



Diocese of Hallam *Schools Together*

**St Francis Catholic Multi Academy Trust**

*Company Limited by Guarantee Number 13589762, Registered in England and Wales at Companies House*

*Registered Office: Hallam Pastoral Centre, St Charles Street, Sheffield S9 3WU*

10<sup>th</sup> January 2022

Dear Sirs

**St Francis Catholic Multi Academy Trust, Diocese of Hallam**

**Conversion of Catholic Schools and Transfer of Catholic Academies**

**Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”)**

The Schools listed on the schedule at Appendix 1 are Catholic schools in the Diocese of Hallam and accordingly are subject to the canonical authority of the Bishop of Hallam, who remains the appropriate Diocesan Authority for the School as recognised in the Education Acts (the “Diocese”). The schools currently maintained by their respective local authorities (“the Council(s)”) will be converting to academy status on the dates set out in the schedule. Those Catholic Schools that are already academies will be transferring to the Trust on the dates indicated. The Schools will be forming and joining the St Francis Catholic MAT (the “Trust”), which has been established by the Bishop of Hallam and is subject to the overarching authority of the Bishop. Further details of what it means to be a Catholic school can be found on the website of the Catholic Education Service (“CES”) ([www.catholiceducation.org.uk](http://www.catholiceducation.org.uk)).

The comments set out below are of course subject to modification in the light of any future political, educational or financial changes which would affect the School(s). Nothing in this letter is intended to create a contract or vary an existing contract.

Letters will be sent to all employees within one month after the TUPE transfer confirming the change of name of employer, in the form set out at **Appendix 2**.

**1. The purpose of this letter**

1.1 This letter operates as the notification by the Trust to the Governing Bodies of the Schools and the Governing Boards of the Academy Trusts that have responsibility for the transferring academies of the measures it envisages taking in relation to the affected employees at the Schools. In light of the intention to forward a copy of this letter to the appropriate representatives of the employees, it also serves as the notification by the Governing Bodies and Governing Boards to those appropriate representatives of the measures the Trust envisages taking in relation to the affected employees at the Schools. This letter also notes the Trust’s expectations regarding the statutory information held by the Schools regarding the affected employees.

1.2 Our solicitors, Winckworth Sherwood LLP, will be writing to the Council shortly (if they have not already done so) in relation to land issues and the Commercial Transfer Agreements.

1.3 As the relevant contractual employer of the employees in the Schools, each Governing Body or Governing Board will need to inform and consult the appropriate representatives of the affected

employees engaged in the School and of any of the Council's staff engaged in the provision of central administration or traded services who are affected by the transfer of the Schools to the Trust.

- 1.4 The Governing Body or Governing Board as the case may be as the current employer will be required under TUPE to supply employee liability information to the Trust at least 28 days before the conversion. The details of this information are set out in Appendix 3.

## **2. Appropriate Representatives & Consultation Meeting**

- 2.1 The following unions are referred to in this letter as “the Recognised Unions” (or simply the “Unions”). NEU, NASUWT, ASCL, NAHT, Voice, UNISON, UNITE and GMB.
- 2.2 We consider that these unions are the appropriate representatives of the staff. A meeting is planned between representatives of the Trust and the Diocese with representatives of the Recognised Unions prior to the start of the school meetings. A date will be notified in due course.
- 2.3 It is envisaged that there will be consultation meetings held for School staff and their representatives, with the Phase 1 school meetings starting the week of 17<sup>th</sup> January 2022. These will be arranged by the Trust with the support of the Governing Bodies and details will be provided to staff and their representatives. A representative of the Trust will be in attendance. As neither the Trust nor we understand the relevant Governing Body or Governing Board are envisaging taking any measures prior to the transfer, there does not need to be a formal consultation by law, but the Trust and the Governing Bodies still wish to engage in meaningful consultation with the Unions. At these meetings we will take a note of any representations and we will provide full responses in writing within 7 days of the final meeting. We will then decide if a further meeting (or meetings) is necessary.
- 2.4 If the appropriate representatives wish to meet with the employees ahead of the relevant consultation meeting with them, they should contact the School to make arrangements.

## **3. Reason for the transfer**

- 3.1 The transfer is a consequence of the provisional decision by the VA schools to convert to academy status. The Schools wish to convert to academy status to further improve student progress attainment and achievement by taking advantage of the financial freedoms and responsibilities given to academies and to build on the benefits of closer collaboration with the other local Catholic schools. It is not intended that this move should have any impact on the School's efforts regarding wider collaboration with other local schools and schools in the Diocese of Hallam.
- 3.2 The transfer is also a consequence of the provisional decision by the Governing Boards of the Catholic academies to join the Trust to take advantage of the opportunities to work more closely with other Catholic schools and be part of a larger multi academy trust, in line with the Bishop's wishes.

## **4. Legal implications of the transfer (which may also amount to measures)**

- 4.1 The maintained Schools are currently Voluntary Aided. The conversion to an academy will mean that the employees will no longer be employed by the Governing Body but will be employed by the Trust (a company limited by guarantee and an exempt charity). For the Schools which are

academies, the transfer will mean that the employees will no longer be employed by the respective academy trust but will be employed by the Trust.

- 4.2 The employees will transfer with their continuity of service for statutory purposes and their contractual terms and conditions protected in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006.

***Impact on Career Continuity of Employment***

- 4.3 Employees who transfer to the Trust but leave its employment at a later date to return to the employment of a local authority or the governing body of a maintained school (other than by way of a further TUPE transfer) may lose their continuity of service in some respects but not in others:

- (a) *Redundancy pay:* Service in local authority schools and academies counts as continuous for the purposes of determining entitlement to statutory redundancy pay. This applies in determining both whether employees meet the 2 year qualification threshold and how much redundancy pay they are entitled to. This is by virtue of the Redundancy Payments (Continuity of Employment etc) Order 1999. This means that if employees move between local authority schools and academies, there will be no effect on their period of continuous service for statutory redundancy pay purposes unless there is a break of at least a calendar week between them leaving employment and taking up the new post.
- (b) *Statutory rights:* In most cases, unfair dismissal protection only extends to those employees who have at least 2 years' continuous service. For the purposes of calculating continuous service for this protection, moving between an academy and a maintained school would break service. The same rules apply when calculating service for the purpose of all other statutory rights, such as entitlement to statutory minimum notice.
- (c) *Contractual rights:* The Burgundy Book terms which apply to teachers provide for a sliding scale of sick pay dependent on service. For these purposes, the relevant period of service is defined to include "all aggregated teaching service with one or more local education authorities". It will be for local authorities and governing bodies to decide whether they interpret this as meaning that service with the Trust counts towards determining entitlement within a maintained school. If there are any staff who leave the Trust in future who are concerned that their new employer will not recognise service with the Trust for the purpose of the Burgundy Book they should insist on an express contractual provision before joining their new school.

**Removal of Statutory Obligations**

- 4.4 The School Teachers' Pay and Conditions Document ("STPCD") will cease to be a statutory requirement upon conversion. Catholic schools are expected to comply with any national guidance issued by the Catholic Education Service, which includes adopting various model employment contracts and HR policies. This national guidance includes an expectation that Catholic schools and academy trusts will continue to adopt the STPCD for any teaching staff and the Diocese supports this position.
- 4.5 Other statutory requirements on maintained schools will no longer apply to the Schools post transfer. For example:
- (a) The School Staffing (England) Regulations 2009 (as amended) will not apply. This means that there is no requirement for the Trust to:

- (i) notify the Council of any vacancy for head or deputy head;
  - (ii) take advice from the Council in relation to advertising any vacancy for head teacher or deputy headteacher;
  - (iii) have a selection panel of three people for such a post; or
  - (iv) have a capability procedure, conduct/discipline procedure or grievance procedure. It is a requirement of the Diocese that the Schools currently follow CES policies and procedures and the Trust's intention is to operate in accordance with these as stipulated by the Diocese. Policies will be reviewed in the first twelve months.
- (b) The provisions for safeguarding and Disclosure and Barring Service checks contained in the Regulations are binding on the Trust by virtue of the Funding Agreement with the DfE.
  - (c) The Education (School Teacher's Appraisal) (England) Regulations 2012 will not apply. The Trust's arrangements will be set out in its suite of HR policies.
  - (d) The former requirement in the DfE's model Funding Agreement that all teachers have QTS has been removed. The Trust does not currently intend to use the freedom to hire non-teachers for teaching other than as allowed for maintained schools (e.g. the use of instructors, UQTs and overseas teachers) but may do so in future.

#### **Collective Agreements**

- 4.6 Both the Burgundy Book and the Green Book are collective agreements for the purposes of Regulation 4A of TUPE. As such they are frozen at transfer and any change made to the agreements after the date of transfer does not bind the Trust in relation to transferring employees or new employees.
- 4.7 The Trust will follow the terms of the local version of the Green Book in relation to the transferring support staff and of the Burgundy Book for the transferring teaching staff.

#### **Governance**

- 4.8 The Trust will have a strategic board of directors (trustees) responsible for the management of all the Schools. A "local governing body" or academy committee will be established to provide local governance and oversight of leadership.

### **5. The economic implications of the transfer (which may also amount to measures)**

#### **Pensions**

- 5.1 All current and future teaching staff will continue to have access to the Teachers' Pension Scheme (TPS) and all current and future non-teaching staff will continue to have access to the Local Government Pension Scheme (LGPS).
- 5.2 The Trust is a Scheme Employer for the purposes of the Local Government Pension Scheme. The employee's contribution is not altered by reason of the TUPE transfer.
- 5.3 Any existing opt-outs for auto-enrolment will not transfer to the Trust and any employees wishing to do so must opt out again.
- 5.4 If the Governing Body as current employer has auto-enrolled any school employees into an auto-enrolment occupational pension scheme (other than the TPS or LGPS), such employees will

after the transfer to the Trust be entitled to be members of a pension scheme compliant with Section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 as amended.

**5.5** To enable the Trust to identify the appropriate entitlement under Section 258 of the Pensions Act we ask that the current employer confirm to the Trust:

- (a) which if any employees have been auto-enrolled; and
- (b) details of the occupational pension scheme into which they have been auto-enrolled.

#### **Tax**

**5.6** The Trust may be required to have a separate tax number with HMRC for the Schools. The Schools will have to issue P45s and P60s on transfer but these will remain on personnel files rather than be sent out to staff. The Trust may issue new tax documents after transfer. This does not breach any employee's continuity of service.

#### **Redundancies**

**5.7** The VA Schools will cease to be maintained by the Council(s) and will be funded by the Department for Education through the Education & Skills Funding Agency ("ESFA").

**5.8** No redundancies are envisaged as a consequence of the TUPE transfer.

**5.9** The Trust cannot give any guarantee that there will be no redundancies in the future.

**5.10** In the event that there are redundancies, the Trust would look for vacancies across all schools in the Trust for redeployment opportunities.

#### **Finance and Admin**

**5.11** The Trust must comply with the ESFA's Handbook for Academies which may have implications for the work undertaken by the School's finance function and for those staff undertaking a more central finance function in the Trust. A copy of the current version is available through the gov.uk website.

**5.12** The Trust's financial year is from 1 September to 31 August. The Trust is required to lodge documents by the ESFA during the year and the year-end procedures will take place in August/September rather than March/April.

**5.13** The School's business manager and finance function will report into and liaise as appropriate with the Trust's central functions. The Trust is intending to rationalise its finance functions across the Trust starting within the next 12 months. The Trust intends to build these functions using resource and expertise from within the Trust in order to mitigate against redundancies. The Trust will consult fully at the appropriate time.

#### **6 The social implications of the transfer (which may also amount to measures)**

**6.1** Naturally, the Trust will comply with all statutory obligations relating to trade unions and their members. The current statutory rights include

- (a) the right to request to be accompanied at a formal grievance or disciplinary hearing by a work-colleague or trade union representative;
- (b) the right for the national head office of the trade union to be informed and consulted for the purposes of TUPE and any “collective” redundancies if more than 20 employees were to be made redundant or have their contracts terminated and replaced with new terms;
- (c) the right not to be subject to detriment or dismissal on grounds of trade union membership or activities.
- (d) the right to reasonable paid time off to carry out trade union duties under s168 TULRCA and the ACAS Code of Practice;
- (e) the right to reasonable paid time off to carry out union learning representative duties under s168A TULRCA; and
- (f) the right to have trade union subscriptions deducted directly from salary subject to the payment of reasonable fees by the Unions from 10 March 2018.

**6.2** The Councils, through the relevant Schools Forum, funds support for trade union facilities time for staff employed in schools in their area. The Trust will honour the Schools’ current commitments regarding the funding of facilities time.

**6.3** The Trust:

- (a) recognises the benefit of having a good working relationship with the Recognised Unions which is underpinned by mutual respect and understanding and in acknowledgement of this, the Trust intends to adopt the TUC Model Agreement for academies. The Trust recognises that the Model Agreement introduces at school level a joint negotiating committee to deal with pay and conditions which depart from any nationally determined pay and conditions;
- (b) in light of its intention to adopt the TUC Model Agreement for academies, exercises its right under Regulation 6(2) to rescind any recognition or facilities agreements entered into with unions by the Governing Bodies as a consequence of the Schools being a maintained school [or by the Governing Boards where appropriate as academies] that would otherwise transfer under Regulation 6(1). This rescission takes place on the Transfer Date. This does not mean that the Unions have been derecognised but just that the existing arrangements cease and are replaced with those set out in this letter.
- (c) will consider entering into a protocol with the Recognised Unions if more academies join the Trust and the Trust notes that a dedicated TUPE+Catholic protocol has been used in other dioceses;
- (d) encourage all employees to join a union;
- (e) allow area and regional officers of the Recognised Unions to support the school level representatives of those unions;
- (f) recognise any union with members employed by it, for the purposes of individual representation of their members in matters such as capability, discipline and grievance;

- (g) consult with representatives of the Recognised Unions on policies such as the Pay Policy and the Appraisal Policy as contemplated in the Model Agreement;
- (h) will consult with representatives of the Recognised Unions on all redundancies (regardless of the numbers of staff affected) and on significant restructuring;
- (i) allow the Recognised Unions:
  - (i) access to confidential meeting rooms to interview members;
  - (ii) use of a dedicated space on notice-boards in staff rooms; and
  - (iii) to arrange meetings for their members on the school premises after the end of the student day on reasonable notice to the Headteacher;
- (j) where disciplinary action is being considered against an employee who is a trade union representative, follow the normal disciplinary procedure but will where possible discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement; and
- (k) consult with any trade union health and safety representatives from the Recognised Unions in relation to the matters set out in Regulation 4A of the Safety Representatives and Safety Committee Regulations 1977:
  - (i) the introduction of any measure at the workplace which may substantially affect the health and safety of the employees;
  - (ii) the arrangements for appointing or nominating persons to be responsible for health and safety generally, evacuation in emergencies, and for fire safety (ensuring the fire extinguishers are in place and working);
  - (iii) any health and safety information required to be provided to those employees by or under the relevant statutory provisions;
  - (iv) the planning and organising of any health and safety training required to be provided to those employees by or under the relevant statutory provisions; and
  - (v) the health and safety consequences for employees of the introduction of new technologies into the workplace.

## **7. The use of agency workers**

By Regulation 13(2A) of TUPE, the current employer is required to inform the appropriate representatives of the number of agency workers working temporarily for the School or under the School's supervision; the parts of the School in which these agency workers are working and the type of work those agency workers are carrying out. We are not aware of any agency workers (other than the usual daily supply teachers required to cover lessons).

## **8. The measures (if any) the Trust envisages it will take in respect of the transferring employees**

In addition to the matters referred to above in the sections on economic, social and legal implications, the Trust will implement the following practices which may amount to measures for the purposes of Regulation 13 of TUPE.

#### Terms and Conditions of Employment

- 8.1 Although future editions of the STPCD do not apply to the Trust the employees whose contracts of employment were based on the STPCD at the Transfer Date will continue to have the benefit of the contractual terms in Part 7 of STPCD including:
- (a) Rarely cover;
  - (b) 195 working days;
  - (c) 1265 hours;
  - (d) daily break;
  - (e) planning, preparation and assessment time; and
  - (f) management time.
- 8.2 This is because section 122 of the Education Act 2002 provides that any term in the STPCD which does not relate to remuneration shall have effect as a term of the teacher's contract of employment.

#### Burgundy Book for TUPE transferred teaching staff

- 8.3 The Conditions of Service for School Teachers in England and Wales (August 2000) were part of the terms and conditions of the School's teaching staff and will remain in force for teachers transferred to the Trust. The Burgundy Book contains contractual terms for:
- (a) notice of resignation;
  - (b) notice of termination;
  - (c) sick pay; and
  - (d) maternity.

#### Terms and Conditions of Employment for New Employees

- 8.4 New employees joining the Trust to work at the Schools will have their continuity of employment in education or local government service recognised for the purpose of redundancy entitlement in accordance with the RPMO.
- 8.5 The Trust has adopted the CES model contracts and policies in line with Diocesan expectations and details of these can be obtained from the Chief Financial Officer. The Trust accepts that these may differ slightly from the contracts and policies currently used by the School, although the requirement for all Catholic schools irrespective of status is to adopt CES contracts and policies. The intention is for the Trust to harmonise model contracts where there are local variations to avoid a two-tier workforce. The Trust does not expect this to be a detriment to any employee.

### Teacher Pay

- 8.6 The STPCD does not apply to the Trust but the Trust's intention is to use the pay ranges set down by the STPCD each year for teaching staff in accordance with an annual Teacher Pay Policy which will be the subject of consultation with the unions.

### Support Staff Pay

- 8.7 Going forward, the Trust intends to mirror the pay scales set in the Green Book for support staff.

### Pay Dates

- 8.8 The Schools currently have a variety of pay dates. The Trust may consider whether to move to a single pay date in the future, once all schools are part of the Trust. A decision will be made in consultation with staff to adopt a single pay date at a point following the transfer date.

### Non-Pension Benefits

- 8.9 The Trust will continue to provide any non-pension benefits the School currently offers.

### Job Titles

- 8.10 There will be no change in job titles as a consequence of the TUPE transfer.

### HR Policies

- 8.11 Full details of the Trust's policies are available from the Chief Finance Officer. In line with Diocesan expectations and what is believed to be common practice across the Diocese, the Trust's policies closely follow the CES model policies and the Schools will be expected to adopt these from the Transfer Date. The Trust believes there will be no detriment to staff.

### Immigration Checks – Certificates of Sponsorship

- 8.12 The certificates of sponsorship for any person working in the School(s) will not automatically transfer to the Trust.
- 8.13 The School(s) on behalf of the Trust will need to ensure that any new work permit/certificates of sponsorship for transferring staff are in place within 28 days after the transfer.
- 8.14 The School(s) on behalf of the Trust will need to conduct fresh checks on all the transferred employees' legal right to work in the UK within 28 days after the TUPE transfer to avail itself of the statutory defence for employing illegal workers.
- 8.15 The Trust will need to be licensed by UK Visas and Immigration as an employer to sponsor overseas workers who do not otherwise have the legal right to work in the UK.

### Exclusion and admissions independent appeals

- 8.16 The School(s) will have to make arrangements for independent appeal panels to deal with appeals against exclusions and admissions. The Trust will explore what services are provided by the Council(s) or establishing its own arrangements in partnership with other schools so that there should be no impact on staff

### Nursery

**8.17** Where Schools operate nurseries on site which are maintained by the School, all of the staff working in the nurseries currently employed by the Governing Body will transfer to the Trust. In some cases, this may require the School to extend its age range and proposals either have or will be made to the DfE to formalise this.

Yours sincerely

Chair

St Francis Catholic Multi Academy  
Trust

cc: LOCAL & REGIONAL UNION CONTACTS – forwarded by the Schools' HR providers  
cc: Staff within the Schools

## Schedule of Schools Converting and Transferring

Name	URN	Type	Phase	LA	Joining Date
St Joseph's School, a Catholic Voluntary Academy	140340	Academy sponsor led	Primary	Doncaster	Mar-22
Our Lady of Sorrows Catholic Voluntary Academy	144469	Academy sponsor led	Primary	Doncaster	Mar-22
St Peter's Catholic Primary School	106760	Voluntary aided school	Primary	Doncaster	Sep-22
Our Lady of Mount Carmel Catholic Primary School	106761	Voluntary aided school	Primary	Doncaster	Sep-22
St Francis Xavier Catholic Primary School	106762	Voluntary aided school	Primary	Doncaster	Apr-22
St Joseph and St Teresa's Catholic Primary School	106769	Voluntary aided school	Primary	Doncaster	Sep-22
Our Lady of Perpetual Help Catholic Primary School	106770	Voluntary aided school	Primary	Doncaster	Sep-22
Holy Family Catholic Primary School	141056	Academy converter	Primary	Doncaster	Mar-22
St Mary's Catholic Primary School, Edlington	106773	Voluntary aided school	Primary	Doncaster	Apr-22
The McAuley Catholic High School	140865	Academy converter	Secondary	Doncaster	Mar-22
St Mary's Catholic Primary School	139880	Academy converter	Primary	Rotherham	Sep-22
St Mary's Catholic Primary School (Maltby)	139881	Academy converter	Primary	Rotherham	Mar-22
St Gerard's Catholic Primary School	139877	Academy converter	Primary	Rotherham	Sep-22
St Joseph's Catholic Primary School	140590	Academy converter	Primary	Rotherham	Mar-22
St Bede's Catholic Primary School	139876	Academy converter	Primary	Rotherham	Mar-22
St Bernard's Catholic High School	138329	Academy converter	Secondary	Rotherham	Mar-22
St Mary's Catholic Primary	112898	Voluntary aided school	Primary	Derbyshire	Apr-22
Immaculate Conception Catholic Primary	141569	Academy converter	Primary	Derbyshire	Mar-22
St Joseph's Catholic and CofE (VA) Primary School	134773	Voluntary aided school	Primary	Derbyshire	Sep-22
St Mary's Catholic High School, A Catholic Voluntary Academy	138470	Academy converter	Secondary	Derbyshire	Mar-22
St. Joseph's Catholic Primary School, a Voluntary Academy	142158	Academy converter	Primary	Nottinghamshire	Mar-22
St Patrick's Catholic Primary School	122816	Voluntary aided school	Primary	Nottinghamshire	Sep-22
Holy Family Catholic Primary School	122820	Voluntary aided school	Primary	Nottinghamshire	Apr-22

## Appendix 2 – TUPE Employee Liability Information

1. The name and age of those employees who are being transferred (Transferring Employees).
2. The particulars of employment of the Transferring Employees, as required under section 1 of the Employment Rights Act 1996 i.e.:
3. the names of the employer and employee,
4. the date when the employment began,
5. the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period),
6. the scale or rate of remuneration or the method of calculating remuneration,
7. the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals),
8. any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),
9. any terms and conditions relating to any of the following -
  - a. entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),
  - b. incapacity for work due to sickness or injury, including any provision for sick pay, and
  - c. pensions and pension schemes,
  - d. the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment,
  - e. the title of the job which the employee is employed to do or a brief description of the work for which he is employed,
  - f. where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end,
  - g. either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer, and
  - h. any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made.
10. Information about any disciplinary procedure taken against, or grievance procedure brought by any of the Transferring Employees within the previous two years, in each case where the Acas Code of Practice on Disciplinary and Grievance Procedures or any other applicable code or statutory procedure applied.
11. Information about any court or tribunal case, claim or action:
  - a. brought by any Transferring Employees against the employer within the last two years;
  - b. that the employer has reasonable grounds to believe that an employee may bring arising out of their employment with the employee.
12. Information about any collective agreements affecting the Transferring Employees which will have effect after the transfer.