



## FREQUENTLY ASKED QUESTIONS re: ACADEMIES

### Admissions

#### 1. Who agrees the admission arrangements for academies?

Admission arrangements for academies are approved by the Secretary of State as part of an Academy's Funding Agreement, which requires compliance with admissions legislation and relevant Codes.

#### 2. Can an academy change its admission arrangements?

An academy is required to consult in the same way as other admission authorities. Any objections to an Academy's admission arrangements are considered by the Office of the Schools Adjudicator.

#### 3. Who makes the decisions about admissions to an academy?

An academy is responsible for its own admissions and makes the decisions in accordance with its published admission arrangements. However, academies are required, by their Funding Agreements, to be part of the Local Authority's co-ordinated admission arrangements.

#### 4. What are the Local Authority's co-ordinated admission arrangements?

All local authorities are required, by legislation, to have in place a scheme for co-ordinating admissions to schools and academies in their area. There is no requirement to co-ordinate applications for places at sixth forms. Schools / academies are consulted on the provisions within the co-ordinated schemes. There are currently two schemes, one for middle, lower and primary phase schools / academies and one for secondary, upper and UTC phase schools / academies. The schemes are on the local authority's website.

<http://www.centralbedfordshire.gov.uk/school/admissions/arrangements/determined.aspx>

#### 5. What are the main obligations within the co-ordinated schemes on local authorities, schools and academies?

- Local authorities are required to make available an application form to enable parents living within their area to express at least 3 preferences for schools / academies, both as part of the normal admissions round and for in-year admissions
- Point of entry applications must be submitted to the local authority in which the child lives. That authority must pass information on applications to schools that are their own admission authority, to academies and to other authorities if the application is for a place in another local authority area school / academy
- For admissions during the normal admissions round, own admission authority schools and academies are required to rank the applications against their admissions criteria and provide the local authority with a ranked list. For in-year applications, schools / academies must inform the local authority whether a place is available to be offered
- The local authority will input the data and where a child is eligible for a place at more than one school / academy, the school / academy ranked highest on the application form will be offered
- Schools / academies are not permitted to inform parents of the outcome of their application. Only the local authority can make an official offer of a place or send a refusal letter. Schools / academies must not contact parents about the outcome of their applications until after these offers have been made.

## **6. Who organises admission appeals?**

The clerking of admission appeals is available for academies to purchase from Central Bedfordshire Council Committee Services as a buy back service. Academies should contact the Clerk to the Appeals Panel if they would like the local authority to arrange the clerking of appeals (there is a charge for this service). Alternatively an academy can schedule their own appeals and independent panel following the statutory requirements of the School Admission Appeal Code (2012); they must ensure the panel members are fully trained and totally independent of the academy. The preparation and presentation of the case for non admission is also a buy back service that the Council currently offers to academies.

## **7. Are academies required to accept pupils through the Fair Access Protocol?**

All schools and academies are required to participate in their local authority's protocol.

## **Finance**

### **1. We already have a bank account, can we continue to use the same one after we become an academy?**

No, the Academy trust will need to set up a new bank account to receive Education and Skills Funding Agency (ESFA) grants. The existing bank account will be closed by the local authority (LA) once the school has submitted a year end pack as at the day before conversion.

### **2. What happens to surplus and deficit balances of the maintained school?**

The Academy will inherit the closing final balance of the predecessor maintained school at the date the school ceases to be maintained by the LA. This will apply whether the balance is a surplus or a deficit although the rules differ for schools that convert as sponsored academies.

### **3. What financial information does the LA require from the converting school in order to close the schools accounts?**

The School will be required to submit a full year end set of accounts as at the last day before converting to an academy. This must include the following documents:

- Final income and expenditure statement signed by Head teacher & Chair of Governors
- Final balance sheet agreeing to I&E signed by Head teacher & Chair of Governors
- Final Cash flow signed by Head teacher & Chair of Governors
- Final Bank and Petty Cash reconciliation
- Latest Bank Statement
- List and back-up to all Accruals
- If the school has any Stock on its balance sheet a copy of the stock certificate
- System print agreeing to I&E
- Outstanding VAT claims agreeing to VAT Debtor on balance sheet
- CFR data to be uploaded on behalf of the school at the end of the financial year. Schools converting partway through the financial year are required to submit a CFR return for the period 1<sup>st</sup> April to the last day before conversion.

### **4. When will any surplus balance be paid over to the new academy?**

The LA is required to calculate the surplus at the date the maintained school closes and pay an amount equal to that to the academy trust. However since the surplus cannot be calculated until the maintained schools accounts are fully closed down, which may take several months, it is likely to be up to four months before the Trust receives payment. More information on surpluses is available on the DfE's website.

<https://www.gov.uk/government/publications/academy-conversion-surplus-and-deficit-balance-transfer-process>

The LA will be responsible for closing the maintained school's bank account.

### **5. What if the converting school has a deficit?**

A different procedure will be adopted; deficit balances will be paid to the LA by the ESFA. The procedure differs for schools that convert as sponsored academies.

### **6. If a school converts mid year how will the budget be calculated?**

The School will be sent a revised payment schedule showing the school's budget up to the date of conversion. This budget should match the school's budget on its local system.

### **7. How is funding calculated when converting to academy?**

Funding for academies will continue to be calculated by the LA using the LA's Formula. Once calculated, Schools Block and High Needs Place Funding will be paid direct to the academy by the ESFA. There is some specific funding where academies will still be paid by the LA, please refer below.

### **8. How is Devolved Formula Capital (DFC) paid to academies?**

New academies will receive DFC from the LA only for the first year of conversion. DFC will be calculated and published on the DfE website.

<https://www.gov.uk/guidance/academies-capital-funding-and-support>

### **9. Will a school which is converted to academy receive any funding from LA?**

As per DfE guidance all academies will receive, where applicable, Individual Assigned Pupil Statementing; Early Years and High Needs Provision Top-up Funding from the LA.

### **10. How is Early Years (EY) funding calculated and paid to academies?**

The EY funding will be determined by the LA Early Years Single Funding Formula (EYSFF) and will be paid directly from the LA starting from conversion date. To view the most recently added and updated FAQs, please see the following link to the DfE's Academy Finance FAQs section.

<https://www.gov.uk/guidance/convert-to-an-academy-information-for-schools>

## **Performance Team**

### **1. Now that I'm an academy, who do I need to send my statutory data to?**

- School Census and Workforce Census will be sent directly to the DfE.
- EYFSP and KS1 will still be collected by the Local Authority.
- Phonics Screening Check results will be collected by the Local Authority.
- KS2 Teacher Assessment will still be collected by the STA (Standards and Testing Agency).
- Notification of exclusions still needs to be provided to the Local Authority.

### **2. What about the other data I usually provide?**

The LA would still like to collect information such as your current and former roll, and other end of year assessments. This helps the LA to plan and provide services for all children and young people in the area.

### **3. Are there any data protection issues with sharing data with the LA?**

If schools and academies use the Privacy Notice suggested by Central Bedfordshire and the DfE then this covers sharing pupil information with the LA. A copy can be found on the Performance Hub

<http://www.centralbedfordshire.gov.uk/schools-portal/administration/school-privacy-notice.aspx>

### **4. What is the exact list of information that the LA would like, and do we get anything in return?**

A formal Data Sharing Agreement has been agreed between Central Bedfordshire Council and schools, setting out exactly what information is shared between the LA and schools and academies e.g. Provisional/Final Result Sheets. A copy is available on the Performance Hub:

<http://www.centralbedfordshire.gov.uk/schools-portal/performance-hub/information/agreement.aspx>

## **5. Will the Performance Team still provide support for the Census?**

Unfortunately the LA does not have access to the live collection so would not be in a position to provide support. The Academy team at the DfE should be able to help out or sign post.

## **6. We're getting more Freedom of Information (Fol) requests than we're used to. Do we have to do them?**

Previously, the LA has provided much information for Fol requests concerning schools. However, since changing to an academy, the role of providing this will now fall to the school.

If the Data Sharing Agreement is signed then the LA can still answer many queries on your behalf (if you would like), but there will inevitably be more coming to academies. More information on what you do and don't have to do can be found at:

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>

## **SEN and School Support Services**

### **1. How will we be funded for our statemented pupils and other pupils with SEN?**

Statemented Pupils are funded in exactly the same way as they are in maintained schools on the level of funding that has been agreed. The only difference is that we hold it in our budget and pay the Academy by cheque. For other SEN pupils, academies are funded through the ESFA by a direct grant.

### **2. How do we access SEN support services and will we have to buy them back?**

The DfE reviewed this element of funding in February 2011 following concerns raised by schools and local authorities. We would provide these services in the same way as we do for maintained schools. Details of what is provided and what can be bought back can be found in the 'Services to Schools Brochure'.

### **3. How can we access the Access and Inclusion Service and what do we have to pay for?**

Academies have to buy the services of the School Attendance Officers (i.e. casework, door-knocking, home visiting etc.) if they want them, but they get the statutory enforcement aspect (the serving of summonses and the presentation of court cases etc.) free as this aspect cannot be delegated. If they don't want to buy these services the local authority will still prosecute parents whose children attend the academy, but the academy will be responsible for producing and providing a file of evidence which will enable the local authority to bring the prosecution.

## **School Improvement**

### **Newly Qualified Teachers [NQTs]**

#### **1. Do academies need to use an Appropriate Body for induction of NQTs?**

Yes, the appointment of an Appropriate Body [AB] is a statutory requirement for the induction of NQTs. All local authorities are recognised as ABs.

#### **2. What are the statutory functions of an AB?**

The role is extensive and includes aspects such as: providing details to the National College for Teaching and Leadership (NCTL) of NQTs undertaking induction, maintaining records of all assessments, monitoring absences, ensuring schools/academies are aware of the statutory requirements regarding induction, providing training and support for NQTs and induction tutors, quality assuring the school's/academy's provision for NQTs and the assessments, ensuring support programmes are in place to help NQTs at risk of failure, etc.

### **3. Does the AB role need to be completed by Central Bedfordshire Council?**

No, but an academy must come to an agreement with an AB to carry out the statutory role. Academies which choose to use CBC will be offered a service level agreement [SLA] to cover this work; the current rate is £150 per NQT per term.

### **4. Can NQTs from academies attend the NQT Training?**

Yes, attendance at the training for NQTs is included as part of the service level agreement to help ensure they receive their statutory entitlement.

### **5. Can teachers from academies attend Professional Study Groups?**

Yes, the PSGs are open to all CBC schools and academies.

## **Statutory Assessment – Monitoring/Moderation**

**Do academies and free schools have to undertake Monitoring and Moderation exercises for:**

- **The new Year 1 phonics screening check**
- **Key Stage 1 National Curriculum assessments**
- **Key Stage 2 National Curriculum assessments, including the English writing assessment?**

It is a requirement of funding agreements for both academies and free schools that assessment arrangements are submitted for monitoring and moderation. Academy trusts must ensure this takes place at routine intervals, on the same basis as maintained schools.

The DfE has asked academy trusts to let their local authority know whether they wish to remain part of their arrangements for data collection, monitoring and moderation, or not.

If an academy trust wants to remain under their local authority's remit, it should contact the authority's assessment support team to confirm that this arrangement is possible.

If an academy trust would prefer an alternative agency to carry out its data collection, monitoring or moderation activity, then it is likely they will approach an alternative local authority. The local authority has the discretion to refuse requests from academies or free schools outside of its area. Academy trusts have been asked to confirm with the DfE that they have reached agreement with their chosen alternative provider.

## **Governor Training and support**

### **Can academies buy into the subscription for governor training?**

Yes, all academies and local authority schools in Central Bedfordshire are welcome to buy into the subscription package for training and support. Courses will be relevant for all academies with the exception of the Finance courses as different rules apply. See the School Governors' section on the Council's website:

<http://www.centralbedfordshire.gov.uk/school/governors/being.aspx>

## **Human Resource Services**

### **What HR processes should be followed when transferring to an academy?**

When converting to academy status all employees of the school are entitled to transfer to the employment of the academy in accordance with TUPE Regulations 2006 (as amended 2014) following a due diligence process which ensures that information relating to employees of the school and any liabilities relating to staffing are transferred in a timely manner and all information transferred is accurate.

The school will also need to complete a number of processes and tasks to ensure employees of the new academy are paid in a timely and accurate manner following the transfer. Further information on these processes is contained in this document.

To ensure all consultative and administrative processes are completed in accordance with employment legislation advice should be taken from HR Services at the earliest opportunity.

### **Who is the employer for Transfer purposes?**

If you are a community school Central Bedfordshire Council is the employer for TUPE purposes therefore CBC along with the school are required to consult with employees and the recognised trade unions. If you are a Foundation School or a Voluntary Controlled School the Governing Body is the employer and therefore the Governing Body is required to consult with the employees and recognised trade unions and should seek HR Advice from the schools HR provider and should seek HR Advice from the schools HR provider.

### **What does TUPE mean?**

**TRANSFER OF  
UNDERTAKINGS AND  
PROTECTION OF  
EMPLOYMENT**

TUPE 2006 entirely replaces the Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI 1981/1794) which have often been referred to as the TUPE regulations.

### **TUPE**

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246)<sup>1</sup> (referred to below as TUPE 2006 as amended 2014) is now the main piece of legislation governing the transfer of an undertaking, or part of one, to another. The regulations protect the rights of employees in a transfer situation in order for them to transfer to another employer on the same terms and conditions, with continuity of employment they have with the current organisation.

### **What do the TUPE Regulations ensure?**

- the transferee is aware of the employees' rights, obligations and liabilities upon transfer
- clarification of the circumstances when the ETO defence (see below) can be applied to change the terms and conditions of employment and in which employers can lawfully make transfer-related dismissals
- that transfers of insolvent businesses are more viable by introducing greater flexibility to attract potential buyers
- the transferor and transferee jointly and severally liable for any failure to inform and consult with the transferring employees
- the territorial application of TUPE is extended so that overseas employees may also be caught by the transfer.

### **What is a relevant transfer of an undertaking?**

TUPE will apply to what are known as 'relevant transfers' which may occur in a wide range of situations. The two broad categories are business transfers and service provision changes.

Some transfers will be both a business transfer and a service provision change.

## **Business transfers**

Business Transfers can be broken into two parts:

- Is there a 'stable economic entity' that is capable of being transferred?
- Will the economic entity retain its identity after the transfer in question?

Factors to decide if there is a stable economic entity that is capable of being transferred include the following:

- Is the type of business being conducted by the transferee (incoming business) the same as the transferor's (outgoing business)?
- Has there been a transfer of tangible assets such as building and moveable property (although this is not essential)?
- What is the value of the intangible assets at the time of the transfer?
- Have the majority of employees been taken over by the new employer?
- Have the customers been transferred?
- What is the degree of similarity of the activities carried on before and after?

If the answer to all (or in some cases several of) the above questions is 'yes', it is safe to assume that there has been a transfer of a stable economic entity. The absence of a profit-motive is not a determinative factor.

## **Service provision changes**

A service provision change occurs when a client who engages a contractor to do work on its behalf is either:

- reassigning such a contract, or
- bringing the work 'in-house' (a service provision change).

It will not be a service provision change if:

- the contract is wholly or mainly for the supply of goods for the client's use, or
- the activities are carried out in connection with a single specific event or a task of short-term duration.

## **The transfer from a school to an academy will therefore be classed as a Business Transfer**

### **How are Terms and Conditions of employment affected by TUPE?**

If a TUPE transfer applies, all terms and conditions of work and continuity of employment should be preserved. This principle applies to all employees who were employed in the entity transferred immediately before the transfer; and those who would have been so employed if they had not been unfairly dismissed for a reason connected with the transfer. Such a dismissal will be automatically unfair for a reason connected with the transfer unless it is for an 'economic, technical or organisational' (ETO) reason.

Human Resource Services will provide further advice on this matter during the conversion process.

### **What information is required to be provided by the transferor (current employer) in a TUPE transfer?**

Transferors (the current employer) are obliged to give the transferee (the new employer) written information about the employees who are to transfer and all the associated rights and obligations towards them. This information includes the identity and age of the employees who will transfer, information contained in the employees' written particulars of employment and details of any claims that the transferor reasonably believes might be brought.

As part of this process of due diligence, it is advised that the all employees of the school receives written information regarding the personal and employment details in order for them to check the accuracy of the data before it is transferred to the academy. This information should be provided to the employee under confidential cover for checking and returning.

Human Resource Services will provide further advice on this matter during the conversion process including the statutory timeframes for the provision of information during the transfer process.

**When is information regarding the staff transfer provided to the academy trust by the current employer?**

All information relating to the employee's subject to the transfer will be provided at least 28 days before the transfer or as soon as is reasonably practicable. This information is provided by the current employer (Local Authority if a community school) or Governing Body if a Foundation School or VC School to the Chair of the Academy Trust. This information is also contained in the Commercial Transfer Agreement (CTA) which is signed by all parties which also includes all other non HR aspects of the transfer.

**What is the consultation and information process?**

The employer has a responsibility to conduct a full and meaningful consultation with employees. It is recommended that the consultation period for the proposed transfer will last for a period of 30 days.

Along with all employees affected by the proposed transfer the recognised Trade Unions and Professional Associations of the Council should also be included in the consultation process.

Human Resource Services will provide further advice on this matter during the conversion process in order to ensure the correct information relating to the transfer is provided to all parties.

**What liabilities are passed to the academy following transfer?**

Following the transfer the academy will take over the liability for all statutory rights, claims and liabilities arising from the contract of employment, for example liabilities in tort, unfair dismissal and discrimination claims with the exception to this rule being criminal liabilities.

**Does the academy need to provide a pension scheme for employees?**

If the previous employer provided a pension scheme then the new employer has to provide some form of pension arrangement for employees who were eligible for, or members of the old employer's scheme. Academy schools are defined as (scheduled) scheme employers within the Local Government Pension Scheme regulations and therefore staff employed on NJC Conditions of Service will be eligible to continue to contribute to the LGPS Scheme.

Employees on Teachers Conditions of Service will continue to be eligible to contribute to the Teachers Pension Scheme.

**Does the academy need to inform the LGPS scheme provider of the conversion to academy?**

The academy needs to write to the LGPS Scheme Provider in order for the actuaries of the scheme to calculate an employer's contribution rate following the date of transfer. Information relating to the employees contributing to the scheme at the point of transfer is required to be provided to the LGPS Scheme Provider and the Human Resource Services will provide further advice on this matter during the conversion process.

**Does the academy need to inform the LGPS scheme provider of the conversion to academy?**

The process outlined above does not need to be followed for teachers pensions however an academy, as the employer, has a statutory requirement to make a pensions return to teachers pensions on an annual basis to inform them of the pensionable service for it's teachers who contribute to the pension scheme.



Human Resource Services will provide further advice on this matter during the conversion process.

### **Should the academy take legal advice in relation to the conversion?**

Legal advice should be taken by both the Transferor (current employer) and Transferee (new employer) in relation to the transfer. Legal advice should be taken throughout the conversion process in relation to all aspects of the conversion which will include but not be limited to:

- \* Transfer of Employee's and their related terms and conditions of employment
- \* Buildings and moveable property
- \* IT and associated electronic property
- \* Any other relevant legal issue relating to the transfer

A Commercial Transfer Agreement will be drafted between the relevant legal advisors which is required to be signed by the Transferor and Transferee prior to the date of transfer.

### **What may be the main concerns for transferring employees?**

- \* Terms & Conditions of Employment
- \* Pension Arrangements
- \* Career and promotion prospects
- \* Job Security
- \* Location
- \* Childcare Arrangements

The TUPE process is a time of change for employee's and provision should therefore be made for all employee's to be able to raise any questions they may have regarding the transfer or how the transfer may affect them during the consultation and transfer process.

### **How can the staff group contribute to the consultation process?**

Should any of the staff group have comments or questions they would wish to make or raise as part of the consultation process they may wish to raise these with their Trade Union or Professional Association who will raise these with the relevant officers of the current employer. The school should also provide a contact for employees at the school.

Human Resource Services will provide further advice on this matter during the conversion process

### **Should the school be undertaking an Equality Impact Assessment (EIA) with regard to the conversion to academy status?**

Statutory Authorities must ensure that they provide services which address the needs of all members of the community and that the workforce at all levels is as representative as possible of the community it serves.

Equality Impact Assessments (EIAs) are conducted as strategies, policies, services and decisions are developed and/or reviewed to:

- Consider issues relating to age, carers disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, or sexual orientation;
- Obtain a clearer understanding of how different groups may be affected;

- Identify changes which may need to be built into an initiative as it is developed;
- Comply with legislative requirements; and
- Identify good practice.

During the consultation process for a school considering a conversion to Academy status and during the staffing consultation it is good practice to complete the EIA. The EIA is a working document that should be reviewed during the transfer process. The Trade Unions and Professional Associations may ask for a copy of the EIA during the conversion process.

Further information and advice with regard to the completion of the EIA can be obtained from Human Resource Services.

### **How will the academy ensure that employees are paid correctly following academy conversion?**

The academy will need to determine who their payroll provider will be post conversion and who the academy is to bank with. Once these decisions have been made the academy will need to ensure that a number of actions are completed in order to ensure payment of staff salaries following the academy conversion date.

You should seek further information/advice with regard to the completion of the payroll processes from Human Resource Services.

### **Does the same TUPE process need to be followed if the school is a foundation school or voluntary controlled school and therefore the Governing Body is the current employer?**

The processes outlined above will need to be followed by foundation schools or voluntary controlled Schools. The academy trust is an employer in their own right and therefore the transfer will be between the current employing governing body and the academy trust governing body. The consultation processes will therefore be between the governing body, employees and the academy trust.

### **Where can I find out further information and receive support and guidance during the transfer process?**

Human Resource Services will provide support and advice to the school during the conversion process.

### **If you have any questions your first contact is:**

Admissions - 0300 300 8037

Finance - 0300 300 6269

Human Resources - HRServicesSchools@centralbedfordshire.gov.uk

Performance Team - 0300 300 8304

Learning and School Support – 0300 300 8304

Access and Inclusion - 0300 300 4953

Further information regarding Academy conversion can also be found at <http://www.local.gov.uk/>