

Written Evidence by the Confederation of Schools Trusts in respect of Chapter 3, Part 1, Clause 28 and Schedule 3 of the Employment Rights Bill

Executive Summary

The Confederation of School Trusts (CST) believes that school support staff make an important and enduring contribution to school standards and to supporting our most vulnerable children, helping all pupils to achieve and thrive. We support the government's ambition to give greater recognition of the vital role support staff play in the workforce and young people's education.

We agree that it is timely to take negotiations on school support staff pay out of local government. We support the government's aspiration for a national framework. We believe that public leaders make better decisions when these decisions are closer to those whom a profession serves. In the case of school leaders, we believe school employers should have the flexibilities to make good decisions that make a positive difference for children. We believe this as a point of principle for all school employers.

CST has long made the case that we should apply the same level of rigour to the training, development and progression of our support staff as we have applied to our teacher workforce.

In support of the Government's desire for this, we want to recognise the unique contribution of our school support staff workforce and make a positive difference for all children.

We acknowledge that this is overwhelmingly a Bill concerned with employment policy but this matter and our recommendations relate to education policy. We are seeking an amendment to the legislative provisions that set out the matters within the remit of the SSSNB. The amendment is sought to clarify the extent of the scope of the SSSNB's remit. Specifically, we are seeking an amendment to make clear that employers should have **a duty whereby they must have regard to** remuneration, terms and conditions, training and career progression for school support staff, as set out in a **national framework**. This means that they must follow the framework unless there are compelling or exceptional reasons not to do so. Where employers have departed from the national framework, they should be enabled to 'comply or explain.' This reflects the 'spirit' of the existing National Joint Council approach, which is adhered to by most but not all school employers.

The principal reasons for seeking this amendment relate to the potential impact on:

- a. school improvement.
- b. SEND reform.
- c. recruitment and retention of staff.

Introduction

The Confederation of School Trusts (CST) is a membership organisation of academy trusts, representing 75% of the academy sector in England. Through our members, CST engages with thousands of trust executives and governance leaders, whose schools are responsible for the education of more than 3.5 million young people, including 82% of secondary school pupils from disadvantaged backgrounds.

CST holds fortnightly online open briefings with the membership. Two recent meetings, held since the tabling of the Employment Rights Bill, have been dedicated to the subject of the proposed establishment of a school support staff negotiating body (SSSNB). These meetings have precipitated feedback on the proposed legislation from members, ranging in size of trust. The vast majority of members surveyed support our submissions contained in this document.

Whilst CST as an organisation represents the interests of academy trusts, we believe strongly in partnership and collaboration. The proposed amendment is firmly designed to meet the interests of all schools, regardless of governance structure and the principles behind the proposals are not exclusive to the academy sector.

However, we would like to express our concern about the risk that the provisions, as currently laid, could have the effect of overriding the Funding Agreement, the contract between the government and each individual academy trust. The Funding Agreement is currently non prescriptive about the terms and conditions of support staff, giving rise to academy freedoms in the establishment of terms of employment. The Bill, which explicitly applies to academies, imposes terms relating to the matters within the SSSNB's remit, thereby overriding the contract that currently exists. If the remit of the SSSNB goes further than establishing a framework to which academies must have regard, instead imposing a national standard which must be strictly adhered to, the Bill will then have the effect of significantly changing the contract between government and each academy trust. Such a change would normally require consultation with a view to reaching agreement. The Bill as currently worded may lead to a unilateral change to the terms of the contract. Conversely, if our proposed amendments are accepted

and the Bill establishes that the SSSNB will negotiate a framework, then academies must have regard to that framework, but a degree of freedom is retained, where departure from the framework is justified.

Reasons for submission

This submission relates to Chapter 3, Part 1, Clause 28 and Schedule 3 of the Employment Rights Bill and in particular the provisions that relate to school support staff and the proposals to introduce the SSSNB. Schedule 3 sets out the proposals to deal with pay and conditions of school support staff in England. Paragraph 1 inserts new Part 8A to incorporate the introduction of the School Support Staff Negotiating Body into the Education Act 2002. Part 8A consists of new section 148A– 148R. New section 148A establishes the School Support Staff Negotiating Body and introduces new Schedule 12A to the Education Act 2002. New section 148B sets out the matters within the SSSNB’s remit. New section 148C defines the meaning of school support staff.

Many members of CST wish to engage positively in consultation about details that will be determined through secondary legislation.

However, at this primary legislation stage, there are concerns about the consequences, if it results in the SSSNB negotiating restrictive national standards for support staff that are imposed on employers without flexibilities as currently envisaged by the provisions in section 148M. We do not believe that this is the intention behind the legislation, but it is a risk.

If the legislation was interpreted and enacted in this way, then these provisions would be unintentionally detrimental to both staff and pupils because:

- It would undermine employers’ ability to make strategic decisions about resource deployment as part of school improvement in most challenging schools.
- It would reduce the ability of employers to recruit and retain good support staff which has negative impact on both staff and pupil outcomes.
- It could potentially limit the flexibility that schools need to deploy their staff towards supporting the most vulnerable children, including those with special education needs and disabilities (SEND).

Individual academy support staff could also potentially lose pay/benefits which we are sure is not the intention of this legislation. There would be both administrative and opportunity costs.

CST calls for the legislation to establish a clear framework applicable to school support staff, to which all school employers “must have regard” - it is a well-established legal principle that a “duty to have regard to” a framework means that the parties to whom it applies must follow the framework unless there are compelling or exceptional reasons not to do so. Such wording enables all employers to continue to meet local needs and innovate in their deployment of support staff, at the same time having regard to a fair and transparent employment structure that truly reflects the value of the role played by support staff in schools.

The main thrust of our submission is therefore to seek an amendment to the legislation, to ensure that employers have a duty to have regard to the remuneration, terms and conditions, training and career progression for school support staff, as set out in a national framework; not a blanket standard that is rigidly applied nationally. This is a fundamental principle which we consider should be established by the wording of the primary legislation itself.

It is support staff who will help the Government achieve their key aim of ensuring that children not only achieve, but flourish at school, as it is within support staffing structures that pastoral, behavioural and educational needs can be met through an ability to recruit, train and deploy staff with specialist knowledge and skills. It is essential that the creative use of support staffing structures is not hampered by a rigid, prescribed regime that seeks to impose or have the consequence of imposing a “one size fits all” menu of staff terms and conditions.

Additionally, there are significant concerns about both the arrangements and the costs if the effect of the SSSNB is to set standards which significantly differ from those currently in force in any given school setting. If the legislation has the impact of setting a national standard, as opposed to a national framework that employers should have regard to, the consequences would include complex transitional arrangements which would inevitably delay any positive impact for staff; and a requirement to “level up” any benefits including pay, at potentially substantial cost.

Any associated costs would need to be centrally funded by Government at a time where funding constraints are critical and the use of public funds requires careful consideration and scrutiny.

We submit that our proposed amendments are important to ensure that the overarching aims of Government and of the education sector itself can be met, in the following key areas:

1. **The impact on school improvement and the quality of education:** Workforce strategy is therefore central to school improvement strategies. All school employers, regardless of school governance structure, must retain a degree of freedom and flexibility to recruit, develop, remunerate and deploy their staff for the benefit of the children in their community/setting, to achieve their particular aims from a school improvement/inclusion perspective. Employers across the board (academy trusts, Diocesan schools and local authorities) have innovated in this space.
2. **The impact on SEND reform.** The National Audit Office published its report in October 2024, calling for extensive overhaul of the SEND education system and initial proposals for reform have been outlined by the Secretary of State. Children with SEND rely on the ability of schools to deploy staff to meet their individual needs. To stifle innovation in staffing to meet these needs will be the greatest barrier to the ability to reform the SEND system. In particular, the aims of ensuring that mainstream provision can meet the needs of SEND children, requires innovative use of support staff resource.
3. **The impact on recruitment and retention.** All school employers operate in a competitive market to both attract and retain staff. Particularly in relation to support staff, schools compete with other local, including private sector, employers in local markets. Incentives to both attract and retain staff are needed. Additionally, employers need the ability to deploy staff to meet the needs of their particular demographic of children.
4. **The complexity of transitional arrangements moving from NJC terms and conditions to different terms established by the SSSNB.** There are concerns about equal pay claims, and the inability to change terms and conditions (due to the changes to legislation contained in the Employment Rights Bill relating to dismissal for failing to agree variation to contract). The complexity of such matters would be reduced by the imposition of duty to have regard to a national framework.

Recommendations for the Committee to consider

Drafted amendments for the Bill: CST proposes that the draft Bill at Schedule 1, Part 1, Clause 8 which sets out proposed changes to section 148B(1) of the Education Act 2002 be amended. The proposed amendment seeks to add the requirement that the remit of the SSSNB will be to determine “a framework” with regard to the matters that are set out in the clause:

148B Education Act 2002: Matters within the SSSNB’s remit

For the purposes of this Part, the matters within the SSSNB’s remit are matters relating to the ***establishment of a framework to which employers of school support staff (being those in Section 148C (3) (a) and (b)) must have regard relating to—***

- (a) the remuneration of school support staff;
- (b) the terms and conditions of employment of school support staff;
- (c) the training of school support staff;
- (d) career progression for school support staff.

If this principle amendment is accepted, additional, consequential, amendments to the draft Bill are required. Our submission relates specifically to the principle, leaving consequential drafting considerations to Parliament.

Conclusion

We hope this has been of assistance to the Bill Committee and would be prepared to provide further clarification on any points raised. We would be happy to give oral evidence if that would assist the Committee as it considers further scrutiny of the Bill.



Confederation of School Trusts

The Confederation of School Trusts (CST) is the national organisation and sector body for School Trusts in England advocating for, connecting and supporting executive and governance leaders. We are a membership organisation of organisations. This means that the organisation – the Trust – is the member. Our mission is to build an excellent education system in England – every school part of a strong and sustainable group in which every child is a powerful learner and adults learn and develop together as teachers and leaders.

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