



**PROPOSED ACADEMY TO REPLACE THE LINDSEY SCHOOL & COMMUNITY ARTS COLLEGE- FREQUENTLY ASKED QUESTIONS**

<p>As you may already be aware, in line with Council’s vision for transforming secondary education in North East Lincolnshire, an academy is proposed which requires the closure of Lindsey School and Community Arts College. We understand that this will raise many queries and concerns and have set out below what we anticipate will be some common questions relating to this change. In particular, we have provided some information around the legislation, known as the <b>TUPE</b> Regulations, which protect employees during changes involving a transfer of undertaking between employers. We hope the responses will both reassure you and assist, as much as is possible, in achieving a smooth transition should the academy proposal be confirmed.</p>	
<p><b>1. What is an Academy?</b></p>	<p>Academies are <i>independent</i> schools within the state sector that are funded directly by the Department and <i>not</i> maintained by the local authority. They may replace schools or be new schools within the area where additional pupil places are required. A change to academy status therefore involves a change of employer.</p>
<p><b>2. When will our school become an Academy?</b></p>	<p>The intention is for the academy to open on 1<sup>st</sup> September 2010.</p>
<p><b>3 What will happen now that the Expression of Interest is agreed?</b></p>	<p>After consultation, the sponsors will design a curriculum that meets the community’s aspirations and needs as well as matching the sponsor’s vision. The Academy will be staffed and managed to deliver this curriculum in a way that raises achievement for all students. Under European Union TUPE legislation, existing staff who match the staffing requirements of the new Academy will be transferred from the employment of North East Lincolnshire into the employment of Tollbar Edge.</p>
<p><b>4. Who employs staff within an Academy?</b></p>	<p>Academies operate independently of the Local Authority. The governing body is the employer of staff working in the Academy and in such circumstances staff are not employees of North East Lincolnshire Council.</p>

<p><b>5. How will a change of Employer affect me?</b></p>	<p>Full and part time employees who match the staffing requirements of the new Academy, and who are currently employed by North East Lincolnshire Council and at Lindsey School (the "transferor") <b>when the transfer takes effect</b>, automatically become employees of the new employer, the academy (the "transferee") on the same terms and conditions. It is as if their contracts of employment had originally been made with the transferee employer. The Transfer of Undertakings (Protection of Employment) Regulations 2006 are intended to safeguard employees' rights when the business or organisation in which they are employed changes hands. This is known as the <b>TUPE Regulations</b>.</p> <p>The Regulations contain specific provisions to protect employees from dismissal before or after a relevant transfer. Representatives of affected employees have a right to be informed about a prospective transfer. They must also be consulted about any measures which the transferor or transferee employer envisages taking concerning the affected employees. No time limits (minimum or maximum) are specified for consultation to take place. The Regulations also place a duty on the original employer to provide information about the transferring workforce to the new employer before the transfer occurs.</p>
<p><b>6. Will TUPE apply to people appointed after the transfer?</b></p>	<p>No. <b>TUPE</b> does not safeguard employment rights for new recruits to an Academy who may find themselves on different terms and conditions to those transferring.</p>
<p><b>7 How will the transfer affect my terms and conditions of employment?</b></p>	<p>The TUPE Regulations protect pay, and terms and conditions of transferred employees. Your present hours of work, rate of pay, annual leave entitlement, sick pay or maternity entitlement and other current conditions of employment are preserved. This means that your contract of employment at the date of transfer will automatically transfer to the new employer <b>unless you voluntarily accept new conditions</b>.</p>
<p><b>8 Can my pay, terms and conditions be changed by the new employer?</b></p>	<p>The new employer may not unilaterally change the terms and conditions of employment of staff who are transferred. However, there is no rule of law that protects conditions of employment transferred under TUPE for all time after the transfer. The new employer will have the freedom to negotiate agreed changes in terms and conditions, and may introduce new arrangements in due course if he/she can show a need to do so, which is not connected with the transfer. Such changes will need to be consulted with staff and TU representatives.</p> <p>The terms of conditions of your employment transfer and cannot be terminated or changed by reason of the transfer alone. The new employer may not vary your contract where the sole or principal reason is the transfer itself; or a reason connected with a transfer which is <i>not</i> an "economic, technical or organisational reason entailing changes in the workforce". This is known as ETO.</p>

<p><b>9 What will happen to my pension?</b></p>	<p>The TUPE regulations protect accrued pension rights. All staff employed by Academies automatically fall within the Teachers Pension Scheme or the Local Government Pension Scheme on the same basis as teaching and support staff in maintained schools. Taking up a post in an Academy will be the same as changing jobs between maintained schools as far as pension arrangements are concerned. Employees will, of course, retain the right to opt out of either scheme and make their own pension arrangements should they choose to do so.</p>
<p><b>10 How will future pay be determined?</b></p>	<p>Academies - as independent schools - are not bound by the Teachers Pay and Conditions Document (STPCD) or by guidance on support staff pay and conditions issued by the National Joint Council for Local Government Services (NJC). Instead Academies and their staff are able to negotiate pay and conditions arrangements to meet the needs of the Academy and its pupils.</p>
<p><b>11 What happens to my previous service?</b></p>	<p>Under the TUPE regulations continuity of employment is preserved and continuous Local Government Service previously accrued will transfer to the new employer. Similarly should a member of staff transfer from an Academy to a maintained school service will be aggregated. Academies have been added to the Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order 1999. This means that service in an Academy counts as qualifying service in the same way, and subject only to the same restrictions, as service in a maintained school.</p>
<p><b>12 Do I have to transfer to the Academy?</b></p>	<p>If this option for change goes ahead and you are covered by the transfer, you may decide not to transfer to the Academy. However, if you do so, your employment with your existing employer will come to an end as if you had resigned, not as if you had been dismissed.</p>

<p><b>13 How will I /my Professional Association/Trade Union be involved in the process?</b></p>	<p>An essential part of the TUPE Regulations includes consulting with transferring employees.</p> <p>The School/LA and the Academy as the new employer must inform and consult with all recognised independent trade unions. The consultation must be undertaken with a view to reaching agreement and the employer must consider and respond to any representations made by the trade unions. You and your representatives will be informed of the following:</p> <ul style="list-style-type: none"> <li>• the fact there is a transfer happening</li> <li>• approximately when it is happening</li> <li>• the reasons why it is happening</li> </ul> <p>the legal, social and economic implications for the affected employees</p> <p>the measures which the employer intends to take in relation to those employees</p> <p>Your views and concerns will be addressed throughout the consultation process and you will have an ongoing opportunity to raise any queries either directly or through your union representation.</p>
<p><b>14 Is there a time period after the transfer when the new employer would be able to vary my terms and conditions?</b></p>	<p>With the passage of time, changes arising may result for reasons other than those connected with the transfer. Employers will sometimes seek to "harmonise" terms and conditions of their existing employees and those of the transferred employees. However, this must be assessed in the light of all the circumstances of the individual case, and will vary from case to case. There is no "rule of thumb" to define a period of time after which it is safe to assume that any change is unconnected with the transfer.</p>
<p><b>15 What if transferring employees prefer the Academy's terms and conditions to their existing terms and conditions that transfer?</b></p>	<p>Part 3 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) - A Guide to the 2006 TUPE Regulations for Employees, Employers and Representatives has been amended to make it clear that changes to contracts which are entirely positive are not prevented by the Regulations.</p>
<p><b>16 Who can I contact if I have any further questions about TUPE?</b></p>	<p>In the first instance you can contact either the School's HR Consultant at NEL or your Trade Union/Professional Association.</p>