

## **Generic TUPE Fact Sheet – 1<sup>st</sup> May 2024**

**The Pioneer Federation establishment of a Multi Academy Trust (MAT) with the federated schools converting to academies and joining the MAT (Chiddingly Primary School, East Hoathley CE Primary School, St Mary the Virgin CE Primary School, and Park Mead Primary School)**

This fact sheet is being made available to all staff who work at the following schools which form the Pioneer Federation:

- **Chiddingly Primary School**
- **East Hoathley CE Primary School (Voluntary Controlled)**
- **St Mary the Virgin CE Primary School (Voluntary Aided)**
- **Park Mead Primary School**

The purpose of this fact sheet is to provide an introduction to the process known as the Transfer of Undertakings Protection of Employment Regulations (TUPE) which apply if a maintained school converts to an academy.

This information is provided as part of the stakeholder consultation process led by the Federated Governing Board and the Executive Headteacher for the Pioneer Federation.

### **Background Information**

This is a generic TUPE fact sheet which is provided as information for staff employed to work at schools in the Pioneer Federation as the Federated Governing Board is in discussion with the DfE with the proposal that the Federation forms a Multi-Academy Trust (MAT) which would include the potential conversion of each of the schools from maintained status to an academy and then become part of the Sussex Pioneer Trust, following the receipt of an academy order from the DfE.

A more detailed and bespoke version of East Sussex County Council's TUPE fact sheet will be provided prior to the commencement of the formal TUPE consultation process, if the Federated Governing Board, on the conclusion of the stakeholder consultation process, decide to proceed with the conversion of the schools to an academy.

### **What is TUPE?**

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 apply where staff

transfer from the employment of the Council to the employment of an Academy Trust.

The Regulations aim to safeguard the rights of employees in the event of a change of employer.

A separate formal consultation process will take place with the members of staff concerned and their trade unions as required by these Regulations. The TUPE transfer is subject to the agreement of the Directed Academy Order, Funding Agreement and the Articles of Association between the DfE and the Academy Trust.

### **Staff Management**

The Academy Trust will be the new employer of staff in the academy and will be responsible for appointing and managing the staff. Within the new Trust the responsibility for appointing and managing staff will be delegated to the CEO of the Trust and the Academy Trustees.

### **Can the Academy Trust change Pay and Conditions of Employment?**

When a school converts to an academy, staff will transfer with their existing terms and conditions of employment which are protected through the TUPE Regulations. Any future changes to terms and conditions must be consulted on with staff in line with statutory and regulatory guidance for all employers. The Trust will employ all its staff on national terms and conditions and has no proposals to change existing terms and conditions.

### **What will happen to my contract of employment?**

You will transfer to the new employer, the Trust, on the terms of your existing employment contract (e.g., same pay, terms and conditions of service). You will not require a new contract of employment unless you take up a new role in the academy after the date of the transfer of your employment.

### **What effect will this have on my continuous service?**

The date of continuous service of your current contract of employment will be protected and will transfer with you.

### **Will there be change to my rate of pay?**

You will continue to receive the rate of pay you receive at the point of transfer.

### **Will the date I am paid alter?**

If the Academy Trust chooses to maintain a trading relationship with the County Council for the provision of HR administration and payroll services, the date you are paid will not alter. If the Academy Trust chooses to administer the HR and payroll

process through an alternative organisation, then the pay date may change, or may remain the same. This information would be shared with staff as part of the TUPE consultation process.

### **How much holiday will I be entitled to?**

You will receive the same holiday entitlement as you do at present.

### **What will happen to my entitlement to sick pay?**

You will continue to be eligible to receive the same amount of sick pay entitlement as you do under your existing terms and conditions of employment.

### **How will the TUPE process work and what specific responsibilities does the school have?**

- The County Council will support the Federated Governing Board with the TUPE consultation process.
- The Council writes to the trade unions to set out the reason for the transfer and the key information required by the TUPE Regulations.
- The Academy Trust will write to the Council to set out if it intends to make any envisaged change to terms and conditions of employment - known as "measures".
- The Council, on behalf of the Federated Governing Board as the employer, then writes to each member of staff advising them of the planned transfer and any measures proposed by the Academy Trust.

### **Pension arrangements for Teachers**

The legal agreement that the academy has with the Secretary of State makes it a requirement that the Academy Trust must offer participation in the Teachers' Pension Scheme (TPS) to all teaching staff. So, as teachers working in an academy you are eligible to remain a member of TPS.

The TPS runs teachers pensions on behalf of the Department for Education. As your employer, the Academy Trust would be responsible for collecting and paying employer and employee contributions to the TPS and for all other administrative responsibilities set out in the Teachers' Pensions Regulations. This function is usually performed on behalf of the employer by the payroll provider.

The TPS determine the employer and employee pension contributions in accordance with the scheme regulations. Any future changes will be decided by the TPS not the academy. Benefits paid to teachers on retirement are not affected by academy status.

## **Pension arrangements for Support Staff**

The legal agreement that the Academy Trust has with the Secretary of State makes it a requirement that the Academy Trust must offer participation in the Local Government Pension Scheme (LGPS) to all support staff. So, as support staff working in an academy, you are eligible to retain your membership of the LGPS.

As your employer, the Academy Trust would be responsible for collecting and paying employer and employee contributions to the LGPS and for all other administrative responsibilities set out in the LGPS policies.

The LGPS determine the employer and employee pension contributions. Benefits paid to support staff on retirement are not affected by academy status.

## **Pension Auto Enrolment**

Where a member of staff changes employer as a result of TUPE transfer, the new employer will be responsible for complying with the employer duties that arise in relation to that employee. This means they will have to assess the worker with effect from the transfer date and where appropriate, automatically enrol them. In effect, they are treated as a new joiner for that employer for pension purposes only. Please see the link below for information on pensions and auto enrolment:

[Pensions and Additional Voluntary Contributions – ESCC Intranet](#)

Staff may seek to opt out of a pension scheme once auto enrolment has taken place.

## **What is the impact on continuity of service for teachers?**

Since Academies have been placed outside the statutory framework of national terms and conditions there is no obligation on local authority schools or on other academies to treat any service in an academy as continuous service for the purpose of occupational benefits. Academies are included in the Redundancy Payments Modification Order 1999 which means that service in an academy counts in the same way as service in a maintained school for the purposes of entitlement to redundancy payments.

At present for teaching staff who choose to seek work in a maintained school or corporate setting in East Sussex, following employment in an academy, continuity of service in an academy **is** recognised for occupational benefits, although this is not an automatic right. This remains under review. However, it's not guaranteed that other Local Authorities or Academy Trusts will recognise employment in an academy for continuous service purposes within an academy for occupational benefits; therefore, the following information has been included in this fact sheet:

A teacher who transfers to an academy and subsequently returns to work in a maintained school in the same Local Authority will not automatically retain that

continuous employment accrued whilst at the academy for the purposes of qualifying for certain statutory rights such as unfair dismissal. This is because the academy is not a Local Authority employer and such a change in employer breaks continuity of service.

Such a teacher would therefore not retain on a move to the Local Authority school the requisite continuous employment to qualify immediately for statutory maternity pay, statutory paternity and adoption leave and pay, statutory parental leave and the right to request flexible working. He or she would have to accrue service at the new Local Authority school before qualifying again for these statutory benefits.

Teachers with less than three years' service, with one or more local authorities when they move to a maintained school after working in an academy will not qualify for full benefits under the Burgundy Book conditions of service document. Their benefits will depend on whether they are in their first, second or third year of service at a maintained school. Unless qualification under the local Sick Pay scheme includes service with an academy, teachers will not have access to full benefits under the Sick Pay scheme until they have accrued at least three years' service with one or more local authorities.

A pregnant teacher who transfers to an Academy and subsequently returns to work in a maintained school in the same authority, might lose her contractual rights to maternity pay if the local authority requires her to have completed not less than one year's continuous service as a teacher, with one or more local authorities immediately prior to the beginning of the 11th week before the EWC. If the authority does not count service prior to the transfer, it must inform Trade Unions and Professional Associations of this fact.

It is open to all local authorities, schools and academies to choose to treat service in an academy as continuous service in the same way as service in a maintained school. The second paragraph in this answer indicates that it is currently ESCC's approach to recognise that service. Staff should ask any new employer to confirm whether they will recognise continuous service for all benefits and make their own decision about whether to accept the new post based on the answer they are given.

### **What is the impact on the statutory protection of teachers' statutory terms and conditions of employment?**

The provisions of the School Teachers' Pay and Conditions Document (STPCD) are protected by statute since 1987. Even though teachers' rights under the STPCD transfer with them to an academy upon a TUPE transfer, the statutory protection is lost, thus collective agreements cease to have effect at point of transfer and post transfer changes to them cannot be statutorily applied where the new employer is not party to the necessary collective bargaining process. Sussex Pioneer Trust will

choose to apply national terms and conditions as varied by these agreements to all its teaching staff.

### **What is the impact on national collective bargaining?**

The contractual terms and conditions and other non-contractual terms of teachers who transfer from a maintained school to an Academy will no longer be or will only partly be determined by national or collective agreement. Academies are not party to national collective bargaining arrangements on, for example the Burgundy Book but can choose to apply them. Sussex Pioneer Trust will remain party to the national and local collective agreements.

### **What is the impact on continuity of service for support staff if they choose to seek employment in the maintained sector after a TUPE transfer to an Academy?**

If support staff decide to leave the employment of the Academy Trust and return to work in a maintained school or other local government service on Green Book terms and conditions, continuous service will be recognised by the new local authority in respect of:

- Contractual Sick Pay and Scheme;
- Contractual Maternity Pay and Scheme;
- Annual Leave.

This is due to Part 2, paragraphs 14.1 - 14.3 of the Green Book (published – April 2022) - National Joint Council for Local Government Services - National Agreement on Pay and Conditions of Service.

Where an employee is transferred to an organisation not covered by the Redundancy Payments (Continuity of Employment in Local Government etc.) (Modification) Order 1999, continuity of service is protected under the TUPE Regulations where there is a TUPE transfer.

However, if that employee returns voluntarily to local government service continuity is broken. Where an employee returns in such circumstances, without a break between employments, all previous continuous service will be recognised for the purposes of calculation of entitlements to annual leave, occupational maternity leave/pay and occupational sick pay. This is subject to the return to service being within five years of the original transfer.

Note: This agreement applies to all employees who have returned to local government service since 1st April 1997 however the calculation of the resulting benefits, such as additional leave, will only take effect as and from 1st April 2002.

### **What if I am on a fixed term contract?**

Your contract may still come to an end on the due date. However, your fixed term contract will transfer to the new employer if it is due to end after the transfer date. Decisions about the rights of all temporary staff to TUPE transfer will form part of the statutory consultation.

Any member of support staff who chooses to leave SPT and move to another Academy Trust should ask that Trust whether they will recognise full continuous service and make their own decision about whether to accept the new post based on the answer they are given.

### **What if I don't want to transfer?**

If you are on the list of staff identified as those who will transfer, and you decide you do not want to transfer you will need to seek another post prior to the TUPE transfer date. If you have not found another post prior to the TUPE transfer date your employment will be regarded as terminated with no dismissal as at the transfer date.

If an employee doesn't want to work for the new employer s/he can refuse to work for the new employer. This is the same as resigning - they won't normally be able to claim unfair dismissal or redundancy pay or be paid in lieu of notice. An employee is not required to give contractual notice in such circumstances. The employee simply tells the employer, or the new employer, before the transfer happens. Employment then ends at the time of transfer.

### **What if I am a casual worker e.g., a supply teacher, exam invigilator etc.?**

TUPE transfer arrangements do not apply to people who work on a casual basis and are therefore not employees. The working arrangements would normally cease on the closure date of the school. However, schools value the contribution of casual claims only staff and it is likely that arrangements for casual staff will be required in the future within the academy. Casual staff will receive further information nearer to the date of the conversion.

### **What if I'm dismissed because of the transfer or for reasons related to the transfer?**

An employee will be automatically unfairly dismissed if the sole or principal reason for the dismissal is the transfer. Under TUPE it will continue to be automatically unfair to dismiss an employee because of the transfer itself. However, dismissals connected to the transfer may be fair if the reason for the dismissal is an "Economic, Technical or Organisational reason entailing changes in the workforce", or the dismissal can be shown to be for genuine redundancy reasons unconnected with the transfer and the employer followed a fair dismissal procedure.

### **Childcare Voucher Scheme (CVS)**

Any staff currently receiving childcare vouchers through the ESCC scheme on the date of conversion are entitled to transfer to the Trust's CVS.

**All** childcare voucher schemes are now closed to **new** members, but eligible staff may be able to access Tax Free Childcare, a new scheme offered by the Government. Further information on this is available from the following website:

[Childcare Vouchers](#)

### **Further information**

Further information is available on the following websites:

[ACAS](#)

[Government Advice - Business Transfers Takeovers and TUPE](#)

Staff may also wish to seek further information from the websites published by trade unions and professional associations.

### **For further information, please contact:**

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