

Guidance on Church of England Education Office Template Terms and Conditions of Employment and Offer Letters for use in Church of England and Church in Wales Foundation or Voluntary Aided Schools and Church of England Academies

Purpose of this Guidance

This guidance should be read alongside the template terms and conditions of employment (“Terms and Conditions”) and offer letters (“Offer Letters”) for employing staff in Church of England and Church in Wales Foundation or voluntary aided schools (“VA schools”) and academies in England.

The purpose of this guidance document is to supplement the drafting and guidance notes/footnotes in the margin of the template Terms and Conditions and Offer Letters and to provide additional information, guidance and explanation.

Purpose of the template documents

The Church of England Education Office has commissioned Winckworth Sherwood to provide new template Terms and Conditions and Offer Letters for those employed by Church of England and Church in Wales VA schools and voluntary academies. This new suite of documents is intended to be adapted to reflect the context of the particular educational establishment and its local circumstances, **ensuring proper consultation with trade unions and staff**, as appropriate.

The Church of England Education Office is mindful that many of its Foundation, VA schools and academies are increasingly under resourced and often have limited input from external sources without significant cost. Where additional support and guidance is available there is not always an appreciation by third party advisers of the specific legal framework that applies to Foundation, VA schools and church academies. Consequently, we have taken the step of providing this resource to offer updated, comprehensive template documents to assist our schools and academies to fulfil their role as the employer and to clearly set out the expectations and requirements of staff in their establishments. However, it is important to note that the Church of England Education Office does not *require* schools and academies to use these templates. Having said that, it is advisable to retain the provisions regarding upholding Religious Ethos, and for employees to have regard to the advice, guidance and directions of the Diocesan Board of Education in relation to the Diocesan Board of Education Measure 2021, and governance of the school/academy in accordance with the founding documents.

The new template documents continue to place, and reinforce, the Church of England/Church in Wales vision for education, which is to be deeply Christian, serving the common good. Church of England and Church in Wales VA Schools and academies are provided with this resource to help with the preservation and development of the religious character of the establishment so that the school’s Governing Body or the Academy Trust Company can meet its obligations relating to the provision of education as set out in their founding documents.

Where Voluntary Controlled (VC) Church of England and Church in Wales schools wish to use these template documents, it is possible that they can be adapted to suit their particular needs, subject always to obtaining the consent of the Local Authority, who is the employer of staff in VC schools.

Voluntary Status

In VA Schools (and in Foundation schools) the employer of staff is the Governing Body (the “Governing Body”). In academies, which are independent schools, the employer of staff is the Academy Trust Company (the “Trust”) which has a board of directors (the “Board”) to run the Trust. Trusts may have just one academy; a Single Academy Trust, or “SAT”. Or they may have a number of academies and be called a Multi-Academy Trust, or “MAT”. MATs are reminded that, as the employer of *all* staff across *all* the academies in the MAT, decisions relating to matters such as terms and conditions of employment, pay, benefits, dealing with requests for time off, implementing decision-making under workplace policies etc should be made in such a way that ensures, as far as possible and/or required, that MAT employees are treated fairly and consistently, especially since employees in one academy in a MAT will be able to use a comparator (for the purposes of discrimination claims and equal pay claims, for example) at another academy in the MAT. Often MATs are made of up previously maintained schools which have converted to academies and joined the MAT. As such, those academies may be used to doing things in their own way, as they always have done; however, it is inadvisable and potentially legally unsafe for academies to act without the authority of the MAT as ultimately, the MAT is liable for the acts/omissions of *all* of its academies (and employees).

Staffing at VA Schools, Foundation Schools and Academies¹ – School Standards and Framework Act 1998

The School Standards and Framework Act 1998 (“SSFA”) permits VA Schools² and independent schools with a religious character³, which includes voluntary academies, to give preference in relation to the **appointment, remuneration or promotion of teachers** to those whose religious opinions are in accordance with the tenets of the religion or religious denomination of the school/academy; or who attend religious worship in accordance with those tenets; or who give, or are willing to give, religious education at the school/academy in accordance with those tenets. This also applies to certain teaching staff in Foundation Schools⁴.

It is therefore optional and at the discretion of the Governing Body or Trust to consider these specific freedoms when making appointments, especially to roles where the school or academy’s religious character is central to their role, such as, potentially, executive appointments and senior leadership posts. In all cases, the Head Teacher, Executive Headteacher and/or CEO, must be committed to leading and/or delivering on the aspects relevant to the Christian character of the establishment.

The SSFA also provides that regard may be had, in connection with the **termination** of the employment of any teacher at the school/academy, to any conduct which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious denomination of the school/academy. This legislative freedom is referred to in the template Term and Conditions documents.

Template Documents

The new templates are split into categories and cover a variety of roles from executive posts, to teaching and support staff roles, as well as casual staff. Winckworth Sherwood have produced the new templates and the contractual content is comprehensive, to ensure that all successful appointees should have a thorough understanding of the context in which they

¹ Voluntary academies includes VA Model Academies which are Church Majority Academy Trusts

² S.60(5) SSFA 1998.

³ S.124A SSFA 1998.

⁴ See S.60(3) SSFA 1998 which applies s.60(5) – please seek advice on the applicability of the provisions of the SSFA as they apply to Foundation Schools with a religious character, as may be necessary.

are being employed to work. The template Terms and Conditions and Offer Letters have been through a period of consultation with the National trade unions **but will still require local consultation.**

The Church of England Education Office believes that the introduction of template standard Terms and Conditions of employment with accompanying, tailored Offer Letter provides a more manageable and efficient system of issuing and maintaining employee contracts at school or trust/academy level. Each new appointee will receive a copy of the standard Terms and Conditions for the post (which can be tailored by the employer to meet its own specific, local context and needs) along with an Offer Letter which has been adapted to record the individual's specific terms of employment, such as their place of work, commencement date and dates of continuity of employment, type of contract, hours, salary, benefits etc. This allows each employer to simply amend the appropriate template Offer Letter when recruiting and means they need only receive back a signed copy of the Offer Letter for the personnel file. Additionally, where changes to the standard Terms and Conditions are made to ensure they are brought up to date and reflect any changes to legislation, this can be achieved without needing to issue new Terms and Conditions to each affected member of staff; depending on the change being made, consulting the Unions, where appropriate, and notifying employees of the change(s) in writing and directing them to the updated Terms and Conditions will suffice.

The new templates also take account of the ability of academies to make executive appointments. Therefore, we have provided template Executive Headteacher Terms and Conditions and Offer Letters, as well as new template Terms and Conditions and Offer Letters for Trust executive post-holders/senior support staff to cover posts such as, for example, Chief Executive Officer, Chief Operating Officer, Chief Finance Officer, Human Resources Director etc. In the academy context, these roles are often a hybrid mix of Burgundy Book, Green Book and other terms and conditions that may be found in a more corporate employment context e.g. post-termination restrictions etc (see below for more information). The templates are a starting point, allowing Trusts the freedom to adapt the terms to suit their own specific needs.

Governing Bodies and Trusts are expected to review the template Terms and Conditions and Offer Letters and amend to suit their specific needs, to meet their legal duties and dovetail with their HR policies, and to consult with trade unions and their workforce, as required. Schools and academies who are using these templates should consult with their Diocese and must take independent legal advice as to the suitability of the adapted version prior to implementation.

The Church of England Education Office and Winckworth Sherwood accept no liability in respect of the template documents or for any loss or damage (howsoever caused) which any end user or other third party may suffer as a result of using and/or relying on them and/or any of their provisions.

Who are the templates aimed at?

The template Terms and Conditions and Offer Letters are designed to be used for new appointments so that, with natural staff turnover, employers will eventually employ most, if not all, staff on these contracts. This will, of course, lead to a two-tier workforce for a period of time, however, the education sector is very familiar with managing different contracts under one employer for various reasons, including the application of TUPE and the introduction of academies.

Where an employer wishes to introduce the new template Terms and Conditions and Offer Letters across their workforce, replacing existing contracts of employment for existing staff members, employers must first seek legal advice. Where harmonisation of contractual terms and conditions will amount to a variation of existing staff members terms and conditions, it may still be possible to harmonise to eliminate a tiered workforce. However, employers will need to ensure they have

sound legally permissible reasons, various factors need to be taken into account before implementing such changes and a proper process should be followed. Employers must also consult with any recognised trade unions, employee representatives and/or those affected employees and provide the requisite notice before the variation takes effect.

Adapting the template Terms and Conditions and Offer Letters

The purpose of the template documents is to provide a starting point for employers to adapt to meet their own specific needs in consultation with their workforce and local union representation. The contractual clauses in the template documents are not drafted in such a way that they are mandatory. Despite the fact that academies are free to set their own terms and conditions of employment, it is the Church of England Education Office's expectation that academies will offer employment on terms which are **no less favourable** than the nationally agreed terms and conditions for staff employed in maintained schools i.e. Burgundy Book and Green Book.

The Church of England Education Office is seeking to provide an impartial, valuable resource to all of its schools and academies across England and Wales, numbering approximately 4,700 separate educational institutions, and as such it is not possible to provide a template set of Terms and Conditions and Offer Letters that can meet the specific needs of all of those separate employers.

The template documents will be available for download and amendment, subject to local advice and consultation, to ensure they meet the specific needs of the employer. For all templates, the parts highlighted in yellow need to be tailored at the employer level. Yellow highlighting indicates the user must EITHER delete from the choices provided OR insert information. The templates include options which are indicated by the use of 'EITHER' and 'OR' – select the appropriate wording (and amend where necessary) and delete all that does not apply.

The template Terms and Conditions of employment and Offer Letters for all school roles are applicable for all Church of England and all Church in Wales Foundation and VA schools. The documents take account of differences between the two systems and employers will need to ensure that they delete whichever of the English or Welsh contractual terms do not apply to them based on the country in which the school is located.

As a reminder, Governing Bodies and Trusts are expected to review the template Terms and Conditions and Offer Letters and amend to suit their specific needs, to meet their legal duties and dovetail with their HR policies, and to consult with trade unions and their workforce, as required. If significant changes are made employers should consult with their Diocese and may need to take independent legal advice as to the suitability of the adapted version prior to implementation.

Changes to the documents may affect the numbering and employers are advised to ensure that the clause numbering and any cross referencing to appropriate clause or paragraph numbers in the template Terms and Conditions and Offer Letters are correct before finalising and issuing.

The table in appendix I sets out the main areas which require employer input with advice and/or an explanation of the purpose of the clause and how it should be adapted by the employer.

Template Offer Letters

The template Offer Letters include commentary and footnotes to assist the employer to adapt the documents to meet their own specific needs and the needs of the role. The commentary and footnotes must be deleted before being finalised and issued to the prospective employee.

It is expected that Governing Bodies and Trusts will provide a comprehensive induction into the role and the school/academy for new appointments. The Church of England Education Office would expect that induction will include an overview of the religious character of the school/academy, the diocese and wider family of diocesan schools and the particular governance arrangements for church schools and academies. The extent of the information to be provided in this regard will likely be linked to the role; executive appointments and senior leadership will be expected to have a full understanding of the legal framework in which the School/Trust operates to ensure compliance with the Governing Body's/Trust's founding documents and all relevant statutory requirements and issues of compliance.

General Advice

Employers are reminded that these documents are templates and that where an employer considers that an employee has acted in breach of the specific provisions of their contract, they are advised to seek HR and/or legal advice to ensure that any action to be taken is reasonable and proportionate in the particular circumstances. In providing comprehensive templates for all Church of England and Church in Wales Foundation and VA Schools and academies, the documents include references to employment issues that may need to be dealt with via the appropriate workplace policies, for example, discipline, appraisal, capability and sickness absence. It is envisaged and advised that employers will always deal with such issues in accordance with those policies.

It is not expected that employers will seek to take action against employees for minor breaches of the contractual provisions where a breach is not relevant to the intention behind the clause. As an example, we would not expect to see action being taken for breach of contract where an employee fails to do something in his/her role as director for a Group Company, where there is no impact on his/her substantive role - see clause 6(f) in the Academy Headteacher contract, for example. An additional example would be an employee's failure to notify the employer of any claim brought or settlement received in respect of an injury for which the employee is, or has been, in receipt of occupational sick pay. The intention behind the clause is to ensure the employee does not recover for the same loss twice i.e. through occupational sick pay and then compensation for their injury from a third party or insurer. Therefore, it is not expected that employers would take action in respect of a failure to notify immediately, per se, but that employers would act reasonably in considering the circumstances relevant to why the employee did not notify them in accordance with the clause. The overriding principle when operating the Terms and Conditions and Offer Letters at a local level is that the employer should act fairly and reasonably, in accordance with the requirements of the law and sector best practice, as appropriate.

Feedback and further support

The Church of England Education Office is not able to advise or give any guidance on whether harmonisation is possible and/or advisable in individual cases and would recommend that employers seek their own advice from their legal provider. Alternatively, schools and academies may independently commission Winckworth Sherwood for additional support in using the template documents and can also provide the full range of legal and HR support. You can contact their Schools HR team by email: SchoolsHR@wslaw.co.uk.

The Church of England Education Office is always happy to receive feedback on the template documents to ensure they remain fit for purpose and user friendly, and to ensure they meet the needs of employers and employees as far as possible when producing a suite of templates for such a large number of employers. Please provide feedback to Robyn Ford at the Church of England Education Office via robyn.ford@churchofengland.org.

APPENDIX I

Contract type	Terms and conditions – clause name	Advice and guidance
Academy and School – Terms and Conditions – All staff level	Beginning part highlighted in yellow	Read, action and delete before issuing Terms and Conditions, as appropriate.
Academy – Terms and Conditions - All staff level	Definitions	<p>'Group Company' and 'Subsidiary and Holding Company'.</p> <p>Some Trusts may offer traded services which fall outside the scope of their objects i.e. providing education. This could include offering school merchandise for sale, hiring out school premises for events not linked to education (e.g. birthday parties), providing catering to local schools or other organisations etc. In cases such as this, the employer may be required to set up a trading company and, where this is the case, this clause which defines 'Group Company' may need to be incorporated in the contract so that the employee is bound to act in such a way that does not infringe any Group Company's rights and/or provide assistance to such Group Company as may be reasonably required.</p> <p>We expect that in most cases that employers can remove this definition, and the corresponding definition of 'Subsidiary and Holding Company'. Please remember to delete all references to these terms from the entire document, not just from the 'definitions' clause.</p>
Academy – Terms and Conditions - All Staff level	Definitions – Local Governing Body/Local Academy Committee/ [INSERT RELEVANT TERMINOLOGY]	Amend to reflect the terminology used in the specific trust. Note that, in a MAT, the Scheme of Delegation will specify the Local Governing Body's remit and this should be reflected as appropriate in the Terms and Conditions.
Academy – Terms and Conditions - Executive Staff and Executive Headteacher	Definitions – Restricted Person	<p>Delete this definition if not incorporating post-termination restrictions in the Terms and Conditions.</p> <p>Where employers are incorporating post-termination restrictions, the definition of Restricted Person needs to be completed (see the Drafting Note in the relevant template Terms and Conditions). The aim is to identify the level of personnel the employer would not want the individual to poach from the academy if they were to leave. Usually, this would cover senior level personnel with whom the individual has had material dealings in 12 months prior to the date of termination of employment.</p>
Academy and School – Terms and Conditions – All staff level	Duties	<p>Employers are encouraged to ensure that the duties listed are relevant to the broad role and that the detailed duties relevant to the specific post are contained in the job description.</p> <p>The duties clause references the appraisal objectives and employers are reminded to ensure that failure to meet appraisal objectives is dealt with in accordance with the Appraisal Policy and that an employee is not held to be in breach of contract where there is a failure to meet appraisal objectives.</p>
Academy and School – Terms and Conditions – All staff level	Probationary Period	<p>Delete/amend to suit employer's requirements.</p> <p>This clause allows the employer to terminate with short notice during the probationary period, but the employee will be bound to give notice as per Notice of Termination clause. Employers may consider amending this to reflect the same notice provisions either way for parity.</p>
Academy and School – Terms and Conditions – All staff level	Conditions and Warranties - Clause – employment conditional upon disclosure of previous disciplinary/capability/gross misconduct dismissal etc	This clause can be deleted, amended, or left as is depending on the individual employer's requirements. Winckworth Sherwood's advice to employers would be to include it to ensure that full disclosure is made at the recruitment stage to determine the individual's suitability for the post and for employment in a Church of England or Church in Wales School, or a Church of England Academy.
Academy and School – Terms and Conditions – Executive Staff, Executive Headteacher, Headteacher	Bonus	<p>Where a discretionary bonus scheme is offered, this clause should be amended to meet the specific local arrangements. The template Terms and Conditions provide areas for consideration. Employers may wish to seek legal advice when considering offering a bonus scheme to avoid the risk of any bonus scheme which is intended to be discretionary, becoming contractual.</p> <p>Where a discretionary bonus scheme is not offered, delete all sub-clauses relating to bonus.</p>

Contract type	Terms and conditions – clause name	Advice and guidance
Academy and School – Terms and Conditions – All staff level	Sick Pay	<p>For Schools:</p> <p>Delete to suit employer’s requirements. The ‘either’ option applies where the employer has its own sick pay policy which sets out the sick pay provisions <i>which may be Green Book or Burgundy Book sick pay provisions or more generous.</i></p> <p>The ‘or’ option will apply where the employer adopts Green Book or Burgundy Book sick pay provisions and does not have its own policy.</p> <p>For academies:</p> <p>Delete to suit employer’s requirements. The ‘either’ option applies where the employer has its own sick pay policy which sets out the sick pay provisions <i>which the Church of England Education Office would expect to be no less favourable than Green Book or Burgundy Book sick pay provisions.</i></p> <p>The ‘or’ option will apply where the employer adopts Green Book or Burgundy Book sick pay provisions and does not have its own policy.</p>
Academy and Schools – Terms and Conditions – All staff level	Maternity, Paternity, Adoption and Shared Parental Leave	<p>For Schools:</p> <p>Delete to suit employer’s requirements. The ‘either’ option applies where the employer has its own family rights policy (or equivalent) which sets out the maternity leave and pay provisions <i>which may be Green Book or Burgundy Book maternity leave and pay provisions or more generous.</i></p> <p>The ‘or’ option will apply where the employer adopts Green Book or Burgundy Book maternity leave and pay provisions but does not have its own policy.</p> <p>For Academies:</p> <p>Delete to suit employer’s requirements. The ‘either’ option applies where the employer has its own family rights policy (or equivalent) which sets out the maternity leave and pay provisions <i>which the Church of England Education Office expects will be no less favourable than the Green Book or Burgundy Book maternity leave and pay provisions.</i></p> <p>The ‘or’ option will apply where the employer adopts Green Book or Burgundy Book maternity leave and pay provisions and does not have its own policy.</p>
Academy and Schools – Terms and Conditions – All staff level	Time off for Dependants	<p>Delete to suit employer’s requirements.</p> <p>The ‘either’ option applies where the employer has its own policy dealing with time off for dependants <i>which may or may not reflect the statutory position.</i></p> <p>The ‘or’ option applies where the employer does not have its own written policy and relies on the statutory position.</p>
Academy and School - Terms and Conditions - All staff level	Place of Work	<p>Employers are reminded that where they wish to operate a ‘mobility clause’ i.e. a clause which allows them to move an employee from one location to another, they must inform and consult with the employee prior to the change of location taking effect.</p> <p>Where an employee is required to work from home, either in accordance with the Place of Work clause or because they are on garden leave, for example, the employer is reminded that its health and safety obligations extend to ensuring the employee’s home working arrangement is legally compliant e.g. the employer will need to conduct a risk assessment and may need to provide appropriate equipment etc.</p>
Academy – Terms and Conditions – All staff level	Term dates and holidays	<p>For Academies:</p> <p>Amend to employer’s holiday year.</p>

Contract type	Terms and conditions – clause name	Advice and guidance
Academy - Terms and Conditions - Executive Staff and Executive Headteacher	Post-termination Restrictions	<p>Delete entire clause if not using and delete references to 'Protected Person' from the document.</p> <p>If using, complete definition of Protected Person in clause 1.1 <i>Definitions</i>.</p> <p>Academies are advised to seek legal advice on when incorporating post-termination restrictions to ensure they are legally enforceable.</p>