



Engage MAT

Staffing Adjustments Policy and Procedure

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Staffing Adjustments Policy and Procedure

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This policy and procedure are based on the model prepared by Educator Solutions and is designed for use in Multi-Academy Trusts. Educator Solutions are ETs HR advisers and the Trust refers to their procedural documents on HR InfoSpace and seeks HR guidance from them.

1. Equal Opportunities and Scope

- 1.1 This policy and procedure document relates to posts that are surplus to requirements or roles that need to be adjusted (e.g. change of hours, duties and/or grade). It provides for redeployment, dismissal on the grounds of redundancy (which may be through voluntary or compulsory selection), variation of contract and dismissal with re-engagement.
- 1.2 The same general policy and procedure will be applied to both teaching and support staff although some slight differences will arise relative to the specific employee groups.
- 1.3 Any Trust employee operating this policy must adhere to its requirements and their more general obligations under equality legislation. They must ensure that all reasonable adjustments or supportive measures are considered to allow equality of access and opportunity regardless of age, gender, ethnicity, sexual orientation, disability, faith or religion, gender identity, pregnancy or marital status.

2. Decision making

- 2.1 Staffing adjustments, which may include proposals for redundancy, must be considered within the legal framework. The Board is legally accountable for any decision to dismiss an employee by reason of redundancy. This policy and

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procedure sets the framework within which the Board expects all staffing adjustments to be undertaken.

2.2 The following points around decision making should be noted:-

- A good, consistent approach to resource planning can often avoid an overstaffing situation from arising. Headteachers are expected to plan carefully taking into account identifiable future needs and budget. The Chief Executive Officer (CEO) is expected to apply appropriate challenge and support to Headteachers.
- Decisions about staffing structures in individual academies sit with the CEO and the Trust's Scheme of Delegation states that the CEO also has delegated authority from the Board for deciding on the dismissal of staff including redundancy.
- Compulsory redundancy will be avoided where reasonably practicable.
- Staffing adjustments do not always have to be resolved through redundancy. For example, a reduction in hours for one or more employees in a group may avoid the need for the removal of a whole post, or an individual could be redeployed to another post. Such options may be put forward by the Trust as the proposed solution or raised by staff or trade unions as a counter proposal to avoid redundancy. Either way, they would need to be the subject of consultation unless they are being achieved through agreement in advance of any formal staffing adjustment process.
- All efforts will be made to redeploy any employee selected for redundancy.

3. Staffing Adjustment Framework

3.1 The Staffing Adjustment Framework has the following elements:-

- A **planning stage** which involves careful consideration of the academy's current and forecast budget situation together with anticipated curriculum demands, pupil numbers, etc.
- A **consultation stage** involving communication with affected staff groups including where necessary formal (Section 188 of the Trade Union and Labour Relations Act) consultation with recognised trade unions and a search for voluntary solutions to any identified problems. This stage should also include clarity about who has authority within the Trust to make the initial dismissal decision and how appeals against dismissal will be heard.
- A **selection stage** which sees the Trust identifying an employee whose post is redundant (as defined by statute), through a fair and transparent process, whilst still seeking to solve the problem by voluntary means.
- An **implementation stage** which sees the changes being put into force at the appropriate time, including (where appropriate) revised contracts or termination of employment with associated payments.

3.2 This policy and procedure is based around these four stages. Each stage involves a number of tasks which may differ in complexity and in the amount of time needed to carry them out, dependant on the extent of the adjustment being made.

3.3 To assist with the process, there is a list of associated documents which are available on HR InfoSpace, at the end of this document.

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4. Planning

4.1 *Rolling three year budget plan*

In line with arrangements for budget forecasting, the Trust, CEO and Headteacher will operate rolling three year budget plans linked to the Development and Improvement Plan, reviewing annually to take into account the following non-exhaustive list of factors:-

- demographic changes in the community;
- anticipated demand for pupil places;
- curriculum requirements;
- budgetary adjustments (termly reviews and annual allocations);
- expected natural turnover of employees (e.g. known retirement, career moves);
- significant temporary absences of employees (e.g. secondment, maternity absence, ill-health);
- career moves;
- the extent to which temporary appointments are used and can be ended fairly;
- the availability of appropriate specialist staff, especially in key curriculum areas;
- the extent to which INSET of individual teachers may help meet curriculum needs;
- other factors such as physical changes to the academy or changes to the Trust.

4.2 *Annual review of the staffing plan*

An annual review of staffing reflected in the budget plan and forecast should normally be undertaken in the Autumn term during which curricular requirements and options, draft financial, demographic and employee information and confirmed student numbers are reviewed. The revised budget/staffing plan for the coming three academic year period should be set towards the end of the Autumn term or beginning of the Spring term. These activities may take place at other times but if changes to staffing structure are to take place with effect from 1 September, planning will need to be completed by mid-Spring term at the latest, to allow consultation, selection and notice periods to take place as required.

4.3 The Trust will need to be able to justify the current and projected budget position that proposals are based on. Evidence of the precise budget position used as the basis for subsequent discussion and decision making on the proposals for change will need to be available. This should include a copy of the three-year budget plan which demonstrates the anticipated problem and a copy of the plan showing the adjusted position following the proposed staffing adjustment.

4.4 *Confirmation of the academy's financial position*

Consideration must be given to any requirements in the Academies Financial Handbook (published by the Education Skills and Funding Agency) in relation to payments made to an individual which go beyond a statutory level. Where a package involves non-statutory/non-contractual elements, totalling £50,000 or more,

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the ESFA's prior approval must be obtained before the Trust makes any binding settlement offer to staff. Even if there is no requirement for ESFA approval, the Academies Financial Handbook requirements for the Trust to satisfy itself on value for money may still apply.

4.5 *Regular review of the academy's financial position*

Any academy initiating a staffing adjustment process should ensure ongoing review of its position throughout the consultation and selection stages, particularly if the budget is the driver for change. Any changes to the academy's anticipated position should trigger a review of the need for reductions to be made.

4.6 An academy making reductions through compulsory redundancy selection should review its financial position prior to taking a decision to dismiss on grounds of redundancy. This will ensure avoidable redundancies are identified and that dismissal decisions are not taken on out-dated financial information.

4.7 Although most staffing adjustment situations will arise out of this annual review of budget and staffing plans, some will be generated through other circumstances and will need to be considered accordingly. This will mean that the timing of certain steps may be different to those outlined. The *Staffing adjustment – an overview G318d* will be useful in identifying necessary timescales for various stages.

4.8 The following principles will be considered when reviewing staffing levels:-

Retention	Where possible, staff will be used flexibly to avoid situations where recruitment and redundancy are happening concurrently in different parts of an academy or the Trust for the same group of staff.
Recruitment	Consideration will be given to redeployment into vacancies within the academy or wider Trust. If a staffing adjustment is anticipated, care will be taken before recruiting on anything other than a short-term, temporary or fixed term basis.
Staff development	Potential changes in need will be anticipated and development opportunities will be provided to ensure existing staff can meet changing needs.
Motivation and morale	Open and transparent processes will be used to reassure staff that employment practices are fair, sensitive and supportive.

4.9 *Determining where the reductions will occur*

Where the need to make reductions or other adjustments in staffing levels has been identified, the Headteacher will need to plan for appropriate implementation. If the

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timetable suggested above is adopted, then by the end of the Autumn Term, it will be known:-

- which area(s) of the academy or staff group(s) need to reduce and by how much;
- what scope exists for assisting this by natural turnover or other voluntary means.

4.10 *Delegation of authority to dismiss*

The CEO has delegated authority from the Board for deciding on the dismissal of staff including redundancy.

4.11 Appeals against dismissal will always be heard by a panel of Trustees. This would normally be three Trustees to ensure a casting vote is available.

4.12 *Preparing to consult*

Unless an early solution to the problem is found through agreement, formal consultation will need to take place with affected staff groups and their recognised trade unions and/or professional associations. By the end of the planning stage, there will need to be clarity on a number of issues which will form the basis of the formal consultation. These are:-

- The reasons for the proposed changes;
- The number and descriptions of posts it is proposed should be dismissed (i.e. the selection pool);
- The total number of employees employed in such posts (i.e. size of the selection pool);
- The selection criteria to be used including the method of applying the criteria and any weightings (*see 7 below*);
- The method of carrying out the dismissals, including any agreed procedure and the intended date of dismissal;
- Ways in which the impact and number of redundancies can be reduced;
- The proposed method of calculating redundancy pay.

5. **Seeking voluntary solutions**

5.1 Through this policy and procedure, all parties will, in the first instance, seek resolution by voluntary means. This will include the seeking of suitable voluntary redeployment where potential redundancy situations could arise.

5.2 There are a number of possible measures to assist in avoiding compulsory redundancy through voluntary solutions:-

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5.2.1 Teaching staff

Option	Elements	Limitations
Redeployment within the Trust	A move to a different role may involve a trial period, where this is practicable, to ensure the appointment is suitable from the perspective of both the employee and the academy/Trust.	None
Redeployment outside the Trust	A move to a different role may involve a trial period, where this is practicable, to ensure the appointment is suitable from the perspective of the employee, the Trust and the receiving organisation.	None
Secondment	This may allow a temporary solution to a problem or could allow effective management of an anticipated temporary reduction in staffing requirements.	None
Leave of absence	In some situations, approving a request for extended leave of absence may allow effective management of an anticipated temporary reduction in staffing requirements.	None
Voluntary redundancy	Redundancy payment with no retirement benefits.	Two years continuous service
Voluntary redundancy with actuarially adjusted benefits (AAB)	Redundancy payment with actuarially adjusted retirement benefits	Two years continuous service for redundancy. AAB for those aged 55 - 60 (or 65*) years only
Voluntary redundancy with age retirement	Redundancy payment with age retirement benefits	Two years continuous service for redundancy. Age retirement for those 60 (or 65*) years + only
Reduction in hours	If achievable through agreement between the Trust and employee(s), a reduction in hours of one or more posts can achieve the required savings. This may include part-time working and job share arrangements.	None

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Option	Elements	Limitations
Reduction in hours with flexible retirement	Flexible retirement benefits may be accessible for an employee taking a reduction in hours	55 years + only
Premature retirement**	Release of accrued benefits without actuarial reduction	55 years + to 60 (or 65*) years only

Notes: Retirement options are only available if scheme membership exists and age and service criteria are met.

* Age limit depends on date of entry to the scheme as age retirement date can be either 60 or 65.

** The Board can grant early retirement but this comes with a long-term financial commitment on the Trust's budget and it is not the Trust's policy to allow this.

5.2.2 Support staff

Option	Elements	Limitations
Redeployment within the Trust	A move to a different role may involve a trial period, where this is practicable, to ensure the appointment is suitable from the perspective of both the employee and the academy/Trust.	None
Redeployment outside the Trust	A move to a different role may involve a trial period, where this is practicable, to ensure the appointment is suitable from the perspective of the employee, the Trust and the receiving organisation.	None
Secondment	This may allow a temporary solution to a problem or could allow effective management of an anticipated temporary reduction in staffing requirements.	None
Leave of absence	In some situations, approving a request for extended leave of absence may allow effective management of an anticipated temporary reduction in staffing requirements.	None
Voluntary redundancy	Redundancy payment with no retirement benefits	Two years continuous service for redundancy. Under 55 years (or over 55 years if not LGPS member or insufficient service to qualify)*

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Option	Elements	Limitations
Voluntary redundancy with early retirement	Redundancy payment with release of accrued retirement benefits.	Two years continuous service for redundancy. 55 years + (If LGPS member with qualifying service)*
Reduction in hours. This may include part-time working and job share arrangements.	If achievable through agreement between school and employee(s), a reduction in hours of one or more posts can achieve the required savings.	None
	Flexible retirement benefits may be accessible for an employee taking a reduction in hours	55 years + (If qualifying service requirement met)

* Note - Qualifying service for LGPS is two years.

- 5.3 Consideration will be given to appropriate training to increase the chances of redeployment. All relevant information regarding terms of redeployment are contained in the Staffing Adjustment Scheme at Appendix A.
- 5.4 Information will be provided to employees interested in a voluntary option to enable them to make an informed decision. A request for information will not commit an employee and will not be taken into consideration should compulsory redundancy selection become necessary. Voluntary options would have to be acceptable to both the employee and the Trust.
- 5.5 Employees considering voluntary options are encouraged to take advice from their trade union or professional association.
- 5.6 When faced with probable staffing adjustments, employees in the affected group will be asked, without obligation, if they are interested in any of the available voluntary options. This process will be part a policy of transparency regarding staffing issues.
- 5.7 *Funding premature retirement*
- No entitlement exists for members of the Teachers' Pension Scheme to take early retirement benefits in a redundancy situation. The authority to decide whether to award early retirement to teaching staff lies with the Trust. Because early retirement would have long-term financial implications for the Trust, the current policy is that early retirement will not be an option for any member of teaching staff.
- 5.8 Support staff who are members of the Local Government Pension Scheme aged 55 years or more and have more than 2 years membership of the scheme are entitled by statute to receive their unreduced pension (and lump sum where applicable) if they are made redundant. Early retirement under LGPS will usually involve a strain

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cost that the Trust would be obliged to meet and this would be a factor when considering voluntary options.

- 5.9 Following the abolition of the statutory retirement age in April 2011, the initiative for retirement (at any age) must come from the employee. It is no longer possible to force the retirement of any employee regardless of their age.
- 5.10 More information on voluntary options is given in the Staffing Adjustment Scheme at Appendix A.

6. Consultation

- 6.1 If the Trust deems a staffing adjustment is required, then information on the reasons for reductions, the proposals for change and timescale will be shared with affected staff and recognised trade unions.
- 6.2 The Trust is aware that where multiple redundancies are involved, additional legal requirements may come into play. If the proposal is to make in excess of 20 employees redundant from one establishment within a 90 day period then it is mandatory for the Trust to consult both the affected employees and the representatives of any recognised trade union or any other employee representatives who may be elected for the purposes of the redundancy exercise in question. It would be exceptional for such significant numbers to be dismissed on grounds of redundancy in an academy situation (other than on the closure of an academy) but the Trust is aware of the particular considerations that apply. It is good practice to follow full consultation procedures where fewer than 20 redundancies are involved, hence the commitment made in 6.1 above.
- 6.3 Consultation with affected staff and their recognised professional associations/trade unions will normally take place where the staffing structure is being adjusted even if redundancy dismissal may not be involved (e.g. removal of Teaching and Learning Responsibility Payments, restructure of a group of support staff, etc).
- 6.4 The purpose of consultation is to:-
- make the affected employee group and their recognised trade unions/professional associations aware of the problem
 - provide information to help them understand why change needs to happen
 - share the Trust's proposals for solving the problem
 - consider any counter-proposals for resolving the problem
 - clarify any uncertainties and to reply fully to any written responses to the consultation.

Whilst the Trust will think carefully about their proposed means of solving the problem, other better solutions or reasonable amendments to proposals may be identified through the consultation. It is essential that commitment is given to the consultation process to ensure avoidable issues do not arise later that could cause delay to the process or distress to individuals who find themselves selected for redundancy.

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- 6.5 Formal consultation with officers of the recognised professional associations and trade unions for the affected group(s) of employees will take place if no early solution to the problem (i.e. avoiding the need for 'forced' changes) can be identified.
- 6.6 Normally, formal consultation and the search for voluntary solutions will take place concurrently. In some cases it may be possible to identify voluntary solutions early on, avoiding the need for a formal process to take place. Examples of this might include an approach from an employee to reduce their hours, an employee who indicates they do not wish to return to work following a period of maternity leave or a decision by an employee to resign or retire.
- 6.7 Statute determines the type of information that needs to be provided by the employer through consultation as summarised in 4.13 above. The Trust will consult Educator Solutions HR Services for the provision of a template and related advice.
- 6.8 Consultation will be with the recognised trade unions for the group(s) affected and with staff in the affected group(s).
- 6.9 In order that consultation is deemed meaningful, selection for redundancy will take place only when the consultation process has been completed (i.e. the formal consultation period has ended and any responses received have been considered and responded to). In managing this process, it is necessary to set a closing date for the completion of the consultation period and a period of four clear term-time weeks is deemed reasonable.

6.10 *Failure to consult properly*

A failure to consult with employees in the affected group, particularly any individual who is subsequently selected for redundancy, will likely render the selection unfair even if consultation with trade unions has taken place.

- 6.11 With a view to seeking agreement on how to proceed with an adjustment, the Trust will consider any formal representations made by the trade unions, respond and, if any suggestions are rejected, give reasons. Trade unions and employees may complain to the Employment Tribunal about a breach of these requirements and the Tribunal can require the whole process to stop until the omission has been corrected. There may be financial implications in respect of breaches of this requirement through a protective award which may be 90 days pay per employee at their actual pay rate.

7. Selection

- 7.1 In most circumstances, permanent employees will normally only be selected for compulsory redundancy after all temporary/fixed-term contracts of less than two years and without previous continuous service by the redundancy date, have already been terminated in the affected areas. Trusts are reminded that individuals

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employed under temporary and fixed-term contracts do have rights and so before any decision is taken to end the contract as part of a redundancy process, advice should be taken from Educator Solutions HR Services. Equally, if the Trust believes justification exists for pursuing redundancy of permanent staff where relatively short-term temporary employees are engaged, advice will be taken before starting any consultation process.

7.2 If the problem cannot be resolved through ending of short-term temporary or fixed-term contracts and no suitable volunteer appears, the Trust will move to select from the 'at risk group(s)' by applying the selection criteria established through the consultation process.

7.3 *Selection criteria*

The Trust must consult on the proposed criteria to be used to select an individual (or a number of individuals) from the wider 'at risk' group. This will form part of the main consultation as outlined above. Only once consultation has ended can the process of selection be applied.

7.3.1 The recommended options for selection processes are as follows:-

- The Educator Solutions HR Services model skills audit for teachers in primary phase is appropriate to the selection of a teacher (or number of teachers) from a wider group of 'at risk' teachers. This includes the general requirements of class teaching (specific to the Key Stages), subject leadership and management roles.
- The secondary phase version of the model skills audit for teachers is appropriate for use in a setting where reductions need to be made from specific subject/curriculum areas.
- The Educator Solutions HR Services model skills audits for selection of a teaching assistant from the wider teaching assistant group. These are based on model job descriptions for different levels of teaching assistant posts but scores can be adjusted to reflect priorities for the academy and identified future needs (individual academies may use teaching assistants in different ways thus affecting the relative importance of the different criteria). Any consultation would need to include the proposed criteria and scoring mechanism.
- In other circumstances, for example where the leadership team or administrative function is being restructured to make efficiency savings, it may be more appropriate to design a new structure with draft new job descriptions with the proposal for selection put forward for consultation being the appointment of existing staff to that new structure. At the end of the appointment process, any individual not appointed to a post will be selected for redundancy. Appointment to the structure could be through a variety of means depending on the comparison between old and new roles (duties and grades). It could involve slotting in (where the grade is the same or lower and the duties are 50% or more unchanged – unless more people would have slotting in rights than there are appropriate posts in the new structure), prior consideration (where a post has 50% or more duties the same but the grade is higher) or competitive interview (for posts that attract no slotting in or prior consideration).

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Sufficient detail would need to be covered in the consultation document that individuals can understand their position.

7.3.2 In cases where the 'at risk' group consists of only one employee, or the number of posts to be removed equals or is more than the number of individuals in the 'at risk' group, the proposal will normally be made through consultation that selection will be based on nothing more than occupancy of the post to be removed. Examples of where such a selection process might apply include:-

- A specific grant funded post, occupied by one individual, which has continued for a significant period of time but is ending because the grant is to cease.
- A one-off post in the academy which is deemed to no longer be required and is to be removed from the structure.

7.4 Advice will be taken from Educator Solutions HR Services on the proposed selection criteria and whether any selection arising out of application of the criteria is likely to be 'fair' within the requirements of employment legislation.

7.5 *Selection criteria not identifying an individual*

In some cases, the application of the chosen criteria will not achieve a clear selection. Application of the criteria may result in two individuals being at risk but they cannot be separated. Where this happens, it would be appropriate for selection to be made between those two individuals on the basis of the cost of redundancy dismissal (i.e. the costs of redundancy are kept to a minimum).

7.6 *Unfair selection for redundancy*

It would be unfair to select an employee for redundancy on grounds of age, gender, ethnicity, sexual orientation, disability, faith or religion, gender identity, marital status or pregnancy. Protection of employees against redundancy selection also extends to those taking periods of maternity, paternity, adoption, shared parental leave or parental leave and to trade union membership or activity. This does not mean it is unfair to select for redundancy an employee who falls under one of these criteria, but the reason for selection must not be the stated criteria. Any individual selected for redundancy whilst on maternity leave does have additional rights (see 10.2) and significant care needs to be taken in these situations.

7.7 Any other redundancy dismissal may be unfair if it is not achieved through proper application of a fair procedure – e.g, if the selection criteria are deemed to be unfair or if they are misapplied.

7.8 *Provisional selection*

Successful application of the criteria will result in a 'provisional selection' for redundancy.

7.9 Once an individual has been provisionally selected for redundancy they will be informed without delay that a redundancy selection meeting or hearing will be held

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at which they have a right to be accompanied by a trade union representative or work colleague. The employee must be informed that they will have the right to make representations at that meeting which will be given proper consideration before a decision about redundancy dismissal is taken.

7.10 *Redundancy selection meeting or hearing*

Arrangements will be made to ensure appropriate individuals can be present for the redundancy selection meeting or hearing.

7.11 The provisionally selected individual will be asked who they wish to be supported by at the meeting or hearing so they can be approached about their availability.

7.12 Once a suitable date has been identified, a formal call-up letter will be issued to the provisionally selected individual providing the following:-

- who will hear the case;
- date, time and place of the hearing;
- reference to any key documents that may form part of the hearing. This would include copies of consultation and selection stage documentation;
- the right of the employee to be accompanied by a trade union representative or work colleague;
- a statement about the possible outcomes of the hearing.

7.13 The employee must receive this letter at least five working days in advance of the meeting taking place.

7.14 Where the individual has provided details of their trade union representative or work colleague who will attend the meeting or hearing with them, a full set of documents must also be issued to that representative or colleague at least five days in advance of the meeting or hearing taking place.

7.15 A full set of documents will be issued to the individual or panel that will be making the decision in the case.

7.16 *Procedure at a redundancy selection meeting or hearing*

Redundancy selection meetings and hearings will be conducted in accordance with the relevant procedure:-

- As the Trust's Scheme of Delegation has delegated dismissal to an individual ie the CEO, the *Redundancy meetings (being heard by an individual) procedure G318h* should be followed.

7.17 *Reduction in hours*

Following precedent set in case law, a substantial reduction in hours is likely to constitute redundancy if agreement for adjusted hours cannot be reached. Any dismissal linked to a reduction in hours, therefore, will involve a redundancy

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payment (subject to qualifying service) where an offer of re-engagement on reduced hours is not accepted.

- 7.18 Where there is a need to reduce hours the following options will be considered:-
- a) If the employee's contract contains a specific clause that allows for variation of hours, it may be possible to achieve the required change without the need for a formal staffing adjustment process. Where the required changes go beyond any stated limits for variation in the contract (or contracts), however, a formal consultation will be required unless changes can be achieved by mutual consent;
 - b) If agreement can be reached with the employee (or employees) to vary their contract by mutual consent, the adjustment can go ahead without the need for a full staffing adjustment process;
 - c) If there is no agreement to vary the hours of the contract by mutual consent and no clause in contracts of employment to all variation of hours, a staffing adjustment process will be required. This process will involve normal consultation on proposed changes including how individuals will be selected. Any employee (or employees) selected for a reduction in hours should have the option of accepting the reduction in hours by agreement otherwise the appropriate means of achieving the change will be to dismiss on grounds of redundancy and to offer re-engagement on the new hours. A redundancy payment is then payable if the alternative employment (i.e. the reduced hour's contract) is not accepted.

- 7.19 Care should be taken to avoid discrimination against part-time employees when exploring reductions in hours as this may result in an indirect sex discrimination claim being brought against the Trust.

7.20 *Removing Teaching and Learning Responsibility Payments (TLR)*

Where a post with a TLR is being removed from the structure and replaced with a lower TLR or a post with no TLR, there must be a clear reduction in the responsibilities attached to the post.

- 7.21 It is essential to ensure that the requirements of the School Teachers' Pay and Conditions Document relating to the removal of a TLR are met.

- 7.22 The nature and extent of consultation required under the staffing adjustment policy will be affected by the amount of change involved in the wider academy structure.

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8. Dismissal

8.1 Dismissal decisions must be confirmed in writing through an outcome statement to the employee within five working days of the Redundancy Selection Meeting or Hearing taking place.

8.2 The outcome statement needs to be accompanied by a formal letter that serves notice of dismissal and provides information on redundancy pay, the search for redeployment and the process for appeals.

8.3 *Notice*

Any employee dismissed on grounds of redundancy is entitled to the period of notice provided by their contract or current employment legislation, whichever is the greater.

9. Appeal

9.1 An employee who wants to appeal against redundancy dismissal should inform their Headteacher within five working days of receiving the decision in writing. The employee must state the grounds for their appeal.

9.2 The purpose of an appeal is:

- to review the decision taken at the Redundancy Selection Hearing or Meeting;
- to consider whether the procedure has been followed correctly.

9.3 An appeal could be held as a re-hearing of the case or as a more focused review of particular elements of the process, depending on the nature of the appeal.

9.4 The employee will be given at least five days' notice of the appeal hearing and will be given the following information in the call up letter:

- who will hear the appeal,
- date, time and place of the appeal hearing,
- a reference to any key documents that may form part of the hearing and, if appropriate, copies of these,
- the right of the employee to be accompanied by a companion,
- a statement that the employee must take all reasonable steps to attend the meeting,
- a statement of the possible outcomes of the hearing.

9.5 Appeals against dismissal will always be heard by a panel of Trustees. This would normally be three Trustees to ensure a casting vote is available.

The appeal will normally take place within six working weeks of the appeal request being received by the Headteacher.

9.6 The procedure to be followed at any appeal hearing will be issued with call-up papers.

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9.7 The decision following the appeal hearing will be issued in writing to the employee within five working days.

10. Subsequent obligations

10.1 Search for redeployment

Any employee selected for redundancy must be offered support in the search for alternative employment. The obligation to avoid compulsory redundancy, where possible, sits with the Trust as the employer. Arrangements should therefore be made through the CEO for vacancies across the Trust to be managed appropriately when one or more academy is undergoing staffing adjustments. This will help maximise opportunities for redeployment within the Trust. If suitable alternative employment arises within the Trust, consideration must be given to any potentially redundant employees before any other recruitment exercise begins. Vacant posts will not normally be advertised until such time as it is determined that the vacancy is not suitable for any at risk or selected employee.

10.2 If an employee's post becomes redundant while they are on maternity, adoption, shared parental or parental leave, they must be offered any suitable alternative post which is available in the Trust even if this would mean recruiting a temporary replacement to that alternative post until their return from maternity, adoption, parental or shared parental leave.

10.3 Where an appropriate service level is being purchased, Educator Solutions HR Services will assist in the search for alternative employment in other Norfolk schools for employees at risk, or under notice, of redundancy. Employees facing redundancy will be asked to complete or provide a generic application form as part of this process. The search for redeployment will continue until suitable alternative employment is found or the notice period expires, whichever comes first.

10.4 In order to allow further time to achieve redeployment in some cases (e.g. where the cost of redundancy may be high), it may be appropriate to defer redundancy dismissal by a term to allow an extended search to take place. Deferral would need to be agreed between the Trust and the individual.

10.5 Time off during the period of notice to seek alternative employment

While an employee is under notice of dismissal on grounds of redundancy, they are entitled to reasonable time off with pay for job hunting, interviews, etc and for arranging further training, etc. 'Reasonable' in this situation would mean allowing time off for all interviews that may lead to the individual securing alternative employment unless a high number of interviews causes difficulties for the academy in providing a good level of education for pupils. Failure to allow this can be challenged before the Employment Tribunal.

10.6 Trial periods

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Redeployment within the Trust or to another school can be agreed on the basis that a trial period will take place. Such arrangements help the employee and the school assess whether the redeployee is suited to the alternative role but without necessarily removing the employee's entitlement to redundancy pay should the role prove to not be suitable. The length of a trial period would need to be determined but for teachers are likely to be a term in length so that if the trial period fails, employment can end at the end of the notional term as required by teacher notice provisions.

- 10.7 Where redeployment involves a trial period, the Trust will continue to be liable for redundancy costs if the trial is unsuccessful.
- 10.8 If an employee chooses to leave following the trial period, redundancy will only be withheld if the employee is deemed to have unreasonably refused suitable alternative employment. In withholding any redundancy, the Trust recognises it would need to demonstrate that the employment was suitable and that the refusal by the employee was unreasonable (see 10.12).
- 10.9 *Leaving before the end of the notice period*

Consideration will be given to any requests received from employees to leave before their notice period expires where alternative employment is found that has a start date before the planned redundancy date. Normally such requests will be accommodated unless the early departure of the individual is likely to have a significant detrimental effect on the work of the academy, particularly the care and education of pupils.

10.10 *Salary safeguarding*

Employees who are redeployed within the Trust may be eligible for salary safeguarding if their new post attracts a lower salary than their redundant post. For teachers, this would be determined in accordance with the School Teachers' Pay and Conditions Document. For support staff, safeguarding will be considered in line with the Staffing Adjustment Scheme (Appendix A). It is unlikely that the same safeguarding eligibility will exist where an alternative role is found in a different school.

10.11 *Excess travel support*

Employees who are successfully redeployed may be eligible for excess travel support. See Staffing Adjustment Scheme (Appendix A) for more information.

10.12 *Refusal by an employee to accept suitable alternative employment*

It is normal practice under this policy to pay redundancy based on actual weekly earnings rather than applying the statutory maximum weekly pay. If an employee declines an offer of suitable alternative employment without good cause they may

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forfeit the entitlement to redundancy pay. As an alternative, consideration may be given to paying redundancy at the statutory maximum weekly pay rate (where this is less than actual weekly pay).

10.13 *Pension impact where there is a drop in pay (support staff)*

Employees who are current members of the LGPS and have membership prior to April 2014, have options they can consider if their rate of pay is reduced or increased. Please see the [Pension option – reduced or restricted pay form](#) for more information.

If the employee is in a different pension scheme they can contact their scheme administrator to find out what options are available.

11. Implementation

11.1 Once the dismissal process is concluded and appropriate notice issued to the employee, it is essential that the Trust's payroll provider is informed so the following arrangements can be made:-

- Employment terminated (including closing payroll records, issuing P45, etc);
- Redundancy payment can be paid where appropriate;
- Where the employee is a member of the Local Government Pension Scheme, the scheme can be informed of the ending of the employment (NB – Members of the Teacher's Pension Scheme should complete the appropriate form and follow the submission process if they wish to access their benefits);

Some of these actions, for example, payment of redundancy will be subject to the outcome of any appeals process.

11.2 *Redundancy Pay*

Employees with more than two years' continuous service are entitled to a redundancy payment on dismissal for redundancy, except for a number of excluded categories.

11.3 Payments will be made in line with the Staffing Adjustment Scheme at Appendix A.

11.4 Redundancy pay is free of deductions but HMRC regulations come into force for payments over £30,000.

11.5 Redundant employees will be entitled to redundancy pay provided they meet length of service criteria and have not found alternative employment covered by the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999 - known as the Modification Order. All employees must sign a Modification Order form to confirm they do not have alternative employment, with another Modification Order Body, to go to that begins within four weeks of their current employment ending. The requirement for the employer to withhold redundancy pay if an employee obtains alternative employment only applies if there

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has been an offer of employment to begin within 28 days of the termination of contract and the offer is made before the termination of contract.

11.6 It is not permissible for redundant employees or other employers (covered by the Modification Order) to seek to falsely create breaks in continuous employment in order to allow a redundancy payment to be made. For example, if a redundant employee finds an alternative post that would normally start immediately following the date of redundancy, the receiving establishment should not allow a later start date purely to allow a break in service. If these circumstances are created, redundancy payment may be withheld.

11.7 *Redundancy and maternity pay*

Special arrangements apply for employees who are made redundant whilst on maternity leave. Guidance should be sought from Educator Solutions HR Services to ensure the employee is aware of her options and entitlements.

11.8 If an employee on maternity leave is unable to return to work (for all or part of the return to work period – i.e 12 weeks for support staff or 13 weeks for teaching staff) because she has been dismissed for redundancy, her entitlement to receive full occupational maternity pay will not be removed. The employee would receive her entitlement to occupational maternity leave in full in these circumstances. The only exceptions to this rule would be where the employee indicated at the outset that she did not intend to return to work following her maternity leave period or where suitable alternative employment has been offered but declined.

Associated documents

- Staffing adjustment – beginning the process – information to share G318c
- Staffing adjustment – an overview G318d
- Staffing adjustment consultation template guidance G318e
- Redundancy meetings (being heard by an individual) procedure G318h
- Redundancy payment form F318
- Staffing adjustment – voluntary options for teaching staff F318b
- Staffing adjustment – voluntary options for support staff F318c

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Appendix A – Model Staffing Adjustment Scheme

This scheme has been adopted by the Trust.

The scheme makes clear the level of support or compensation to be paid to individuals who are subject to:-

Redeployment – where an employee moves from one post to another within the Trust or to a similar post in another Trust or maintained school.

Stepping down – where an employee moves from their current post to a different post at a lower level of responsibility within the Trust.

Redundancy – where a post is removed from the structure and an employee's employment ends as a result.

Early retirement – where an employee is given access to their pension benefits before normal retirement age as a result of being made redundant (i.e. the age at which they could normally take their pension without penalty).

Reductions in hours – where an employee remains in their post but the weekly hours are reduced.

Other opportunities may allow the Trust to avoid or delay redundancy decisions. For example, the secondment of a permanent employee may allow the Trust to make savings over a period of time during which natural turnover may occur to avoid a compulsory redundancy having to take place.

In some situations, the options summarised above may be combined.

This scheme applies to both teaching and non-teaching employees in the Trust.

1. Staffing adjustment scheme provisions

1.1 Redeployment

1.1.1 *Salary safeguarding*

Where redeployment to a different post within the Trust is achieved, salary safeguarding will apply where the new post is a lower paid role. In these cases:-

- for teaching staff, salary safeguarding will be as determined by the School Teachers' Pay and Conditions Document.

OR

- for non-teaching staff, salary compensation will be 18 months of compensation based on the difference in pay between new salary and old but capped at two grades difference or 20% of the old salary, whichever is lower.

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1.1.2 *Excess travel*

Where an alternative post is secured outside the Trust, no financial support will be provided in respect of excess travel.

Where an alternative post is secured within the Trust but at a different location, excess travel allowances will be payable

Employees will be eligible for the cost of excess mileage to be reimbursed where their new journey to work is a minimum of 10 miles further compared to their old journey to work (each way). Employees who qualify for excess mileage will be responsible for meeting the additional costs of the first 10 miles of the difference in travel (each way). Where the difference in travel is 10 miles or less, (each way) employees will not be reimbursed the cost of any additional mileage. Where the change in work base is necessary as all other reasonable adjustments to make the existing workplace accessible for an employee with disabilities have been exhausted, it may be appropriate for all additional costs to be reimbursed as a reasonable adjustment, depending on the individual circumstances.

Example 1

Employee X's journey from home to work base A was 10 miles. They are transferred to a work base B which requires a 15 mile journey from their home. The difference in the journey to work between workplace A and B is 5 miles. Employee X is not entitled to claim excess mileage costs.

Example 2

Employee Y's journey from work base A was 2 miles and they are transferred to work base B which requires a 20 mile journey from home to their new base. The difference in the distance travelled is 18 miles. Employee Y is eligible for 8 miles excess mileage (16 miles per day) as they meet the cost of the first 10 miles (20 miles per day).

In all cases payment will be by a monthly lump sum added to salary and calculated on the basis of the number of weeks the employee works during the year i.e. discounting annual leave and statutory bank holidays, and other periods when the employee is not at work, e.g. non-term time. The maximum number of weeks excess mileage will be payable is 45.6 weeks (for employees with 24 days annual leave plus bank holidays).

1.1.3 Car users

Car mileage paid under this scheme is not classed as business travel mileage and so will not be credited to official mileage. Excess mileage payments are taxable as home to work mileage falls outside HMRC rules. Therefore, an employee may have two separate mileage arrangements with one taxable under the excess mileage

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scheme and the other non-taxable to cover business mileage. The 10,000 miles threshold applies to each arrangement.

1.1.4 Cycle Users

The same principles apply as for 1.1.3 above, with any additional mileage above 10 miles paid at the Bicycle User Transport Rate at the time of the claim.

1.1.5 Public transport

Where the employee travels by public transport, their eligibility for excess mileage will be calculated on the increased mileage differential of the notional home to new base and notional home to old base. Where this is greater than 10 miles, the employee will be reimbursed the additional public transport costs incurred. Where this is less than 10 miles, the employee will be responsible for meeting any additional cost associated with travelling to work.

1.1.6 Excess mileage will be payable for 12 months provided the employee's circumstances do not change (see below). The monthly payment will be calculated in accordance with the mileage policy and rates in operation at the time of payment.

1.1.7 For part-time employees the payment will be based on their working pattern e.g. an employee who normally travels to and from their place of work for 3 days out of 7 each week will be paid 3/5th of the allowance payable to full-time employees (assuming 5 day week).

1.1.8 Changes to circumstances

If, during the 12 month period the employee's circumstances change, the excess mileage allowance will be recalculated as follows:

- Where the change is requested by the employee, e.g. they move home, take a secondment at a different workplace, or request a change to their working pattern, the excess mileage will only be recalculated where there is a reduction in the costs.

Employees must inform their Headteacher or manager in writing of any change to their address or working pattern, advising that they are currently in receipt of excess mileage and the date the change(s) will take effect, at the earliest opportunity so the payment can be recalculated.

Where the change is requested by management, in the event that there is a further change of base, then the original payment will cease completely and a new 12 month payment will commence from the date of the change. Where there is a change to the working pattern that does not result in a change of base, the original payment will be recalculated for the time remaining from the original 12 month period.

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1.1.9 Absence from work

Occasional sickness will be ignored but payment will be suspended in cases of prolonged illness (i.e. in excess of four weeks). There will be no extension to the 12 month payment period where payment has been suspended as a result of sickness absence.

If an employee is absent for more than 4 weeks on maternity/paternity or adoption leave, or absent on grounds of their disability, for example, where they are fit for work pending reasonable adjustments being made, excess travel payments will be suspended for the duration of their absence. However, the employee will still be entitled to the full 12 months of payments. Payments will restart when the employee returns to work and the payment period extended by the length of time the employee was absent.

1.2 Trial periods

Where it is agreed that a trial period is appropriate to assess the suitability of the role for the employee and the employee to the role, details of the terms of the trial will need to be clarified at the outset and may be specific to the individual's circumstances.

A trial period for a teacher will not normally exceed one term and for non-teaching staff will be no less than four weeks and no longer than one term.

Any agreement on a trial period will need to make clear the obligations on the Trust and other parties involved, should the trial period prove unsuccessful.

Where redeployment is a voluntary option, it would not normally involve a trial period. Where an employee who has been selected for compulsory redundancy has found a redeployment opportunity and a trial period is agreed, it will need to be clear for that employee what their position will be should the trial period prove unsuccessful. Normally in such circumstances, a further search for redeployment will be appropriate before redundancy benefits are released.

1.3 Stepping down

It may be possible for an employee in a senior position to step down into a lower paid post to avoid a redundancy. In such cases the employee will need to take advice on the impact of such a change on their pension. If the stepping down is to avoid redundancy, salary safeguarding (as outlined above) will still apply.

1.4 Redundancy

Payments are calculated on the number of years' continuous employment. For Trust employees who have continuous employment for redundancy purposes, all service is counted although special calculation arrangements may apply for employees with multiple employment (see guidance on continuous service for

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employees with multiple employment). Each completed year of service, up to a maximum of 20, after the age of 18 counts for payment on the following scale:-

from age 41, but under 65:	1.5 weeks' pay
from age 22, but under 41:	1.0 week's pay
from age 18, but under 22:	0.5 week's pay

The Trust's policy is to use the statutory formula for a week's pay and apply the statutory maximum week's pay.

Whether paid as a voluntary option or as a result of compulsory redundancy selection and dismissal, redundancy is normally paid using the statutory redundancy calculator and taking into account the employee's actual week's pay (i.e. not capped at the statutory maximum weekly pay).

Should an employee who has been selected for compulsory redundancy refuse to cooperate with a search for alternative employment, it may be deemed appropriate to either cap weekly pay at the statutory maximum when calculating redundancy or to not pay any redundancy.

Redundancy payments can only be released to an employee if the requirements of the Redundancy Payments Modification Order are met. The employee will be asked to sign a *Redundancy payment form F318* to confirm their entitlement.

1.5 Early retirement

1.5.1 *Non-teaching staff* – Early retirement (i.e. early release of accrued benefits without penalty) is a statutory entitlement for members of the Local Government Pension Scheme aged 55 years and over with more than 2 years membership of the scheme, if their employment ends through redundancy (voluntary or compulsory). In these cases, unreduced retirement benefits would have to be released in addition to redundancy pay. The Trust recognises its obligation to pay strain costs where early retirement is awarded.

1.5.2 *Teachers* – There is no statutory entitlement to early retirement (i.e. where an employee is given access to their pension benefits before normal retirement age but without penalty) for members of the Teachers' Pension Scheme who are made redundant. The Trust does have discretion to allow early retirement for members of the scheme aged 55 or over but the policy is to not allow this because of the long-term costs involved. Some retirement options remain available for teachers aged 55 years and over including Actuarially Adjusted Benefits, Phased Retirement and Age Retirement. More information on these options can be found on the Teachers' Pensions website.

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1.6 Reductions in hours

Reductions in hours can arise either from proposals from the Trust to reduce the number of hours per week allocated to particular roles, or through employees offering reductions in hours as a means of avoiding whole post reductions.

Where reductions in hours are agreed between the Trust and the employee, the contract of employment and salary will be adjusted accordingly. No compensation is payable.

Where the Trust seeks to reduce the working hours of a particular post but the employee does not agree, the Trust has the option to dismiss on grounds of redundancy with an offer of re-engagement on the new (reduced working hours) terms of employment. If the employee accepts the offer of re-engagement, no compensation is payable. If the employee refuses the offer of re-engagement redundancy is payable when the employment ends. Notice, in accordance with the employee's contract, will need to be given.