

UNISON

Negotiating advice for school staff

Trust schools

NEGOTIATING EDUCATION


UNISON
Education Services

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Introduction

This is an updated briefing note for UNISON branches in England on the development of trust schools, the first of which opened in September 2007.

This note sets out what trust schools are, the recent developments, issues of concern, UNISON's position, a branch checklist and campaign resources available.

UNISON is trying to persuade school governing bodies not to go down the trust route.

What is a trust school?

A trust school:

- is a foundation school with a charitable trust
- is primary or secondary (including special schools)
- is likely to be grouped with other schools locally or with other schools with similar specialities regionally or nationally
- has its own admissions authority abiding by the national admissions code
- is funded like other maintained schools
- employs staff – would be subject to School Support Staff Negotiating Body (SSSNB) agreements
- controls assets, land and buildings.

The trust must be set up as a charity and is not allowed to make a profit from the school(s). It may be the charitable arm of a single private company or body but could also have many external partners such as other companies, higher or further education institutions, charities or voluntary groups. Only extreme examples of companies involved in gambling, alcohol, tobacco and pornography have been ruled out by the Department for Children, Schools and Families (DCSF). In addition it could have multi-school and local authority membership too.

Trusts have seats on the school governing body and can have a majority. The trust is not obliged, or even expected, to make a financial contribution to the school(s), unlike some academy school sponsors. The government sees the benefit in bringing in outside expertise.

It is quite possible for the commercial company to have had little previous interest in education and the DCSF is always searching for potential new partners.

Initial openings have been among secondary schools but primary schools are now becoming trusts too. Many of the schools interested already have a subject specialism or outside

links established. Some of the early trust schools appeared benign on the surface because they sought to formalise existing links either with feeder primary/middle schools or with neighbouring secondary schools and/or colleges in a trust. However UNISON's concerns, as set out below, are concentrated on commercial interests potentially controlling both the trust and school governing body to the detriment of all.

Recent developments

Forty-seven new trust schools opened in the period July to September 2009.

Universities, in particular, are being encouraged to be trust school partners or sponsors of academy schools.

The co-operative movement is also being supported in getting involved in the setting up of new trust schools and promises to run them on co-operative principles. Twenty-five co-operative trust schools already exist and the DCSF is paying for 100 more to consider the co-operative trust model working with the Co-operative College.

The pressure from the DCSF to create trust schools (and academies) also continues through a variety of means.

Firstly, local authorities have been, and continue to be, under pressure to promote both trusts and academies as part of their bids for funds for new buildings, known as the Building Schools for the Future (BSF) programme.

Secondly, if population growth means a new school is needed in a particular area, then pressure is applied for it to be either a trust or academy school.

National Challenge trusts

The latest development to promote trusts is through the National Challenge programme, which was launched in June 2008 and provides support to around 545 schools which are below or at risk of being below the DCSF floor target (30% of pupils achieving five or more GCSEs). It is supported by £400m until 2011 and offers schools a range of support to suit their needs. As part of this process schools can have an educational improvement partner paid for by the DCSF.

However, the more controversial aspects of the programme are that the DCSF puts pressure on local authorities with National Challenge schools for them to become either trusts or academies as part of their improvement plan they have to submit to the secretary of state. The secretary of state can order improvement notices if not satisfied and commission external reviews of local authority school plans (this has happened with Blackpool, Leicester and Gloucestershire, Kent, Leeds and Suffolk so far) to ensure that they have no schools below the target of at least 30% of pupils achieving five A* to C GCSEs, including English and Maths, by 2011.

UNISON believes that many of these National Challenge schools are often working in difficult circumstances and are often improving at the time of DCSF intervention. The National Challenge label often provides a setback.

UNISON is concerned that this is undemocratic because local authorities can, in the name of improvement, now override the governing bodies of National Challenge schools and close the school. They can then re-open it as a trust school or replace the existing governors with an Interim Executive Board (IEB) in order for them to apply to be a trust. To attract DCSF funds, the new trust must have at least one partner with an educational background, for example another school or college, and control the majority of the governors.

Twenty-two National Challenge trusts opened in September 2009.

Schools seeking trust status are normally expected to conduct a two-stage consultation, the first locally on the initial idea and then a second three-month statutory consultation. UNISON branches are often consulted and this note is designed to help branches respond.

Please inform UNISON head office of any local consultations at: education@unison.co.uk.

UNISON's concerns

Staff – the governing body of a Trust school acts as the employer and therefore can set its own terms and conditions for support staff. However, trust schools will be covered by any agreements reached by the new SSSNB, and that means trust schools will be legally obliged to implement any national agreements on pay and conditions.

Transfer – If the school is a foundation school already then a trust school will be no different in terms of employment status, but there could be dangers if a business-dominated charitable trust assumes majority control of the governing body. If the school is a community school and wants to become a trust it needs to change its status to foundation school first. The government has introduced a fast-track approach to this. When a community school makes this transition this means significant change for staff moving from local authority to governing body employment. Many governing bodies struggle at first without local authority support and administration. Schools that transfer from the local authority to the governing body of a school are normally subject to TUPE. However, new regulations have come into force regarding this transfer. The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 now provide for all rights, powers, duties and liabilities to transfer from the local authority to the governing body. Paragraphs 29 to 32 of Schedule 1 of these regulations provide for all rights, powers, duties and liabilities to transfer from the local authority to the governing body.

See: www.opsi.gov.uk/si/si2007/20071289.htm for the exact regulations.

In other words, the transfer of staff now takes place under education legislation and not under the provisions of TUPE. The effect of these provisions is still to protect an individual's employment rights on transfer and to ensure that any agreements entered into by the local authority before this date are honoured. However UNISON was concerned about what this might mean for future employees and has therefore sought further advice from government officials. We received a letter from the DCSF which says:

“For the present our view remains that where governing bodies follow the Prescribed Alterations regulations and guidance that the requirements on consultation meet the needs to a transfer taking place under the TUPE regulations. Furthermore the department's guidance also requires governing bodies take account of the Cabinet Office's guidance, ensuring that the principles of TUPE are followed so that those involved are treated no less favourably than had the TUPE Regulations applied.”

Governing body – It is possible for the charitable trust to have either a minority or a majority of the governing body. Most of the trust proposals UNISON has seen have involved minority control only, which is preferable, and many have involved the local authority as one of the members of the trust. If a majority, UNISON is concerned that this gives a private company control of the land, assets, buildings, curriculum influence and the employment of staff and contractors. Many of the bodies interested in both trust schools and academies have religious influences, and in such cases the branch should seek confirmation that the trust will abide by all relevant public sector equality duties. The governing body would have a legal power to innovate and possibly break from national agreements and regulations, though we have never heard of the innovation power being used in this way before, and developments with the SSSNB may preclude this in future.

Until the National Challenge started, the decision to bid for trust status from the DCSF rested entirely with the governing body. Now

for National Challenge schools it is possible for the local authority to close the school and re-open it as a trust or for them to take over the governing body to achieve this with DCSF financial support. The new trust has to be one with an educational track record, for example a further education college, university or another school, and has to take a majority of the governing body not a minority.

Co-operation – the growth of trust schools impairs the ability of the local authority to co-ordinate education provision and could cut across other co-operative developments between schools such as the 14-19 curriculum and the Every Child Matters agenda. By being their own admissions authorities they further complicate the admissions picture for parents.

Where UNISON stands

UNISON believes:

- in a good local school for every child
- in the positive role of the local authority
- in a national pay and conditions framework for school support staff
- that the powers to federate with other schools and to have links with universities, colleges, businesses and charities already exist for both community and foundation schools without having to have trust status
- that the power to have up to four sponsor governors already exists if schools wish to forge business and other community links
- that governing bodies should not irreversibly give away their positive power and responsibility for the school's well-being
- trust schools will reduce elected parental involvement (although one-third of the governing body must be parents only one position has to be elected with the rest appointed)

- they could encourage a lack of co-operation with schools outside the trust and have exclusive access to services not available to other schools
- though trust schools are maintained schools they are a step closer to the independent and unaccountable academies.

For these reasons we believe that governing bodies should not pursue the option to become a trust school and UNISON branches should campaign against them.

Negotiating checklist for branches and representatives

- a Check with your local authority/director of children's services whether any schools are considering trust status, possibly as part of the Building Schools for the Future programme or the National Challenge.
- b If yes, ask local UNISON school reps and/or the head/governing body what their intentions are for the school.
- c If proceeding, write and ask to be included in the consultations.
- d Hold a meeting of the UNISON members affected to get their views.
- e Make sure the governing body holds a consultation meeting for all staff.
- f Use the consultations to point out the risks of trust status and the advantages of other options.
- g Raise with the local authority whether they should be a member of the trust.
- h If going ahead press for the trust to have minority not majority control of the governing body.
- i Inform the education workforce unit at Mabledon Place of the consultation (education@unison.co.uk).
- j Use whatever campaigning tools the branch sees fit; letters to the paper, press releases, local authority scrutiny committee, petitions and so on.
- k Evaluate the suitability of the proposed outside partners and their employment record (you can contact the bargaining support group or private companies unit at Mabledon Place for background information).
- l If transferring from community school status, work with your regional officer to secure trade union recognition, facility time and negotiating rights for school support staff. Try to secure a TUPE Plus agreement that lasts as long as possible and covers new starters as well as existing staff.

Resources

The schools section of the UNISON website:
www.unison.org.uk/education/schools/index.asp

Useful UNISON contacts

Bargaining support
Deborah Littman
National officer
UNISON
1 Mabledon Place
London WC1H 9AJ
Email: bsg@unison.co.uk

See also the bargaining zone on the UNISON website:
www.unison.org.uk

Private companies research

Julie Hallam
National officer
UNISON
1 Mabledon Place
London WC1H 9AJ
Email: bsg@unison.co.uk

They have information on private companies providing public services. In addition UNISON staff have access to the online Bargaining Information Service (BIS) which contains a wealth of information on companies, agreements with employers and contracts

Official trust schools website

For a list of new trust schools, frequently asked questions and the official trust school toolkit, the official website hosted by the Specialist Schools and Academies Trust (SSAT) for the DCSF is:
www.trustandfoundationschools.org.uk

Other useful websites

Campaign for Advancement of State Education (CASE) – UNISON is affiliated:
www.campaignforstateeducation.org.uk

Children Services Network (CSN – part of the Local Government Information Unit – UNISON is affiliated:
www.csn.info

Anti-Academies Alliance – UNISON is affiliated. Though concentrating on academy schools, the alliance is interested in trust schools and some academy sponsors are also be involved with trust schools:
www.antiacademies.org.uk

Opposition to trust schools

UNISON is working with the major teaching unions to oppose the establishment of trust schools:

ATL www.atl.org.uk

NASUWT www.nasuwat.org.uk

NUT www.teachers.org.uk/index.php

The NUT has produced more detailed guidance on campaigning against trust school status, available from Mabledon Place:

Email: education@unison.co.uk

UNISON contact details

Please send your information on trust schools to:

Bruni de la Motte
National officer
UNISON education workforce unit
1 Mabledon Place
London WC1H 9AJ
Email: education@unison.co.uk



contact

Tel: 0845 355 0845

Email: education@unison.co.uk

www.unison.org.uk/education/schools