

ORGANISING TO WIN

2014/15



ACADEMIES TOOLKIT

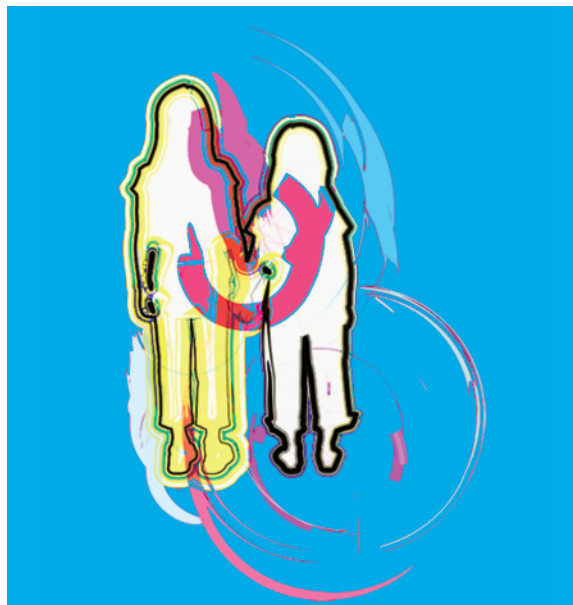
Protecting members in academies

Your guide to safeguarding the rights of
NUT members working in academies



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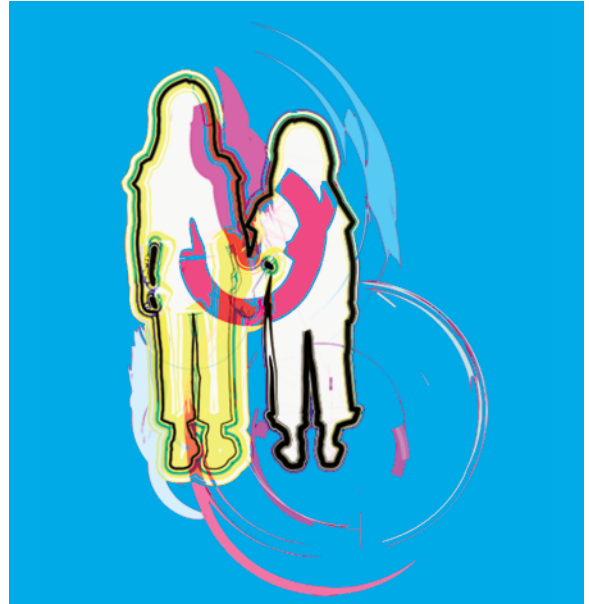
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This 2014/15 version of the Academies Toolkit: Protecting members in academies replaces and updates the 2012 version. Please refer to www.teachers.org.uk/academies for any updates.

INTRODUCTION



This toolkit is for NUT representatives in schools which are expected to become academies, or have already become academies.

This includes those whose schools are being forced into conversion. It will also apply to those in existing academies where the school is joining a chain or otherwise changing employer.

The purpose of the pack is two-fold. It is to guide you through the process that your school will follow in the transfer to an academy, and it is to equip you with information and guidance on how to promote the interests of the Union's members in your academy school post-transfer.

The toolkit offers practical guidance and tools, explaining the steps that employers will take and how you can influence the transfer process. It sets out the legal requirements for information and consultation with the Union,

and tells you what to look out for in order to protect teachers' terms and conditions within the new legal framework.

Your role will be to work alongside your division secretary on these tasks. As the lead contact and representative of the Union's membership in your school, your work will be critical in developing the strength of your school group, and ultimately the whole Union. Whether you are feeling disappointed after a hard-fought campaign to oppose academy status, (whether as a converter or forced (sponsored) academy), or were less (or even not) opposed to the move, with your help and vigilance, the NUT will continue to work collectively with our members to prevent the erosion of teachers' pay and conditions in academies.

Parts of the toolkit include information on legal duties and rights. These are given as background to the steps that we ask that you take, such as convening meetings of members to consider management

proposals, or warning the Union of any problems that you identify. Remember that assistance and advice are available to you from your division secretary or your NUT regional office.

To accompany this toolkit, the NUT has produced a guidance booklet which provides more detail on the law as it applies to TUPE transfers in schools, and the various trade union issues you will need to consider. The booklet, "*Academy Transfers – NUT guidance for School Representatives and Activists*," is available on the NUT website in the section for School Representatives in the Members Centre. You can access it directly at www.teachers.org.uk/TUPEbooklet. In this toolkit, you will find references to the document as 'the guidance booklet'.

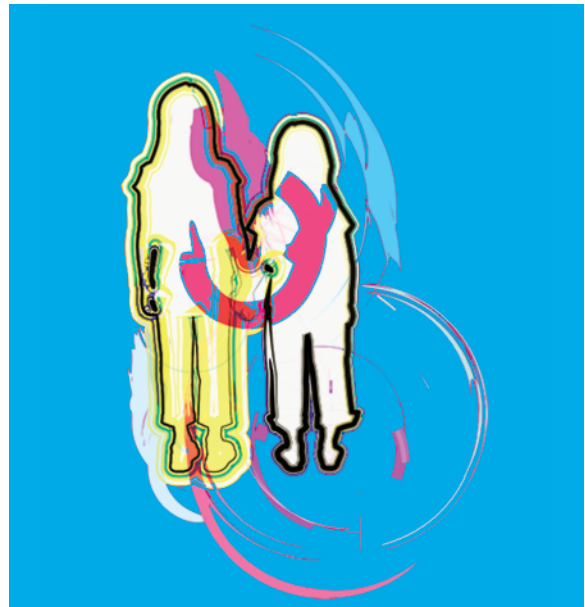
This toolkit will show you that a key to your success will be to communicate with and involve members in your school, and it serves as a reminder that you are not alone.

BY WORKING TOGETHER WE CAN MAKE A DIFFERENCE!

PROTECTING YOUR RIGHTS: BUILDING A COLLECTIVE VOICE

The growing number of academies is changing the shape of the education landscape. This, in turn, will have a knock-on effect on the way the NUT operates as a union. Building a strong collective presence in each and every academy will become progressively more important in a context where strong school union groups will be necessary to ensure terms and conditions are protected. The NUT has for some time put a focus on ensuring that there is a representative in every workplace and on building strong union groups. Central to this has been the idea that union activities should involve as many members as possible in making their collective voices heard within the workplace. The Union has achieved considerable success in this initiative and whether your school becomes a stand alone academy, a sponsored academy or joins an academy chain, we want to help you in your school.

The NUT is actively campaigning to defend state education and whilst supporting members in academies who are working to establish good working relations with their new employers, we remain opposed to the Government's academy programme. Materials that can assist with campaigning against academy status for your school are available at www.teachers.org.uk/academies. This pack does not seek to offer advice about running a campaign against academy status. Rather it seeks to provide practical guidance, tools and arguments to NUT representatives and activists who engage in taking steps to promote members' interests and strengthening the Union in the context of it being an academy.

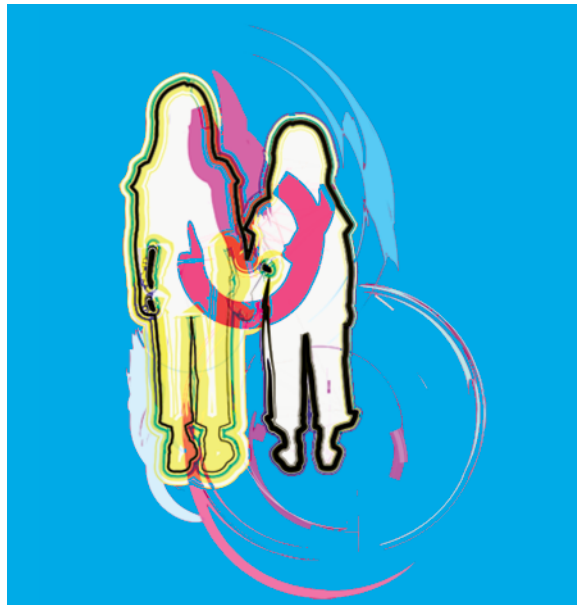


It covers the procedures that start when the governing body (or interim executive board – IEB) has passed a resolution and a formal application has been made. This is described by steps 4-8 on the academies transfer timeline diagram overleaf.

Remember at all times:

- seek to involve members at all stages of the process for changing the school to an academy; try to get other members to take an active role in the Union;
- recruit any non-members to the Union;
- talk to representatives of the other unions in your school;
- if your school is part of a federation or group of schools converting, stay in touch with representatives in the other schools;
- if your governing body is proposing that your school is sponsored by another school, a college, group of schools or that it joins an academy chain, contact representatives in those institutions;
- always ask management for clarification on any issue you or your members are uncertain about during the process of becoming an academy; it may be important for members' rights for any ambiguities to be cleared up;
- be robust in defending your members' interests, and always put your representations in writing;
- have the NUT aims and objectives contained in this document clear in your mind so you know what you want during and after the change to academy status;
- keep in touch with your division secretary throughout the process.

STAGES IN THE PROCESS OF BECOMING AN ACADEMY



1. Head/governing body register an interest

2. School management begin work towards conversion. Possible consideration of joint application with other schools

3. Consultation under Academies Act

4. Governing body pass a resolution

5. LA/governing body begin TUPE consultation

6. Secretary of State approves application and makes an Order

7. Consultations/Registrations/Lands issues etc completed

8. Funding agreement is signed and conversion effected

Once the head teacher or governing body has expressed an interest, we would expect the Academies Act consultation to begin. This asks the school community – including staff, parents and pupils – whether or not the school should become an academy.

This is the time for school groups to be carrying out campaign tasks and building the school group to be as self-sufficient as possible.

Once a resolution is passed, a formal application is made to the Department for Education. This is the point at which the TUPE information and consultation must start.

The school's application will go through a number of pre-approval checks before an Academy Order is issued.

Once the Order is made, the school will finalise governance documents, register the Academy Trust at Companies House, and complete all the legal documentation required.

Some schools won't follow this time-line chronologically. Steps 1-3 could take place at the same time as steps 4-5. Ensure that you are aware of the process to be followed.

In the case of a forced academy, it is possible the governing body may have been replaced by an IEB which is likely to include the proposed sponsor. The IEB will conduct the Academies Act consultation and make a recommendation to the Secretary of State who will then issue the Academy Order.

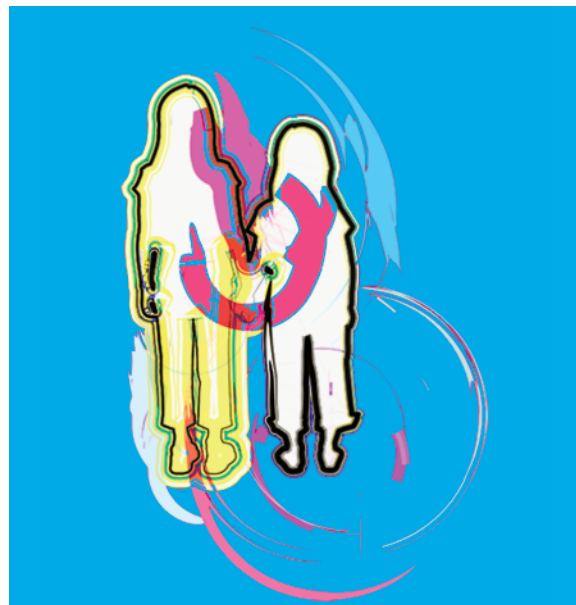
PREPARING FOR THE INFORMATION AND CONSULTATION PROCESS

This section is aimed at those representatives in schools that are in the process of becoming an academy or changing employer. However, if you are in an academy that has now finished this process you may still find the general advice about organising your members useful.

THE CHANGE TO ACADEMY STATUS

The timeline on page 6 outlines the process that a school must follow before it becomes an academy. Some schools won't follow the timeline chronologically but will undertake steps 1-3 in parallel with steps 4-5. This means that, if you have a strong school group opposing academy status, you may well be able to extract concessions out of management in relation to terms and conditions and working practices at the point when management is attempting to sell the idea of academy status to the wider community.

Once the governing body (or IEB) has made a definite decision in favour of academy status, or has decided to join an academy chain which involves a change of employer, your school should embark on an information and consultation process with staff regarding the effect of the change of status on working practices and contractual arrangements. This is known as 'TUPE consultation' as the requirements are set out in the Transfer of Undertakings (Protection of Employment) Regulations 2006. This is different to the earlier Academies Act consultation with the wider community which we would expect to precede the decision to convert, in that it relates to the impact of becoming an academy, rather than whether or not a school should do so.



CONTACT THE NUT LOCALLY

If you are informed that a resolution to become an academy has been passed by the governing body or that TUPE consultations are to begin, you should immediately contact your NUT division secretary, as it is they who should be receiving the formal communication from the employer. In practice you may know about it before them. You can find contact details for your local secretary on your membership credential or at www.teachers.org.uk/contactus.

You will be working alongside the division throughout the consultation period, and they will be able to provide invaluable help and support.

If your school is part of a federation or group of schools converting to academy status, or if the proposal is that your school will become a sponsored academy or join an academy chain, you will need to stay in touch with your division as well as keeping in contact with NUT representatives and members in the other schools.

GET MEMBERS TOGETHER

Whilst it is likely that, as the representative, you will be directly involved in talking to management throughout this process, it is vital that you meet with other NUT members frequently. There will be much to discuss about the transfer and its implications for staff, so it is helpful to allow opportunities for members to air any questions or concerns they may have. As school representative you should convene this meeting. Don't feel you have to be an expert on all the issues at hand. This is a collective effort. Also, a little knowledge goes a long way! If any questions are raised you are uncertain about, contact your division secretary or regional office for advice.

Planning for a Meeting

In some schools, meetings of members may not have happened for some time. When you are planning a union meeting:

- choose a convenient and accessible time for members;
- advertise the meeting well in advance through email, announcements in briefings, newsletters and posters;
- the most important thing is to speak to members individually; let them know what the meeting is about and why they should attend;
- provide refreshments if appropriate: your association/division may refund the cost;
- keep the meeting short and focussed;
- be inclusive;
- give time over to questions and contributions from members;
- avoid using jargon and don't presume or patronise;
- ask members to undertake activity where possible;
- minute action points and circulate to members.

See Appendix A for useful materials for building a meeting.

INVOLVE MEMBERS

In a secondary or large primary school NUT groups function best when there is a team of people doing a number of small jobs rather than one individual trying to do everything. At your first NUT meeting prior to TUPE consultations you should encourage members to take a role in the transfer process. For example, you could ask for volunteers to do the following:

- keep a chronological file of all the minutes of meetings and formal letters sent out as part of the consultation;
- collect together copies of any 'local' agreements and policies in operation at the school;
- act as a personal contact for members in their department if it is a large school with lots of members;
- help communicate with members face-to-face, in addition to emails, newsletters and posters.

Throughout the change to an academy it is vital that members feel a sense of collective ownership and are included in the decision-making process. It is also important that the feelings and decisions of members are fed back to management.

Obviously if your school group is small, you may be able to organise and divide up tasks more informally. No matter which type of school you work in, the changes confronting teachers at this time will help recruit into membership any non-union members.

HITTING THE RIGHT TONE WITH MEMBERS

Getting NUT members together early in the consultation process is vital. It is important to be sensitive to the strength of feeling about the transfer to academy status. Some school groups will have opposed the transfer very actively. Others may have been less vocal or even ambivalent. Below are some general points to be aware of depending upon circumstances.

MEETING WITH MEMBERS WHO ARE OPPOSED TO ACADEMY STATUS

When meeting with members who are opposed to academy status but where the governing body has nevertheless resolved to pursue academy status or the school is threatened with becoming a forced academy it is important that representatives are sensitive to the confidence of the school group. You may wish to contact your division secretary for assistance.

- It may be necessary to re-motivate members; this is especially true if they ran an active campaign against academy status and feel deflated. It is crucial that members still see the sense in acting collectively.
- Give some time to addressing the concerns members have. The union group will need to reposition itself to engage in the next stages of the process constructively and to ensure they get the best out of the situation.
- Use any set-backs as an opportunity to re-shape union activity. It needs to be reinforced that a strong active union group is the only mechanism to ensure teachers' voices are heard within the new academy. Ask people to get more involved, and agree diary dates for future union meetings.

If your school governing body is following stages 1-3 and 4-5 in parallel, then your school group, with the support of your division secretary, may be able to extract concessions out of management during this period.

MEETINGS WITH MEMBERS WHO SUPPORT OR ARE LESS OPPOSED TO ACADEMY STATUS

When meeting with these members, the issue of the NUT's principled objection to academies cannot be avoided. It is vital to explain that whilst we are opposed to academy status for schools because of the fragmentation of the education system that it brings, we nevertheless remain committed to supporting all NUT members, including those who work in academies.

Explain that the working environment and culture in schools that become academies often changes, and that it is important:

- for the union group to meet regularly to ensure teachers' voices are heard in the new academy;
- to act together to ensure members' voices are listened to during and after the transition; and
- to act together to ensure that agreed terms and conditions are adhered to as the school moves forward through the TUPE process.

TALK TO MEMBERS IN OTHER ACADEMY SCHOOLS OR EXISTING ACADEMY CHAINS

If it is proposed that your school will be sponsored by another academy school or a college or that it will join an academy chain, you should try to speak to members working within those institutions who have experience of the proposed new employer. You may wish to invite another NUT rep or other members within those institutions to speak to you and your colleagues about their experience before, during and after the transfer to academy status.

TALK TO OTHER UNION REPRESENTATIVES

Once you have met with NUT members, you should seek a meeting with representatives of any other sister unions in school – both teaching and support staff (ATL, NASUWT, Unison, GMB, Unite). You should seek to come to an agreed position on how you will handle formal consultation meetings. You could even divide up practical tasks. For example, decide on someone being the official note taker, who is going to keep copies of all relevant literature and so on. At a national level there is a consensus amongst these unions on academy status and how to approach TUPE consultations. If, however, you think there are divergent opinions that cannot be talked through then you should consult with your members and division secretary in an attempt to come to a suitable outcome.

Working together with sister unions strengthens the position of all employees.

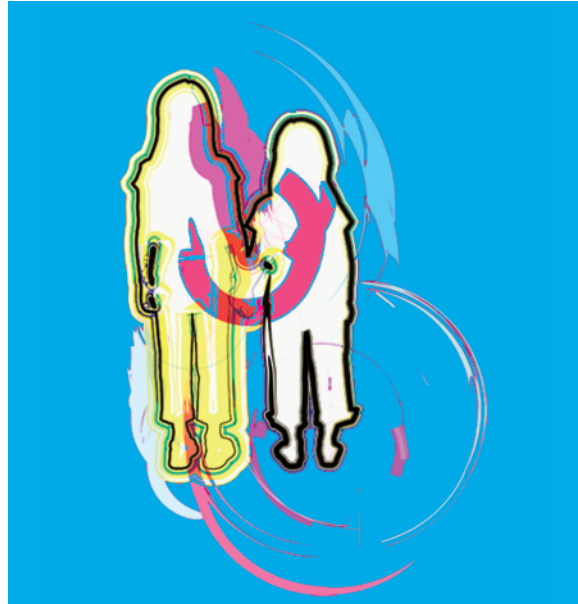
WHAT IS 'TUPE' ABOUT?

In order to be able to deal with members' questions at the meetings you will need to have an understanding of how the law operates, both giving rights to information and consultation but also protecting the terms and conditions of employees. In addition to the information included in this toolkit, you may find the first chapter of the guidance booklet, headed 'TUPE Overview' helpful.

If you work in an existing academy which is to move to an academy chain, TUPE will apply to all staff who transfer to the new academy chain employer. This includes head teachers whose schools are forced to become academies. NUT advice is that the head teacher post in a pre-conversion school equates to the principal post of an academy, forced or otherwise.

If you work in a school which has already become an academy and the consultation process has finished, you still need to know about TUPE as it offers protection to your members' terms and conditions.

It is important to remember that you are not expected to be an expert in these matters. Support and advice is available. The intention of this section is to give you an introduction to the legal rights that the Union will rely on, and to make you familiar with the language and concepts these involve.



A NOTE ABOUT FREE SCHOOLS

In the majority of cases, the establishment of a free school will differ from a transfer to an academy school in that the free school will be a new school on a new site with new pupils and new staff. TUPE is unlikely to apply in these circumstances.

However, some existing private schools are becoming free schools and in these circumstances, TUPE would apply.

Furthermore, some free schools are being established upon the merger, take-over and/or closure of existing schools. In these cases, the NUT argues that TUPE does apply. If you believe that your school, or a distinct unit of your school, is closing in anticipation of the establishment of a free school, or is being merged with a free school, please contact your division or regional office for advice.

THE REGULATIONS

When a school transfers to academy status, becomes a forced academy or where an existing academy is taken over by an established academy chain, it is covered by the Transfer of Undertakings (Protection of Employment) Regulations 2006. These TUPE regulations offer a legal framework which protect the rights of employees transferring from one employer to another.

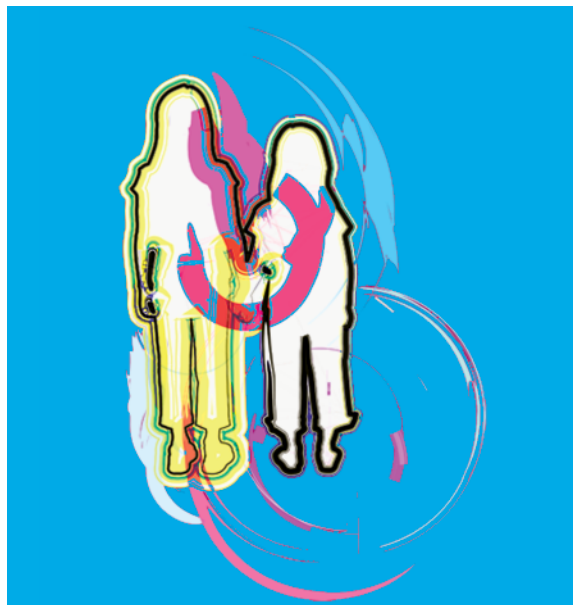
TUPE protects each employee's existing contractual position when a school is transferred from one employer to another employer. This happens by operation of law when a school takes academy status.

Employees of the 'old' employer (the local authority or governing body) will automatically become employees of the new employer (the academy governing body or most likely the academy trust if the school is part of a chain of academies) keeping the same terms and conditions. It is as if their employment contracts had originally been made with the new employer.

TUPE also requires that employers provide information about the transfer in advance, and give the Union an opportunity to be consulted about any changes to working arrangements that are being considered.

The TUPE booklet outlines these protections. The booklet also provides guidance on new TUPE regulations which affect transfers taking place on or after 31 January 2014.

GETTING INVOLVED IN INFORMATION AND CONSULTATION



We will now take you through the TUPE consultation process and the key issues to be aware of. Always remember to view TUPE as a legal framework around which to involve and engage members to act collectively to protect and further their rights. The TUPE regulations are not by themselves a guarantee that rights will be protected and teachers given a collective voice in the workplace – this requires collective organisation.

Even if your head teacher says that there are no planned changes to terms and conditions or to working practices, there is still a statutory obligation to provide information to the Union. Most often, employers will provide this information in the form of what is known as a ‘measures letter’. It is important that the Union engages with the process of information and consultation.

If a sponsored or chain academy is proposed, reps in existing sponsor schools or chains may be able to provide you with advance information on whether the academy employer proposed to change working practices, terms or conditions, how the NUT responded to this, and how the matter was resolved.

Again, if your school is already an academy, and has no intention of joining an academy chain, you may want to skip the sections on information and consultation.

HOW SHOULD CONSULTATIONS BE CONDUCTED?

It will be the case in many schools that there are no threats to terms and conditions, and that no changes to working practices are planned. In these circumstances you can feel confident in attending a meeting with your head teacher to discuss how protections for the future will be adopted by the school.

Where you are already aware that the governing body may propose measures that would involve changes to terms and conditions or working practices you should consult with your division secretary about how to prepare for the meeting and discuss who should attend.

Once you have decided on this and you’ve spoken to representatives from other unions, the next point to clarify is who will be your counterpart from the school management.

Which body is required to carry out the duties to inform and consult will depend on the category of school that you are employed in before the transfer. If your school is a community or voluntary controlled school, you are employed by the local authority, so the local authority has the legal duty to inform and consult. If you are employed in a voluntary aided or foundation school, the governing body is your employer, so is responsible for giving you information and carrying out any consultations. If you work in an existing academy which is to move to an academy chain, your current academy governing body or trust will be your employer.

In practice you are likely to be talking to the head teacher throughout the transfer process. You may also be in discussions with representatives from the local authority and perhaps school governors.

The information is often given to the Union in a number of ways. Typically it will be a combination of oral and written reports in consultation meetings, letters to staff, staff presentations and so on. Nevertheless, the 'old' employer must provide certain information in writing to the NUT division and if appropriate to the NUT regional office. This is in addition to informing you as school rep.

You should try to press for face-to-face meetings as much as possible so members have opportunities to ask questions and feel more part of the process. Before any meeting with the head teacher about the transfer, you should try to meet or talk with members in order that you can raise specific questions and concerns they may have. Consultation meetings are likely to be more productive if you have prepared with members in advance. The key measure to the success of these meetings should be that the employer has explained in clear terms what is happening, and members feel as though they understand the process.

There is no minimum time-scale for the entire consultation process under TUPE, but in a transfer to academy status, we would expect it to be a matter of months rather than days or weeks. Neither would the Union consider it reasonable to include school holidays in this calculation, as members will not be available for consultation.

Meeting with Management

Meeting with your head teacher, chair of governors or a local authority representative may seem intimidating at first. In truth there is nothing to fear if you follow these general tips on meeting with management:

- have a clear agreed agenda before the meeting;
- have a clear idea of what you want from any meeting by talking to members beforehand;
- have an agreed contingency position; but don't agree to something you are uncertain about;
- act in a professional and confident manner;
- always take notes and never be afraid to ask a question or seek clarification. If possible have someone else with you to assist in taking notes or, if the meeting involves representatives from other unions, agree with them in advance who will take notes on behalf of all unions present;
- if an issue is raised you are not prepared for, tell the manager you will need to speak with members or take advice before giving a response;
- always report back to members on any outcomes;
- always take the advice of your division secretary or regional office if you feel that any matters will be raised which would change working practices. Report back on developments in any event.

WHAT SHOULD BE DISCUSSED DURING TUPE MEETINGS?

There are two distinct duties in TUPE – one is to **inform** of certain categories of information and the other is to **consult** regarding '**envisaged measures**' (essentially, any proposed changes). They both fall under the general category of 'consultation' in the TUPE regulations, which can be confusing as in fact they are distinct duties. We will seek to explain this further below. (Also see 'TUPE overview' in the guidance booklet).

Regulation 13(2) of TUPE states that the following information should be provided in good time before the transfer:

- the proposed date of transfer;
- any legal, economic and social implications of the transfer;
- any measures (ie changes in working practices) which are 'envisaged' either by the current employer pre-transfer, or the new academy employer post-transfer.

As we have said, even if this information is divulged during a meeting, it must also be provided in writing to the NUT division and, if appropriate, to the regional office.

The Union should be informed of the legal, economic and social implications of a transfer. This must include those flowing from the fact that an academy is not a local government employer, and therefore transferred teachers will:

- lose continuity of service should they return to work for the transferring authority at some future point,
- lose statutory protection for STPCD terms and conditions which will become contractual only upon transfer, and
- no longer be employed by an employer who is a party to national collective bargaining arrangements.

The term 'measures' can cover any sort of change, whether it would take place before or after the transfer. It can include redundancy exercises and staff restructuring, as well as administrative arrangements such as changing your pay date. More advice on dealing with such changes is found later on in this toolkit.

Regulation 13(6) of TUPE states that where measures are envisaged by an employer, there is a duty to consult union representatives 'with a view to seeking agreement' to those measures.

ARE ANY CHANGES BEING PROPOSED?

Even if your employer tells you 'there are not going to be any changes to terms and conditions' they still have a duty to inform under TUPE and it would be expected that, in addition to providing information in writing, meetings would be held in order to provide information and answer questions about the transfer process. Sufficient time should be allowed for the Union to consider whether it believes that any of the proposals will involve changes or 'measures' and to engage in consultation on those. It is important to remember that, even without TUPE, employers should be consulting with the Union on changes to working practices. The NUT believes that the process of becoming an academy has significant implications for staff, and expects that all governing bodies offer consultation.

Where specific measures are envisaged, you should be given time to take away the information provided, consult with other members and make representations about the proposed changes. Your employer should reply to these representations and, if they disagree with them, they should state their reasons.

If you have any difficulties getting information about proposed changes to your terms and conditions, contact your division secretary.

If at any time you or your members are uncertain about anything that has been said or distributed you should put in a written request for clarification – make sure it is addressed to both your existing employer (local authority or governing body as appropriate) and the new employer (the new academy governing body), and make sure you get a written response.

Although TUPE does not require that agreement is actually reached in the consultation process (only that there is an opportunity to exchange reasoned views), remember that if there are strong representations from union members in a well organised school group, then proposed changes may be altered or abandoned.

Always inform members what you have asked for and what you receive back. If possible you should try and allow time for members to respond to any communications you send or receive.

Keep a Written Record!

It is vitally important that you keep documentary records of each stage of the consultation process, including any questions or representations you make and the responses you get. In the event the Union takes a 'failure to consult' claim in the Employment Tribunal we will need to prove precisely what happened and when.

You should therefore keep an **evidence file** with all the following documents (preferably in chronological order).

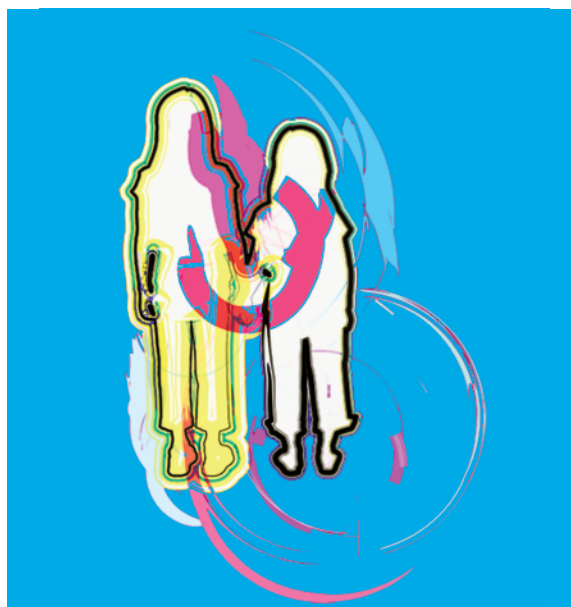
Anything the management-side produce in the way of information and consultation, e.g.:

- letters to staff informing of date of transfer, TUPE process etc;
- minutes of consultation meetings;
- staff presentations, slideshows, etc, often emailed round as Powerpoint docs;
- staff structures and documents regarding slotting/matching;
- redundancy selection criteria, matrices, etc;
- written correspondence (including emails) over issues raised by the Union, etc.

Anything raised by the Union, eg:

- Issues and objections raised regarding any proposed changes – if you raise these in meetings, follow them up with a formal letter/email asking for a written response.
- Trade union representatives who attend meetings should keep their own notes of those meetings, including what is said by the management-side, and responses they get to the Union's questions. If official minutes are produced, they may not tell the whole story!

UNDERSTANDING WHICH RIGHTS TRANSFER



During the information and consultation process you should discuss with your colleagues and your division secretary which contractual rights members enjoyed before transfer so that you know which will transfer under TUPE. In this way you can stay vigilant for proposed changes. After conversion it is just as important to know what these rights are, so you can act collectively to safeguard these rights after transfer to academy status.

Under TUPE, all the contractual terms which form each teacher's contract with their employer transfer to the new employer. There are a number of sources of the terms of teachers' contracts. The national terms on pay and working time contained within the School Teachers' Pay and Conditions Document (STPCD) form a part of the contract of all teachers and head teachers in maintained schools in England and Wales, and transfer across to the new employer.

Nationally applicable terms on, for example, sick pay and maternity leave are set by the Burgundy Book. These have been agreed between the teacher associations and local authority employers. In addition, the Burgundy Book is often supplemented by local agreements with individual local authorities or schools, giving improvements to the Burgundy Book, such as enhanced maternity leave and pay, or additional benefits such as time off for religious observance, or disability leave.

Finally, teachers may also have individual, contractual agreements such as a flexible working agreement or job share arrangement (for more information see Section 2 of the guidance booklet – 'transferring contracts').

INDIVIDUAL RIGHTS

It is important to be aware of the different types of terms in collective agreements.

Terms in agreements which give individual rights will normally be incorporated into individual teachers' contracts, such as the right to paid time off to attend an adoption meeting in an Adoption Leave Agreement. Where a term is incorporated into an individual teacher's contract, the teacher will be able to enforce the right against the new employer.

Terms in agreed school policies and procedures, such as equality policies are not normally incorporated as 'terms' of individual contracts. Nevertheless, TUPE also provides that these agreements transfer across as if they had originally been made with the new academy. As these policies and procedures can be very important to working conditions, it is crucial that you ensure the academy is aware that they transfer under TUPE. (Also see section 3 of the guidance booklet – 'collective agreements').

GET IT IN WRITING!

The STPCD and Burgundy Book, which will apply in all cases of transfer from a maintained school, should be available in school, but are also available online.

You should ask your division secretary to supply you with up-to-date copies of all collective agreements in writing so you can check they are accurate.

You should obtain a copy of your school pay policy together with the annexed staffing structure and confirm whether the NUT agreed to the school pay policy.

You should also ask members if they think they have any specific individual contractual agreements such as job share agreements, to ensure that these have been taken account of. You should encourage members to collate their individual letters of appointment, any contracts they have been issued, and any correspondence relating to individual contractual arrangements.

If your school has already become an academy, it is still important for you to find out what collective agreements have transferred, and check that they have been properly implemented. Your division secretary should be able to provide you with copies.

TRADE UNION RECOGNITION ALSO TRANSFERS

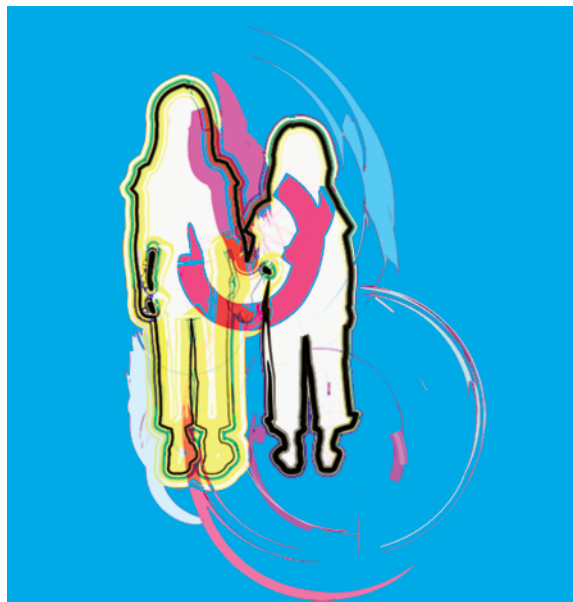
Trade union recognition is also a form of collective agreement that transfers under TUPE and it is crucial that the pre-conversion employer and the academy both acknowledge this. Contact your division secretary immediately if either refuses to do so.

It is likely that the pre-transfer agreement will need some amendment for the new academy conditions, and the TUC unions have agreed a 'model agreement' for this very purpose. The model may be used in particular to establish procedures for meetings and for facilities for trade union representatives.

The content of the model agreement is covered later in this toolkit, along with strategies for negotiating terms and conditions for new staff. Please also see Section 5 of the guidance booklet "Trade Union Recognition".

Where a school becomes a sponsored academy or joins an academy chain, the new employer may propose revisions to the recognition and bargaining arrangements. It is important that these arrangements are discussed and settled as far as possible before conversion.

WHAT TO DO IF CHANGES ARE PROPOSED



Where any changes or ‘measures that are envisaged’ are proposed, TUPE Regulation 13(2) requires that, in addition to information being given, there must be consultation with the Union. This should all happen in good time before the transfer. You should ensure that your division secretary is aware of the situation and able to support and advise you.

If your school has already become an academy and you believe that full consultation has not taken place, you should contact your division secretary as it may be possible to bring an Employment Tribunal claim if you are still within the three month time limit from the date of transfer.

WHAT IS A ‘MEASURE’?

A ‘measure’ is a very broad term which will apply to any deliberate change in working conditions or practices which your employer wants to introduce. This would cover changes to both contractual and non-contractual terms and conditions.

‘Measures’ will also include changes that might happen before the transfer; for example, a redundancy exercise or an administrative change such as a change to payroll arrangements. However, it must be something that is related to the transfer and would not have happened without the transfer to an academy.

TUPE offers protection to your pre-transfer contractual terms and conditions. These cannot be changed either before or after transfer if the sole or principal reason is the transfer.

Contractual terms may however be changed if agreed and the sole or principal reason for the change is an economic, technical or organisational (“ETO”) reason which entails changes in the workforce. An ETO reason must entail changes in the numbers or functions of the workforce. For example, this could take the form of redundancies or staff restructuring or a combination of both. See page 20 for changes to collectively agreed terms.

In some cases a staff restructuring may be proposed by the new academy either at the point of transfer or shortly after. The Union does not accept that a restructuring would justify changes to terms and conditions such as those contained in the STPCD or Burgundy Book. (Please see section 4 of the guidance booklet for detailed advice on how to approach this situation).

TUPE does not protect non-contractual conditions from change, but the employer does have a duty under TUPE to consult if changes to non-contractual conditions are proposed.

Examples of non-contractual measures might include changes to:

- the teaching timetable;
- the start and end times of the teaching day;
- staffing structures;
- the school calendar;
- administrative procedures;
- remote access to the internet for home working.

If the academy knows before transfer that it is going to make any changes, it has a duty to inform the pre-conversion employer. Details of the changes should be included in the general information and consultation process pre-conversion.

It is therefore vital that you discuss with members, and representatives from other unions, about how to respond to any 'measures'. You should also seek advice from your division secretary or the NUT regional office, and should do so as a matter of urgency if any contractual changes are proposed. If it isn't possible to call a meeting then you should try to seek views via email or conversations with members.

After speaking with members put any representations in **writing** and send them to both your current employer and the new academy. Always report back to members on any reply.

If your school has already become an academy, or your academy has transferred to an established academy chain, and your new employer is now trying to change your terms and conditions you should contact the division secretary urgently.

DEFENDING COMMON NATIONAL TERMS FOR NEW JOINERS

TUPE offers protection to current employees at the point of transfer. It does not provide any guarantees that new joiners to the staff team will be offered the same contractual terms as their transferring colleagues.

There are obvious problems with such a situation. Over time a 'two-tiered' workforce may evolve, separating those with TUPE protected rights and those staff members employed post-transfer. If the academy is proposing to offer different terms and conditions to newly appointed staff, you should contact your NUT division for advice.

To try to prevent this situation arising, the NUT, along with other TUC-affiliated education unions, has produced a model agreement for the new academy to adopt. Amongst other things, this stipulates that there will be a common set of terms for each category of staff. In this way all teachers can be employed on STPCD and Burgundy Book conditions.

The model agreement is looked at later in this pack but there are a number of additional ways in which you and your division might be able to safeguard the rights of new staff joining the academy post-transfer. For example, divisions have negotiated new collective agreements with their local authority in the run up to conversion, providing for these to transfer over and apply to all staff in any academy. These agreements apply to staff in schools that become academies.

The Union has prepared a model paragraph you can ask to be inserted into staff contracts before transfer, and one that new employers can be urged to include in academy contracts after transfer. These are attached in Appendix B along with a standard letter to send to the head teacher which asks the governing body to formally agree that all staff will be employed on national terms and conditions.

Working with your division secretary, you can also seek to be innovative in building in protections for the future. You can seek benefits for teachers in the academy by negotiating a specific agreement with the academy employer that all teaching service prior to joining the academy will count for the purposes of determining pay increments and entitlements to occupational sick leave and maternity leave and pay.

Some academies have agreed to have a significant number of staff governors. One division secretary succeeded in achieving a resolution of a governing body that a large majority of the governing body would be required before any staff could be offered terms other than the transferred contractual provisions. To benefit teachers who subsequently return to local authority employment after having worked at an academy, some local authorities have agreed to count academy service towards a teacher's continuous employment to calculate maternity leave and pay entitlements.

It's never too late to negotiate agreements – even after transfer. Please talk to your division secretary about how to achieve such protections. The Union can publicise these achievements to help others.

BEWARE OF SUBTLE ATTACKS ON TUPE RIGHTS!

Where a two-tier set of conditions develops, it is important to maintain vigilance to protect the terms of those employees who transferred. Some academies have attempted to undermine transferred teachers' terms and conditions by 'harmonising' the two contracts. Often this has been attempted through individual conversations or letters to employees.

Harmonising the terms and conditions of staff who transferred before 31 January 2014 would be unlawful.

Such 'Harmonisation' would be a 'transfer' related reason even several years after the transfer. It would not change the numbers or functions of a workforce, so it could not be an ETO reason. In any event, an employer could not impose changes to terms and conditions without agreement – whether under TUPE or not – it must consult and negotiate first.

Employers are entitled however to seek to negotiate changes to terms and conditions deriving from collective agreements where the transfer takes place on or after 31 January 2014. The changes will be lawful provided they are agreed, they are not less favourable overall for the affected staff and they come into effect at least a year after the transfer.

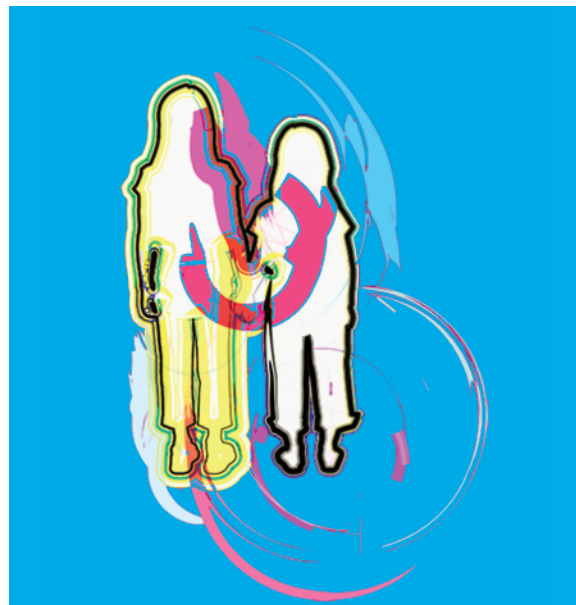
In practice, for any new terms to be deemed no less favourable, employers would have to offer a very valuable package of terms and conditions in return for giving up, for example, the Burgundy Book maternity or sick pay scheme.

It is far easier to resist proposed variations to contracts of employment if members act collectively. If at any time you find out that management are approaching members about signing new contracts you should act immediately.

- Contact your division secretary.
- If possible call an emergency meeting of members.
- Explain that they aren't compelled to sign new contracts, and that if everyone acts together in saying 'no', you are likely to be successful.
- It would perhaps be useful to draft a letter with members to management, stating that as a union group you reject the proposed changes.

Acting collectively in such a way will give individual members confidence (especially if they feel as though management are pressurising them), and it will also send a clear message to management.

PROTECTING AND BUILDING YOUR UNION



Throughout this pack we have referred to the TUC model recognition agreement for academies. A copy of this can be found in Appendix D.

TUC MODEL AGREEMENT FOR ACADEMIES

The TUC model agreement sets out a series of guidelines on how the academy should negotiate with trade unions, what facilities for union representatives should be established, and also a guarantee to ensure all future staff are entitled to the same terms and conditions as those staff who transfer to the new employer.

As representative you should discuss the model agreement with NUT members and representatives from other unions that may have members in your school. Once members are made aware of the importance of the agreement you should approach your head teacher and ask that the governing body adopt the agreement. **This should happen before transfer if possible.**

Given the document itself is fairly lengthy, the governors may want some time to read and consider its implications. You should stress that the great strength in the agreement is that it maintains continuity in existing relationships and codifies in a clear way expectations in terms of future relationships. This will aid in valuing the professionalism of staff by giving them a voice in the workplace, and ensuring consistency around terms and conditions.

The NUT places great importance on getting the academy to adopt the agreement. However, it may be the case that, for whatever reason, they do not wish to do so. If this is the case then there are several options open to you and your members.

- Firstly, you should seek to talk through any issues with the head teacher or governors. It may be that they simply need reassurance that this document is about establishing a stable and clear understanding and relationships between unions and management.
- Secondly, if they still refuse to adopt the agreement then you should inform your division secretary and seek advice. It may be possible that, after speaking to your division secretary, members and other union representatives, the agreement can be modified to take into account specific concerns raised by the governors.
- Thirdly, if the governors simply refuse to adopt the agreement or to negotiate around the issue of adopting an agreement, then industrial action is a possibility. Any industrial action would need the backing of NUT members and could not be contemplated without first speaking to your division secretary and regional office.

Where the new governing body is resistant to adopting the TUC model agreement or any variation of it, it is important that other possibilities are explored and, where possible, the following should always be covered in a local agreement:

- a regular forum for negotiation and consultation;
- time off with pay for trade union duties, and participation in local authority arrangements;
- facilities for trade union activity – eg, being able to hold meetings for members in the school, and the use of notice boards and email system for communicating with members.

ARRANGEMENTS FOR FACILITY TIME

The 2014 DfE Advice on Trade Union Facility Time says, “Following a TUPE transfer, an academy should comply with any existing facility time agreement until they give notice that they want to end or re-negotiate this agreement.”

Academies have a statutory obligation to provide facility time to trade union representatives for duties undertaken in respect of academy employees.

The most straightforward way of doing this is for academies to “buy back” into local authority facility time arrangements by making a contribution to the facility time budget. This will enable them to receive reimbursement for supply cover costs for local officers employed by the academy.

The TUC Model Agreement for Academies sets out acceptable arrangements for facilities for union representatives. If your academy does not wish to adopt the agreement as a whole, it is worth attempting to persuade the school to agree to the key principles in respect of trade union recognition and facilities, set out in the TUC Model Agreement for Academies – Guidance Note & Key Principles, (see Appendix D) which is supported by the school workforce unions and the NAHT.

FUNDING FACILITY TIME

School funding reforms which came into effect from April 2013 require significantly greater delegation of funding to schools. Local authorities will only be able to retain funding for trade union facility time for representatives – in the form of supply cover costs – where schools have agreed through the Schools Forum to “de-delegate” the funding.

The retention of funding for trade union facility time under the heading of supply costs allows the local authority to reimburse individual schools for the employment of a long term replacement for NUT officers who are on partial or full time release. It can also cover short term supply costs for occasional absences for other trade union representatives’ attendance at meetings or training courses.

As a result of the funding reforms, local authorities consult on whether Schools Forums should recommend that money be de-delegated for supply cover costs, including for trade union facility time.

Where local authorities decide to de-delegate funds for supply cover costs, including for trade union facility time, it is in the interests of academy school teachers and school leaders for academies to “buy-back” into local authority facility arrangements. Working with your division secretary and using the letters at the back of this toolkit should assist you in this activity.

The point of transfer is an ideal time to urge academies to participate in local facility time arrangements.

The letters at Appendix E to academies set out the arguments for retaining central funding by the local authority for the costs of supply cover relating to trade union facility time.

Letter B5 addressed to academies where local pots do not exist can be used locally to urge schools at the point of transfer to either set up school facility time funding arrangements or to lobby the local authority to establish a pot.

Letter B6 addressed to academies where local pots exist can be used at the point of transfer to urge them to participate in local facility time funding arrangements.

Letter B3b, may be used at any time for academy schools that do not currently buy-back, urging them to participate in buy-back arrangements established by the local authority.

SHAPING THE FUTURE OF YOUR SCHOOL

Much of this pack has talked about using the TUPE process to protect members who transfer to the academy. It is vital that throughout this period we, as a union, are as proactive and involved in the process as possible, and that we monitor the situation after transfer. We want to shape events not be shaped by them. Key to influencing the transfer process is to ask questions, make representations, and most importantly of all, to show to management the strength of feeling and level of engagement of members.

However, as well as trying to ensure the legal process is followed in as transparent and open a way as possible, and moulded as best it can to deliver for members, as a union we need to be proactive in developing a strong collective presence.

You can do this by meeting with the head teacher on a regular basis as stipulated in the model agreement.

You should where possible meet with members beforehand to inform your discussions. If members have issues of concern, they need to be discussed collectively if appropriate and then raised and hopefully resolved through negotiation.

Bear in mind that when you are talking with the head teacher, you are speaking as a representative of and on behalf of all NUT members, and that you have the strength of the membership behind you.

Remember to keep in constant dialogue with your division secretary. They are there to help and support you, and have a wealth of knowledge and expertise you can tap into – never be afraid to get in touch. If you don't have their contact details please visit www.teachers.org.uk/contactus where you will find them.

Thank you for taking the time to read this guidance document. As an NUT representative you play a vital role in ensuring that teachers have a voice in the workplace. We hope you find the role enjoyable and rewarding, and please remember that any contribution to ensuring the continued success of your union is greatly appreciated.

You will find more information and support materials in helping you carry out your role of a representative in the NUT Representatives Guide which, if you don't already have a copy, should be available from your local division secretary. It can also be accessed in the school representatives section of the members centre on the NUT website.

BY WORKING TOGETHER WE CAN MAKE A DIFFERENCE!

2014/15

APPENDIX A



Documents for use in school



www.teachers.org.uk

Academy Status:

What do you need to know?



Venue:

Date:

Time:

Academy Status:

What do you need to know?



Venue:

Date:

Time:

Academy Status:

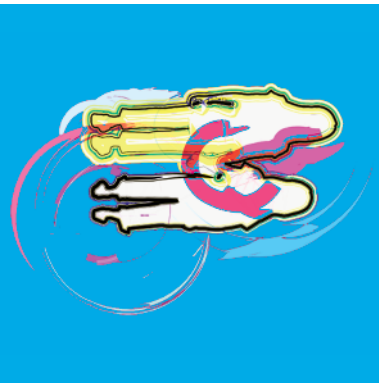
What do you need to know?



Venue:

Date:

Time:



School meeting



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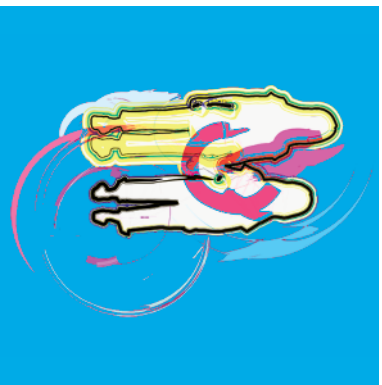
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Willing to help
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School meeting



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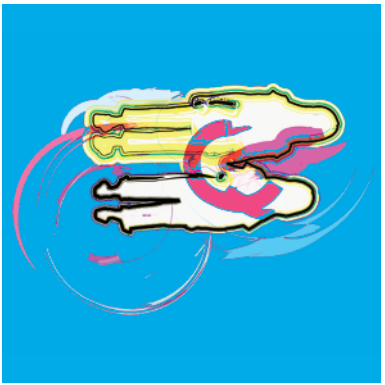
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**Willing to help
campaign?**



School meeting

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Union member

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Willing to help
campaign?

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Academy Status:

What do you need to know?



Venue:

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Time:

Academy Status:

What do you need to know?



Venue:

Date:

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What do you need to know?

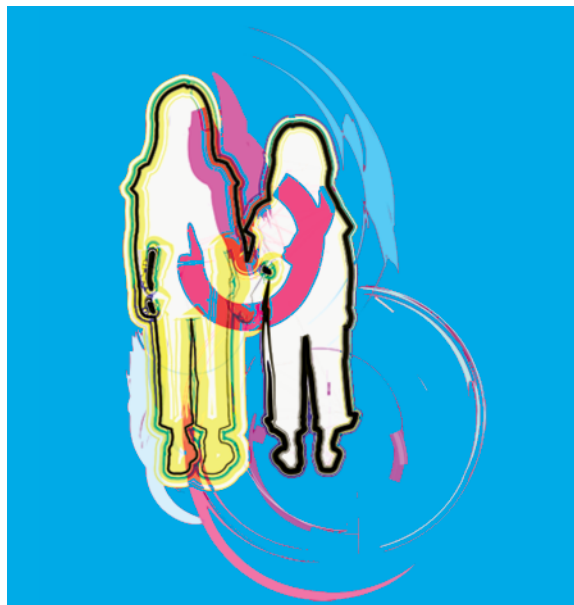


Venue:

Date:

Time:

APPENDIX B



Model Paragraph to be Included in Teacher Contracts Before the Transfer

This paragraph should if possible be included in the contracts of teachers employed in the school before it changes to academy status. This will help to ensure full clarity over pre-transfer contractual terms.

“Your pay, professional duties and working time obligations will be as set out in the School Teachers’ Pay and Conditions Document for the time being in force under Part 8 of the Education Act 2002 or under any successor legislation making similar provision. Your other terms and conditions of employment will be as set out in the National Conditions of Service for School Teachers in England and Wales (the “Burgundy Book”) and in any supplementary collective agreements negotiated between _____ (name of your employer) and the teachers’ organisations recognised by it. From time to time, variations in your terms or conditions of employment will result from changes to those documents and agreements. These will be separately notified to you or otherwise incorporated in the documents which are available to you for reference. In either instance, the effect will be that the changes are incorporated into your contract of employment.”

Model Paragraph to be Included in Teacher Contracts Post-Transfer

Inclusion of this paragraph in academy contracts will assist to ensure the applicability of the STPCD and Burgundy Book. Inclusion of the section in square brackets will additionally ensure the applicability of local agreements where the academy has agreed to adopt these.

“Your pay, professional duties and working time obligations will be as set out in the School Teachers’ Pay and Conditions Document for the time being in force under Part 8 of the Education Act 2002 or under any successor legislation making similar provision. Your other terms and conditions of employment will be as set out in the National Conditions of Service for School Teachers in England and Wales (the “Burgundy Book”) and in any supplementary collective agreements negotiated between the governing body of the academy or the academy trust and the teachers’ organisations recognised by it and between the _____ local authority and the teachers’ organisations recognised by it as may have been adopted by the governing body of the academy]. From time to time, variations in your terms or conditions of employment will result from changes to those documents and agreements. These will be separately notified to you or otherwise incorporated in the documents which are available to you for reference. In either instance, the effect will be that the changes are incorporated into your contract of employment.”

TEMPLATE LETTER FOR SCHOOL REPRESENTATIVES TO GIVE TO HEAD TEACHER (Pre-transfer)

Dear (*Head Teacher)

Now that the school is seeking to move towards academy status, I am writing to you to seek confirmation of your proposals regarding staffing matters after becoming an academy.

You will know that as a result of the Transfer of Undertakings (Protection of Employment) Regulations 2006 changes cannot be made to the contractual terms and conditions of staff if the sole or principal reason is the transfer of the school to academy status. The same Regulations also provide that union recognition and other contractual collective agreements transfer to a new employer in the same way.

Whilst the Regulations protect terms and conditions for existing staff we are sure that the governing body will wish to ensure that new colleagues joining the school will be employed on the same terms. This would avoid all the dangers and complications associated with the development of a two-tier structure. It will also assist with recruitment and retention by ensuring that terms and conditions are comparable with other local schools.

As an academy, the school will be operating in a different legal framework, with a changed relationship with the local authority and other local schools. In view of this, it will be necessary for the governing body to take some formal steps to ensure that existing arrangements are preserved as required by TUPE. As well as guaranteeing the preservation of staff contractual terms by the inclusion of the enclosed paragraph in teacher contracts before the transfer, it will be necessary to adopt a revised agreement to allow for negotiation and consultation to continue in the same way. As you know this currently includes facilities arrangements, including paid time off for local representatives to undertake their role.

The relevant formal steps that we propose that the governing body take are to:

- formally agree that all new joiners will be employed on the relevant terms and conditions for their post, as apply to those transferring employment to the academy;
- formally agree that links to contractual terms that are fixed externally are maintained so that the terms offered by the academy do not fall behind those offered elsewhere;
- adopt the TUC model recognition agreement which is attached, and agree to participate in and contribute to the local trade union facility time funding arrangements.

Please confirm that you will recommend these matters to the new governing body in order that these arrangements can be formally confirmed for the future.

I would be happy to meet with you to discuss this if you wish.

Yours

School Representative

(*union name)

TEMPLATE LETTER FOR SCHOOL REPRESENTATIVES TO GIVE TO HEAD TEACHER (Post-transfer)

Dear (*Head Teacher)

I am writing to you regarding staffing matters now that the school has become an academy.

You will know that as a result of the Transfer of Undertakings (Protection of Employment) Regulations 2006 changes cannot be made to the contractual terms and conditions of staff if the sole or principal reason is the transfer of the school to academy status. The same Regulations also provide that union recognition and other contractual collective agreements transfer to a new employer in the same way.

Whilst the Regulations protect terms and conditions for transferred staff we are sure that the governing body will wish to ensure that new colleagues joining the school will be employed on the same terms. This would avoid all the dangers and complications associated with the development of a two-tier structure. It will also assist with recruitment and retention by ensuring that terms and conditions are comparable with other local schools.

As an academy, the school is now operating in a different legal framework, with a changed relationship with the local authority and other local schools. In view of this, it will be necessary for the governing body to take some formal steps to ensure that existing arrangements are preserved as required by TUPE. As well as guaranteeing the preservation of staff contractual terms by the inclusion of the enclosed paragraph in teacher contracts post-transfer, it will be necessary to adopt a revised agreement to allow for negotiation and consultation to continue in the same way. As you know this currently includes facilities arrangements, including paid time off for local representatives to undertake their role.

The relevant formal steps that we propose that the governing body take are to:

- formally agree that all new joiners will be employed on the relevant terms and conditions for their post, as apply to those transferring employment to the academy;
- formally agree that links to contractual terms that are fixed externally are maintained so that the terms offered by the academy do not fall behind those offered elsewhere;
- adopt the TUC model recognition agreement which is attached, and agree to participate in and contribute to the cost of the local trade union facility time funding arrangements

Please confirm that you will recommend these matters to the new governing body in order that these arrangements can be formally confirmed for the future.

I would be happy to meet with you to discuss this if you wish.

Yours

School Representative

(*union name)

TUC Model Agreement for Academies – Guidance Note & Key Principles

This statement is supported by the affiliated school workforce unions - ATL, GMB, NASUWT, NUT, UNISON and Unite - and the non-affiliated school leaders' union, NAHT.

Introduction

This guidance considers the key issues of principle for the teaching and support staff unions in relation to trade union recognition and pay and conditions for employees in academies.

The TUC working with the affiliated unions (ATL, GMB, NASUWT, NUT, UNISON and Unite) have developed a *Model Agreement for Academies in England*. That model agreement provides a mechanism for trade union recognition and facilities and machinery for consultation and negotiation in academies and the unions are working for its adoption and implementation in all academies throughout England.

This guidance is intended to help in discussions between school governors, managers and trade union representatives about these issues. Experience has shown that governors are sometimes uncertain about the nature and extent of the commitments involved in establishing arrangements of this kind or are resistant to the adoption of the full TUC model agreement. This guidance will allow key principles to be discussed and agreed before more detailed discussions about the exact arrangements in each academy.

All the unions will support representatives of the sponsoring unions to achieve the principles below where possible. Representatives should contact their unions if they need further support about how best to approach an academy to achieve this.

The key principles

The following are the key principles for the trade unions and the key points for inclusion in any agreement. All are, of course, covered in the TUC model agreement. Adoption of the TUC model agreement will ensure these matters are fully and properly dealt with in the academy. All of the unions who are signatories to this document believe that academies must consult and negotiate, where appropriate, on any proposal to move away from any of the arrangements specified in this guidance note.

Trade union recognition and facilities

- an acknowledgement that, under the TUPE Regulations, existing trade union recognition transfers to the academy. In addition, recognition should extend to all new employees
- an undertaking to maintain the terms of existing recognition agreements and procedures, subject to any necessary amendment to those procedures to reflect the new circumstances of academy status
- an undertaking to permit and assist trade union organisation and activity and support trade union facilities
- an agreement to time off for academy union representatives
- an agreement to provide access to facilities (e.g. meeting rooms) for day-to-day trade union activities

- an agreement to participate in trade union facilities arrangements made by local agreement, including release time for Academy employees and payments into pooled funding for these arrangements
- an agreement that where arrangements exist for the deduction and transfer of union subscriptions through payroll, these arrangements should continue.

Consultation and negotiation

- an undertaking to consult and negotiate with trade unions on matters affecting employees' employment and terms and conditions beyond the statutory requirements and in accordance with existing agreements, subject to any necessary amendment to procedures, to reflect new circumstances
- an agreement that there should be regular meetings between managers and union representatives, preferably in a specified regular forum
- an agreement that union representatives may, where they consider it necessary, be accompanied by local/regional trade union officers and officials at such meetings; and at any hearings involving union members
- an agreement that, where any disputes arise between the academy and trade unions, either side may involve ACAS and the "status quo" will be maintained while this happens
- an agreement that the academy will seek to participate in local authority consultative machinery (where possible) where this discusses matters which will affect academy employees

Trade union membership

- an agreement that the academy will encourage all staff to become members of the appropriate union (as described in the Model Agreement) at the time of appointment
- an agreement that academies will provide the trade unions with details of the names/workplaces of new staff on request.

Pay and conditions

- an undertaking to abide by existing national and local pay and conditions of service and to employ new employees on those terms
- an undertaking to abide by all future national pay increases and changes in conditions of service
- an agreement to recognise previous service in local authority schools and/or academies for contractual purposes
- an acceptance that employees are entitled to membership of the Teachers' Pension Scheme and the Local Government Pension Scheme and a commitment to continuing participation in these pension schemes.

Notification to employees

- an agreement that the employer will write to all employees at the time of transfer setting out these terms of undertaking and agreement.

NAHT

The non-affiliated school leaders' union - NAHT - has made the following statement: "We support the principles espoused in this guidance document which we regard as an appropriate starting point for local negotiations. We value the role of trade unions in supporting teaching and support staff and school leaders and want to ensure that, wherever possible, agreements are reached that facilitate the work of the unions. These principles are offered as a framework to indicate what we see as desirable potential elements in any recognition agreement; their interpretation will need to be subject to detailed local discussion and negotiation before agreement".

Model Agreement for Academies in England

Trade Union Recognition and Facilities and Machinery for
Consultation and Negotiation



COVERING NOTE TO THE TUC MODEL AGREEMENT FOR ACADEMIES IN ENGLAND¹

TRADE UNION RECOGNITION AND FACILITIES AND MACHINERY FOR CONSULTATION AND NEGOTIATION

USING THIS TUC MODEL AGREEMENT FOR ACADEMIES

This model agreement has been agreed by the teacher unions (ATL, NASUWT and NUT) and the unions representing support and other professional school staff (GMB, UNISON and Unite). It is intended to assist the trade unions in negotiations with academies over the confirmation of trade union recognition and the establishment of acceptable arrangements for facilities for union representatives and machinery for consultation and negotiation.

Where an Academy replaces an existing school so that students and staff transfer to the Academy, there should² be a transfer of recognition accompanying the transfer of undertakings under the terms of the TUPE Regulations. In such cases, there should be no need to negotiate the principle of recognition with the Academy sponsor.

In those Academies where there has been no transfer of undertakings from a predecessor school, it may be necessary to negotiate the principle of recognition.

The circumstances of relationships with individual Academy sponsors obviously vary. In some cases, there may already be a satisfactory relationship and arrangements for consultation, negotiation and representation without a formal recognition agreement being in place. In such cases, you will of course want to consider whether a proposal to the Academy sponsor to enter into a formal agreement and arrangements as set out in the TUC model would be of benefit.

Where the model is used, it will serve in those Academies which have succeeded predecessor schools to establish revised arrangements more appropriate to the changed circumstances of the Academy. In Academies without a predecessor school, it will serve to establish appropriate arrangements to give effect to the newly-established recognition arrangements.

The model is, of course, intended for adaptation to the particular local circumstances in each Academy and local authority area.

¹ This agreement covers England as there are currently no plans to introduce Academy schools in the rest of the UK. However, the remit of this agreement will be reviewed in consultation with all the relevant school workforce unions, including EIS and UCAC, if this situation changes in the future.

² Trade unions have a legal right under TUPE to the transfer of recognition arrangements where members who were covered by a recognition agreement transfer to an Academy.

This model procedure provides for recognition for those unions which have existing recognition rights protected by TUPE and are signatories to this agreement. In situations where there are no members of one or more of the nationally recognised TUC affiliated unions (see list in paragraph 1 of the agreement), recognition of such unions will automatically apply whenever they gain membership.

The application of this procedure will be taken forward most effectively in partnership by all of the trade unions which have members at an academy, and the anticipated process will be that these unions will wish to discuss the situation together prior to opening negotiations on presenting this TUC model procedure to the Academy employer body.

The model constitution for the JCNC provides for single table bargaining. The signatory trade unions believe the single table model is the most effective way of bargaining on behalf of the whole school workforce, with provision for sub-groups where appropriate. Advice on situations where academy employers operate more than one Academy can be obtained from trade union regional or national offices.

The model agreement provides for the Academy to participate in local arrangements within the authority relating to time off with pay for any employee who is a trade union officer at branch or national level. This will be particularly important where an existing local officer or Executive member works in a prospective or operational Academy. These local arrangements obviously vary, in particular in terms of the arrangements for funding and compensating for time off, and it may be that some variation may be needed to accommodate the inclusion of the Academy. Advice can be obtained from trade union regional or national offices.

It is not possible for this model agreement to address every eventuality and it is therefore recommended that representatives of the signatory trade unions consult their specific union if they require any further information and clarification on specific parts of the agreement.

MODEL AGREEMENT FOR ACADEMIES IN ENGLAND

TRADE UNION RECOGNITION AND FACILITIES AND MACHINERY FOR CONSULTATION AND NEGOTIATION

INTRODUCTION

In accordance with the TUPE Regulations, trade union recognition rights for recognised trade unions are automatically transferred over when a maintained school becomes an academy. This move, from direct LA control to academy status, means that there is a need to clarify the specific working arrangements between the Unions and (name of school), particularly in respect of consultation and negotiation and facility time for Union Representatives. The terms of the Agreement which follows provide that clarification.

PARTIES, COVERAGE AND DEFINITIONS

1. The following trade unions are covered by this agreement:
 - the teacher unions (ATL, NASUWT and NUT) and the unions representing support and other professional school staff (GMB, UNISON and Unite);
 - [other trade unions as may be agreed].
2. This agreement applies in respect of employees in the following categories:
 - teaching staff (ATL, NASUWT and NUT);
 - support and other professional school staff (GMB, UNISON and Unite);
 - [other categories of staff as may be agreed].
3. Throughout this agreement, the following definitions apply:
 - “The Academy” means the governing or other body responsible for the running of the Academy and other persons or bodies having responsibility for the management of the Academy;
 - “The trade unions” means the recognised trade unions as listed above;
 - [other definitions as appropriate].

PRINCIPLES AND OBJECTIVES

4. The independent trade unions identified in this agreement are recognised for the purposes of collective bargaining, consultation and individual staff representation on behalf of the workforce.
5. This agreement is intended to promote and assist in the establishment of:

Model Agreement for Academies in England 2010

- jointly agreed pay and conditions of employment;
 - good practice with regard to matters of employment and health and safety;
 - effective communication;
 - participation and involvement of staff;
 - effective and prompt resolution of issues and disputes;
 - equal opportunities in employment; and
 - arrangements for discussion of professional issues concerning teaching and learning, including issues relating to the curriculum, behaviour policy etc.
6. The trade unions recognise that it is the Academy's responsibility to plan, organise and manage the delivery of education to the students at the Academy.
7. In turn, the Academy recognises the trade unions' right to represent and protect the interests of their members employed in the Academy both individually and collectively.
8. The Academy believes that representative trade unions help ensure good employee relations. The Academy will encourage employees to become union members, and will inform new appointees of their right to join a trade union. The Academy will provide the trade unions with the names and work locations of new appointees.
9. The Academy and the trade unions declare their commitment to maintaining good industrial relations and agree to make every effort to resolve any difficulties which may arise and to ensure that this agreement is effective.

TRADE UNION REPRESENTATIVES

10. For the purposes of this agreement, the term "trade union representatives" includes workplace representatives, health and safety representatives and learning representatives.
11. Trade union representatives will be appointed in accordance with the rules of the individual trade unions concerned. The trade unions will inform the Academy in writing of the names of their appointed representatives.
12. The numbers of trade union representatives appointed shall be a matter for each union but the trade unions agree that the numbers shall be reasonable in relation to the number of members represented. The Academy will not decline to recognise appointed trade union representatives.
13. Trade union members shall be entitled to be represented by employed officials or local representatives of the trade union, where the trade union considers this to be necessary in the circumstances.

14. The Academy undertakes that no trade union representatives will suffer any disadvantage as a result of undertaking this role on behalf of trade union members.

FACILITIES FOR TRADE UNION REPRESENTATIVES AND MEMBERS

15. The Academy agrees to provide appropriate facilities to trade union representatives and members in order to enable them to discharge their union duties and undertake trade union activity and to facilitate the objectives of effective communication and consultation with employees and their representatives set out in this agreement.

Time off with pay for trade union representatives

16. The Academy will permit trade union representatives reasonable time off with pay during their normal working hours (including release from timetabled teaching and learning support in the classroom) for the purpose of carrying out trade union duties.

17. The Academy will also permit trade union representatives time off with pay within their normal timetabled working hours (including release from timetabled teaching and learning support in the classroom) where necessary, in particular to prepare for and/or attend meetings or to consult with employed officials or local representatives of their union. Trade union representatives will give as much notice as possible of the need for such time off.

18. The Academy will seek to ensure that all meetings convened by the Academy and involving trade union representatives take place within their normal working hours.

19. The Academy will participate in arrangements within the local authority area with regard to time off with pay for any employees who are local or national trade union officers in order to permit time off with pay for trade union duties undertaken in that capacity.

20. The Academy and the trade unions are committed to ensuring that trade union representatives receive appropriate training to allow them to discharge their trade union duties. The trade unions will provide appropriate training to their representatives. The Academy will permit trade union representatives reasonable time off with pay to attend relevant training courses run by their trade unions or by other appropriate bodies.

Other facilities for trade union representatives

21. The Academy will provide the following facilities to trade union representatives:

- reasonable accommodation to hold meetings and to interview members in a confidential manner;
- confidential access to and reasonable free use of telephone, fax and email facilities and computing and photocopying facilities;
- reasonable access to administrative and secretarial services;
- secure office/storage space;
- individual notice boards in all staff rooms;
- space on the academy intranet;
- all relevant documents, including those which provide information as to the structure and allocation of promoted posts applicable to the academy, the articles of government, the funding agreement and documents that set out the pay, conditions of service and the regulations of the academy which apply to the employees of the academy.

Trade union meetings

22. The Academy will allow trade union members to hold meetings on the premises outside their normal working hours, including at lunchtimes and immediately following the end of the student day. The trade unions will give reasonable notice of such meetings to the Academy. The Academy will not seek to place restrictions on the frequency or duration of such meetings or to the attendance of employed officials or local representatives of the trade union at such meetings.

23. The Academy will allow trade union members to hold and attend such meetings on the premises within their normal working hours, where appropriate to the urgency or nature of the matters to be discussed. Trade union representatives will give as much notice as possible to the Academy when seeking consent for such meetings. The Academy will not unreasonably withhold such consent to such meetings.

Time off for trade union activities

24. The Academy will allow trade union representatives and members reasonable time off during working hours for the purpose of taking part in trade union activity, including in particular representing the trade union at external meetings and conferences. Time off for trade union representatives and members to attend

annual conferences and other policy-making conferences of their trade unions as a delegate will in all cases be time off with pay.

Disciplinary action involving trade union representatives

25. The Academy will not take disciplinary action against a trade union representative until an employed official of that trade union has been consulted.

JOINT CONSULTATIVE AND NEGOTIATION COMMITTEE

26. The Academy will provide the trade unions with appropriate information on financial and organisational issues in order to allow meaningful consultation and negotiation (including information required for collective bargaining and consultation in accordance with the ACAS Code of Practice). The trade unions agree to treat information with sensitivity in cases of genuine commercial confidentiality.

27. The Academy and the trade unions agree to set up a Joint Consultative and Negotiation Committee (JCNC) consisting of representatives of both sides to undertake the following functions:

- the provision and sharing of information by the trade unions and the Academy;
- consultation on employment procedures and working and organisational arrangements;
- negotiation and agreement on the issues listed below for consideration by the JCNC.

28. Before implementing any changes in employment procedures and working and organisational arrangements, the Academy will undertake consultation and negotiation with trade union representatives through the JCNC.

29. The following matters shall, in particular but not exclusively, be considered by the JCNC:

- negotiating machinery and procedures;
- terms and conditions of employment;
- staffing and pay structures;
- employment policies and procedures;
- matters of health and safety;
- operational issues affecting the deployment, security and prospects of staff;
- staff training and development;
- professional issues concerning teaching and learning, including issues relating to

the curriculum, behaviour policy etc;

- equal opportunities matters.

30. In regard to these items (insert name of the Academy) will employ all staff on the national terms and conditions for school teachers and support staff.

31. The Academy and the trade unions agree that any dispute on interpretation of this agreement or any other matter will be referred initially to the JCNC for resolution.

32. The constitution and procedural agreement governing the JCNC is attached to this agreement as an Annex.

FAILURE TO AGREE

33. The Academy and the trade unions agree that it is in the interests of all parties that consultation and negotiations are carried out expeditiously and with the aim of reaching an agreed settlement.

34. If the Academy and the trade unions cannot reach an agreement, the matter may be referred to the Advisory Conciliation and Arbitration Service (ACAS) in order to seek resolution of the issue. Either party may determine that a matter is referred to ACAS for conciliation. Both parties may subsequently agree, where necessary, that a matter is referred to ACAS for arbitration.

35. Whilst these procedures are being followed the Academy will honour the status quo ante.

[COMMENCEMENT], REVIEW AND VARIATION

36. [This agreement comes into effect on the following date:

- date as appropriate].

37. The provisions of this agreement may be reviewed at the request of either side or varied at any time by mutual agreement of all parties following discussion as an agenda item at a quorate meeting of the JCNC.

38. The agreement itself may be terminated at any time by mutual agreement of all parties following discussion as an agenda item at a quorate meeting of the JCNC; or through 12 months' notice of termination from the Academy or from the trade unions acting jointly. In the latter circumstance, either side will be entitled to place the matter for discussion upon the agenda of a meeting of the JCNC and subsequently to refer the matter to ACAS for arbitration in order to seek resolution of the issue. Any individual trade union may withdraw from this agreement through 12 months' notice of withdrawal.

ANNEX

CONSTITUTION FOR THE JOINT CONSULTATIVE AND NEGOTIATING COMMITTEE (JCNC)

Title

1. The Committee shall be known as the Joint Consultative and Negotiating Committee or JCNC.

Purpose of Committee

2. The Committee has been established in support of the Principles and Objectives listed in Paras 4-9 above, and in order to consult and negotiate on the matters listed in the Agreement and other appropriate matters.

Representation at Meetings

3. The composition of the Academy Side is the prerogative of the Academy but there will be an expectation that there will be regular attendance by the appropriate senior Academy officials at all JCNC meetings.

4. Negotiation and consultation on terms and conditions issues will take place through the JCNC. Sub groups may sometimes meet to discuss issues which only affect teachers or support and other professional school staff. These sub groups will only be formed by joint agreement and will report back to the full JCNC.

5. The membership of each side shall be determined annually. Each side shall inform the other side promptly of any changes in representation.

6. Substitute representatives shall be permitted on both sides where necessary but each side shall seek to ensure that its nominated representatives attend all meetings.

7. Each side shall be entitled to be accompanied by an adviser with speaking rights.

8. The office of Chair shall alternate [annually] [at each meeting] between the Academy and Union sides.

Meetings

9. Each side shall nominate a Secretary who shall be responsible for liaising with the other side on matters such as dates of meetings, agreement of agendas and draft minutes, issuing invitations and agenda to members etc.
10. Meetings shall be held once per term. The date and agreed agenda shall be sent to members at least ten working days before each meeting. The agenda shall list the items for discussion but shall also allow other urgent business to be discussed. Any additional items should be specified before the meeting and agreed by both sides.
11. Special meetings shall be held where either the Academy or Union side submits a request in writing to the other side. The date and agenda for special meetings shall be sent to members no later than five working days after the request is submitted and the meeting shall take place no later than fifteen working days after the request is submitted.
12. Each Side shall be entitled to a pre-meeting prior to the meeting in order to discuss the business on the agenda.
13. The quorum for all meetings shall be [as appropriate] members of the Academy side and [as appropriate] members of the Union side.
14. Administrative support to the JCNC shall be provided by the Academy. The draft minutes of all meetings shall be circulated to both Secretaries for agreement no later than ten working days after the meeting. The agreed minutes of all meetings shall be submitted to the governing body for information.



Dear

We are writing to request that the xxxxx academy participates in and contributes to the locally-agreed 'pooled' arrangements for union facility time.

As you will know, successive governments have recognised the importance of good industrial relations and have legislated to provide a statutory basis for union facility time as follows:

- Paid time off for union representatives to accompany a worker to a disciplinary or grievance hearing
- Paid time off for union representatives to carry out trade union duties
- Paid time off for union representatives to attend union training
- Paid time off for union learning reps to carry out relevant learning activities
- Paid time off for union health and safety reps during working hours to carry out health and safety functions

These provisions are contained within the Employment Relations Act 1999, the Trade Union Labour Relations (Consolidation) Act 1992 and the Safety Representatives and Safety Committees Regulations 1997. As union recognition rights were transferred over to the academy in accordance with TUPE legislation and as acknowledged by the DfE Advice on Trade Union Facility Time, the issue we must now jointly address is how facility time is organised for your school.

Many academies have already opted to contribute to locally agreed 'pools', held by their local authority that cover the costs of facility time in all of the schools within their area. These academies have already recognised the clear advantages in using local 'pools' to discharge their statutory obligations:

- If facility time is not organised centrally, then each union can press for release of a union representative at each school. The training requirement for these representatives could be significant given the new role they are expected to fulfil. For example, their release from teaching to accompany members to meetings could be more disruptive than the current arrangements, where a union rep is released centrally to perform these tasks.
- The current arrangements allow trade union representatives who understand the local context to deal with issues arising within schools, without necessarily being a member of staff of the particular school. They also allow experienced trade union reps to seek to resolve problems at an early stage, often informally.
- The 'pooled' arrangements not only provide a mechanism to cover time for union duties, but also for maternity and long-term sick leave cover and public duties such as

Union Ref: B3b

jury service. Maintaining a positive relationship with the local authority can bring other mutual benefits too, around admissions, sports facilities, SEN arrangements and transport requirements, for instance.

We hope that you will also recognise the significant advantages a locally-agreed 'pooled' arrangement represents for your school, and that you will arrange to make the necessary contribution as a matter of priority.

If you wish to discuss the terms of this letter, or any other matter relating to union facility time, please do not hesitate to get in touch.

Yours sincerely

[Insert Local/Division Secretaries' signatures]

Further information:

[Insert details of the 'pool' formula where possible, or else insert contact details for the local authority contact who can provide them].



Dear

You may be aware that there is currently no mechanism within the area of xxxxx local authority for local academies to contribute and participate in central pooled arrangements for the funding of trade union facility time. As union recognition rights will be transferred over to xxxxx academy in accordance with TUPE legislation and as acknowledged by the DfE Advice on Trade Union Facility Time, the issue we must now jointly address is how facility time will be organised for your school.

In the absence of a pooled scheme, in order to meet its statutory obligations, the new academy will be required to provide for each trade union:

- Paid time off for union representatives to accompany a worker to a disciplinary or grievance hearing
- Paid time off for union representatives to carry out trade union duties
- Paid time off for union representatives to attend union training
- Paid time off for union learning reps to carry out relevant learning activities
- Paid time off for union health and safety reps during working hours to carry out health and safety functions

These obligations are set out under the Employment Relations Act 1999, the Trade Union Labour Relations (Consolidation) Act 1992 and the Safety Representatives and Safety Committees Regulations 1997.

Since facility time is not organised centrally, then each union will press for release of a union representative at each school. The training requirement for these representatives could be significant given the new role they are expected to fulfil. For example, their release from teaching to accompany members to meetings could be more disruptive than under a central arrangement whereby a union rep is released centrally to perform these tasks.

We would of course, prefer for facility time to be funded and organised centrally and we would urge you to ask the Local Authority to set up a mechanism for this to happen and then that you pay into such a 'pool'.

Central funding arrangements allow trade union representatives who understand the local context to deal with issues arising within schools, without necessarily being a member of staff of the particular school. They also allow experienced trade union reps to seek to resolve problems at an early stage, often informally.

Alternatively if the Local Authority declines to set up a central pool then, once xxxxx school transfers to xxxxx academy, you may be willing to set up and manage such a central 'pool', then we will do all we can to encourage other local maintained schools and academies to participate in the scheme. Some academies have already volunteered to hold and manage locally agreed 'pools' that cover the costs of facility time in all of the

Union Ref: B5

schools within their area. These academies have already recognised the clear advantages in using local 'pools' to discharge their statutory obligations.

If you are not able to establish a central 'pool' but another school within your locality agrees to do so, then we would urge you to contribute to and participate in that local arrangement.

If you wish to discuss the terms of this letter, or any other matter relating to union facility time, please do not hesitate to get in touch.

Yours sincerely

[Insert Local/Division Secretaries' signatures]

Further information:

[Insert details of the 'pool' formula where possible, or else insert contact details for the local authority contact who can provide them].



Dear

You will be aware that your local authority operates a locally-agreed pooled arrangement for trade union facility time.

We are writing to request your academy agrees to participate in and contribute to the locally-agreed 'pooled' arrangements at the point that your school becomes an academy.

Successive governments have recognised the importance of good industrial relations and have legislated to provide a statutory basis for union facility time as follows:

- Paid time off for union representatives to accompany a worker to a disciplinary or grievance hearing
- Paid time off for union representatives to carry out trade union duties
- Paid time off for union representatives to attend union training
- Paid time off for union learning reps to carry out relevant learning activities
- Paid time off for union health and safety reps during working hours to carry out health and safety functions

These provisions are contained within the Employment Relations Act 1999, the Trade Union Labour Relations (Consolidation) Act 1992 and the Safety Representatives and Safety Committees Regulations 1997. As union recognition rights will transfer over to the academy in accordance with TUPE legislation and as acknowledged by the DfE Advice on Trade Union Facility Time, the issue we must now jointly address is how facility time is organised for your school.

Many academies have already opted to contribute to locally agreed 'pools', held by their local authority, that cover the costs of facility time in all of the schools within their area. These academies have already recognised the clear advantages in using local 'pools' to discharge their statutory obligations:

- If facility time is not organised centrally, then each union can press for release of a union representative at each school. The training requirement for these representatives could be significant given the new role they are expected to fulfil. For example, their release from teaching to accompany members to meetings could be more disruptive than the arrangement whereby a union rep is released centrally to perform these tasks.
- Central funding arrangements allow trade union representatives who understand the local context to deal with issues arising within schools, without necessarily being a member of staff of the particular school. They also allow experienced trade union reps to seek to resolve problems at an early stage, often informally.

Union Ref: B6

- The 'pooled' arrangements not only provide a mechanism to cover time for union duties, but also for maternity and long-term sick leave cover and public duties such as jury service. Maintaining a positive relationship with the local authority can bring other mutual benefits too, around admissions, sports facilities, SEN arrangements and transport requirements, for instance.

We hope that you will also recognise the significant advantages a locally-agreed 'pooled' arrangement represents for your school, and that you will arrange to make the necessary contribution as a matter of priority.

If you wish to discuss the terms of this letter, or any other matter relating to union facility time, please do not hesitate to get in touch.

Yours sincerely

[Insert Local/Division Secretaries' signatures]

Further information:

[Insert details of the 'pool' formula where possible, or else insert contact details for the local authority contact who can provide them].



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