

## **FAQs in Response to Consultation on Academy Conversion**

What are the other options to an Academy?

Schools can remain as a VA school unless the Regional Schools Director has issued a direct Academy Order in response to a school going into an Ofsted category. It is the Bishop's wish however, that all Catholic schools in the diocese work together within the two major MATs of St Thomas Catholic Academies Trust in the south and Our Lady Immaculate in the north.

What experience does St Thomas Catholic Academies Trust (STCAT) have in education?

STCAT provides opportunities for nurturing and developing Catholic leaders and for strong practitioners to take on school improvement lead roles. The structure of the MAT secures best practice in partnership working with the full backing of the Diocese of Northampton. STCAT provides challenge, support and accountability and has a proven track record of school improvement.

Is there a financial benefit for the school?

There is a financial benefit to academy status for the school:

- The schools will no longer have to pay 10% on building projects
- The schools will be able to claim back VAT on building projects
- The schools will be able to access the academies capital grant that offers the potential of more substantial funding for the building work that is required

Exactly what number of local pupils will be accepted to the school and what happens to those pupils who are not?

There will be no changes to admissions arrangements

Will you automatically be accepted if you live in the current catchment area?

As above

Will the catchment area remain the same as it is now?

As above

What procedures will be put in place to ensure that pupils with special educational needs are admitted to the Academy on a fair basis?

As above

Will pupils have to take a selection test by aptitude?

As above

For parents who do not want to send their children to the Academy, who will pay the transport costs of getting them to other schools which are still under Local Authority control?

This is a decision for parents. There will be no change in our schools beyond arrangements for governance, enhanced professional support and finance and we would not envisage any reason to withdraw pupils.

Will the Academy's exclusion policy be the same as other local schools?

Each school already has its own exclusion policy in line with other Catholic schools in the local area partnership

Will the Academy have an anti-bullying policy? **Yes**

How would SEND pupils be catered for and can you give an assurance that current levels of SEND support and behaviour support staff would be maintained?

The school is not seeking to change the way SEND pupils are supported. No school is immune to national funding changes and therefore adjustments are sometimes required but we do not envisage the need for any further change.

Will staff representatives be included on the governing body? If not, how will teachers' views be represented?

Yes. The school will have its own Local Academy Committee that reports to the Trust directors and staff are part of the membership

How will parents' views be represented?

Elected membership

Who will have the majority on the governing body?

Foundation directors appointed by the bishop and trustees, will be in majority as they are now

What staffing structures and pastoral care will be in place?

No changes are planned

What happens to staff such as catering and cleaners who are employed via buy-back from the Local Authority?

These are services we pay for already. No change is planned.

What obligation does the Local Authority have to employees who do not want their contracts to be transferred to an Academy? Do we have any right to be re-deployed and remain employed by the Local Authority?

This a Voluntary Aided (VA) school and staff are employed by the governing body, not the LA

For current employees, TUPE conditions will apply. Can you give a guarantee that you would not re-negotiate teachers' terms and conditions under "reorganisation"?

The school will always work to the best possible terms of conditions for all staff and for teaching staff this is defined by THE School Teachers' Pay and Condition Document (STPCD). We are not seeking to change any aspect of teachers' terms and conditions or indeed those of any staff.

Would the Academy pay scales remain in line with national agreements, and would future employees be offered the same terms and conditions as transferred staff?

The school will always work to national agreements.

Will the existing head teacher be appointed head of the new school? If not, why? When will the new principal be in place and how will they be appointed/by whom? Yes

How will parents' and stakeholders' views be taken into account when a decision is made about an Academy?

Governors will consider stakeholder responses to consultation

Can you confirm what percentage of people opposed to the Academy it will take to stop the proposal going ahead?

There is no percentage. The decision to proceed to academy status will be defined by the potential advantages and careful consideration of any disadvantages for our children.

## **Parent Specific questions:**

Will the school uniform change if we convert to academy?

The school does not intend to make any change to the school's uniform

Will the school's name change if we convert to academy? No.

Will the school day change if we convert to academy? No.

What are the benefits for my child if the school joins STCAT?

The pupils will benefit from strengthened links across the schools of the Trust, as staff will be sharing professional development activities and opportunities to share good practice, leading to a continuously improving quality of education. The catholicity and distinctive ethos of school is supported along with a strong focus on continuously improving educational standards.

Will the school still teach the National Curriculum?

Yes. The school values the National Curriculum and all pupils will continue to receive a broad and balanced curriculum, that supports all pupils regardless of need or ability.

Who will make the decisions in each school?

The Headteacher is responsible for the day to day business of the school, as at present and the Governing Body will continue to exist, but in a slightly different way. It will be known as the schools Local Academy Committee and a board of directors selected for their relevant skills, sits above the LAC, monitoring their performance.

## **Staff Specific questions (including TUPE related questions):**

Who will be my employer?

You will be employed by St Thomas Catholic Academies Trust (STCAT)

What are the terms and conditions of employment for new staff within STCAT?

Existing staff will TUPE into (STCAT) on existing Terms and conditions. The Burgundy Book (which applies to teachers) and the Green Book (which applies to support staff) are collective agreements and will transfer as current, any future changes will not be binding on the Trust. The Trust intends to continue to apply the School Teachers Pay and Conditions Document (STCPD) and will mirror changes as amendments are made over time, including pay awards.

Will the staff terms and conditions remain the same?

It is anticipated that all school staff will transfer to the Trust and retain their existing terms and conditions and continuity of employment. Although subsequent changes are possible following a TUPE transfer, none are planned and can only be made if the reason is an 'economic, technical or organisational reason' involving changes in the workforce/ workplace.

Will Job Descriptions be re-written?

Job Descriptions will be reviewed in the same way as currently.

What will be the changes to the day-to-day operations?

Most staff will not see any noticeable day-to-day differences. Senior Leaders and finance teams will have close relations with the Trust central team.

Will I be asked to move to a different academy within the Trust?

It is highly unlikely that staff will be asked to move to another academy - unless for a promotion, and unless the member of staff felt it advanced their career.

Will we be expected to work weekends?

Directed time will not be timetabled over the weekend.

Will the length of the school day change?

The length and timing of the school day is up to the school as it is now and we have no plans to change it.

Are we going to work longer hours?

There will be no increase in directed time.

Will the term dates change?

Term dates will be arranged in the same way as they are now.

Are we changing the name of the school?

No, we are not changing the name.

How dictatorial will STCAT be?

STCAT has a clear scheme of delegation that empowers Heads, Local Academy Committees and school leaders and lets them focus on teaching and learning, whilst giving a fair degree of autonomy over the budget. Our non-negotiables state that we value diversity in our schools whilst they are good or better, but we will intervene and support where a school is not good.

Who is the Headteacher accountable to in the new structure?

In the new multi academy structure, the Headteacher is line managed by the Local Academy Committee, like now, but on an executive basis by the Senior Executive Lead (SEL). The SEL has to abide by the trust scheme of delegation.

Will the unions continue to be recognised?

Unions will continue to be recognised. We have a long track record of excellent relations with local Unions. The Trust will continue to consult with recognised trades unions via their HR Provider, a continuation of consultation arrangements in place currently.

Will the existing pay scales remain in place? Yes.

Will we receive the same salary?

Yes, under TUPE you will be paid the same, and we honour School Teachers Pay and Conditions documents.

Is land protected from being sold off?

The school land will be leasehold by the Trust for 125 years, we cannot sell it off.

Who will own the property?

The property will be owned by the Trust

What are the times in the year when a school can convert to an academy?

Schools can convert on the first day of any month.

What is TUPE?

TUPE is the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), amended 2014. They implement the European Community Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC).

The TUPE Regulations ensure that employees' terms and conditions are preserved when a business or undertaking, or part of one, is transferred to a new employer, i.e. where a school converts to an Academy

When does TUPE apply?

Subject to certain qualifying conditions, the Regulations apply:

- a) when a business or undertaking, or part of one, is transferred to a new employer, or
- b) when a 'service provision change' takes place (for example, where a contractor takes on a contract to provide a service for a client from another contractor)

These two circumstances are jointly categorised as 'relevant transfers' and therefore apply where a school chooses to convert to an Academy.

How are transfers from the public sector to the private sector treated?

These are covered by the regulations just as transfers between private sector employers.

I have heard of the terms transferor and transferee – please can you explain who these are?

The transferor is the old employer the Governing Body and transferee is the new employer i.e. STCAT

Under the TUPE Regulations what actually transfers to the new employer?

All obligations in relation to employees which were the responsibility of the transferor become the responsibility of the transferee who is said to 'step into the shoes' of the transferor. Consequently all existing contractual terms whether expressed or implied and including terms incorporated from a collective agreement will transfer.

Does TUPE apply to all employees?

The TUPE regulations apply to full-time & part-time employees, and those employed on fixed-term contracts of employment, provided their contracts extend beyond the date of transfer. It does not apply to agency staff where they do not have a BC / School contract of employment and may not apply to zero hours / casual employees, or direct supply staff. Employees whose substantive post is in the transferring area, but who are on secondment to another part of the organisation or school will also transfer. Secondees into the organisation affected by the transfer are not generally included in TUPE as their substantive post is elsewhere in an alternative school, or within BC.

Can the new employer choose who transfers?

No. Employees who are mainly or primarily employed in the undertaking or service being transferred, and only they, transfer under TUPE. This is a matter of legal fact and in the event of dispute is decided by employment tribunal. Employees absent from work, for example, those on long term sick leave or maternity leave, are included. Employees who work across two or more schools will only be TUPE'd under the contract for the school that is affected. The school will work with employees in this situation to understand how much of their role relates to the affected area being transferred. The impact of their role will also be taken into consideration. However, in general if the majority of their work is transferring then the employee too will transfer. The School will determine those affected and consult with the 'appropriate representatives' at the earliest opportunity.

I am about to go on maternity leave knowing that a TUPE transfer is likely to occur while I am absent. What will happen to me?

The fact that an employee may already be on maternity leave prior to and/or at the time of transfer makes no difference to her maternity rights. Clearly if you are affected by the transfer

you will be informed at the same time as your colleagues. However, if you are unable to attend a face to face meeting, your manager will agree with you to consult by telephone or in writing and/or for a representative to attend any meetings on your behalf.

I am on maternity leave and a TUPE transfer is underway/has happened. What will happen to my pay?

The employee will be entitled to the same contractual maternity pay, had she continued to be employed by the transferor. Any remaining Statutory Maternity Pay and/or Occupational Maternity Pay will be paid by the new employer.

I am on Shared Parental leave/ Adoption leave and a TUPE transfer is underway/ has happened. What will happen to my pay?

The employee will be entitled to the same statutory shared parental leave and any contractual pay, had he/she continued to be employed by the transferor. Any remaining shared parental pay/adoption leave, both statutory and Occupational pay, will be paid by the new employer.

I am on long term sick leave and have been notified of a TUPE transfer. What will happen to my sick pay entitlements?

The employee will be entitled to the same amount of statutory and occupational sick pay, as if he/she has continued to be employed by the transferor. Any statutory sick pay and any remaining occupational sick pay will be paid by the new employer.

What happens to me if I am transferred to another employer under TUPE?

When TUPE applies to the transfer of a team's work, it means that the contracts of employment of all staff employed within that area – that is your terms and conditions of service at the date of transfer - are automatically transferred to the new employer.

What protections do employees have under TUPE?

The effect of a TUPE transfer is that transferred employees retain all the rights and obligations existing under their contract of employment with the previous employer (School/BC) and these are transferred to the new employer. This means that their previous terms and conditions of employment carry over to the new employer. The main exception to this rule under TUPE law concerns the treatment of occupational pensions but please refer to the separate questions below regarding how pension obligations are covered when a school converts to an Academy. Accordingly, contractual terms and conditions of employment including the principles of pay are preserved by TUPE. e.g. performance pay and pay dates. With regard to annual salary increases, the principle contractual terms apply. Please note that where the Transferee has not had the opportunity to influence any collective agreement negotiations relating to pay awards these will not be considered binding and will therefore not automatically transfer. Liabilities also transfer. This may include for example outstanding holiday and loans.

Is continuity of employment broken by a TUPE transfer?

No. An employee's period of continuous employment is not broken by a TUPE transfer to an Academy and, for the purposes of calculating entitlement to statutory employment rights, the date on which the period of continuous employment started would usually be the date on which the employee started work with the old employer (BC).

What happens to the service I've built up with the local council at the date of transfer?

The transfer does not break your service or your continuous employment. The date your continuous employment started with the council is the one on which any entitlement to statutory employment rights will continue to be based. This includes any entitlement to redundancy payments along with any restrictions contained within the Modification Order.

### Will my continuity of service be maintained if I return to Local Government?

Where an employee returns to a LA school, or Local Government, following a TUPE transfer to an Academy without a break between employments, all previous continuous service will be recognised. This will be taken into account for the purposes of calculation of entitlements to annual leave, and occupational sick pay. This is subject to the return of the original employer being within five years of the original transfer. If the employee returns voluntarily to local government, service continuity is broken.

### What terms and conditions are likely to transfer?

The new employer is obliged to honour your contract of employment, which means that it must maintain your existing pay and conditions of service. Examples of Terms and Conditions likely to transfer are:

- Rate and method of pay
- Hours of work
- Employment protection rights e.g. unfair dismissal, and redundancy rights
- Annual leave entitlement and pay
- Sick pay and sick leave entitlements
- Statutory and contractual redundancy and severance entitlements
- Collective agreements
- Professional fees (if currently contractual)
- Contractual benefits e.g. (where these are contractual) lease car, health schemes, childcare support
- Mobility and flexibility terms
- Contractual personnel procedures/ policies
- Individual personnel files including disciplinary records and current formal warnings
- Notice provisions
- Continuity of service (for purposes of calculating annual leave, sickness and redundancy calculations)
- Mileage Rates

### Will any terms and conditions not transfer?

There are some benefits that won't be included in a TUPE transfer as they are not contractual terms and conditions of employment. These include things such as Long Service Awards, bike loans under Cyclescheme, Travel Choice cards, discounts with local organizations and discounted BUPA cover for staff who may have been provided with this as a benefit. With regard to annual salary increases, the principle contractual terms apply. Please note that where the Transferee has not had the opportunity to influence any collective agreement negotiations relating to pay awards these will not be considered binding and will therefore not automatically transfer.

### Can the Academy alter terms and conditions of employment?

When a school converts to a new Academy, staff are entitled to transfer under the same employment terms and conditions. Therefore, immediate changes to the staff structure and operation are not anticipated. However, once open, the academy trust may consult with staff and their union representatives on changes to these terms and conditions, for example to enable the academy to operate over a different term times, or change the length of the school day

### Will the new organisation issue me with a new contract of employment?

There is no need for the new organisation to issue a new contract on transfer. However, it is normal practice for the new organisation to write to confirm that it is the new employer.

So if I transferred under TUPE, I would take all my terms and conditions of service with me? There is one exception; your pension rights are not transferred. However, the Government requires the council to ensure your new employer provides access to a broadly comparable occupational pension scheme for your future service.

**What happens to Pensions for Support Staff (LGPS)?**

Pensions are not currently included in TUPE provisions. However, Bucks Council is committed to following the Dept of Communities and Local Government guidance on treatment of pensions in relation to local authority service contracts. Guidance on the LGPS Admitted Body status explains the regulatory position provided for in the Local Government Pension Scheme (Administration) Regulations 2008 [2008/239] (as amended) about how external providers, such as companies or third sector organisations, can be admitted to the LGPS. It also sets out the pension considerations that arise when employees transfer from a local authority to an external provider. Essentially pension provision for public sector employees on a TUPE transfer must be protected in one of two ways:-

- The transferee employer should become an admission body of the Local Government Pension Scheme; or
- By the transferee employer offering such employees membership of an alternative pension scheme which is certified as 'broadly comparable' by the Government Actuaries Department (GAD).

In a tendering process, the Council can express a preference for admitted body status but cannot state that this is a requirement as this may restrict which bidders can meet these criteria and may not ensure the best overall deal for the Council.

**What happens to the pension arrangements for Teachers when a school converts to an academy?**

Teachers working in an academy fall within the scope of the Teachers' Pension Scheme (TPS) just as if they were employed in a local authority maintained school. Staff transferring from a maintained predecessor would simply continue their membership of the Scheme. The academy, as the new employer, would be responsible for remitting contributions to the TPS and for all other administrative responsibilities that fall to employers who employ teachers who are subject to the teachers' pensions regulations. Teachers Pensions administer the scheme on behalf of the DfE and will provide the academy with full information about their role and responsibility in relation to the TPS. Teachers do have the right to opt-out of the TPS if they prefer to make other pension provision for themselves.

**Can my terms and conditions of service be changed once I have transferred to the new employer?**

When a school converts to a new academy, staff are entitled to transfer under the same employment terms and conditions. Therefore, immediate changes to the staff structure and operation are not anticipated. However, once open, the academy trust may consult with staff and their union representatives on changes to these terms and conditions, for example to enable the academy to operate over a different term times or change the length of school day.

**Will terms and conditions be harmonised?**

In general, only agreed changes, which would have occurred even if the transfer had not taken place, are allowed. All employers have a duty to consult on changes they wish to make. An employee has the same right to object to unilateral contractual changes after the transfer as he or she had before it. The TUPE Regulations place limitations on the ability of the new employer to vary terms and conditions following transfer. Essentially the new employer

cannot worsen the terms and conditions of transferring employees unless it can demonstrate that there is an economic, technical or organisational (ETO) reason entailing changes in the workforce. Government guidance and recent case law suggests that worsening an employee's contract for the purpose of achieving post-transfer harmonisation cannot be justified by an ETO reason.

Is there a time limit or period after which TUPE terms are no longer valid?

No, TUPE provides indefinite protection for your terms and conditions of employment which transfer intact and should not change without your prior agreement.

After a period of time, can a new employer change the terms and conditions of employment by using methods such as the consultation process?

Yes it can, but only with your agreement in the normal way. It must also be able to prove that any changes are not solely or principally by reason of the TUPE transfer.

What if the new employer dismisses me rather than employing me?

TUPE gives enhanced rights to employees who are dismissed before, or after, the transfer. Such dismissals would be automatically unfair unless they can be shown to have been either unconnected with the transfer or for a genuine economic, technical, or organisational reason (sometimes referred to as an ETO reason) entailing changes in the workforce e.g. redundancies, and the employer is acting "reasonably" in treating that reason as sufficient to justify a dismissal. If your new employer does dismiss you for one of these reasons, it must treat you according to your normal rights relating to redundancy, including such things as contractual notice and redundancy compensation.

What if I don't want to transfer?

The regulations allow for you to opt out of the transfer by informing either your line manager or your proposed new employer. You should note, however, that this is likely to mean that you will be treated as if you had resigned, not as if you had been dismissed. There is no redundancy situation and therefore there is no entitlement to any redundancy payment.

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

Your job still exists – it has simply transferred to a new employer so you are not redundant.

At what point would I go on the Employee Transfer Register?

Under the Transfer of Undertakings (Protection of Employment) Regulations your role and existing terms and conditions will transfer to the new employer. You will therefore not be in a redundancy situation with the Council and therefore will not meet the criteria to be placed on the Employee Transfer register.

Will trade union recognition agreements transfer?

This depends on whether the service is transferring as a unit in its own right or whether it will become merged into the new employer's organisation. If it transfers as a unit which is intact and retains its identity, the new employer will usually inherit any recognition agreements in place between the transferring employer and the recognised trade union. Otherwise there is no entitlement to the recognition agreement transferring.

Will the sickness records of individuals and other personnel information be passed to the new employer?

Yes, sickness records will be passed to the new employer but only those relevant for current occupational sick pay and statutory sick pay purposes. Other personnel records, which relate to the contract of employment, will also transfer. These will include:

- Personal details, e.g. age, length of service, next of kin information, pay details
- Offer letter
- Statement of written particulars
- Job Title and job description
- Relevant training records
- Accident report forms
- Leave sheet to ensure retention of any carry forward
- Eye test letter

The new employer is also entitled to information about any live disciplinary or grievance cases.

**What about any claims I have against my existing employer?**

Any pre-existing claims which the transferring employees have against the Council would also transfer with the employees to the new employer. Any liability for a dismissal which was for a transfer-connected reason would transfer. Any claims for personal injury, any employment tribunal claims, common law claims (and indeed most claims) transfer also.

**How and what will I be told about the transfer?**

Under the TUPE regulations there is a statutory duty imposed on the old employer to consult and inform the 'appropriate representatives' of all employees who are affected by the transfer, prior to the transfer taking place. The process of consultation with representatives must be undertaken with a view to reaching agreement on the proposal.

The Council will tell you and your trade union or elected representatives:

- That a transfer is being considered and why it is being considered
- The approximate date of transfer
- Which group/individuals are proposed to transfer
- About the legal, economic and social implications of the transfer
- That your terms and conditions of service will transfer to the new employer (TUPE applies)
- What differences, if any, it will make to you – changes in pensions etc.
- Whether you will be moving to new premises to work for the new employer etc.
- About any measures to be taken in connection with the transfer which will affect you
- About any measures likely to be taken by the new employer that will affect you.
- About numbers of agency workers engaged by the Council; the areas they work in and types of work they do.

**How much notice will I be given of a TUPE transfer to a new employer?**

There is no legal requirement for a minimum consultation period. However, the council has agreed a minimum consultation period of 5 weeks with recognised unions. The DfE are advising schools wishing to convert to start the relevant consultation as soon as possible. There is no requirement to give notice of the termination of an individual's contract as the contract is continuing with the new employer.

**Who can I contact if I have any further questions about TUPE?**

We appreciate that this period of major change can be very unsettling for some staff and you may require further support. In the first instance please speak to the School's HR Officer. If you are a member of Professional Association/Trade Union then you can also speak to them about your concerns. You may also wish to contact the Employee Assistance Programme if you wish to speak to someone independent of BC. Tel No: 0800 243 458.