



# USER GUIDE ON CES MODEL EMPLOYMENT DOCUMENTATION FOR STAFF IN CATHOLIC SCHOOLS AND ACADEMIES

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# **USER GUIDE ON CES MODEL EMPLOYMENT DOCUMENTATION FOR STAFF IN CATHOLIC SCHOOLS AND ACADEMIES**

## **INTRODUCTION**

### **1. What is the role of the CES?**

The Catholic Education Service (CES) was founded in 1847 as the Catholic Poor School Committee and is an agency of the Catholic Bishops' Conference of England and Wales ("The Bishops' Conference"). The Bishops' Conference is the permanent assembly of all the Catholic Bishops in England and Wales. The CES, as an agency of the Bishops' Conference, is charged with promoting and securing education on behalf of the Bishops throughout England and Wales.

### **2. What is this User Guide for?**

This User Guide has been produced to complement model employment documentation that has been published by the CES for staff employed in Catholic schools and academies in England and schools in Wales ('CES employment documentation'). A list of all the CES employment documentation can be found in Appendix I at the end of this User Guide. These resources include application forms, procedural recruitment documentation, contracts of employment and workplace policies that underpin the principles in those contracts together with guidances.

This User Guide will offer guidance on how to implement and use the CES employment documentation. It will also cover frequently asked questions, the answers to which can be found by subject matter in Appendix II also at the end of this User Guide.

Please refer to the section in this User Guide headed “terminology” below for an understanding of the terms “school” “academy” “governing body” and “board of directors”.

### **3. Who is this User Guide for?**

This User Guide has been produced for use by:

- Dioceses and their education officers,
- Governing bodies of Catholic voluntary aided schools and boards of directors in Catholic voluntary academies
- Senior leaders in Catholic voluntary aided schools and Catholic voluntary academies
- Legal advisers, human resources providers and relevant school staff

### **4. Where is this User Guide applicable?**

This User Guide is applicable to Catholic schools and academies in England and Wales.

### **5. Terminology**

Throughout this User Guide “**Governing Body**” or “**Governing Bodies**” will be used to denote the entity or entities within the school or academy trust company that exercise the functions of the employer under the appropriate constitutional arrangements.

The term ‘**Catholic school(s)**’ or ‘**school(s)**’ will mean all Catholic schools and colleges, including schools in the trusteeship of a religious order. This includes maintained schools, academies in England, independent schools, sixth form colleges and non-maintained special schools.

In the CES model contracts of employment we use the term “**Board of Directors**” to describe the persons appointed to the academy trust company’s board to exercise the powers, and carry out the duties, of the academy trust company.

## 6. Why does the CES produce model employment documentation?

CES employment documentation is produced to ensure that the staff member and the employer, are both aware of, and bound by, the terms and conditions of employment which relate to the required Catholic character of the school.

The CES is also concerned to ensure that those persons within the school environment who issue CES employment documentation to prospective staff members (particularly the CES model contracts of employment) understand the nature and the obligations and expectations on the employee, by which the prospective employee will be legally bound.

## 7. Why should Catholic schools use CES employment documentation?

The Bishops' Conference Memorandum on Appointment of Teachers in Catholic Schools (**"the Bishops' Memorandum"**) is an extremely important document which has been issued by the Bishops of England and Wales. It is available to download from the CES website. It sets out the collective requirements of the Bishops on all Catholic schools in relation to staffing and the use of CES employment documentation.

The aim of **the Bishops' Memorandum** is to "help and guide employers in Catholic schools to fulfil their responsibilities, including statutory responsibilities, to preserve and develop the Catholic character of the school in relation to the appointment of teachers".

All Catholic schools must ensure that they have a copy of **the Bishops' Memorandum** and that they comply with it. This includes a requirement that Catholic schools issue clear guidelines about the Catholic character of the education and life in their school and issue the appropriate contract of employment and associated documentation as published by the CES. Particularly, the model contracts ensure, in the context of the role within the school which the employee is employed to perform, the preservation and development of the Catholic character of the school.

**The Bishops' Memorandum** is explained further under the section LEGISLATIVE FREEDOMS: EMPLOYMENT IN CATHOLIC SCHOOLS below.

# THE EMPLOYER'S DUTIES

## 1. The employer of school staff

In Catholic voluntary aided schools, non-maintained special schools and Catholic sixth form colleges the responsibilities of the employer rest with the governing body.

In Catholic voluntary academies the responsibilities of the employer rest with the board of directors of the academy trust company, and in other independent schools with the proprietor.

Employers have a legal and canonical<sup>1</sup> duty to ensure that the Catholic character of the school is preserved and developed. Foundation Governors and Foundation Directors are required, as the cornerstone of their role, to ensure this objective is achieved. However, governing bodies are reminded that *all* governors and directors have a duty to preserve and develop the Catholic character of the school in order to fulfil the objects cited in the Trust Deed and Instrument of Government of the school or the Articles of Association/Funding Agreement of the academy.

It is also imperative for Catholic schools to ensure that their legal or HR provider (whether that is the local authority or not) is aware of the requirements of the CES model contracts as they apply to staff employed in Catholic schools, that they *use* the model contracts and workplace policies and that all advice that is given by such provider is set in the context of the Catholic character of the school and the workplace policies adopted by the school.

Below you will find flowcharts to explain the relationship between the employer and different entities that exist within the education sector:

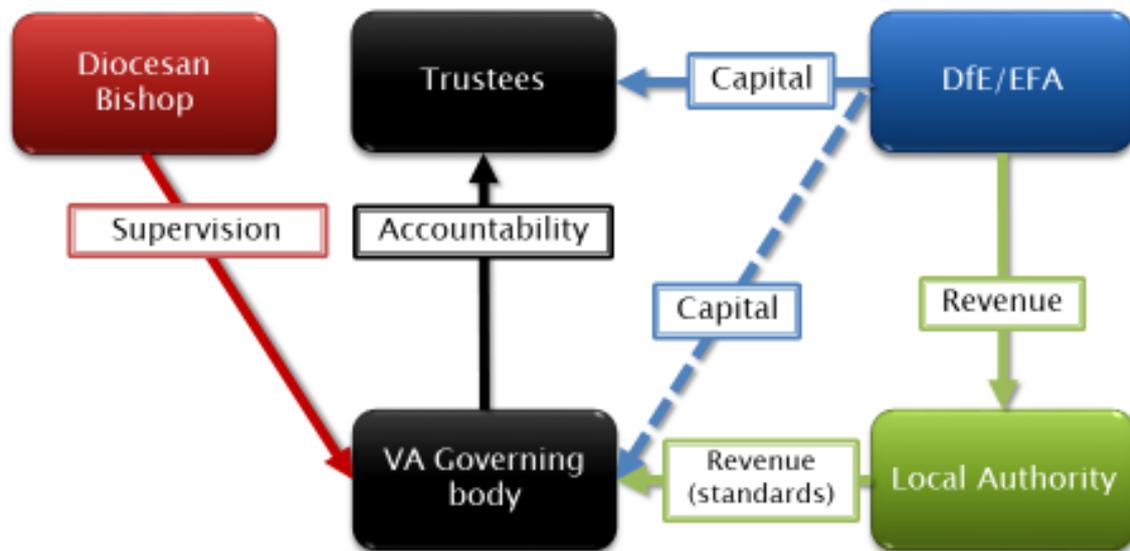
### a. Voluntary Aided Schools

In Catholic voluntary aided schools staff are employed by the governing body of the school, and the responsibilities of the employer rest with the governing body of the school. The diagram below sets out the relationships between the Bishop, the Governing Body, the Trustees, the Local Authority and the Department for Education. Please refer to the colour coded explanations below for further explanation:

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<sup>1</sup> See User Guide section entitled Role of the Church: Canon Law

## Voluntary Aided School: Relationships



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### Oversight by the Diocesan Bishop

The Diocesan Bishop has the responsibility of supervision and inspection of Catholic schools in his Diocese as set out in Canon law<sup>2</sup>.

### Accountability to the school's trustees

The governing body occupies the Trustees property in order to conduct a Catholic school [or schools] on their behalf - they are accountable to their Trustees for carrying out the mission of the Trustees within the requirements of the Trust Deed.

### Revenue funding (and Accountability Standards)

A maintained school receives its revenue funding from the local authority which is responsible for the maintenance of educational standards within the schools maintained by it.

### Capital Funding

Capital funding comes from the EFA in various streams. Some streams (such as DFC) are paid directly to the governing body. Other streams (typically larger project based funding) may be paid to the school's Trustees depending on a range of factors.

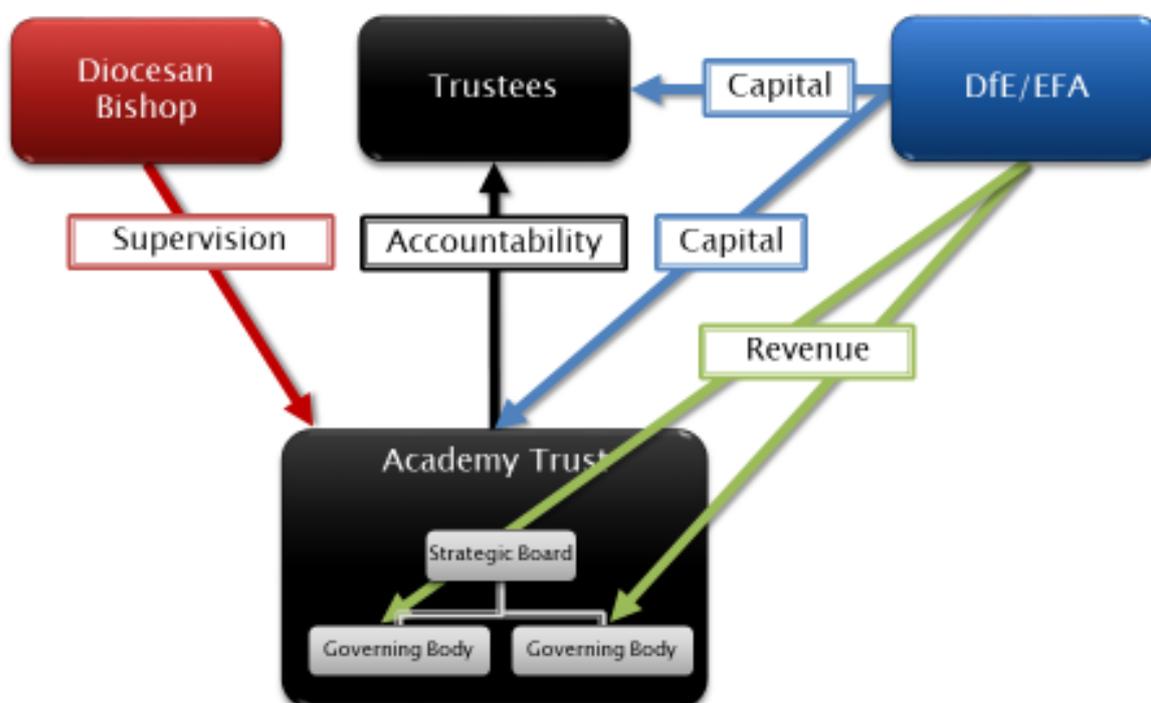
<sup>2</sup> See User Guide section entitled *Role of the Church: Canon Law*

## b. (Multi) Academy Trusts

In Catholic voluntary academies, staff are employed by the academy trust company and the responsibilities of the employer ultimately rest with the board of directors of the academy trust company. In many academy trust companies (particularly in multi academy trust companies) there will be one or more committees established by the directors (often known as “local governing bodies”). The extent to which the functions of the employer are delegated to these local governing bodies for one or more of the academies within the academy trust company is set out in the academy trust company’s schedule/scheme of delegation or similar.

The diagram below sets out the relationship between the Bishop, the Academy Trust, the Strategic Board, any local governing bodies, the Trustees, and the Department for Education. Please refer to the colour coded explanations below for further explanation:

### Multi-Academy Trust: Relationships



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### **Oversight by the Diocesan Bishop**

The Diocesan Bishop has the responsibility of supervision and inspection of Catholic schools in his Diocese as set out in Canon law<sup>3</sup>.

### **Accountability to the school's trustees**

The academy trust company occupies the Trustees property in order to conduct a Catholic school [or schools] on their behalf - they are accountable to their Trustees for carrying out the mission of the Trustees within the requirements of the Trust Deed.

### **Revenue funding (and Accountability Standards)**

An academy receives its revenue funding from the EFA and the academy company has a contractual responsibility for educational standards to the Secretary of State.

### **Capital Funding**

Capital funding comes from the EFA in various streams. Some streams (such as DFC) are paid directly to the academy trust company. Other streams (typically larger project based funding) may be paid to the school's Trustees depending on a range of factors.

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<sup>3</sup> See *User Guide* section entitled *Role of the Church: Canon Law*

## 2. Trust Deed

The Governing Body of every Catholic school is under a legal duty to conduct the school in accordance with its Trust Deed. In maintained schools this duty is currently set out in section 21(4) of the Education Act 2006. In addition, foundation governors have a specific statutory duty to secure that the Catholic character of the school is preserved and developed, and that the school is conducted in accordance with its Trust Deed and any other governing documents of its foundation<sup>4</sup>. Academies are also subject to the same duties, but they derive from the Academy Trust Articles of Association.

In education law, “Trust Deed” is given a wide definition which includes any instrument (other than the instrument of government) regulating the constitution of the governing body or the maintenance, management or conduct of the school.<sup>5</sup> In the context of Catholic schools, as well as the Trust Deed itself, this includes the following documents:

- ❖ the provisions of Canon law relating to schools,
- ❖ the Bishops’ RE Curriculum Directory and Statement on RE,
- ❖ any directives for Catholic schools issued by the Bishop

The Trust Deeds of most Catholic schools are those of the Diocese or Religious Order that provides them. Most of these are very similar, and provide the object of the school, and regulate certain aspects of the conduct of the school. Typically, the objects clause, which sets out the purpose for which the school exists, provides that the school is held on trust for the advancement of the Catholic religion by such means as the Bishop (or Religious Superior), thinks fit.

Many Trust Deeds also have specific clauses providing, for instance, that religious doctrines and practices taught and observed in any school must be according to the principles and subject to the regulations and discipline of the Church, and for all work under the trusts to be subject to the absolute control of the Bishop and carried on in accordance with his directions in all respects. For full details, contact should be made with the diocese (and in religious order schools, with the Religious Order)

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<sup>4</sup> Reg. 9(1) of the School Governance (Constitution) (England) Regulations 2012

<sup>5</sup> s.579 of the Education Act 1996

## THE ROLE OF THE CHURCH

### 1. Canon Law

The Catholic Church is governed by its own law and legal system, called canon law. One of the world's great legal systems, it has been built up as a body of jurisprudence over two millennia. The canon law applicable in a particular place includes the universal law and local, or particular, law. The universal law has been codified and, for the Latin Catholic Church, is to be found in the Code of Canon Law 1983 (the 21 Eastern Catholic Churches have their own universal law, codified in 1990). The canons (laws) particularly affecting Catholic schools, are canons 793-806, which are to be found in Book III of the Code, entitled 'The Teaching Office of the Church'. The authentic text of the Code is in Latin but approved English translations are readily available. To this must be added the local or particular laws: these can be issued in some cases by the Bishops Conference, and also by a Bishop. For schools in England and Wales, these will include the Bishops' Conference RE Curriculum Directory and Statement on RE, as well as any Directives for Catholic schools issued by their Bishop under canon 806.

### 2. Teaching Office of the Church

Christ has given his Church a triple mission: teaching, sanctifying and governing: this corresponds to the triple office of Christ as priest, prophet and king, with which all Christians are associated in virtue of their baptism. The Teaching Office of the Church is therefore one of these three offices, tasks or functions (*'munera'* in Latin) and relates to the prophetic office of Christ, and the call to preach Gospel to all peoples. Catholic schools are an important work of the Church's Teaching Office, and all teachers in Catholic schools therefore participate in this Office, in collaboration with the Bishop.

### 3. Bishop and Local Ordinary

Bishops are the successors of the Apostles. The Bishop is the Vicar and Ambassador of Christ in his Diocese and, by his consecration, personally exercises the offices of teaching, sanctifying and governing in Christ's name. He is therefore the Chief Teacher of the Faith in his Diocese and moderator of all teaching carried out in the name of the Church. In exercising his jurisdiction, he is sometimes referred to as the 'Local Ordinary' – this latter term also includes his Auxiliary Bishops, Vicars-General and Episcopal Vicars<sup>6</sup>.

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<sup>6</sup> These are senior diocesan clergy who assist the Bishop in the exercise of his office.

#### **4. Religious Orders**

This term is used to encompass a diversity of many different religious communities formally established within the Catholic Church as 'Institutes of Consecrated Life' and 'Societies of Apostolic Life'. These have many different names: monasteries of monks or nuns, congregations, societies and institutes of religious brothers or sisters, for example. Many of these are either specifically dedicated to teaching, or engage in teaching as part of their mission. Religious orders have a high degree of autonomy in conducting their own affairs and possess their own governance structures. However, any Catholic schools conducted by them are also subject to the supervision and inspection of the Diocesan Bishop.

# LEGISLATIVE FREEDOMS: EMPLOYMENT IN CATHOLIC SCHOOLS

## 1. Legislative Freedoms in Staffing

The Catholic Church has been a provider of education in England for centuries. The first schools in this country were established by the Church and, prior to the Reformation, it was the only provider of schools in England.

Following the re-establishment of Catholic Bishops in England in 1850, the Bishops of England decided that their first priority was the education of the poor and therefore encouraged Catholics to build schools before churches. Catholic schools were built across England from that time on.

The 1944 Education Act enabled the Catholic church to become a key educational partner with the State in the provision of voluntary aided schools; thus was established the 'dual system'. This system has been in place for nearly 70 years and has provided Catholic parents, and other parents where sufficient school places were available, with the choice to send their children to a Catholic school if they so wished.

In return, the law enshrined a number of guarantees from the State to ensuring the religious character and ethos of the schools was maintained: particularly in the areas of admissions, governance and (for the purposes of this User Guide) staffing.

Legislation give Catholic voluntary aided schools and voluntary academies in England the right to give preference to Catholic applicants for roles in their schools<sup>7</sup>. These freedoms under the School Standards and Framework Act 1998 ("**SSFA**") to give preference to those of the same faith of the particular school relate to the *teaching staff* at the school. This extends to lawfully giving preference to Catholic teachers (i) during the appointment process, (ii) with respect to their pay and (iii) with respect to their promotion prospects. The legislation also enables governing bodies to require that teachers conduct themselves in a way which is compatible with the precepts and tenets of the Catholic Church. This provision is reiterated in the CES employment documentation (especially the model contracts of employment and it extends to all staff employed in a Catholic school or academy, not just

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<sup>7</sup> sections 60(5) and 124A of the School Standards and Framework Act 1998 (the SSFA)

teaching staff). External advisers (legal and HR providers or advisers) must understand and respect the school's relationship with their diocese and to take account of any additional legal requirements such as a directive issued by the Bishop, when formulating their advice.

## **2. Appointment of Practising Catholics in senior roles**

Alongside the freedoms contained in the **SSFA** relating to teaching staff, as explained above, the Bishops of England and Wales issued **the Bishops' Memorandum** which states that, as a minimum, the posts of Head Teacher or Principal, Deputy Head Teacher or Deputy Principal and Head or Co-ordinator of Religious Education (or equivalent terms for senior school leaders, such as Head of School, Executive Head, Associate Headteacher) must only be filled by applicants who are *practising Catholics*. This is because these posts are highly influential in terms of the preservation and development of the Catholic character of the school.<sup>8</sup> The Headteacher is not only the leader of the educational life of the school, he or she is also the leader of the spiritual life of the school. For further elaboration of that it means to be a *practising Catholic* in the context of senior roles, advice should be sought from the School's diocese on their local requirements. The CES recommends that dioceses issue guidance in this regard.

## **3. Appointment of Practising Catholics in support staff roles**

The legal position regarding support staff is different to the legal position regarding teachers.

**In England** it is possible for a Catholic school or academy to require a support staff role to be filled by a *practising Catholic*. However the employer needs to be able to "objectively justify" that a support staff position can *only* be filled by a *practising Catholic*. This is, of course, subject to the school being able to satisfy the legislative requirements in respect of 'objective justification' and **the CES always advises that governing bodies of Catholic schools in England take legal advice before applying such a requirement.**

**In Wales** Catholic schools cannot lawfully require that a support staff role be filled by a practising Catholic.

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<sup>8</sup> Please see the "Contracts" section of this User Guide paragraph 11 headed "The importance of defining senior roles in Catholic Schools" for further details.

# CES EMPLOYMENT DOCUMENTATION: Four types

## Four types of documentation produced by the CES

This User Guide brings together all of the CES employment documentation that is available for use by dioceses and their schools and academies. It explains the requirement for all the CES employment documentation that schools can use during the following four main areas of an employment relationship:

- ❖ APPLICATION STAGE
- ❖ RECRUITMENT AND APPOINTMENT STAGE
- ❖ CONTRACTS
- ❖ POLICIES AND PROCEDURES

## Appendix I

A complete list of all the CES employment documentation that is explained in this document can be found in the Appendix I at the back of this User Guide.

## Appendix II

We have provided a compilation of responses to “frequently asked questions” (FAQs) section in each area to answer questions that have been raised with the CES. A list of all the FAQs can be found in Appendix II at the back of this User Guide.

If you feel that there are questions that remain unanswered that could be added to this User Guide then please do let the CES know.:

**The CES regularly updates these documents so we advise schools to always use the latest version of any CES documentation from our website each time they recruit and advertise a post.**

# CES EMPLOYMENT DOCUMENTATION

## APPLICATION STAGE

The CES has produced the following documentation in respect of the application process:

- ❖ Teacher Registration Form
- ❖ Support Staff Application Form
- ❖ Lay Chaplain Application Form
- ❖ Teacher Application Form
- ❖ Leadership Application Form
- ❖ Notes to Applicants
- ❖ Recruitment Monitoring Form
- ❖ Rehabilitation of Offenders Act 1974 - Disclosure Form
- ❖ CES Guidance Employment References: Frequently Asked Questions

### 1. Teacher Registration Form

This form is for students about to gain Qualified Teacher Status (QTS) and seeking appointment at a Catholic school or other teachers who are seeking appointments in Catholic schools. On receipt of a completed form the CES will alert dioceses to the individual's availability for teaching positions. **Please note that this is a registration form alerting dioceses and schools to an individual's interest in teaching in a Catholic school. It does not replace the need for an individual to make specific applications for particular vacancies.**

### 2. Application Forms and Notes to Applicants

The CES has produced model Application Forms that are available on the CES website for the following different roles with accompanying Notes to Applicants:

- a. Leadership Application Form
- b. Lay Chaplain Application Form
- c. Teacher Application Form
- d. Support Staff Application Form

The Notes to Applicants should be used by applicants to assist in completion of the application forms and supplementary forms.

**Applicants should be advised not to return any completed application forms and/or supplementary documents to the CES as their applications will not be passed on. All completed application forms**

**and/or supplementary documents should be returned to the school/college where the position applied for is based, or as instructed in the details of the post.**

### **3. Recruitment Monitoring Form**

The CES has produced a Recruitment Monitoring Form which is available on the CES website. Applicants are not obliged to complete this form but it helps schools to fulfil their duties under the Equality Act 2010 to eliminate unlawful discrimination, harassment and victimisation, to promote and advance equality of opportunity and to foster good relations between people who share a relevant “protected characteristic” and those who do not.<sup>9</sup> This Recruitment Monitoring Form should always be detached from the Application Form.

### **4. Rehabilitation of Offenders Act 1974 - Disclosure Form**

In accordance with statutory requirements certain pre-employment checks are conducted for positions involving working with vulnerable groups, specifically children and vulnerable adults.

This Disclosure Form is available on the CES website and is supplementary to the mandatory section in the CES model Application Form relating to the Rehabilitation of Offenders Act 1974.

### **5. CES Guidance Employment references: Frequently Asked Questions**

The CES has produced Guidance on frequently asked questions on employment references. In simple terms, although an employer is under no general duty to provide a character reference, there is a duty to take reasonable care to ensure the reference is true, accurate and fair and that it is not misleading. This is a duty that is owed to both the employee/ex-employee applying for the role and to the potential new employer. Please refer to the CES guidance available on the CES website for more details on what is required.

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<sup>9</sup> “Protected characteristics”, as defined by the Equality Act 2010, are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

## ➤ **APPLICATION STAGE: Frequently Asked Questions**

Through the work of the CES in advising dioceses, certain questions recur regularly. You may therefore find an answer to your question below:

- **What happens to an application form that an applicant incorrectly submits to the CES?**

If an application form for a position in a Catholic school is sent to the CES there is no guarantee that it will be forwarded to the appropriate employer. Applicants are advised not to return any completed application forms and/or supplementary documents to the CES. All completed application forms and/or supplementary documents should be returned to the school/college where the position applied for is based, or as instructed in the details of the advertisement.

- **If an applicant who is a *practising Catholic* wants to apply for a teaching role which does not require that the candidate must be a *practising Catholic*, should they still provide referee details for their parish priest?**

Yes, the law provides that Catholic voluntary aided schools and voluntary academies in England have the right to give preference to Catholic applicants for roles in their schools<sup>10</sup>. These freedoms under the School Standards and Framework Act 1998 to give preference to those of the same faith of the particular school relate to the *teaching staff* at the school. This extends to lawfully giving preference to Catholic teachers (i) during the appointment process, (ii) with respect to their pay and (iii) with respect to their promotion prospects.

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<sup>10</sup> sections 60(5) and 124A of the School Standards and Framework Act 1998 (the SSFA)

# CES EMPLOYMENT DOCUMENTATION

## RECRUITMENT and APPOINTMENT

The CES has produced the following documentation for use during the recruitment and appointment process:

- ❖ Bishops' Memorandum On Appointment Of Teachers To Catholic Schools
- ❖ Guidance Note on Recruitment of Staff for Governing Bodies
- ❖ Model Invitation to Interview Letter
- ❖ Equality Act 2010 - Reasonable Adjustments Statement
- ❖ Applicant's Declaration on receipt of contract
- ❖ Model Checklist of evidence (at interview stage)
- ❖ CES Guidance and Policy on Disqualification under the Childcare Act 2006

### 1. The Bishops' Memorandum - Advisory rights of the diocese

Dioceses must always have '**advisory rights**' in the recruitment of senior staff and the CES school workplace model policies and procedures. The CES employment documentation reflect this requirement.

**The Bishops' Memorandum** provides that:

- ❖ The Bishop is entitled to be represented at all proceedings relating to the appointment of senior leaders and teachers of religious education. This reflects his rights set out in Canon law<sup>11</sup>.
- ❖ Governing Bodies must therefore facilitate the attendance of the Diocesan Director (or their nominee), either by affording them advisory rights or otherwise. These may be in relation to all appointments at the school or, more usually, to the appointment of the senior posts to which the requirement to be a practising Catholic are applied.
- ❖ Governing Bodies must give sufficient advanced notification to the Diocesan Director of a vacancy for any senior post to which the requirement to be a practising Catholic is applied before taking any action, including appointing an acting Head Teacher or Principal, acting Deputy Head Teacher or Deputy Principal, or advertising the vacancy. It is particularly

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<sup>11</sup> See User Guide section entitled *Role of the Church: Canon Law*

important to agree all meeting and interview dates with the Diocese in advance, to allow Diocesan Officers to be involved from the beginning of the process, including drawing up job descriptions and person specifications.

- ❖ A Diocesan representative should be invited to participate in shortlisting and interviews whenever senior posts with pastoral responsibilities are being considered.
- ❖ For appointments to which the requirement to be a practising Catholic are applied, the Governing Body will meet to draw up a shortlist of candidates, conduct interviews and make an appointment. The Governing Body may appoint a selection panel to undertake these functions. These appointments may need ratification by the full Governing Body.
- ❖ In addition, the appropriate Diocesan Officer must always be invited to the interview of Heads of Religious Education and School Chaplains.

## **2. Guidance Note on Recruitment of Staff for Governing Bodies**

This CES document is available for download on the CES website and takes the governing body through the process of recruiting, including issues to look out for or be aware of (e.g. disability/Catholicity requirements/disqualification etc) and also includes a helpful checklist of items to be completed before an offer of employment should be made.

## **3. Model Invitation to Interview Letter**

The CES has produced a model Invitation to Interview Letter which is available on the CES website and can be adapted by the school to send out to those applicants selected for interview. The template lists the enclosures, including the sample CES contract appropriate to the role, and acts as a useful reminder to issue the sample contract at shortlisting. Schools should contact their diocese to ensure that they are provided with their diocese's guidance on their local requirements as to what it means to be a *practising Catholic* which should also be provided at shortlisting. This Invitation to Interview letter also includes the Reasonable Adjustments Statement (mentioned below).

## **4. Equality Act 2010 - Reasonable Adjustments Statement**

This Reasonable Adjustments Statement is available for download and use from the CES website. Should an applicant have a disability and require a particular adjustment to be made during the application and recruitment process this document provides a non-exhaustive list of some of the types of adjustments that the employer may make to ensure that the recruitment process is fair to all

applicants, if it is reasonable to do so in all the circumstances. This is in order to allow that individual to fully participate in the recruitment process.

#### **5. Applicant's Declaration on receipt of contract**

The CES has produced a pro-forma declaration which can be downloaded from the CES website. This is then completed by the candidate at interview and retained by the school. The declaration confirms that the applicant has been provided with a sample copy of the model contract of employment particular to the post at the school/academy for which they have applied, and that they have read and understood the content of the contract and have been afforded an opportunity to ask questions and have had such questions answered.

#### **6. Model Checklist of Evidence (at interview stage)**

The CES has also published a model checklist of evidence which is available for download from the CES website. An employer can use this to confirm that they have received all the appropriate required documentation from the applicant at interview stage. These documents are required to make a valid/compliant appointment.

#### **7. CES Guidance and Policy on Disqualification under the Childcare Act 2006**

Following Statutory Guidance called "Disqualification under the Childcare Act 2006", the CES has published the following 2 documents for use by Catholic schools and academies in England:

- **The CES Disqualification Guidance for Schools and Academies** sets out the obligations of Schools and Academies surrounding disqualification and recommends that an undertaking is obtained from all staff in the form set out in the Disqualification Policy below.
- **The Disqualification Policy for Staff** sets out an explanation of what staff members should know about disqualification and what they are obliged to do.

## ➤ RECRUITMENT and APPOINTMENT STAGE: Frequently Asked Questions

Through the work of the CES in advising Dioceses, certain questions recur regularly. You may therefore find an answer to your question below:

- **Does the Governing Body have a duty to advertise the role of a Headteacher?**

The governing body must advertise vacancies for headteacher or deputy headteacher in line with *School Staffing (England) Regulations 2009* (“2009 Regulations”) and *in such a manner as it considers appropriate unless it has good reason not to*<sup>12</sup>. Therefore, whether a decision not to advertise, (for example, as a means of cost cutting is a “good reason”) would need to be judged on its own facts taking into account, for example, the financial state of the school, what other measures they considered in terms of recruiting, how long the post has been unfilled and the impact of a lack of headteacher on the school.

Additionally *Guidance on managing staff employment in schools* published by the Department for Education, is statutory guidance that explains the requirement on governing bodies, local authorities and head teachers in the 2009 Regulations and provides at paragraph 5.11

*The 2009 Regulations specify that the governing body must advertise the vacancy or post in such manner as it considers appropriate, unless it has good reason not to (Regulations (15(2), 15(7), 27(2) and 27(7)). It is recommended that the governing body seeks advice from their local authority and diocesan authority, before deciding not to advertise* (our emphasis).

- **In what circumstances should the Governing Body appoint an acting Head?**

Teaching staff of a voluntary aided school include *a person appointed as headteacher or a person appointed to carry out the functions of the headteacher of the school*<sup>13</sup>

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<sup>12</sup> *School Staffing (England) Regulations 2009 Part 3 paragraph 27*

<sup>13</sup> *Education Act 2002, Section 36(3)*

An acting headteacher must therefore be appointed where there is a headteacher vacancy that cannot be filled. The use of an acting headteacher is a temporary measure and does not relieve the governing body of its duty to appoint a new headteacher. The governing body should continue to be proactive in filling the vacancy as soon as practically possible. The deputy headteacher is not required to undertake the duties of the headteacher pending *appointment* of a headteacher<sup>14</sup>.

Where there *is* a headteacher but he/she is absent, the STPCD requires the deputy headteacher to undertake the professional duties of the headteacher as required by the governing body. However, this is a short-term arrangement and where absence is longer term, the governing body should appoint an acting headteacher.

- **Is the CES an employer (or a party to the contract of employment) for staff in Catholic schools?**

No, the CES is an agency of the Catholic Bishops' Conference of England and Wales and has produced model employment documentation for use in Catholic schools and academies in England and schools in Wales. They are not a party to any contract of employment in any Catholic schools and academies in England or in any schools in Wales

- **Why is the Bishop represented at interviews of senior leaders and teachers of religious education?**

The Bishop is entitled to be represented at all proceedings relating to the appointment of senior leaders and teachers of religious education because he has rights of episcopal oversight (as set out in **the Bishops' Memorandum<sup>15</sup>**)

All teachers in Catholic schools are employed to participate in the Church's teaching office, exercising this ministry in accordance with the Church's teachings.<sup>16</sup> Like any ministry exercised in the name of the Church, it is subject to the supervision of the Bishop in all Catholic schools, including schools that are not in the Trusteeship of the Diocese. This 'supervision' is understood within the Bishop's general duties of oversight and inspection of all Catholic schools<sup>17</sup> which is explored further in the section of this User Guide headed *The Role of the Church*.

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<sup>14</sup>Guidance on managing staff employment in schools paragraph 5.3

<sup>15</sup>Bishops' Memorandum on Appointment of Teachers to Catholic Schools

<sup>16</sup>Please see section of this User Guide "Contracts Frequently Asked Questions": What is the "Ministry of a Teacher...?"

<sup>17</sup>Canon 806

# CES EMPLOYMENT DOCUMENTATION

## CONTRACTS

### 1. CES model contracts of Employment

The CES produces model contracts of employment for the various roles within both Catholic schools and academies in order to ensure that the Bishops' objective that Catholic schools fulfil their responsibilities to preserve and develop the Catholic character of the school is met.

The following contracts of employment are available:

[CES Model Leadership Contract Group 1 \(Head teacher, Joint Head teacher, Acting Head Teacher\)](#)

[CES Model Leadership Contract Group 2 \(Deputy Headteacher, Assistant Headteacher\)](#)

[CES Model Teacher Contract \(Fast Track Teacher, Teacher and Newly Qualified Teacher\)](#)

[CES Model Lead Practitioner Contract](#)

[CES Model Support Staff Contract \(Teaching Assistant \(Levels 1, 2, 3 and 4\), Temporary Welfare Assistant, Classroom Assistant, Nursery Employee, Support Staff Member \(Not Teaching Assistants\)\)](#)

[CES Model Instructor/Unqualified Teacher Contract](#)

[CES Model Lay Chaplain Employed by a Governing Body Contract](#)

[CES Model Lay Chaplain Employed by a Diocese Contract](#)

The above 8 contracts of employment are available with small but important amendments for the following types of employers:

- ❖ Voluntary aided schools (available online)
- ❖ Voluntary academies (available online)
- ❖ Voluntary academies with flexible pay and conditions (available through your diocese)
  
- ❖ The above 3 versions of contracts for schools and academies jointly run by the Catholic Church and the Church of England/Church in Wales (available through your diocese)

## **2. Contracts available in two formats**

The contracts available on the CES website are available in 2 formats as follows:

### **Method 1: Download and Amend**

The user must choose from one of eight overarching contracts that cover the majority of roles in Catholic schools. The Microsoft Word version model contracts are now capable of download for amendment and adaptation in many areas without the need for diocesan and CES approval.

### **Method 2: Electronic Contract Generator (ECG)**

By simply completing our online questionnaire, which asks the user to provide details of the employee, the school, and certain important terms of the employment relationship, then clicking 'submit', the answers provided are automatically populated into a PDF version of a standard CES contract of employment which is particular to the role. This allows schools to generate contracts of employment quickly and easily for their staff safe in the knowledge that, provided the questionnaire is completed correctly, all contractual clauses relevant to the role will be incorporated and the contract will be specific to the school and the employee.

## **3. Additional guidances and documents on CES contracts**

Additional documents available on the CES website are the following guidances on the CES model employment contracts of employment:

- ❖ CES User Guide On Model Employment Documentation (For Staff In Catholic Schools And Academies)
- ❖ Guidance Note on the Employment of Special Educational Needs Coordinators (SENCOs)
- ❖ Guidance Note on Lead Practitioner Contracts
- ❖ Explanation of Instructor/Unqualified Teacher Contracts
- ❖ Four different levels of Teaching Assistants (please contact the CES)
- ❖ CES Optional Contract Clauses

#### **4. CES User Guide On Model Employment Documentation (For Staff In Catholic Schools And Academies)**

This User Guide brings together all of the CES employment documentation that is available for use by dioceses and their schools and academies. It explains the requirement for all the CES employment documentation that schools can use during application, recruitment and appointment and then throughout the life of the employment relationship together with a compilation of answers to frequently asked questions during the different stages of employment. A complete list of all the CES employment documentation that is explained in this document can be found in the Appendix I at the back of this User Guide. A complete list of frequently asked questions can be found in Appendix II.

#### **5. CES model School/College Contracts of Employment: Notes to Users and CES model Academy Contracts of Employment: Notes to Users**

Should you require assistance in practically completing CES model contracts of employment in schools, colleges or academies please consult these respective document available on the CES website.

#### **6. Guidance Note: Employment of Special Educational Needs Coordinators (SENCOs) employed in a Catholic School or Academy**

This Guidance Note supplements the CES model contracts of employment for staff employed in a Catholic School or Academy and can be found on the CES website.

The CES has not produced a model contract of employment specifically for a SENCO; the employment arrangements of SENCOs are a matter for each individual school. The CES recommends that the CES Model Teacher contract is adapted as necessary through the Appendices and paragraph 6.3.2 (i.e. additional allowances).

The CES has produced this Guidance Note to assist schools/academies in drafting appropriate job descriptions and/or contracts of employment for SENCOs.

#### **7. Guidance Note on Lead Practitioner Contracts**

This Guidance Note is supplemental to the CES model Lead Practitioner Contract of Employment for staff employed in a Catholic school or academy and can be found on the CES website. The CES model

contract of employment for a Lead Practitioner is based on a combination of the CES model Teacher contract and the CES model Senior Leadership Group 2 contract.

The non-statutory Departmental Advice issued by the DfE entitled *Implementing your school's approach to Teacher's pay* (available to download from the DfE's website) provides some guidance on what a Lead Practitioner's role may entail and the type of person who may be appointed to a Lead Practitioner post. This is explored further in this Guidance Note

## **8. Four different levels of Teaching Assistants**

The Support Staff contract provides for four different levels of Teaching Assistants. In order to determine which level is appropriate, the CES has produced a guide which explains and differentiates between the four levels of Teaching Assistants which is available on request from the CES if needed.

## **9. CES Optional Contract Clauses**

The CES has published a document entitled "Optional Contract Clauses". These clauses are available on the CES website and they deal with issues such as, for example, probationary periods which some employers may want to incorporate into the model contracts. The clauses in this document are not to be found in the body of the standard CES model school and academy contracts. These optional clauses, if used, would be added in Appendix 2 of the CES model contracts of employment but, of course, may need to be tailored to fit the requirements of the particular role.

Schools and academies should ensure they follow an appropriate consultation process and that they seek legal and/or HR advice if appropriate should they wish to incorporate any of the optional contract clauses in Appendix 2. Schools should ensure approval is sought from their diocese and from the CES in terms of any significant departures from the suggested wording.

## **10. The importance of defining senior roles in Catholic schools**

**The Bishops' Memorandum** reflects the fact that there are different terms for senior school leaders, such as Head of School, Executive Head, Associate Headteacher etc and to reflect the fact that those with overall responsibility for the day to day management of the school, and the person who is the second most senior person in the leadership team, regardless of the descriptor applied to their role, will be required to be *practising Catholics*.

Teaching staff of a voluntary aided school must include a person appointed as head teacher, or a person appointed to carry out the functions of the head teacher of the school pending the appointment of a head teacher or in the absence of the head teacher<sup>18</sup>. A school may only have one substantive headteacher (“a” person).

The School Teachers Pay and Conditions Document (“STPCD”) provides the following definitions:

**“Headteacher in England or Wales”:** A person appointed to the teaching staff of the school as headteacher and includes a person appointed as acting headteacher to carry out the functions of a headteacher pursuant to s.35(3) or 36(3) of the [Education] Act [2002] but not a teacher who is assigned and carries out duties of a headteacher without being so appointed.

**“Assistant Headteacher”:** A qualified teacher with leadership responsibilities across the whole school who is appointed to the post of assistant headteacher.

**“Deputy Headteacher”**

**In England,** a qualified teacher appointed to the teaching staff of a school as a deputy headteacher in accordance with the School Staffing (England) Regulations 2009 (as amended) and includes a teacher appointed as an acting deputy headteacher but not a teacher who is assigned and carries out the duties of a deputy headteacher without being so appointed.

**In Wales,** a qualified teacher appointed to the teaching staff of a school as a deputy headteacher in accordance with the Staffing of Maintained Schools (Wales) Regulations 2006 and includes a teacher appointed as an acting deputy headteacher but not a teacher who is assigned and carries out the duties of a deputy headteacher without being so appointed.

As stated above, the wording of s.36 makes it clear there can only be one substantive headteacher of a school.

However, headteachers can job-share headship posts in one school. The STPCD sets out the requirements in respect of headteacher pay where a headteacher is employed through a job-share arrangement.

Governing bodies must ensure that they comply with the legislation which requires that there is, at all times, one substantive headteacher. Where there is an executive headteacher appointed to oversee individual headteachers (usually across a number of schools), governing bodies need to ensure that

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<sup>18</sup> Education Act 2002 Section 36(3)

the substantive headteacher is complying with their duties and responsibilities as defined in legislation and must be certain whether the headteacher is permitted to delegate those duties and responsibilities to an executive headteacher (although bear in mind that duties would usually be delegated downwards not upwards). Furthermore, the governing body will need to be aware of the concerns of the School Teachers' Review Body (STRB) and the unions regarding pay and conditions for those persons who are employed to perform a role which does not fit within the STPCD.

## 11. The importance of Lay Chaplains

The CES model contracts of employment for Lay Chaplains employed by Governing Bodies of Catholic schools, and those employed by a diocese to work within Catholic schools in their diocesan area, require the employer to make a determination about the terms and conditions of employment before the contract is issued. The model contracts are drafted so that the employer must choose from a range of options relating to salary, pensions and certain other conditions of employment relevant to the particular Lay Chaplain post within their school. This means that, before the contract is issued, the employer must have considered the requirements of the role and the requirements of the employee they wish to recruit to perform the role i.e. the job description and person specification. Furthermore, **all decisions to recruit or appoint any chaplain (including a lay chaplain) must involve the diocese**<sup>19</sup> and, where the employer is the governing body of a school (as opposed to the diocese), the governing body must obtain the consent of the diocese to the recruitment or appointment of a Lay Chaplain.

In order to assist employers in making a determination on salary, pension rights and other conditions of employment, the CES' "A Guide to the Employment of Lay Chaplains in Schools and Colleges" (2004) is a useful starting point. In respect of determining the level of salary for a Lay Chaplain post, the Guide provides the following useful indicators:

- ❖ The remuneration of a Lay Chaplain should be pitched at the right and just level, commensurate with the duties and responsibilities of a skilled professional.
- ❖ The current view is that the salary for a full-time equivalent Lay Chaplain should not be less than the salary of a main pay range for a teacher.
- ❖ There have been many queries and questions about the appropriate salary pay range, and there is no single correct answer. Some employers opt for teachers' pay ranges (this is

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<sup>19</sup> Please see the Bishops' Memorandum on Appointment of Teachers in Catholic schools

acceptable, particularly if the Lay Chaplain is a qualified teacher), some opt for local government pay ranges and others for diocesan pay ranges. The guiding principle is to avoid ad hoc arrangements and adopt a recognised pay range, so that any adjustments for periodic increases or annual increments can be applied within an agreed structure.

Taking the above considerations into account, the model contracts can be amended to reflect the position where the Lay Chaplain has Qualified Teacher Status, in which case the STPCD, Burgundy Book and Teachers' Pension Scheme may be most appropriate. In other cases, the employer can amend the contracts to reflect local government employee arrangements (i.e. those adopted for support staff in Catholic schools) including, for example, the Green Book and the Local Government Pension Scheme. Finally, the diocese may have its own policy in respect of remuneration and employment terms and conditions for Lay Chaplains employed within the diocese (which may also be applicable where the governing body is the employer) and this is also provided for in the model contracts.

## **12. Explanation of Instructor/Unqualified Teacher Contracts**

The Schools Staffing (England) (Amendment) Regulations 2012 provide that:

“... a person who is not a qualified teacher and who is appointed....to give instruction in any art or skill or in any subject or group of subjects, where special qualifications or experience or both are required.....may carry out specified work (teaching) if the governing body is satisfied as to his qualification or experience or both.”

Academies which signed Funding Agreements after 27 July 2012 incorporate these changes as follows:

Clause 18: ....the Academy Trust [company] shall, in accordance with any guidance which the Secretary of State may issue on the qualifications of teaching and other staff in Academies, employ anyone it deems is suitably qualified or is otherwise eligible under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils.

Clause 19: Clause 18 does not apply to anyone who:

- “...is appointed as the SENCO by the Academy Trust [company] under section 317(3A) of the Education Act 1996, who must meet the requirements set out in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945); or
- is appointed as a designated teacher for looked after children.”

For relevant employers this has the effect that:

- unqualified teachers may be appointed whenever and wherever the employer considers they have appropriate skills and experience for the role
- unqualified teacher can be employed on a permanent basis

The situation for academy trust companies that signed their Funding Agreement before 27<sup>th</sup> July 2012 may be different and they will need to check their agreements to determine who they can employ.

It remains open to governing bodies of schools and relevant academies to make a policy decision (which should be recorded) to seek to recruit qualified/trainee teachers wherever possible and therefore to continue to recruit unqualified teachers on a temporary basis pending the appointment of a qualified /trainee teacher. If this clause is inserted into the contract the employer would be able to terminate the contract if and when a qualified/trainee teacher was available for appointment. However, such clauses are only valid if they are actively operated. This means that in order for such a dismissal to be regarded as fair, the employer would have to evidence that they had, from the point the contract was issued, actively sought, on a regular and on-going basis to recruit a qualified/trainee teacher for the position. The longer the unqualified teacher is employed, the more difficult it would be for the employer to demonstrate that their policy of only employing qualified/trainee teachers was valid.

## ➤ **CONTRACTS: Frequently Asked Questions**

Through the work of the CES in advising Dioceses, certain questions recur regularly. You may therefore find an answer to your question below:

- **Can the CES contracts be amended in terms of pay?**

Generally the CES model contracts of employment incorporate nationally agreed terms and conditions of employment i.e. the School Teacher's Pay and Conditions Document (STPCD)/Burgundy Book in both schools and academies. This is the case even though academies are not required, in law, to employ staff under any prescribed terms and conditions and are free to negotiate terms that are different to the STPCD, Burgundy Book and Green Book. The contracts therefore can be amended in terms of pay and conditions by academies to meet particular local circumstances. However, in order to maintain uniformity across the country, academies who do not wish to employ staff on the same terms as schools **must** contact their diocese to discuss their intentions and to seek approval of those terms of employment before the diocese will agree to issue a model contract which the academy can amend.

- **Can the notice periods set out in the CES model contract be amended for support staff?**

Again generally CES model contracts of employment in both schools and academies can be amended to meet particular local circumstances provided consent is obtained from the diocese and from the CES and this can be dealt with in Appendix 2 to the model CES contract.

- **Can the CES model contracts be used for other roles such as School Business Managers, Bursars and Trainee Teachers?**

The starting point for an appropriate model contract that would suit these particular roles is likely to be the support staff contract which would have to build in elements that deal with the more senior aspects that may be relevant to the role. Some posts, for example for School Business Managers, are likely to require lengthier notice periods.

The CES model contract of employment in both schools and academies can therefore be amended to meet particular local circumstances provided consent is obtained from the diocese and from the CES. Schools are also advised to seek assistance from their human resources provider and/or seek

independent legal advice to ensure that the contract is tailored appropriately for the particular required role.

- **Can a local authority insist on using their own standard contracts for schools but with amendments to incorporate what they consider to be appropriate Catholic elements?**

No, the local authority cannot insist on the use of their own documentation. The governing body, as the employer of staff in a Catholic school (or academy), is mandated by the Bishops of England and Wales to use the CES documents, including the contracts of employment. **The Bishops' Memorandum** sets out the collective requirement of the Bishops on all Catholic schools in relation to staffing and the use of CES employment documentation which, importantly, includes the CES model policies and procedures.

It is however possible to incorporate any additional terms and conditions suggested by the local authority within Appendix 2 to the CES model contract if agreed by the CES and by the diocese and if the governing body wishes to adopt such terms and conditions.

- **What is Appendix 2 for?**

Appendix 2 in the CES model contract of employment is there to include any additional terms and conditions not set out in the body of the contract for example "collective agreements" or other optional contract clauses (please see above)

For example, in terms of collective agreements, an employer may have an agreement with employees' representatives (from trade unions or staff associations) that allows negotiations of terms and conditions like pay or working hours. This is called a collective agreement. The terms of the agreement could include how negotiations will be organised; who will represent employees; which employees are covered by the agreement and which terms and conditions the agreement will cover.

Schools are also advised to seek assistance from their human resources provider and/or seek independent legal advice to ensure that the contract is tailored appropriately for the particular required role.

- **Are there contracts of employment developed specifically for schools jointly run by the Catholic Church and the Church of England or the Church in Wales?**

Where a school or academy is jointly run by the Catholic Church and the Church of England (or a school is jointly run by the Catholic Church and the Church in Wales), the CES has developed employment contracts wholly based upon the CES model contracts but with small and important amendments that have been made and agreed between the CES and the Church of England Education Office. Should such contracts be required please contact the appropriate education officer at your diocese.

- **What is “Continuity of Service”?**

Under employment law, an employee is required to have built up a certain amount of “continuous service” with their employer before they are entitled to bring certain claims or receive certain entitlements. So, for example, an employee who commences employment with an employer today will need to accrue two years’ continuous service with their employer to be eligible to bring a claim of unfair dismissal (provided they also fulfil the other criteria for bringing such a claim). Usually, continuity of employment is broken at the point where the employment contract is terminated (for whatever reason). The employee would start to accrue continuous service starting from the first day with their new employer when they secure new employment.

Where continuity is being calculated in respect of employment within the education sector, different rules apply so that, in certain cases, an employee may build up continuous service even where they move from employment with one employer to another. Usually this is permitted where the employers are “associated”. Whether or not an employer is “associated” with another, or not, differs depending on the type of claim or entitlement and the employment history of the employee concerned in terms of their route of employment to their current position.

There are three principal pieces of legislation that affect the continuity of service for various purposes in State funded schools.

The Redundancy Payments (Continuity of Employment in Local Government etc) Modification Order 1999 (“RMO 1999”) provides that local government, which includes maintained schools and academies, are “associated employers” for the purpose of calculating redundancy payments.

Section 218(7) Employment Rights Act 1996 (“ERA 1996”) provides that, where the employee of a maintained school is taken into the employment of another school maintained by that same local authority, the change of employer does not break continuity of service.

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) (as amended) provides that, where an undertaking (e.g. a school) is transferred from one employer to another (e.g. by an amalgamation of two schools) employees retain all their existing terms and conditions, including their continuity of service.

The table below sets out the various scenarios and how those scenarios affect an employee’s continuous service for the purpose of calculating service for unfair dismissal and redundancy.

Please note that references to maintained school in the table includes any school maintained by the local authority including community, voluntary controlled, voluntary aided.

Please also note that existing academies established under s.482 Education Act 1996 are included as a body recognised under the RMO 1999. New academies are also covered by virtue of s.17(4) Academies Act 2010:

<b>Scenario</b>	<b>Redundancy Payment</b>	<b>Unfair Dismissal</b>
<b>Scenario 1:</b> The employee leaves one maintained school and joins another maintained school within the same local authority area.	✓ RMO 1999	✓ ERA 1996
<b>Scenario 2:</b> The employee leaves one maintained school and joins another in a different local authority area.	✓ RMO 1999	✗
<b>Scenario 3:</b> The employee leaves a maintained school and joins an academy	✓ RMO 1999	✗
<b>Scenario 4:</b> The employee leaves an academy and joins a maintained school	✓ RMO 1999	✗
<b>Scenario 5:</b> The employee leaves one academy to join another academy.	✓ RMO 1999	✗

<p><b>Scenario 6:</b></p> <p>The employee is transferred under the TUPE Regulations from one maintained school to another maintained school (regardless of whether the schools are in the same local authority).</p>	<p style="text-align: center;">✓</p> <p style="text-align: center;">TUPE</p>	<p style="text-align: center;">✓</p> <p style="text-align: center;">TUPE</p>
<p><b>Scenario 7:</b></p> <p>The employee is transferred under the TUPE Regulations from a maintained school to an academy (i.e. conversion to academy status).</p>	<p style="text-align: center;">✓</p> <p style="text-align: center;">TUPE</p>	<p style="text-align: center;">✓</p> <p style="text-align: center;">TUPE</p>

The above table provides an overview of continuity of employment in the context of redundancy and unfair dismissal in the scenarios cited. If continuity of service with the immediate previous employer is established for a particular purpose, it is necessary to repeat the process with the employer before that, and so on, until any break in continuity is established. This area of law is potentially very complicated, and therefore the CES recommends that schools seek legal/HR advice from their provider when making a determination about, or calculation of, continuous service, taking into account other legal criteria required to be satisfied to ensure continuity is/has been preserved.

- **What is the “Ministry of a Teacher” referred to in paragraph 4.1 of the CES contract of employment for teachers?**

The Catholic Church understands the vocation of a teacher as a form of ministry within the Church<sup>20</sup> For this reason the CES model contracts for all teaching staff in Catholic schools (including head teachers) articulate the notion that, by teaching in a Catholic school, the employee is exercising the ‘ministry of a teacher’. All teachers in Catholic schools are employed to participate in the Church’s teaching office, exercising this ministry in accordance with the Church’s teachings. This requires teachers to be witnesses in word and deed to the Divine Teacher, Jesus Christ<sup>21</sup>.

As such, teachers in every Catholic school are collaborators with the Bishop, who is the Chief Teacher of the Faith in his Diocese<sup>22</sup>. Like any ministry exercised in the name of the Church, it is subject to the supervision of the Bishop in all Catholic schools, including schools that are not in the Trusteeship of

<sup>20</sup>*Gravissimum Educationis*, 8

<sup>21</sup>*Lay Catholics in Schools: Witnesses to Faith*, 32

<sup>22</sup>*Directory for the Pastoral Ministry of Bishops*, Ch.V

the Diocese. This ‘supervision’ is understood within the Bishop’s general duties of oversight and inspection of all Catholic schools set out in Canon 806.

- **Why is the National Workload Agreement referred to in the CES contracts?**

The National Workload Agreement is the commonly used name for the National Agreement on Raising Standards and Tackling Workload Agreement 2003. The National Workload Agreement, which was signed on 15th January 2003 by the Department for Education and Skills, the Welsh Assembly and most of the major national teachers’ and general workers’ unions, is an agreement which introduced contractual changes into the School Teachers Pay and Conditions Document (STPCD), which is the document that sets out the nationally agreed terms and conditions of employment for teachers in England and Wales. The National Workload Agreement therefore is an historical document that continues to influence and underpin important requirements within the STPCD.

- **What are Break Clauses in Fixed Term and Temporary Contracts?**

The CES model contracts contain a break clause for fixed-term<sup>23</sup> and temporary contracts<sup>24</sup> of employment. Without a break clause, the risk of employing an individual could mean that the contract could not be terminated before the end of the fixed-term or the happening of the event without the school being in breach of contract. This would render the school liable to pay remuneration to the end of the fixed-term/happening of the event.

With a break clause, schools can lawfully bring the contract to an end earlier without breaching the term of the contract by simply exercising their right to terminate the contract by giving the required contractual notice. However, whether bringing the contract to an end early is a “fair” dismissal will depend entirely on the circumstances of the individual case but it will not be a wrongful dismissal i.e. a dismissal in breach of contract, provided that the break clause notice period is exercised correctly.

In all cases, schools are always advised to seek assistance from their human resources provider and/or seek independent legal advice to ensure that the contract is tailored appropriately for the particular required role and to ensure that contracts are terminated lawfully.

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<sup>23</sup>Fixed Term contracts expire on a date specified in the contract

<sup>24</sup>Temporary contracts expire on the happening of an event (as opposed to a known date)

- **What is the “Green Book” that is referred to in the CES contracts?**

The “Green Book” is the National Agreement on Pay and Conditions of Service applicable to local government employees (so called because it is contained in a green folder). The Green Book, which came into force on 1<sup>st</sup> April 1997, and which was signed by the national employers (public services) and the trade unions, is an agreement which replaced the APT&C (Administrative, Professional, Technical & Clerical workers) Handbook (the “Purple Book”) and the Manual Handbook (which varied in colour depending on the region). The Green Book merged the negotiating machinery for APT&C and Manual Workers.

Essentially it sets out the nationally agreed terms and conditions of employment of local government employees. There are other local agreements in place in certain parts of the country (e.g. Kent)

In Catholic schools the employer is the governing body and not the local authority as it is in community schools. Therefore, Catholic schools are not required to employ support staff on national terms and conditions i.e. the Green Book. However, despite not being required to adopt the Green Book, the CES has encouraged Catholic schools to employ support staff on the nationally agreed terms and conditions contained in the Green Book, including in relation to pay. As such, the model contracts have been drafted to incorporate Green Book terms and conditions as standard.

- **What is the “Burgundy Book” that is referred to in the CES contracts?**

The “Burgundy Book” is the Conditions of Service for School Teachers in England and Wales and represents the national agreement between the six teacher organisations and the local authorities. The current revised edition was published in August 2000. It sets out nationally agreed terms and conditions of employment for teachers in addition to those in the School Teachers’ Pay and Conditions Document (STPCD).

As stated above, in Catholic schools the employer is the governing body and not the local authority as it is in community schools. Therefore, Catholic schools are not required to employ teachers on the national terms and conditions contained in the Burgundy Book. However, despite not being required to do so, the CES has encouraged Catholic schools to include the appropriate sections of the Burgundy Book in their terms and conditions for teachers. As such, the model contracts have been drafted to incorporate the appropriate sections of the Burgundy Book terms and conditions as standard.

- **What do CES contracts say about planning, preparation and assessment (PPA)?**

The CES has opted to adopt the STPCD national framework for the purposes of uniformity of practice across all of its schools and academies in England and its schools in Wales. The application of the STPCD means that teachers are entitled to reasonable periods of time for planning, preparation and assessment (PPA) which would not be less than 10% of teachers timetabled teaching (as set out in the STPCD)

The CES model contract provides for reasonable time (and of course this must be “in accordance with the provisions set out in the STPCD”). The CES model contract in fact provides greater flexibility than what is set out in the STPCD.

- **What are the new pension rules?**

The CES model contracts of employment reflect current legislation. Please therefore note that the current basic state pension and second state pension has been abolished and replaced by a single-tier state pension, which means the end of contracting-out for defined benefit schemes. As a consequence, employers and scheme members of a contracted out scheme will pay the standard National Insurance contributions; which translates as an increase over what was previously paid.

- **Is it possible to postpone auto enrolment into a pension by three months as set out in the CES model contract?**

Staff are contractually enrolled on to their pension regardless of the length of contract. However the Pension’s Regulator makes it very clear that **employers are entitled to postpone auto-enrolment in any appropriate pension scheme for up to 3 months**. Automatic enrolment *is one of the key employer duties* and this is set out within the CES model contracts. The core requirement is that employers must make arrangements so that their eligible jobholders become active members of an automatic enrolment pension scheme from their automatic enrolment date. It is an additional flexibility for an employer that allows them to choose to postpone auto enrolment from the required start date. One of the main reasons an employer might decide to postpone is if they have temporary or short-term staff who they know will stop working within three months. An employer can also use it to align auto enrolment with other business or payroll processes, for instance deferring all new joiners to the start of the next pay reference period will negate the need for pension contributions to be deducted for part pay periods. Also, an employer may wish to use postponement so assessment is aligned to the

end of an employee's probation period. The reality is that an employer can choose to postpone automatic enrolment for any lawful business reason.

Both the Pensions Regulator's website and Teachers Pensions website provide further detail on this.

- **Could the wording regarding auto-enrolment in the Pensions paragraph be considered "an inducement" and therefore unlawful?**

The wording in the CES contract provides as follows:

*If Your employment is full-time or part time and You are between the ages of 16 and 75 and Your employment is for a period of **3 months or more**, You shall be automatically enrolled as a member of the Teacher's Pension Scheme ("TPS") or other appropriate pension scheme.*

*If Your employment is full-time or part time and You are between the ages of 16 and 75 and Your employment is for a period of **less than 3 months**, You will not be automatically enrolled as a member of the TPS or other appropriate pension scheme. You may elect to opt-in to the TPS or other appropriate pension scheme and should consult the Governing Body/School's Pension Policy, if applicable.*

*You may, at any time in the course of Your employment, opt out of the TPS or other appropriate pension scheme and make alternative arrangements. Notice to do so should be given in accordance with the Governing Body/School's Pension Policy.*

Detailed non statutory guidance for employers: *Safeguarding individuals: The new safeguards for workers* published by the Pensions Regulator advises that an inducement is as follows:

*"The sole or main purpose test of the particular action is to persuade or cause an individual to opt out of or leave their pension scheme, without becoming an active member of another scheme"*

The CES model contract merely provides for postponement of automatic enrolment for 3 months, it does not offer packages or encourage anyone to opt in or to opt out of either contractual enrolment or auto enrolment.

# **CES MODEL EMPLOYMENT DOCUMENTATION**

## **POLICIES AND PROCEDURES:**

### **A list of the CES model policies and procedures**

The CES produce separate versions of policies and procedures for schools and for academies situated in England and a version for schools in Wales. They are designed to ensure that the Bishops' objective that Catholic schools fulfil their responsibilities to preserve and develop the Catholic character of the school is met throughout the employment relationship.

They underpin the CES model contracts of employment and go to the heart of the employment relationship. These policies and procedures are available on the CES website and are:

- ❖ Appraisal Policy and Procedure for Support Staff
- ❖ Appraisal Policy and Procedure for Teachers
  
- ❖ Capability Policy and Procedure
- ❖ Capability Policy and Procedure - Template letters
  
- ❖ Sickness and Absence Policy and Procedure
- ❖ Sickness and Absence Policy and Procedure - Template letters
  
- ❖ Form GRP1 – notification of formal grievance to the Clerk to Governors
- ❖ Form GRP2 – notification of appeal against grievance resolution
- ❖ Grievance Resolution Policy and Procedure
- ❖ Grievance Resolution Policy and Procedure – Template letters
  
- ❖ Disciplinary Policy and Procedure
- ❖ Disciplinary Policy and Procedure - Template letters

As explained in the subsection dealing with CONTRACTS, most staff will be required to preserve and develop the Catholic character of their school, and all staff will have contracted not to do anything which would be detrimental or prejudicial to the interests of the Catholic character of the school. Furthermore, all staff will be bound to carry out their contractual duties in accordance with

the requirements of Canon law<sup>25</sup> in respect of the governance of the Catholic nature of the school and the Trust Deed and Instrument of Government of the school or Articles of Association of the academy.

It is important that all CES employment documentation is used by schools as it forms an important support framework established for Catholic schools: for example, the contracts refer to CES policies and procedures. In respect of these CES policies and procedures, there is a built in mechanism so that the school is able to seek assistance from their diocesan education service in respect of any workplace policy matters. In certain cases, including where disciplinary allegations concern misconduct which could bring the Catholic character of the school into disrepute, the school **must** notify the diocese. This provides a layer of protection to ensure that the Catholic nature of the school is preserved by incorporating diocesan input and representation. Furthermore, the diocese is the only religious authority competent to give authoritative advice and guidance about the teachings of the Church and/or matters of a particular Catholic nature.

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<sup>25</sup>See *User Guide* section entitled *Role of the Church: Canon Law*

## ➤ POLICIES and PROCEDURES: Frequently Asked Questions

Through the work of the CES in advising dioceses, certain questions recur regularly. You may therefore find an answer to your question below:

- **What consultation has been carried out by the CES with Trade Unions at national level?**

We consult with the major trade unions when we review our policies. The CES maintains a list of the unions with whom consultation has taken place which can be shared with dioceses and schools as appropriate.

- **What consultation should be carried out with unions at a local level and can the policies be adapted?**

Please note that the documents are models. Schools must therefore use the model policies as a starting point and adapt them to meet the specific needs of their school and their workforce, in consultation with both staff and local union officials/representatives before the school formally adopts any policy or procedure. This is because it is not possible in models of this nature to cover every eventuality to reflect local circumstances. Schools should seek advice from their diocese, where appropriate.

In terms of adaptation to meet localised needs, one example is that small schools have the option to build in relationships with other schools so that there are sufficient numbers to effectively carry out the process at the various stages under the relevant policy.

- **Does a school need to agree any CES policy with a union before it is adopted?**

Whilst we encourage schools to engender professional relationships with unions representing their workforce, we would remind schools that they are not required to agree the specific provisions of policies with unions. As mentioned above, Schools should consult with both staff and local union officials/representatives before the school formally adopts any policy or procedure. Schools, however, have no obligation to sign any document that requires union agreement on the basis that where agreement cannot be reached the school will be left in a situation where it is unable to adopt any policy, CES or otherwise.

Schools must ensure that where they do adopt a policy, it is communicated to all staff, and is accessible to all staff, to reduce the possibility that an employee is unaware of the school's policy.

- **Do you take into account governance arrangements in academies?**

An entire set of policies and procedures has been created for academies and reflect the governance arrangements in a multi-academy trust, in particular reflecting authority where it has been delegated to local governing bodies or retained at a more central level.

- **How do schools and HR providers need to engage with their diocese?**

Schools in a diocese should use HR advisers who are familiar with CES documentation and understand the requirements on Catholic schools to use CES employment documentation in satisfaction of the **Bishops Memorandum**<sup>26</sup>

- **What are diocesan rights of attendance at hearings?**

Appropriate diocesan officers are entitled to attend hearings that are held by Schools/Governing Bodies with their staff pursuant to the model CES policies and procedures. Examples include:

- ❖ **Appraisal Policy and Procedure**

In matters of appraisal, the Governing Body may seek advice from other external advisers including, but not limited to, the Diocesan Schools' Commission or the Local Authority. In appeal hearings (at paragraph 14 of the policy), the Diocesan Schools Commission may send a representative to advise the School.

- ❖ **Capability Policy and Procedure**

For capability issues, please note the following paragraph 8.2:

*In the event that there are insufficient numbers of Governors available to participate in a Governors' Capability or Appeal Panel, the Governing Body may appoint associate members to participate solely*

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<sup>26</sup> *Bishops' Memorandum on Appointment of Teachers to Catholic Schools;*

*in the appropriate Governors' Capability or Appeal Panel on the recommendation of the Diocesan Schools Commission.*

Also at paragraph 11:

*In all cases involving any sanction in relation to the Headteacher or to a person on the Leadership Spine, or to potential or actual dismissal of any other member of staff, the Diocesan Schools Commission (and for maintained Schools, the Local Authority) may send a representative to advise the Capability Manager, Final Capability Manager or Appeal Manager.*

#### ❖ **Grievance Policy and Procedure**

In matters relating to grievances, (at paragraph 3 of the policy); a panel appointed by the Diocesan Schools Commission is a "Stage 2 Resolution Manager for grievances relating to the whole body of Governors.

#### ❖ **Disciplinary Policy and Procedure**

In terms of disciplinary matters (at paragraph 7.2 of this policy), please note there are diocesan advisory rights in relation to appointment of associate members in panels where there are an *insufficient numbers of Governors in certain panels.*

Further paragraph 11 of this policy, as follows

*In any case concerning the religious character of the School, the Diocesan Schools Commission must be notified immediately the School becomes aware of the allegations and it may be represented at any relevant interview or meeting to advise the Investigating Manager, Disciplinary Manager or Appeal Manager.*

Finally, diocesan advisory rights (and rights of attendance) exist in relation to sanction of a Headteacher and/or potential or actual dismissal of any other member of staff

#### ❖ **Sickness Policy and Procedure**

Within this policy, *the Governors expect the School to seek support and advice from its HR provider and the Diocesan Schools Commission, as appropriate.*

At paragraph 12.2 of the policy; please note there are diocesan advisory rights in relation to appointment of associate members in panels where there are an insufficient numbers of Governors in certain panels.

Finally, at paragraph 16 of the policy; diocesan advisory rights (and rights of attendance) exist in relation to the sanction of a Headteacher and/or potential or actual dismissal of any other member of staff

- **How do you operate these policies fairly and reasonably?**

Employment Tribunals expect employers to behave fairly and reasonably and therefore the CES policies once adapted and adopted by schools should be operated fairly and reasonably by them as the employer. The following core principles of reasonable behaviour are taken from the Advisory, Conciliation and Arbitration Service (UK) (ACAS) Code of Practice on disciplinary and grievance procedures and the CES would encourage such behaviour in the operation of all of their model policies:

The ACAS Code of Practice on disciplinary and grievance procedures gives practical guidance for handling these issues in the workplace. Failure to follow the Code does not make a person or organisation liable to proceedings, however, Employment Tribunals are legally required to take the ACAS Code of Practice into account when considering relevant cases. A tribunal can adjust any awards made in relevant cases by up to 25 per cent for unreasonable failure to comply with any provisions of the Code. Employers and employees should always look to resolve disciplinary and grievance issues in the workplace.

**These core principles of reasonable behaviour set out in the ACAS Code are to:**

- ❖ Use procedures primarily to help and encourage employees to improve rather than just as a way of imposing a punishment.
- ❖ Inform the employee of the complaint against them, and provide them with an opportunity to state their case before decisions are reached.
- ❖ Allow employees to be accompanied at disciplinary meetings.
- ❖ Make sure that disciplinary action is not taken until the facts of the case have been established and that the action is reasonable in the circumstances.
- ❖ Never dismiss an employee for a first disciplinary offence, unless it is a case of gross misconduct.
- ❖ Give the employee a written explanation for any disciplinary action taken and make sure they know what improvement is expected.
- ❖ Give the employee an opportunity to appeal.

- ❖ Deal with issues as thoroughly and promptly as possible.
- ❖ Act consistently.

These basic principles are further reinforced and indeed extended by the principles of Catholic Social Teaching set out below:

- **What are the principles of Catholic Social Teaching?**

The Catholic Church's social teaching is a rich treasure of wisdom about building a just society and living lives of holiness amidst the challenges of modern society. Several of the key themes that are at the heart of Catholic social tradition and which should permeate through Catholic School, are<sup>27</sup>:

- ❖ life and dignity of the human person;
- ❖ call to family, community and participation;
- ❖ rights and responsibilities;
- ❖ option for the poor and vulnerable;
- ❖ the dignity of work and the rights of workers;
- ❖ solidarity and
- ❖ care for God's creation.

Some of the specific tangible examples of this teaching is reflected in the concept of preferential option for the poor and through the CES employment documentation through contractual provisions in relation to trade unions and its membership:

- **Preferential Option for the Poor**

This concept (amongst other principles) is mentioned in a footnote to the CES model Appraisal Policy and Procedure when setting out appraisal objectives:

*In setting and reviewing objectives for Teachers at the School, the following principles should be considered:*

- (a) Justice for all;*
- (b) The needs of the whole person;*
- (c) Respect for the individual and the community; and*

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<sup>27</sup> <http://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/seven-themes-of-catholic-social-teaching.cfm>

(d) *The preferential option for the poor.*

The Catholic commitment for poor young people at the centre of the education programme is set out below:

*“When the preferential option for the poorest is at the centre of the educational programme, the best resources and most qualified persons are initially placed at the service of the least, without in this way excluding those who have less difficulties and shortages. This is the meaning of evangelical inclusion, so distant from the logic of the world. The Church does, in fact, mean to offer its educational service in the first place to “those who are poor in the goods of this world or who are deprived of the assistance and affection of a family or who are strangers to the gift of Faith.”<sup>28</sup>*

➤ **Trade Union membership**

All employees and workers in a Catholic school have the right to join a trade union and take part in its activities. This right not only flows from the current law in England and Wales<sup>29</sup> but also from the Catholic Church’s social teaching. The Second Vatican Council’s Pastoral Constitution on the Church in the World (*Gaudium et Spes*) states: *“Among the basic rights of the human person is to be numbered the right of freely founding unions for working people. ... Included is the right of freely taking part in the activity of these unions...”* (para.68). The 1996 Bishops’ Conference document *“The Common Good and the Church’s Social Teaching”* also elaborates on this, and other rights of workers derived from the Church’s teaching (paras.91-95).

It is for this reason that the CES has, for many years, stipulated this right in the model contracts. For so long as the current law remains, it may seem, strictly speaking, unnecessary and ineffectual to give this as a contractual right as well. However, it is retained for two reasons. First, because the right deriving from the Church’s social teaching predates the current law now guaranteeing this for all workers. Second, and more importantly, because if the current law were to change in any way, this would not affect workers in Catholic schools, where it clearly exists as a contractual right over and above any statutory minimum.

• **What happens at the appeal stage?**

The appeal stage in a disciplinary, grievance, sickness absence and capability procedure gives employees another opportunity to put forward their case and employers a chance to address any

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<sup>28</sup> *The Congregation for Catholic Education: Consecrated Persons and their Mission in Schools para 70*

<sup>29</sup> *Trade Union and Labour Relations (Consolidation) Act 1992*

unfairness in the original process and/or decision. The importance of offering a right of appeal is covered in the ACAS code of practice on disciplinary and grievance procedures.

When employers receive notification of an appeal, they should arrange a hearing without unreasonable delay and inform the employee of their right to be accompanied at the hearing by a work colleague or trade union official.

Ideally an appeal should be conducted by somebody impartial who is more senior than the original decision maker. Ideally the appeal officer should also be outside the original decision maker's reporting line.

The potential outcomes of the appeal process should be made clear. For example, will the appeal be a review of the original decision, or a complete re-hearing of the case?

- **At the appeal stage, should there be a review of the evidence or a full re-hearing?**

A review involves the appeal officer deciding if the disciplinary decision was reasonable based on the evidence available at the original hearing. A full rehearing, however, involves re-interviewing the employee and potentially taking further witness evidence in order to come to a fresh decision.

Where the appeal will have a significant effect on an employees' ability to pursue their chosen career, a full rehearing may be appropriate. And it is possible that procedural defects in an initial disciplinary hearing may be remedied if an appeal is sufficiently comprehensive (in effect a rehearing).

- **At the appeal stage, what happens if there is new evidence?**

New evidence arising at the appeal stage may be taken into account in justifying a dismissal even if the evidence available at the initial disciplinary hearing would not have justified it. The employee should be given the opportunity to comment on any such new evidence before a decision is taken to ensure a fair process is followed.

In ensuring that policies are operated fairly and reasonably, employers should:

- ❖ Always give a right of appeal against any disciplinary sanction or grievance outcome
- ❖ Make sure the appeal is conducted by someone impartial and more senior (if possible)
- ❖ Offer the right to be accompanied at the appeal hearing
- ❖ Explain the type of appeal process to be followed and potential outcomes
- ❖ Give the employee an opportunity to comment on new evidence
- ❖ Keep careful records of the appeal process.

- **The Sickness Absence Policy and Procedure refers to “Medical Consent”, what is this?**

There are specific legal limitations on what an employer can expect from a staff member in particular in relation to the consent that is needed for medical reports. Primarily schools are advised to seek assistance from their human resources provider and/or seek independent legal advice. In general however the following legislation is likely to be relevant:

- Access to Medical Reports Act 1988 (the Act)
- Guidance from the General Medical Council (the Guidance)

The Act specifically states that a worker/employee must be asked in advance whether they consent to the report being sought and if they want to see the report before it is sent to their employer or an insurer. An employer can only obtain a medical report from a medical practitioner if it specifically relates to employment or insurance.

However section 3 of the Act states that a worker/employee **has to give his or her consent** for their employer to be given access to their medical records.

An employer must notify the worker/employee concerned that they intend to apply to their doctor or medical practitioner to see their medical records. Contained within the notification must be full details of the employee’s rights under the Access to Medical Reports Act.

A worker/employee then has the right to do the following things under the Act:

- Refuse their consent
- To consent to the report being provided to their employer and state that it can be sent directly to their employer
- To consent to the report being provided to their employer but state that they wish to see the report before it is provided to their employer

If a worker/employee does wish to see the report beforehand they can withdraw consent once they have seen it. However the Act only applies to medical reports prepared by a medical practitioner who has been responsible for the clinical care of the worker, so if the worker is only being examined by a doctor and not treated the Act may not apply (nor does it apply to reports by nurses? However the Guidance confirms that a doctor should gain a patient’s consent before disclosing information to a third party (and that includes a worker who is being examined only for a medical report).

# Appendix I – List of CES Employment Documentation

## **BISHOPS CONFERENCE/CES/DIOCESAN DOCUMENTATION**

**All documentation listed here is available on the CES website:**

- Bishops’ Memorandum on Appointment of Teachers to Catholic Schools;
- Bishops’ Conference and CES document entitled “Christ at the Centre”;
- CES Guidance on Governance of a Catholic School: A Clarification of Roles and Responsibilities for England & Wales;
- CES documents “The Public Sector Equality Duty in England” and “The Public Sector Equality Duty in Wales”;
- CES document entitled “Catholic schools, children of other faiths and community cohesion”;
- CES document entitled “Pupils of Other Faiths in Catholic schools”;
- CES document entitled “Equality Act 2010 Guidance for Catholic Schools”;
- CES document entitled “Catholic Values and ‘British Values’ Practical Advice from the Catholic Education Service”;

## **CES MODEL EMPLOYMENT APPLICATION DOCUMENTS**

**All documentation listed here is available on the CES website:**

- Teacher Registration Form
- CES Guidance Employment References: Frequently Asked Questions
- Recruitment Monitoring Form
- Rehabilitation of Offenders Act 1974 - Disclosure Form
- Leadership Application Form
- Lay Chaplain Application Form
- Teacher Application Form
- Support Staff Application Form
- Notes to Applicants
- Model Checklist of evidence (at interview stage)

## **CES MODEL RECRUITMENT AND APPOINTMENT DOCUMENTS:**

**All documentation listed here is available on the CES website:**

- Bishops’ Memorandum On Appointment Of Teachers To Catholic Schools
- Guidance Note on Recruitment of Staff for Governing Bodies
- Model Invitation to Interview Letter
- Equality Act 2010 - Reasonable Adjustments Statement
- Applicant’s Declaration on receipt of contract
- Model Checklist of evidence (at interview stage)
- CES Guidance and Policy on Disqualification under the Childcare Act 2006

## **CES MODEL CONTRACTS OF EMPLOYMENT**

**All documentation listed here is available on the CES website unless otherwise stated:**

1. CES Model Leadership Contract Group 1 (Head teacher, Joint Head teacher, Acting Head Teacher)
2. CES Model Leadership Contract Group 2 (Deputy Headteacher, Assistant Headteacher)

3. CES Model Teacher Contract (Fast Track Teacher, Teacher and Newly Qualified Teacher)
4. CES Model Lead Practitioner Contract
5. CES Model Support Staff Contract (Teaching Assistant (Levels 1, 2, 3 and 4), Temporary Welfare Assistant, Classroom Assistant, Nursery Employee, Support Staff Member (Not Teaching Assistants))
6. CES Model Instructor/Unqualified Teacher Contract
7. CES Model Lay Chaplain Employed by a Governing Body Contract
8. CES Model Lay Chaplain Employed by a Diocese Contract

The above 8 contracts of employment are available with small but important amendments for the following types of employers:

- **Voluntary aided schools (available online)**
- **Voluntary academies (available online)**
- **Voluntary academies with flexible pay and conditions (please contact the diocese)**
- **Voluntary aided schools jointly run by the Catholic Church and Church of England (please contact the diocese)**
- **Voluntary academies jointly run by the Catholic Church and Church of England (please contact the diocese)**
- **Voluntary academies jointly run by the Catholic Church and Church of England with flexible pay and conditions ((please contact the diocese))**

#### **CES GUIDANCE ON EMPLOYMENT CONTRACTS**

**All documentation listed here is available on the CES website unless otherwise stated:**

- CES employment documentation User Guide
- CES model School Contracts: Notes to Users
- CES model Academy Contracts: Notes to Users
- CES model Academy Contracts: Notes to Users (diocesan version) (please contact the diocese)
- Guidance Note on the Employment of Special Educational Needs Coordinators (SENCOs)
- Guidance Note on Lead Practitioner Contracts
- Four different levels of Teaching Assistants (please contact the CES)
- CES Optional Contract Clauses

#### **CES MODEL SCHOOL POLICIES AND PROCEDURES**

**All documentation listed here is available on the CES website:**

- Appraisal Policy and Procedure for Support Staff
- Appraisal Policy and Procedure for Teachers
- Capability Policy and Procedure
- Capability Policy and Procedure - Template letters
- Sickness and Absence Policy and Procedure
- Sickness and Absence Policy and Procedure - Template letters
- Form GRP1 – notification of formal grievance to the Clerk to Governors
- Form GRP2 – notification of appeal against grievance resolution
- Grievance Resolution Policy and Procedure
- Grievance Resolution Policy and Procedure – Template letters
- Disciplinary Policy and Procedure
- Disciplinary Policy and Procedure - Template letters

The above 12 documents relating to school policies and procedures are separately produced for:

1. Schools in England
2. Academies in England
3. Schools in Wales

#### **EXTERNAL THIRD PARTY GUIDANCE (e.g. DfE/ACAS guidance)**

- **Guidance on managing staff employment in schools** published by Department for Education dated April 2013
- **Discipline and grievance** - Acas Code of Practice published by ACAS dated March 2015
- **Leading and Governing Groups of Schools Guidance** jointly produced by ASCL, NGA and Browne Jacobson dated March 2015
- **Implementing your school's approach to Teacher's pay** published by Department for Education

#### **FURTHER READING**

The following Church documents set out the Church's teaching on the nature and purpose of Catholic education in some detail (most of which are available on [www.vatican.va](http://www.vatican.va) unless otherwise stated):

- Declaration on Christian Education *Gravissimum educationis* (28<sup>th</sup> October 1965) available on the following link:  
[http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_decl\\_19651028\\_gravissimum-educationis\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_gravissimum-educationis_en.html)
- The Catholic School (19<sup>th</sup> March 1977) available on the following link:  
[http://www.vatican.va/roman\\_curia/congregations/ccatheduc/documents/rc\\_con\\_ccatheduc\\_doc\\_19770319\\_catholic-school\\_en.html](http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_19770319_catholic-school_en.html)
- Lay Catholics in Schools, Witnesses to Faith (15<sup>th</sup> October 1982) available on the following link:  
[http://www.vatican.va/roman\\_curia/congregations/ccatheduc/documents/rc\\_con\\_ccatheduc\\_doc\\_19821015\\_lay-catholics\\_en.html](http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_19821015_lay-catholics_en.html)
- The Religious Dimension of Education in a Catholic School (7<sup>th</sup> April 1988) available on the following link:  
[http://www.vatican.va/roman\\_curia/congregations/ccatheduc/documents/rc\\_con\\_ccatheduc\\_doc\\_19880407\\_catholic-school\\_en.html](http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_19880407_catholic-school_en.html)
- The Catholic School on the Threshold of the Third Millennium (28<sup>th</sup> December 1997) available on the following link:  
[http://www.vatican.va/roman\\_curia/congregations/ccatheduc/documents/rc\\_con\\_ccatheduc\\_doc\\_27041998\\_school2000\\_en.html](http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_27041998_school2000_en.html)
- Consecrated Persons and their Mission in Schools: Reflections and Guidelines (28<sup>th</sup> October 2002) available on the following link:  
[http://www.vatican.va/roman\\_curia/congregations/ccatheduc/documents/rc\\_con\\_ccatheduc\\_doc\\_20021028\\_consecrated-persons\\_en.html](http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20021028_consecrated-persons_en.html)
- Educating Together in Catholic Schools: A Shared Mission between Consecrated Persons and the Lay Faithful (8<sup>th</sup> September 2007) available on the following link:  
[http://www.vatican.va/roman\\_curia/congregations/ccatheduc/documents/rc\\_con\\_ccatheduc\\_doc\\_20070908\\_educare-insieme\\_en.html](http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20070908_educare-insieme_en.html)
- Bishops' Statement on Religious Education <http://rcdow.org.uk/education/headteachers/re-in-catholic-schools/>
- RE Curriculum Directory (Bishops' Conference, 2012) available on the following website:  
[www.Catholiceducation.org.uk](http://www.Catholiceducation.org.uk)

## Appendix II – Index of Frequently Asked Questions

This is a list of frequently asked questions that have been answered in this User Guide:

### ❖ APPLICATION STAGE

- What happens to an application form that an applicant incorrectly submits to the CES?
- If an applicant who is a *practising Catholic* wants to apply for a teaching role which does not require that the candidate must be a *practising Catholic*, should they still provide referee details for their parish priest?

### ❖ RECRUITMENT AND APPOINTMENT STAGE

- Does the Governing Body have a duty to advertise the role of a Headteacher?
- In what circumstances should the Governing Body appoint an acting Head?
- Is the CES an employer (or a party to the contract of employment) for staff in Catholic schools?
- Why is the Bishop represented at interviews of senior leaders and teachers of religious education?

### ❖ CONTRACTS

- Can the CES contracts be amended in terms of pay?
- Can the notice periods set out in the CES model contract be amended for support staff?
- Can the CES model contracts be used for other roles such as School Business Managers, Bursars and Trainee Teachers?
- Can a local authority insist on using their own standard contracts for schools but with amendments to incorporate what they consider to be appropriate Catholic elements?
- What is Appendix 2 for?
- Are there contracts of employment developed specifically for schools jointly run by the Catholic Church and the Church of England or the Church in Wales?
- What is “Continuity of Service”?
- What is the “Ministry of a Teacher” referred to in paragraph 4.1 of the CES contract of employment for teachers?
- Why is the National Workload Agreement referred to in the CES contracts?
- What are Break Clauses in Fixed Term and Temporary Contracts?
- What is the Green Book that is referred to in the CES contracts?
- What is the Burgundy Book that is referred to in the CES contracts?
- What do CES contracts say about planning, preparation and assessment (PPA)?
- What are the new pension rules?
- Is it possible to postpone auto enrolment into a pension by three months as set out in the CES model contract?
- Could the wording regarding auto-enrolment in the Pensions paragraph be considered “an inducement” and therefore unlawful?

## ❖ POLICIES AND PROCEDURES

- What consultation has been carried out by the CES with Unions at national level?
- What consultation should be carried out with Trade Unions at a local level and can the policies be adapted?
- Does a school need to agree any CES policy with a union before it is adopted?
- Do you take into account governance arrangements in academies?
- How do schools and HR providers need to engage with their diocese?
- What are diocesan rights of attendance at hearings?
- How do you operate these policies fairly and reasonably?
- What are the principles of Catholic Social Teaching?
  - Preferential Option for the Poor
  - Trade Union membership
- What happens at the appeal stage?
- At the appeal stage, should there be a review of the evidence or a full re-hearing?
- At the appeal stage, what happens if there's new evidence?
- The Sickness Absence Policy and Procedure refers to "Medical Consent", what is this?