

To the Regional, Local and School Representatives of the following Unions:

Unite
Unite House
128 Theobald's Road
Holborn
London
WC1X 8TN

UNISON
130 Euston Road
London
NW1 2AY

NASUWT
Rose Hill
Rednal
Birmingham
B45 8RS

GMB National Office
22 Stephenson Way
Euston
London
NW1 2HD

National Education Union
Hamilton House
Mabledon Place
London
WC1H 9BD

Voice the Union
2 St James' Court
Friar Gate
Derby
DE1 1BT

ASCL
130 Regent Road
Leicester
LE1 7PG

National Association of Head Teachers
1 Heath Square
Boltro Road
Haywards Heath
West Sussex
RH16 1BL

A copy to be forwarded to the Director of Children's Services in the appropriate Local Authority for information.

[Date]

Dear Colleagues

[St Francis] Catholic Multi Academy Trust, Diocese of Hallam (the "Trust")
Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE")

The School is planning to join [St Francis] Catholic Multi Academy Trust (a company limited by guarantee and an exempt charity).

The School is a Catholic school in the Diocese of Hallam and accordingly is 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 Trust has been set up by the Diocese to fulfil the Bishop's vision for his schools. Full details, including FAQs, can be found on the Diocesan website. 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).

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. 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 1**.

1. The purpose of this letter

- 1.1 Having been notified of any measures by the Trust, this letter serves as the notification by the Governing Body/Board, the current employer, to the appropriate staff representatives of the measures the Trust envisages taking in relation to the affected employees at the School.
- 1.2 The School is obliged 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 School to the Trust.
- 1.3 It is noted that the School will be required under TUPE to supply to the Trust the employee liability information for all staff working at the School at least 28 days before the transfer date.

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. We consider that these unions are the appropriate representatives of the staff.
- 2.2 A meeting is planned between representatives of the Trust and the Diocese with representatives of the Recognised Unions prior to the workplace meeting to which staff and their representatives will be invited. A date will be notified in due course.
- 2.3 The workplace meeting for staff and their representatives will take place [on] [at], [on a date to be confirmed]. A representative of the Trust will be in attendance to answer questions and support the consultation. A note will be taken of any representations or queries and we will provide full responses in writing as soon as reasonably possible after the 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

The transfer is a consequence of the decision by the School to join [St Francis] Catholic Multi Academy Trust. This decision has been taken in light of the Bishop's wishes for his schools and the requirement for all schools to take steps to join a strong multi academy trust as set out in the Department for Education White Paper – [Opportunity for all](#). It is not intended that this move should have any impact on the School's efforts regarding collaboration with other local schools and other Catholic schools in the Diocese of Hallam.

Legal implications of the transfer (which may also amount to measures)

- 4.1 [As a Voluntary Aided school], the conversion to an academy will mean that the School is no longer maintained by the local authority and will receive its funding direct from central Government. It also means the employees will no longer be employed by the Governing Body but will be employed by the Trust.] [As an academy], the transfer will mean that the employees will no longer be employed by the current 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 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. Whilst the adoption of the School Teachers' Pay and Conditions Document ("STPCD") is not a statutory requirement for academies, the CES 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 do not apply to academies. 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 local authority of any vacancy for head or deputy head;
 - (ii) take advice from the local authority in relation to advertising any vacancy for head teacher or deputy headteacher – the Trust will still be expected to consult with the Diocese;
 - (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 School 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 in consultation with the Unions.
- (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 (for teachers) and the Green Book (for support staff) 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 oversight and management of the schools in the Trust. 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.

Tax

- 5.4 The Trust may be required to have a separate tax number with HMRC for the School. The School 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

- 5.5 No redundancies are envisaged as a consequence of the TUPE transfer.
- 5.6 The Trust cannot give any guarantee that there will be no redundancies in the future.
- 5.7 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

- 5.8 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.
- 5.9 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. This may impact on those staff working in the School's finance function, particularly those working term-time only.
- 5.10 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 within the next 12 months. The impact of these proposals has not yet been fully considered or budgeted, including whether this might involve redundancies and/or redeployment, and there are no details to share as yet. The Trust will consult fully at the appropriate time.

5 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 Trust will honour the School's current commitment regarding the funding of facilities time as approved by the local School's Forum.
- 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 consultation and negotiation committee (the JCNC) 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 School (or local authority on behalf of the School) 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 replaced with those set out in this letter (and the new agreement).
- (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. The School has the usual agency arrangements in place for supply teachers.

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 School (or any other school for which the Trust has responsibility) 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 Trust or downloaded from the Diocesan website. 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 There are no immediate plans to change the payroll arrangements or the current pay date, but it's possible a consultation about harmonising pay dates across the Trust will be undertaken in the first 12 months.

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 Trust and can be downloaded from the Diocesan website. 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 School 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 will not automatically transfer to the Trust.
- 8.13 The School 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 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 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 local authority and may establish its own arrangements in partnership with other schools so that there should be no impact on staff

Nursery

- 8.17 Where relevant, all staff currently employed by the School and working in any Governor led nursery or in connection with a nursery staff will transfer to the Trust. Where this requires the School to extend its age range, proposals either have or will be made to the DfE to formalise this.

Yours sincerely

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Chair of Governors

Appendix 1 – Post-transfer letter

[ON TRUST HEADED NOTE PAPER]

Dear

Change of Written Particulars of Employment

I am writing to comply with the formal requirement of Part 1 of the Employment Rights Act 1996, so many apologies for the formality.

From today you became employed by the [Name of Trust] ("the Trust"). The Trust is a company limited by guarantee and is registered with Companies House under number []. Its registered office address is [].

Your period of continuous employment and your contractual terms of employment remain unchanged.

A copy of this letter has been placed on your personnel file and you should keep a copy for your records.

Yours sincerely

[]

Chief Executive Officer