



Symphony Learning
TRUST

Changing Terms & Conditions of Employment Guidance

Adopted by Symphony Learning Trust	Autumn 2019
Version	1

Purpose

This guidance should be considered by trustees, local governors and senior leaders at the point that they are considering making any changes to either employees' contractual terms or conditions of employment OR other changes in working arrangements (non-contractual).

It is important to note that this guidance provides only general advice for those wishing to make changes to terms and conditions of employment in the future. It is important to note that varying the contractual terms of employment is a complex area and therefore all schools in Symphony will seek HR advice at the earliest opportunity.

Background

During the TUPE Transfer process when a Local Authority maintained school converted into an Academy, Academies made a commitment to continue to comply with the following that were in place at the point of the TUPE transfer:

- Nationally agreed terms and conditions of service for teachers (incl. School Teachers Pay and Conditions Document – STPCD and the Burgundy Book)
- Nationally agreed terms and conditions of service for support staff (the Green Book)
- Locally agreed policies and procedures.

Therefore staff are protected on the terms and conditions of employment that were in place at the point of transfer.

During the TUPE consultation period, many Academies made an even greater commitment; specifically, that it was their intention to continue to adhere to any future amendments made to the nationally agreed documents such as the STPCD and Green Book, on a dynamic basis.

This means that post transfer, schools in Symphony Learning Trust are obliged to continue to work to these documents along with any subsequent changes made to them following conversion to School status. Any School wishing to alter any aspect of the terms and conditions must engage in meaningful consultation / negotiation with relevant Trade Unions and affected employees before any changes can be made.

This guidance outlines the points for schools to consider and actions that are required prior to all changes being made to contractual terms of employment. HR Advice should be sought early on in the process.

Preparatory work

It is important for each school to have a clear understanding of what it agreed to as part of the TUPE transfer. Schools should refer to their TUPE documentation to clarify their current position, such documents include:

- Measures letters,
- Minutes of TUPE consultation meetings with Unions,
- Transfer agreements,
- Funding agreements and
- Articles of association.

- Contracts of employment of affected employees to establish if there are any flexibility clauses contained within them that give SLT, as the employers, the right to change particular conditions of employment, eg relocation /shift patterns and so on.

Employers can only use flexibility clauses to make reasonable changes. Advice should be sought from HR regarding this. In such cases Appendix 2 may be used.

What is a contract of employment?

A Principal Statement, often referred to as a contract of employment is the agreement between an Employer and Employee which sets out the basis of the employment relationship along with the rights and obligations which bind the employer and employee to the contract.

The terms of a contract can be:

- express (those which are explicitly agreed between the employer and employee, either in writing or orally)
- implied (those which have not been spelled out but which would be taken by the people involved to form part of the contract) or
- statutory (those implied or imposed by an Act of Parliament or Statutory Instrument, e.g. the entitlement to be paid the national minimum wage or given a minimum period of notice. Agreements to contract out of statutory terms are normally void under the law).

Why vary the terms and conditions of employment?

As an employer a School may wish to vary the terms of the contract because of a change in circumstances, whether these changes are due to Economic, Technical or Organisational reasons. Such reasons may include reduced funding or deficit budget or a reorganisation of the establishment and so on. Other possible changes could affect rates of pay, changes in working hours, changes in duties and so on.

The updated TUPE regulations state that an organisation cannot rely on these ETO reasons alone, and that the organisation must gain agreement from employees and unions before changes can be made.

Below are some options for MATs to consider for varying terms and conditions for employees:

1. Develop a new set of agreed Terms and Conditions that will be applicable to all newly appointed employees. Such individuals, as employees of a MAT, will not be bound by the National Pay and conditions Framework or any agreements negotiated locally with the Local Authority.

Consideration would need to be given to the fact that this option would lead to a 2-tiered workforce, with employees being employed on different terms and conditions. MATS would also need to consider carefully the new terms and conditions of employment and seek both HR and Legal perspectives on this.

2. Alternatively, MATs may wish create new terms and conditions for all staff. MATS would need to ensure that thorough consideration had been given to the proposed changes and that any action can be fully justified. A process of negotiation would then be required with Trade unions in order to try and come to an agreement on the proposed changes. It would also be good practice to consult with employees regarding the proposed changes.

How can contracts be varied?

Changes to an existing contract of employment or terms and conditions may be made:

- Following receipt of a request for a change to contractual / non-contractual working arrangements from an employee.
- By agreement with an employee / group of employees following meaningful consultation where a change is non-contractual. It would be advisable to include Trade Unions during this process.
- Through a collective agreement / negotiation with Trade Unions where a change is being proposed to terms and conditions or is contractual. The purpose of the negotiation is to try and agree the changes or to come to a compromise on the changes to allow them to be implemented with the mutual agreement of all parties.

When undertaking negotiation with Trade Unions, this will usually be done through the Academy's Joint Consultative Group (JCG). In addition it is considered best practice to involve Employees at the earliest opportunity. This may also assist in cases where Trade Unions oppose proposed changes but where staff are in agreement. Employees affected by the proposals should fully understand the reasons behind them and have an opportunity to express their views.

Variations to the contract can be agreed verbally or in writing. However, it is considered preferable for any variations to the contract to be recorded in writing, as evidence of the agreed changes may need to be produced if the variation to the contract is verbal.

Where a variation to the contract has been agreed the School should give written notification of the change to the employee, within a month of the change taking effect. It is important that this written notification is signed by the affected employee(s) and returned to the School for inclusion on an employee's personal file.

Where negotiation takes place with Trade Unions, if an agreement cannot be reached, the School can serve notice to terminate the existing contract with notice and offer the employee re-engagement on the new terms. **This should be considered only after full and thorough consultation with employees and their representatives and treated as a last resort. Speak to your HR Adviser if you anticipate you may need to consider this option.**

By undertaking this process the School will be dismissing the employee and therefore it is important that a fair dismissal process is followed and that the employee is offered the right of appeal against their dismissal. Employees may make a claim to an Employment Tribunal for unfair dismissal who would decide whether or not the dismissal was fair or unfair.

It is important to note that an employee may make a claim for unfair dismissal even if they choose to sign up to a new contract of employment (i.e. where there has been a dismissal and an immediate re-engagement on less favourable terms and conditions) with the employer. Advice should be sought from HR early if this process is required.

Note: To impose a new contract unilaterally would result in a breach of contract by Academies and could lead to the following challenges being raised by your employees:

- legal claims against the School for constructive dismissal if the breach is fundamental and significant
- claim damages for breach of contract.
- claim at an employment tribunal for unlawful deduction from wages if the change affects their pay.



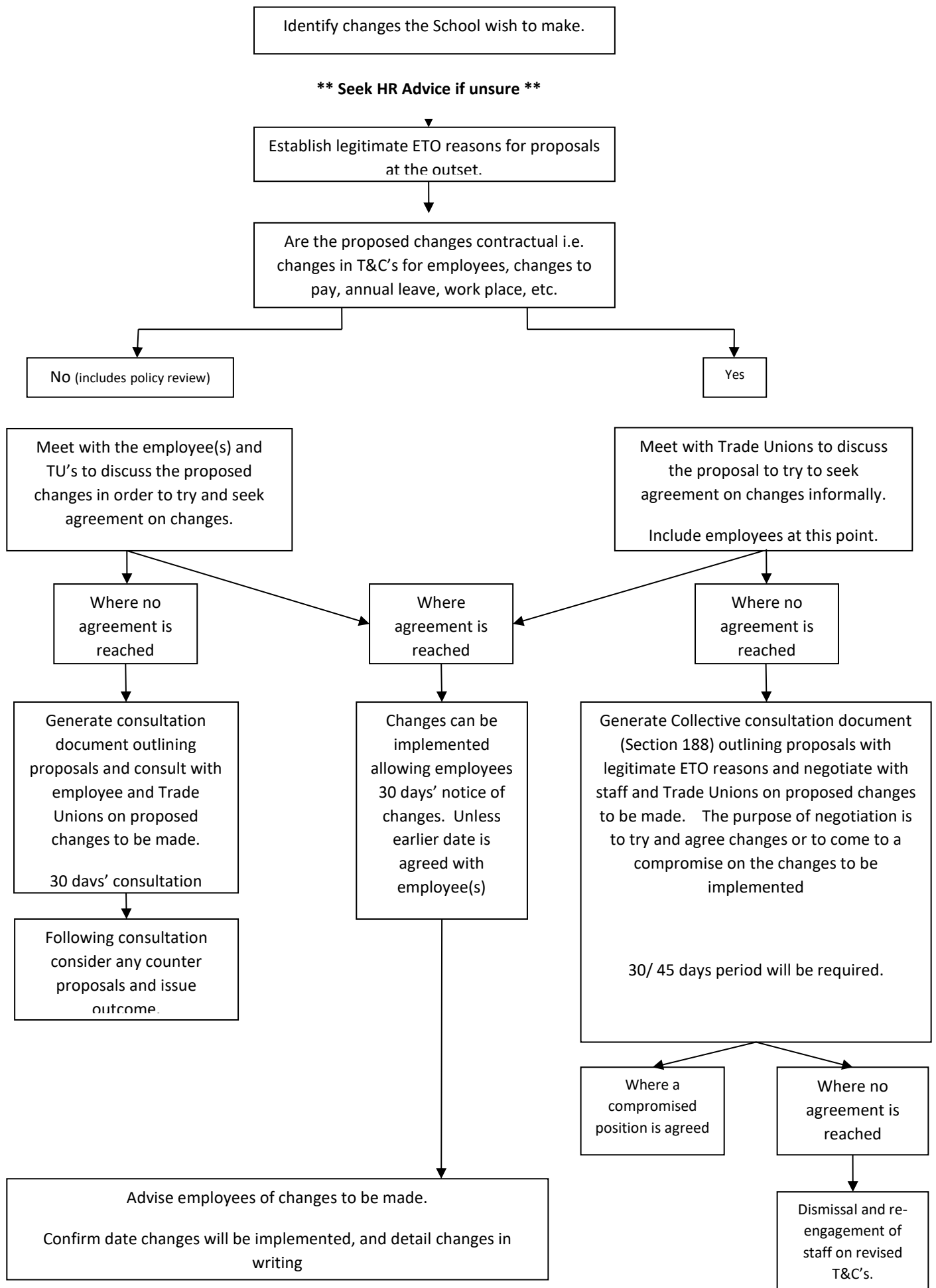
When can changes be made?

Where changes proposed affect non-contractual terms or policies and procedures:

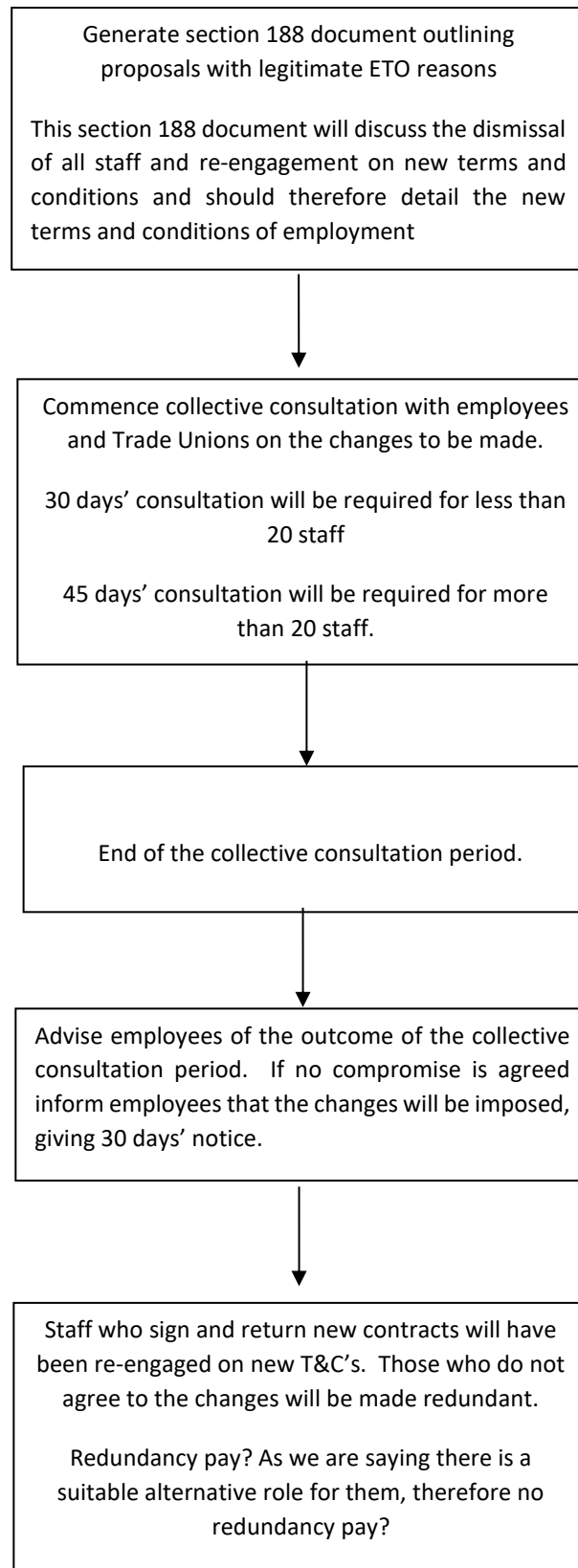
Changes to non-contractual working arrangements or changes to locally agreed policies and procedures can be made either on request from an individual employee or, where the proposals affect a large number of employees, following meaningful consultation with employees and their Trade Unions. It is important to note that consultation does not require agreement and changes can be implemented following consultation.

Where changes proposed affect contractual terms:

Although the amended TUPE regulations (January 2014) state that a School can alter the terms and conditions of its employees following a TUPE transfer, this needs a cautious approach. The TUPE regulations state that changes can only be made **providing that the changes in the conditions are no less favourable to the employees**. In addition, the TUPE regulations state that it is also important that the School establishes clear and robust ETO reasons for the changes and seek to gain agreement from employees and TU's on these changes prior to implementation. The flow chart on the following pages details the points Academies will need to consider when proposing changes to terms and conditions for its employees:



Process of dismissal and re-engagement of staff





Appendix 1: Letter confirming agreement to variation of contract

Dear

I refer to our meeting on (date), at which we discussed the organisation's proposals to make changes to your terms and conditions of employment.

As you are aware, the organisation sought your agreement to change (insert details of the particular terms and conditions that will be changed).

I understand from our discussions that you agree to the organisation making these changes. I therefore confirm that *this change / these changes* will take effect from (date).

I enclose two copies of your revised terms and conditions of employment. Please sign and return one copy to me by no later than (date) to confirm your acceptance of these terms.

Should you have any further queries or require any further information please do not hesitate to contact me.

Yours sincerely

Name

Position

Appendix 2: Letter explaining a variation of contract where a contractual right to vary terms and conditions exists

(Use this letter to confirm changes to the terms and conditions of an employee's contract. Modify this template to include the relevant clause in the contract)

Dear

As you are aware from our discussion on (date), the organisation intends to make changes to your terms and conditions of employment. In particular, the organisation intends to change (insert details of the particular terms and conditions that may be changed).

The reasons for this are (insert reasons).

The organisation has the right to make this change in accordance with your contract of employment. I refer to (insert relevant clause) in your contract of employment which provides (insert details).

I therefore confirm that this change will come into effect on (date).

Should you have any further queries or require any further information please do not hesitate to contact me.

Yours sincerely

Name

Position

Appendix 3: Letter inviting an employee to a consultation meeting to discuss a proposal to vary terms and conditions of employment

(Use this template letter to invite an employee to discuss varying terms and conditions of their employment and the reasons why this is happening)

Dear

Following our discussion on (date), I confirm that the organisation is proposing to make changes to your terms and conditions of employment.

We are proposing to change (*insert details of the particular terms and conditions that may be changed*). The reasons for this are (*insert reasons*).

I now write to invite you to a meeting at (time) on (date) at (venue) to discuss this matter further.

Should you have any further queries or require any further information please do not hesitate to contact me.

Yours sincerely

Name

Position

 **Appendix 4: Letter to vary contract of employment (following consultation)**

(Use this letter to send to employee following consultation when changes result in variation of the contract of employment)

Dear

As you know for (time period) we have been discussing proposed changes to (give details). I am very pleased that we have now reached agreement, and the purpose of this letter is to confirm the changes that have been agreed.

The changes are as follows: (insert full details of the changes, including any changes to hours, pay, place of work, nature of work etc.).

The reasons for these changes are as we discussed, namely (insert reasons).

The changes will take effect from (give date).

As these changes result in a change to your contract of employment I would request that you sign the enclosed copy of this letter and return it to me. This will signify your acceptance of the changes to your contact of employment.

If you have any questions relating to these changes please do not hesitate to contact me.

Yours sincerely

Name

Position

I have read, understood and agree to the changes to my contract of employment as set out in this letter.

Signed:

Date:



Appendix 5: Collective Consultation – letter to affected employees inviting them to meeting for collective consultation purposes:

(Use this letter to write to employees affected by the collective consultation, inviting them to a meeting to indicate the start of the consultation meeting)

Dear

Following our *(meeting / discussion / communication)* on *(date)*, you will be aware that the organisation has identified a need to implement some changes within our organisation. As a result, we are proposing to make changes to the terms and conditions of your employment.

We are proposing to change *(insert full details of the particular terms and conditions that may be changed)*. The reasons for these changes are *(insert reasons)*.

We are hopeful that we can reach agreement with affected employees in relation to our proposals. However, in the event that we are unable to obtain agreement and the organisation considers it necessary to proceed with implementing these changes, we may decide to terminate existing contracts of employment and offer re-engagement to those employees on these new terms and conditions.

In view of this, we have identified that the organisation may need to dismiss and offer re-engagement to *(insert number)* employees within a period of 90 days or less.

In accordance with our obligation under Section 188 of the Trade Union and Labour Relations (consolidation) Act 1992, as we are proposing to dismiss *(20 or more / 100 or more)* employees within a period of 90 days, we are required to consult for at least *(30 / 45)* days prior to the first dismissal taking effect.

I now write to invite you to a meeting where the proposals will be outlined in more detail. This meeting will indicate the start of the formal consultation process on the proposed changes to be made. This meeting will take place on *(date)* at *(time)* in *(venue)*. If you are unable to attend please contact *(contact details)* to discuss and to ensure that you receive copies of all consultation documentation.

If you have any questions or require any further information please do not hesitate to contact me.

Yours sincerely

Name

Position



Appendix 6: Collective Consultation – letter to affected employees inviting them to meeting for collective consultation purposes:

(Use this letter to write to TU's of affected employees to the collective consultation, inviting them to a meeting to indicate the start of the consultation meeting)

Dear

Following our *(meeting / discussion / communication)* on *(date)*, you will be aware that the organisation is proposing to make changes to our terms and conditions of your employment.

We are proposing to change *(insert full details of the particular terms and conditions that may be changed)*. The reasons for these changes are *(insert reasons)*.

We are hopeful that we can reach agreement with affected employees in relation to our proposals. However, in the event that we are unable to reach agreement and the organisation considers it necessary to proceed with implementing these changes, we may decide to terminate existing contracts of employment and offer re-engagement to employees on these new terms and conditions.

In view of this, we have identified that the organisation may need to dismiss and offer re-engagement to *(insert number)* employees within a period of 90 days or less.

In accordance with our obligation under Section 188 of the Trade Union and Labour Relations (consolidation) Act 1992, as we are proposing to dismiss *(20 or more / 100 or more)* employees within a period of 90 days, we are required to consult for at least *(30 / 45)* days prior to the first dismissal taking effect.

As a representative of the affected employees, we now intend to begin consultation with you and affected staff. In the course of this consultation we will fully discuss the details and reasons for our proposals, the numbers and descriptions of those employees who are affected, the process that will be followed and any other alternatives to our proposals.

You are invited to a consultation meeting on *(date)* at *(time)* in *(venue)*. If you are unable to attend please contact *(contact details)* to discuss and to ensure that you receive copies of all consultation documentation.

In the meantime if you have any questions or require any further information please do not hesitate to contact me.

Yours sincerely

Name

Position

