

# **Our Lady and St. Anne's RC Primary School**

## **FAQs - Staffing Matters**

### **Background**

You are currently employed by the Governing Body of Our Lady and St. Anne's RC Primary School. The Governing Body is in the process of consulting with all stakeholders about converting to academy status and joining the Bishop Bewick Catholic Education Trust (the Academy Trust). This will be a separate legal entity to which pre-existing staff would be transferred under Transfer of Undertakings (Protection in Employment) (TUPE) 2006 Regulations which was updated with the Collective Redundancy and Transfer of Undertakings (Protection of Employment) Amendment Regulations 2014.

Governors are currently giving serious consideration to this proposal and must follow the statutory requirement to fully consult with staff in accordance with these requirements.

This briefing note aims to provide information on the key requirements for staff directly affected by the transfer. Please note this is for information only at this stage and should not be viewed as constituting actual TUPE consultation.

### **Questions and Answers**

#### **1. Legal Protection/TUPE Regulations**

##### **What is TUPE and how does TUPE work?**

TUPE stands for the Transfer of Undertakings (Protection of Employment) Regulations. The main purpose of the TUPE Regulations is to preserve continuity of employment and to safeguard the employment rights of all employees whose employment transfers to an Academy Trust as a result of a relevant transfer i.e. transfer to the Bishop Bewick Catholic Education Trust

TUPE places a statutory requirement on the School as the outgoing employer (the 'transferor') and the Academy Trust (the 'transferee') as the incoming employer to consult with you and your representatives. This will include all staff employed in the School and the trade union representatives for the staff.

##### **What consultation will take place?**

Employers are required to inform and consult with you through appropriate trade unions representatives and will also consult directly with you if you are affected. TUPE does not prescribe a defined time period for consultation.

The information supplied to trade unions will include:

- the fact that the transfer is going to take place, approximately when and why

- any social, legal or economic implications for you if you are affected for example the fact that you will become employees of the Academy Trust (transferee)
- whether or not there are any measures that the outgoing employer (transferor) and Academy Trust expect to take in respect of your employment, see below

The meaning of the term 'measures' is not defined but is considered to mean any action, step or arrangement that will have implications for you if you are transferring to the Academy Trust or any other employee affected by the transfer. For example, this might include a change in location, a change to working patterns, a change in pay date, or a plan to change job titles, amongst other things.

### **What about after the transfer to the Academy Trust?**

In accordance with TUPE, pre-existing terms and conditions of employment and working arrangements cannot be changed for reasons related to the transfer.

### **Do we have to re-apply for our jobs?**

No. You do not have to re-apply for your post. If you are in employment on the day before the conversion you will transfer to the Academy Trust. Your contract of employment and your terms and conditions transfer with you.

### **Will we be issued with a new contract?**

The purpose of TUPE is to preserve your service of employment and safeguard your employment rights. In effect your contract of employment transfers intact to the Academy Trust so there is no need to issue a new contract. However, your contract of employment is made up from multiple terms contained within a variety of documents including national agreements, local agreements, individual arrangements etc. All employees should have received at some point a Written Statement of Employment Particulars which contains some of the main particulars of their employment. It is not itself a contract of employment but is evidence of the contract of employment.

### **Is there a time limit on TUPE consultation?**

No. TUPE states the time of informing must be reasonable. The formal part of the process usually takes two to three weeks unless there are "measures" identified (see above), which may then result in a longer formal consultation process.

## **2. Pay, Terms and Conditions**

### **Will my terms and conditions remain the same as they are now?**

Yes, the TUPE legislation as well as the legislation surrounding Academies means that you will continue to be employed on the same terms and conditions as you were before transfer.

**How easy would it be for the new employer to change pay, conditions, contracts etc?**

The new employer would need to enter full consultation with you and trade unions. If any changes were agreed in the future, notice would need to be given of changes.

**Will overtime and other enhancements continue to be paid?**

Any rates and enhancements that are terms and conditions of employment will therefore transfer.

**What about other policies – will these change?**

Current contractual terms and conditions, including maternity/paternity entitlements will transfer. However, some policies may need to change slightly to reflect the Academy Trust and any new governance arrangements, for example it may be necessary to remove any reference to the involvement of the previous employer. The Academy Trust may want to adopt a common set of policies moving forward, however, where this is the case an analysis of all existing policies would be undertaken to ensure that overall the terms of any Trust policies are more favourable and would also be subject to full consultation.

**Will I still have continuous service?**

Yes, any accrued service will be transferred to the new employer. Legislation is in place that allows employment service with different local authority associated employers to be accrued as continuous service for the purpose of redundancy payments and for some staff (support staff), annual leave, sick pay and maternity pay. This legislation is called the Redundancy Modification Order (RMO).

The Local Government Employers Organisation has confirmed that any Academy Trust established under the Academies Act 2010 (this will apply to the Academy Trust) will be a recognised local authority associated employer covered by the RMO.

**Will existing working patterns, such as flexible working hours or shift patterns, be maintained?**

Where working patterns are the subject of formal individual or collective agreements then these will transfer under TUPE. Similarly, where working arrangements are defined in the contract of employment then again these will transfer under TUPE.

### **3. Pension arrangements**

#### **What happens to my TPS or LGPS pension when I transfer to an Academy?**

The Academy Trust is a member of the Local Government Pension Scheme (LGPS) and the Teachers Pension Scheme (TPS) and your pension is protected as part of the TUPE transfer. Therefore, your pension will be unaffected by the transfer.

The Academy Trust offers LGPS to any new support staff appointed post transfer and any new teachers appointed post transfer will be in the TPS.

If you are already a member of an occupational pension scheme such as the TPS or the LGPS you will see no difference to your scheme membership. Where appropriate your pension records will be automatically transferred into the name of your new employer (the Bishop Bewick Catholic Education Trust), there will be no change to the pension benefits you accrue, and you need take no further action. You will receive confirmation of the change in employer in due course.

#### **Staff not currently in the TPS or LGPS**

If you have already provided an opt out form and are currently not paying pension contributions you will be automatically be enrolled into the TPS or LGPS in accordance with Auto Enrolment Regulations as your new employer is required by law to enrol you into an appropriate occupational pension scheme from the date of transfer. As a member of the Scheme you will be required to contribute a percentage of your salary to that scheme. Your employer will also contribute to the Scheme on your behalf, with the employer contribution to the Scheme being determined at each triennial valuation of the Pension Fund by the Fund's appointed actuary.

If you do not wish to be a member of the Scheme (or decide at some later date that you do not wish to be a member), you can obtain an opting out form from the relevant pension scheme administrator via the website, but please note, your employer is not permitted to provide you with an opt out form.

If you make a valid opt out within three months of being enrolled you will be treated for all purposes as not having become an active member of the pension scheme on this occasion and we will refund to you any contributions paid by you through the payroll system.

### **4. Trade Union Recognition**

#### **Does the Academy Trust have to recognise a trade union following a TUPE transfer?**

Trade union recognition transfers with a TUPE transfer. Therefore, if a trade union recognition agreement is in force at the date of the transfer, then the Academy Trust must recognise the union. There is no requirement for the

new employer to continue to recognise the union. It may elect to terminate the recognition agreement following the transfer, in which case the union would have to seek recognition anew. Please be assured Bishop Bewick Catholic Education Trust will continue to recognise Trade Unions currently recognised in our school.

Collective agreements in place at the time of the transfer also transfer to the Academy Trust. These include terms and conditions of employment negotiated through collective bargaining as well as the wider employment relations arrangements.

Terms and conditions from collective agreements may be renegotiated after one year provided that overall the contract is no less favourable to the employee.

#### **4. Personal Information**

##### **What personal information will be passed to the Academy Trust?**

Regulation 11 of the TUPE Regulations requires the outgoing employer to disclose certain information to the new employer in order that they can manage the employment contract going forward. This will also include your personal file. As the disclosure of this information is required by law your consent to disclose this information is not required.

You will be asked to verify the data that is held on you and the Academy Trust will:

- Only disclose this information for the sole purpose of preparing for the proposed TUPE transfer;
- Not disclose this information to anyone other than those authorised employees negotiating the proposed transfer and its advisers;
- Ensure that the employee information provided is kept securely.

#### **5. Refusal to transfer**

##### **Does an employee have to transfer to the Academy Trust?**

When there is a TUPE transfer, its effect is to transfer all those employees who are assigned to the outgoing employer immediately before the transfer. If you fall into that group, when the transfer happens you become employed by the Academy Trust.

The only exception is if you were to make a valid objection to becoming employed by the new employer. However, in those circumstances, the transfer simply terminates your contract without any dismissal. In these circumstances there is no dismissal in law, so you would not be entitled to any dismissal-based claims against the old or new employer, including for a redundancy payment.

**Why can't I be made redundant if my job with the current employer no longer exists?**

Your job still exists, it has simply transferred to the Academy Trust therefore you are not redundant.

## **6. Next Steps**

### **What happens next?**

A three-week consultation period will run from 11<sup>th</sup> May to 5<sup>th</sup> June 2020, during which time the Governing Body have asked for stakeholder views of which you are an important group. You are encouraged to feed into this process, following consultation the Governing Body will make their final decision about academy status.