still dominates a TUPE transfer (compare Patterson, 2001; Coats, 2004).

Even though the two universities observed the spirit and letter of the TUPE regulations, Cooke et al's (2004) findings - that the nature of the employment relationship changes after transfer - is supported by this study. Participants are not transferred en masse to a new institutional setting able to retain their status and social norms. These have to be accommodated within the hierarchies and norms of the recipient organisation, differentially affecting each individual as their networks and power bases are disrupted.

This article fills an important gap in the literature by exposing the experiences of managers and employees and informing both theory and practice. Coupling and decoupling processes disrupt and slow the process of change, and operate at both individual and group levels. Further research in this area is likely to substantially benefit the development of new workplace practices that can be adopted by human resource, union and senior manager representatives.

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