



# Organisational Change

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## Model HR Policy and Procedure for Schools and Academies

Last Reviewed: February 2019

# Policy Outline

## Reviewing the Policy

TfC HR Advice Team will keep the operation of this policy under review and will make such changes to the policy as deemed appropriate following consultation with the trade unions, where appropriate.

## Personalising the Policy

TfC HR Advice Team has developed a number of model policies for schools and academies to consider and adopt as their own. There are a number of sections within this policy which require either amendments and/or deletion to the specific paragraphs to ensure the policy is accurate in setting out your operational requirements. We advise that these sections are amended prior to the policy being adopted.

The relevant sections in this policy we advise you consider are:

Pages 10 and 19

Consider highlighted text and make a determination to leave or remove references to 'Trust' if not required.

Consultation with recognised trade unions has been undertaken prior to the issuing of this model policy. Should you wish to make amendments to the contents of this policy (save for those as set-out above in 'Personalising the Policy') then you may need to enter in further consultation with recognised trade unions. Please seek advice from your allocated HR Adviser.

In addition, the term 'school' is used throughout this policy and refers to a school or an academy. This reference could be amended throughout the policy where deemed appropriate.

## Summary of Changes

The policy has been developed from the model Redundancy Policy and now includes the school's approach to restructures which was not included in that policy. The policy also includes references to TUPE.

## Contacts for help and assistance

Please contact your allocated HR Adviser within the TfC HR Advice Team for help and assistance in applying the content of this policy. Alternatively you can email the TfC HR Advice Team at;

Email [HRAdvice@togetherforchildren.org.uk](mailto:HRAdvice@togetherforchildren.org.uk)



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# 1 Introduction

Organisational change can be essential to maintaining high quality teaching and learning in schools, in order to achieve best outcomes for children. However, if the process is not handled appropriately uncertainty created by organisational change can also damage morale and motivation among staff, with negative consequences for service delivery.

This policy therefore aims to ensure that organisational change is conducted through fair and consistent procedures that put communication with staff, listening and addressing staff concerns through negotiation with staff and trade union representatives at the heart of the process.

Underpinning the procedures set out below, the policy will be implemented with a commitment to transparency, information sharing and good employee relations / partnership working.

This policy also covers where there is a need for staff redundancies. Whilst the Governing Board aims to avoid redundancy wherever possible, situations such as financial constraints, reductions in the number of pupils on roll, changes in curriculum need or numbers, organisational change etc. may mean that redundancies cannot be avoided.

# 2 Data Protection

The school processes personal data of employees, including data that is within the special categories of data (such as personal data concerning an employee's health), collected during their recruitment and while they are employed in accordance with its data protection policy for the purposes of dealing with proposals and implementation of a restructure or/and any potential or actual redundancies. In particular, data collected and processed for those purposes is held securely and accessed by, and disclosed to individuals for the purposes of applying this policy in a fair and transparent way.

Inappropriate access or disclosure of employee data by an employee of the school constitutes a data breach and should be reported immediately in accordance with the school's data protection policy. It may also constitute a disciplinary offence, which will be dealt with under the school's disciplinary procedure.

Trade union representatives, in their capacity as representatives of a trade union, must deal with personal data about employees in accordance with all relevant legal requirements, including the General Data Protection Regulation.

# Part 1 - Restructuring

## 1 General Principles

The staffing element of a school is its greatest expenditure. Staffing should therefore be structured to meet the needs of the students and the community the school serves, within budgetary constraints.

The challenging financial climate requires the school to review its staffing structure on a more regular basis in order to achieve best value. It is usually the Headteacher's responsibility to regularly review the staffing structure to ensure it remains fit for purpose and operates within the school's financial parameters, although some external factors may also result in the initiation of a review e.g. change in government policy.

The review process provides an opportunity to ensure the whole school staffing structure operates to lead and manage teaching in the most efficient and effective way.

The process will be initiated when the school (usually the Headteacher) identifies a need for organisational change which affects the staff establishment. This may arise where a change in working practice means the current structure is no longer fit for practice or due to budgetary pressures. It is usual for the responsibility for consulting with employees and the relevant trade unions representatives with regards to the proposals, to be delegated to the Headteacher.

The Governing Board will have determined responsibility for making decisions regarding changes to the establishment, including those which involve staff dismissals, including redundancy (more information for dealing with redundancies is covered at Part 2 of the policy). This may involve a relevant committee of the Governing Board i.e. Staffing or Personnel or this may be delegated to the Headteacher.

The Headteacher will make the Full Governing Board aware that there is a need to review the staffing structure. The Full Governing Board will then consider the matter and where necessary delegate to a 'relevant committee' the responsibility for the detail, consultation and implementation of the restructure in conjunction with the Headteacher and line with the terms of reference for that committee.

## 2 Restructure Proposals

The Headteacher will develop draft outline proposals and a rationale for change which should also include structure charts, job descriptions for any new posts on the structure and an implementation plan.

Any proposed changes to the staffing structure will be based on the roles and responsibilities required by the school. Proposals will not be structured around individuals. The purpose of a restructure will be to provide a staffing structure that is fit for purpose.

Costing the revised structure is a crucial part of the process when considering a new staffing structure. The proposals should therefore be discussed with the school's finance provider at the earliest stage to ensure it is cost effective and within the budgetary constraints. This may be more crucial where the restructure is budget driven to ensure the proposed staffing structure meets the required reductions in cost.

It is important to also consider job responsibilities and grades of post in line with the schools agreed pay structure and adopted job evaluation scheme. HR should be consulted at an early stage when drafting proposal documentation to ensure equality considerations have been taken into account and to also ensure the proposals and its rationale are clear and transparent.

## **2.1 Teaching Staff Positions**

All Teaching positions will need to be created and paid in line with the schools Pay Policy for Teachers and the DfE Schools Teachers Pay and Conditions Document (STPCD).

This will include Leadership posts and well as Teaching and Learning Responsibility (TLR) positions. The STPCD provides clear guidance to schools creating new TLR positions on the structure in relation to criteria and payment at the different levels.

Where a Teacher loses a post or payment due to a restructure, the school will comply with the safeguarding requirements as set-out within the STPCD, where applicable.

## **2.2 Support Staff**

Support staff posts will need to be created and paid in line with the schools agreed pay structure and adopted job evaluation scheme. It will be important to ensure for each new post being created the proposals (usually the individual job descriptions) include;

- The grade and salary
- The purpose of the post
- The generic responsibilities of the post holder
- Whom the post holder will report to and;
- Which posts will be managed by the post holder, if applicable.

It may be necessary for new jobs to be evaluated in line with the adopted job evaluation scheme. The Headteacher should discuss this with HR as early as possible when creating new posts.

## 3 Consultation

Where the restructure involves a potential reduction in posts which may place staff at risk of being made redundant, Part 2 of this policy should be followed in terms of the legal requirements for consultation.

Where the proposals do not place staff at risk of redundancy, once the Full Governing Board have agreed to the need for a restructure in principle and delegated responsibility for the process to the relevant committee in conjunction with the Headteacher, the Headteacher can then share the proposals with the relevant trade union representatives and affected staff to initiate the formal consultation period.

The proposals, rationale, implementation plan and any other relevant documents i.e. job descriptions and structure charts, should be sent to the relevant trade union representatives and a copy provided to all affected staff. In order to ensure that the process is clear and transparent it may be appropriate to arrange a staff meeting (see section 3.1 below) to discuss the proposals and answer any questions staff or trade union representatives may have.

Consultation provides an opportunity for staff and trade unions to understand the draft structure, to seek further clarification and make recommendations / suggested changes in relation to the proposals. These recommendations can then be submitted in writing as 'responses to the proposals'.

It may be appropriate for the proposals to be changed in light of responses received by staff / trade union representatives. The Headteacher should clarify if changes have been made as a result of the consultation process and explain the reason why the decision has been taken to either accept or reject suggestions.

Formal responses to the proposals should be made in writing to the Headteacher or the Chair of the relevant Committee. A reasonable timescale should be provided for responses to be received in writing. The schools will consider the size and scale of the proposals in determining a reasonable timescale, which in most cases will be no more than 10 working days.

### 3.1 Consultation Meetings

The school will meet with affected staff initially to discuss the proposed structure; relevant trade union representatives will be invited to attend. Trade union representatives will be given the opportunity to remain after the meeting to meet with their members separately, where at all possible.

Staff will also be offered the opportunity to attend 'one to one meetings' to allow them the opportunity to discuss how the proposals may affect them personally. Should staff wish to have a one to one meeting with the Headteacher then they can be accompanied during the meeting via a recognised trade union representative or a work colleague who does not have a conflict of interest. HR

would usually be invited to the one to one meeting to provide advice and support in relation to the process.

## 4 Consideration of the Proposals

Following the period of consultation the relevant committee will meet to consider the proposals. In most cases it will be appropriate for the Headteacher to attend the meeting to present the proposal documents and respond to any queries the committee may have. It will also be necessary at this point for the committee to fully consider any written responses submitted by either the staff and/or the trade unions. HR support and advice may be necessary during this committee meeting.

It may be appropriate at this point for the committee to make changes to the proposals as a result of responses received during the consultation period. These changes may be subject to further consultation as described earlier. Where there is an extension to the consultation period staff and relevant trade union representatives should be informed in writing of the timescales of the extended period of consultation and the issues to be addressed during that period. The relevant committee will meet again following the extended period of consultation to consider any further written responses.

Once the relevant committee have approved the staff structure the Headteacher should notify the staff of the approved changes.

## 5 Implementation

Once the relevant committee has approved the staff structure they will need to consider implementing the changes. This part of the process is usually delegated to the Headteacher to deal with, who may seek HR advice as to how best to fill posts on the structure.

In most cases posts will be filled utilising slotting in and ring-fencing during a first round of recruitment:

- **Slotting in**, without the need to go through a recruitment process, shall apply where there has been no significant change in the duties and responsibilities of a post following restructuring and where the number of posts available is equal to or in excess of the number of existing post holders. To qualify for this treatment a post must be of the same grade before and after restructuring, with no other member having an accepted comparable claim to be considered for the post.
- **Ring-fencing** of applications for posts will apply where the previous structure contained posts that carried substantially the same duties and responsibilities but the number of staff exceeds the number of posts available in the new structure, or where there are similarities between

old and new posts but with significant differences that do not make them suitable for slotting in.

The criteria utilised to decide on the application of slotting and ring-fencing procedures will be fair, objective, consistently applied job related criteria, backed by evidence where possible.

Any employee who is not successful in obtaining a post after this initial stage will be formally notified that they are "at risk of redundancy." Part 2 of this policy refers to the formal process where redundancies are necessary.

For any remaining posts on the structure, priority will be given to applications from staff classified as "at risk of redundancy."

It may be possible to redeploy employees into alternative positions within the school [or within the trust] by providing them with suitable training. While this may not be possible for roles that are highly technical or require a certain level of experience or qualification, it may be possible for roles where new skills can be learnt over a relatively short period of time.

If a vacant post remains vacant, the post may be advertised internally across the whole school [or trust] before making a decision to advertise the post externally.

Where more than one internal expression of interest has been received for a vacant post on the structure, a recruitment process should be followed i.e. formal interviews, as a method of recruiting to the post. In the event that only one internal expression of interest is received for a post but the post is of higher responsibility and / or pay or is a different role to that the applicant currently occupies, a recruitment process should be followed i.e. a formal interview, to ensure the candidate is measured against the criteria of the post before making an appointment.

# Part 2 - Redundancies

## 1 General Principles

The relevant definition of redundancy is provided by the Employment Rights Act 1996 which defines redundancy as occurring when:

- the employer has ceased, or intends to cease, to carry on the business for the purposes the employee was employed;
- the employer has ceased, or intends to cease to carry on the business in the place where the employee was so employed;
- the requirements of the business for employees to carry out the work of a particular kind have ceased, or diminished or are expected to cease or diminish;
- the requirements of the business for employees to carry out work of a particular kind in the place where they were so employed are expected to cease or diminish.

Redundancies are acknowledged as being an unsettling time for any school. A reasonable and transparent procedure is vital in helping employees to process what is happening to them and colleagues, and in limiting any damage to morale both for the employees who are selected and those who are being retained.

When faced with a potential redundancy situation the school will ensure that:

- at the earliest opportunity, it will seek any required advice;
- at the earliest opportunity potentially affected employees, and where appropriate their representatives, are consulted in a meaningful way on any proposals and their potential implementation;
- the total number of redundancies made is kept to a minimum;
- the process is handled sensitively and fairly;
- selection for redundancy is based on clear criteria that will be objectively and fairly applied;
- support and advice is available to employees selected for redundancy to help them find suitable alternative work;
- an employee can be accompanied by a trade union representative or a work colleague of their choice, at formal meetings (with the exception of the recruitment and selection process); and
- where an employee has a mental impairment, consideration will be given to reasonable adjustments in respect of the appropriate person to accompany them in the formal meetings.

Employees on maternity, adoption or shared parental leave have specific rights in relation to redundancy.

## **2 Strategies for Avoiding or Minimising Redundancy**

The school will fully consider all reasonable alternatives to minimising the numbers or avoiding redundancies, which may include:

- Restrictions on recruitment, e.g. not filling vacancies.
- Considering job share or re-allocation of duties.
- Reduction in overtime working.
- Voluntary options (e.g. voluntary early release and voluntary reduced working).
- Filling internal vacancies with existing employees by the use of redeployment where possible.
- Restriction on the use of agency or contract labour engaged on work which might be suitable for the employees concerned.
- Voluntary redundancy from employees from other areas within the school.

## **3 Redundancy Proposals**

The Governing Board will have determined responsibility for making decisions for staff dismissals (including redundancy). For maintained schools this will be in line with the School Staffing (England) Regulations 2009. This may involve a relevant committee of the Governing Board i.e. Staffing or Personnel Committee or this may be delegated to the Headteacher.

The full Governing Board will determine whether reductions in staff will be necessary, the likely area to be identified (e.g. teaching and/or support staff) and the suggested method of selection.

It is the responsibility of the Headteacher to consult with employees and the trade unions /elected representatives within good time of the potential redundancy situation.

## **4 Consultation**

The aim of consultation is to provide effected employees, and where necessary their trade union representatives, the opportunity to respond to the proposals with a view to avoiding the dismissals, reducing the numbers of employees to be dismissed, and mitigating the consequences of the dismissals.

The school is committed to consulting at the earliest opportunity to enable meaningful consultation, and will comply with any statutory requirements, before issuing any individual notices of redundancy.

In order to meet its statutory obligations in consulting with staff and trade union representatives, the Governing Board may consider that it is appropriate to delegate the initial stages of the consultative process to the Headteacher. For example, the Headteacher may be asked to meet with and/or issue communications to employees and trade union representatives in advance of the initial meeting of the relevant committee.

The school will communicate the proposals with staff, and their trade union representatives, including the reason for them, in order to explore the options for avoiding, reducing or mitigating the consequences of the proposed redundancies. Any alternative options put forward by staff and/or trade union representatives will be considered.

The school will follow statutory collective consultation rules where it is making 20 or more employees redundant within any 90-day period at a single establishment.

Where there are 20 or more proposed redundancies, and before consultation starts, the Governing Board will notify the Redundancy Payments Service (RPS), as required.

Under collective consultation rules the school is obliged, under s.188(4) of the Trade Union and Labour Relations (Consolidation) Act 1992, to inform the trade union representatives in writing at the outset of the collective consultation period of:

- i) The reasons for the proposal.
- ii) The numbers and descriptions of employees whom it is proposed to dismiss as redundant.
- iii) The total number of employees of any such description employed at the establishment.
- iv) The proposed method of selecting the employees who may be dismissed should reflect the decision of the full Governing Board.
- v) The proposed method of carrying out the dismissals with due regard to any procedure, including the period over which the dismissals are to take effect. (notice period and appropriate dates).
- vi) The proposed method for calculating the redundancy payments.
- vii) Information with respect to the number of agency workers working temporarily for and under the supervision and direction of the school, the parts of the school in which they are working and the type work they are carrying out.

At the commencement of the process the Governing Board will determine if any additional information is to be made available, in order to assist meaningful consultation, this may, for example, include financial information and/or the school development plan. Any requests from staff or trade union representatives for additional information made during the consultation process will be considered by the relevant committee and/or Headteacher.

The school is committed to complying with statutory requirements for collective consultation, where applicable, before issuing any individual notices of redundancy. These are:

- At least 30 days collective consultation where the school is considering making between 20 and 99 employees redundant within 90 days.
- At least 45 days collective consultation where the school is considering making 100 or more employees redundant within 90 days.

Whilst there is no legal obligation for the school to consult with trade union representatives where fewer than 20 redundancies are proposed, the school will elect to do so in any event in order to support working relationships with recognised trade unions. Such consultation does not require compliance with the statutory collective consultation rules.

Collective consultation, whether statutory or elective, will be appropriate in the early stages of the redundancy process, particularly when initially informing staff of the need for redundancies. Ongoing consultation may also be appropriate as a means of updating staff on the redundancy process.

Wherever possible, access to confidential meeting areas will be made available for recognised trade union representatives to communicate with employees during a redundancy process.

Whilst consultation does not have to end in agreement, it will be carried out with a view to reaching it, including ways of avoiding or reducing the redundancies.

It is important to ensure individual employees have been consulted with as well as trade unions. Following the Governing Board's determination, **ALL** employees in the school will normally be informed in writing of the need to reduce staff and of the reasons. Subsequent consultation will then be focused on those pools of staff at risk of redundancy. Consideration will be given to seeking volunteers for redundancy at this stage. Employees will also be invited to make written or oral representations at this stage if they so wish.

#### **4.1 Individual consultation**

In addition to collective consultation the school (usually the Headteacher) will endeavour, wherever possible, to hold individual consultation meetings during the consultation window with those employees identified as "at risk" of redundancy.

Whilst there is no set timeframe for individual consultation meetings to take place it is anticipated that the first meeting is likely to be arranged once the 'at risk' pools have been identified with a second meeting likely to occur following the outcome of the selection process i.e. the provisional selection for redundancy.

The school may elect to hold further additional meetings before redundancy is confirmed. Additional meetings will be agreed on a case by case basis.

These meetings, alongside the collective consultation process, will provide employees with the opportunity to present their individual case and make representations that relate to their individual situation.

Whilst employees do not have a statutory right to be accompanied by a work colleague or a trade union representative at individual meetings the school has elected to allow this in order that individuals have access to the appropriate support and advice.

#### **4.2 Consulting with absent employees**

Employees who are absent from work, for example on sick leave or maternity leave, will be included in the consultation process if their roles are potentially redundant. As with other staff, absent employees will be notified of the potential need for redundancies and will be included at each stage of the redundancy consultation process. The school will ask the employee to confirm how he or she would like to be consulted, for example by way of meetings at the employee's home, by telephone or in writing, and will endeavour to accommodate the employee's requests where deemed reasonable to do so by the school.

## **5 Redundancy Selection**

Wherever possible, volunteers for redundancy should be considered before reaching a decision that compulsory redundancies are necessary. However, it may not always be possible or appropriate to accept volunteers for redundancy as a means of avoiding compulsory redundancies. Selecting an actual post, or posts for redundancy, will take account of the overall school priorities, plans and curriculum needs.

Where compulsory redundancies cannot be avoided, the school will identify the post or posts that are at risk ("the selection pool(s)"). If the number of individuals in the selection pool(s) exceeds the number that need to be dismissed, by reason of redundancy, the school will need to apply selection criteria to identify those employees that they wish to retain i.e. those who are most able to meet the needs of the school.

The school will establish a suitable objective and fair method to provisionally select those whose employment the school wishes to retain. The proposed

selection criteria and method will be shared with those 'at risk' individuals and recognised trade union representatives during consultation.

Selection criteria will be in line with the school's priorities, plans and curriculum needs and **may** include one or more of the following:

### **Teaching Staff**

- i) Current main areas of responsibility (leadership/TLR/and or subject specific coordination as determined by the formal job description.
- ii) Main curriculum priorities for the school (outcome focused) for example in relation to the School Development Plan, SEF, OFSTED Action Plan.
- iii) Age ranges taught for at least one full academic year within no more than the last five years.
- iv) Previous and relevant experience (e.g. subject/curriculum management/co-ordination) within no more than the last five years.
- v) Experience to teach other subject specialist areas within no more than the last five years.

### **Support Staff**

- i) Current main areas of responsibility as defined by the formal job description.
- ii) Main priorities for example in relation to School Development Plan, SEF, OFSTED Action Plan.
- iii) Previous relevant experience.
- iv) Qualifications/skills.

**The above list is not prescriptive or exhaustive and other factual criteria may be applied;** the precise selection criteria and weighting applied may vary dependent on the selection pool and what is reasonable given the circumstances, as well as consultation.

When identifying selection criteria the school will have careful regard to equalities issues and reasonable expectations for the job role.

In some circumstances, selection by agreed criteria may not be deemed the most appropriate method of selection and an interview process may be adopted. Alternatively, if agreement cannot be reached on the application of an interview process, the relevant committee may, following consultation, determine to apply an alternative selection method. Where selection criteria

is to be used then the relevant committee may determine to use additional selection criteria to be applied in the event of a 'tie-break' situation.

Any employee on leave of absence or secondment, e.g. maternity leave, who falls within the selection pool must be treated as though currently active in their post and be subjected to the selection criteria in the same way as other employees.

Where it is necessary to select those at risk of redundancy from a selection pool, and where the use of selection criteria is the chosen method, all employees in the selection pool will be asked to complete an individual matrix which is then assessed by the relevant committee against the school's selection criteria.

Selection will be carried out by the relevant committee using information about the potentially affected employees entered into the selection criteria matrix.

Following the selection meeting, the individual members of staff provisionally selected for redundancy should be informed in writing as soon as possible. This letter will invite the individual to a consultation meeting with the Headteacher and the Chair of the Committee to discuss their provisional selection for redundancy.

### **Individual Consultation**

The school will consult individually with those provisionally selected for redundancy on outcome of the selection process and the method undertaken.

The purpose of the meeting is for the Chair of the Committee to explain how the selection criteria was applied, give the employee an opportunity to make representations, and make suggestions as to how the redundancy could be avoided, and provide further information he/she believes may be relevant. The school should consider providing employees with a copy of their own score, or alternative information where a different selection method was used, and give them the opportunity to comment on it and challenge the basis on which the decision has been arrived at.

Some suggested points of discussion include:

- explaining the grounds for the employee's selection, including the criteria adopted and his or her scores against those criteria;
- considering any suggestions that the employee makes in relation to avoiding redundancies;
- investigating the possibility of alternative employment;
- investigate the opportunities for retraining;
- confirming what reasonable amount of paid time off is permitted to support finding new employment;
- confirming if assistance with CV preparation and/or interview training is available;.

- confirming details of the redundancy payment that the employee will receive if the redundancy is confirmed;
- clarifying the notice period that will apply if the redundancy is confirmed, and arrangements such as whether or not the employee will be required to work the notice period;
- considering any support that will be available, for example outplacement or time off to look for new work; and
- considering any outstanding related issues or questions that the employee raises.

At the meeting, the school will give the employee the opportunity to express his or her views and will give this genuine consideration.

If, after individual consultation, the Chair of the Committee decides that the decision should be reviewed, the matter will be referred back to the relevant committee and a further meeting will be held. The relevant committee will meet to assess the new information against the selection criteria. Should this result in a change, the relevant committee may need to reassess all the proformas in the light of this new information to determine which post is to be recommended for redundancy.

Those staff who have volunteered for redundancy may not require an individual consultation meeting to discuss the proposals or selection process. However, they should still be offered a consultation meeting to discuss alternative roles and support available to them in seeking redeployment, as outlined in the above. This meeting will also allow them to feedback on the proposals should they wish to do so.

## **6 Dismissal**

Once individual consultation has been carried out (with further meetings where necessary), and provided that the possibility of any suitable alternative employment has been fully explored, the school should confirm its decision in writing to those who have been selected for redundancy.

The letter should set out the date of termination together with details of redundancy payments, any other entitlements and the right of appeal against the decision.

This letter should also be sent to those individuals who volunteered for redundancy.

Once the consultation process has been completed and the individuals have had the opportunity to feed back on the proposals and/or the selection process, all employees selected for redundancy regardless of whether this is voluntary or compulsory will be issued with a letter confirming the termination of their employment on grounds of redundancy in line with notice provisions.

## 7 Appeal

To appeal, the employee will notify the Chair of Governors in writing that they wish to appeal the decision within 10 working days of receipt of the letter confirming the decision. The employee is required to set out the grounds of their appeal.

The appeal will be heard by a relevant committee of the Governing Board.

## 8 Offers of Alternative Employment

Staff which have been identified as “at risk of redundancy”, either due to a selection process or following a restructure, will be entitled to consideration for redeployment to any suitable alternative employment where they meet all of the essential criteria for the post or would be able to do so within a reasonable timeframe. This would include any vacancy within the whole school [or within the multi-academy trust].

At risk staff will be kept aware of posts which could be considered as suitable alternative employment, from them being identified as “at risk” until their notice period expires.

An individual employee who is offered alternative work is entitled to a trial period of 4 weeks which enables both the individual and employer to determine whether the new employment is suitable.

The Headteacher and/or Governing Board will ensure when making the offer of employment that the individual is aware that it is subject to a statutory trial period.

The trial period may be extended if the employee requires training.

When considering what constitutes a suitable alternative offer the following will normally be taken into account:

- The appropriateness of the role in terms of level of pay, location, status, service conditions and skills required, and
- The reasonableness of the offer taking into account the employee’s own personal circumstances.

During the trial period, regular reviews will be held between the Headteacher and the employee, to monitor progress and discuss issues and concerns, and identify training and support as necessary.

If an employee considers that the alternative job is not suitable they must inform their Headteacher in writing before or during the trial period that they

do not accept that this is an offer of suitable alternative employment, and the reason for this, otherwise the right to any redundancy payment will be lost.

If notice of redundancy has been issued and the employee turns down an offer of alternative employment which is assessed as suitable, during the notice period or trial period, or unreasonably fails to engage in the process of finding suitable alternative employment, then the employee may forfeit their right to receive a redundancy payment.

If the school considers the trial period to be unsuccessful, this will be discussed with the employee and confirmed in writing. An employee's contract of employment will be terminated on the grounds of redundancy at the end of the contractual notice period, which was previously issued, as they have been unable to secure suitable alternative employment.

In accordance with statutory duty, employees on maternity, adoption or shared parental leave will be offered suitable alternative employment without competition.

## **9 Time Off to Seek Alternative Employment**

Employees who are under notice of redundancy will be given reasonable paid time off to look for alternative employment.

## **10 Redundancy Payments**

An employee dismissed by reason of redundancy and who has been continuously employed for two years or more years will be entitled to a statutory redundancy payment. The statutory amount is based on weekly gross pay, age and length of service. The statutory payment is subject to a prescribed limit of the amount of a week's pay and is capped at a maximum 20 years' service continuous service. The school has elected however to exercise its discretionary powers to disregard this weekly pay limit and calculate the redundancy payment on the basis of actual weeks' pay. The school has retained the capped maximum 20 years' service continuous service limit.

Redundancy payments will be calculated using the statutory ready reckoner.

When calculating service the school will also give consideration to the effect of the Redundancy Modification Order.

If an employee who is under notice of redundancy receives an offer of a job from another Modification Order body, and accepts it before the termination of his or her employment and then takes it up within 4 weeks of the end of the old employment, there will be no dismissal for redundancy payment purposes,

no redundancy payment and the employee's service will carry over to the new employer.

Employees under notice of redundancy will therefore be asked if he or she has been offered another job with a Modification Order body and, if so, whether he or she intends to take it up within 4 weeks of finishing his or her current job.

Further information in relation to the Redundancy Modification Order is available from HR.

## 11 Pension implications

Consideration will be given to pension implications at an early stage in the process and advice provided to employees where relevant.

An employee aged 55 years or over, who has more than two years' service in the Local Government Pension Scheme (LGPS), and who is dismissed on the grounds of redundancy is entitled to their retirement benefits (i.e. pension and lump sum) immediately, based on their membership up to the date they leave employment, with no actuarial reduction for early payment. The LGPS regulations require that the employee must take their benefits where they are entitled to do so. It is likely that in such circumstances there will be a cost to the school, known as the 'strain' cost. Strain costs are calculated as the difference between the value of the benefits the member would have received under the normal course of providing benefits from the pension fund, and the value of the benefits provided as a result of un-reduced early retirement due to redundancy.

An employee aged 55 years or over, who has more than two years' service in the LGPS, and whose fixed term contract ends, may also be entitled to early retirement on the grounds of redundancy if the work they were employed to do has ended as well. If they are employed on a fixed term contract which ends but the work continues, such as covering for an absence, they will not be entitled to early retirement.

Employees aged 55 to 59 who are members of the Teachers' Pension Scheme (TPS) and who are dismissed on the grounds of redundancy, may access actuarially adjusted pension benefits by completing the online Actuarially Adjusted Benefits application form in the forms and leaflets section of the website ([www.teacherspensions.co.uk](http://www.teacherspensions.co.uk)).

Employees aged 60 or over who are members of the Teachers' Pension Scheme (TPS) may access their pension benefits by completing the online form in the forms and leaflets section of the website ([www.teacherspensions.co.uk](http://www.teacherspensions.co.uk)).

## Part 3 – TUPE

### 1 What is TUPE?

TUPE refers to the Transfer of Undertakings (Protection of Employment) Regulations. The main purpose of the TUPE regulations is to preserve continuity of employment and to safeguard the employment rights of all employees whose employment transfers to another employer as a result of a relevant transfer e.g. a transfer to an academy trust as a result of a conversion of a maintained school or the transfer of catering staff to a new catering provider.

The TUPE regulations were first introduced in 1981 to protect workers involved in transfers. They were introduced to comply with the European Community Directives covering the transfer of employees. The 1981 regulations were replaced in 2006 by the Transfer of Undertakings (Protection of Employment) Regulations 2006.

The 2006 regulations were then supplemented in 2014, but not replaced, by 'The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014. References to the "TUPE regulations" should therefore be taken as referring to both the main 2006 and supplementary 2014 regulations.

The Regulations contain specific provisions to protect employees from dismissal before or after a relevant transfer.

Representatives of affected employees have a right to be informed about a prospective transfer. They must also be consulted about any measures which the transferor or transferee employer envisages taking concerning the affected employees.

The Regulations also place a duty on the current employer to provide information about the transferring workforce to the new employer no later than 28 days before the transfer occurs.

### 2 When does TUPE apply?

Subject to certain qualifying conditions, the TUPE regulations apply:

- (a) when a business or undertaking, or part of one, is transferred to a new employer; or
- (b) when a 'service provision change' takes place (for example, where a contractor takes on a contract to provide a service for a client from another contractor).

These two circumstances are jointly categorised as 'relevant transfers'.

Those employees employed immediately prior to the transfer will automatically transfer on their terms and conditions to the new employer under the TUPE regulations. The new employer takes over responsibility for the transferring employees and inherits most liabilities in relation to employment related matters. The transferring employees retain their continuity of service for the purpose of both statutory and contractual employment rights.

### 3 Pensions

For members of staff who are offered access to the Local Government Pension Scheme (LGPS) or Teachers Pension Scheme (TPS) there are arrangements in place to ensure that where an employer decides to outsource services under the TUPE arrangements; all staff who are in, or eligible to be in, the LGPS or TPS at the point of transfer will be entitled to remain/become members of the Scheme.

#### Academies

Academies are required by their funding agreement to offer access to the LGPS and TPS so there should be no detrimental impact on staff who join an academy or who are transferred to an academy by way of TUPE.

#### Transfer to non-public sector employers

Where a school is proposing to transfer staff to a non-public sector employer under TUPE terms then there are arrangements that require the transferring employees to have continued access to their previous public sector pension scheme (or in some cases a comparable scheme).

These arrangements are:

- 'Fair Deal for staff pensions' issued by HM Treasury which applies to those schools where the Governing Body/Trustees are the employer; and
- The Local Government Best Value Pensions Direction 2007 which is a Direction issued under sections 101 and 102 of the Local Government Act 2003 and applies to a school which is maintained by a best value authority.

Employer	Covered by	Types of school
<b>Governing body</b>	New Fair Deal (in scope)	Foundation Foundation Special Voluntary Aided Academies
<b>Local authority</b>	Best Value Staff Transfers (Pensions) Direction 2007	Community Community Special Maintained Nursery Voluntary Controlled

New Fair Deal requires that the new employer provides to the transferring employees continued access to their public sector pension. For the TPS, no new employees can join the scheme post transfer even if replacing a member who was part of the original transfer exercise. For the LGPS, the arrangement can be 'closed' i.e. limited to those who had access to the scheme at the point of transfer or 'open' which allows new employees access to the LGPS post transfer, which may increase the costs associated with the provision of the pension access.

The Best Value Staff Transfers (Pensions) Direction 2007 requires that the new employer provides to the transferring employees continued access to their public sector pension or access to a comparable pension scheme that offers similar or better pension rights, as assessed by the Government's Actuary Department.

Where the new employer is required to provide continued access to the current public sector pension (i.e. New Fair Deal) or where they choose to do so (i.e. Best Value Staff Transfers (Pensions) Direction 2007) they will be required to enter into detailed arrangements with either the TPS or the local scheme administrator, in the case of the LGPS. Either way, the pension arrangement must be in place on the day that the transfer takes place therefore the pension arrangements may have an impact on the date of the transfer. It can take several months for a participation agreement to be put in place that provides access to the relevant pension fund.

The steps required for a new employer to gain access to a pension scheme differs between the TPS and LGPS, and advice must be sought early in the process. It is likely that prior to the conclusion of any participation agreement an assessment must be undertaken by an actuary to determine the risks to the pension fund of admitting a contractor into the fund. **Depending on the level of risk, the new employer may be required to provide an indemnity or bond in mitigation. Before a participation agreement is entered into the financial implications need to be understood by the new employer.** This would include an assessment of the new employer's contribution rate which could be greater than that applied to the school. An actuary will determine the financial implications and a charge will arise on completion. These costs are usually borne by the entity transferring the staff who may seek to recoup the cost from the new employer by way of the contract for services.

## 4 Further advice

TUPE is a complicated piece of legislation and the likely added complication of employee pensions requires the school to seek advice at the very earliest of stages to ensure that all of its obligations are understood and met. Further advice should therefore be sought from HR.