

news and articles of special interest for
headteachers and senior managers

Welcome...

to another academic year fraught with further changes from the DfE!

By now you will have in place your revised pay policy and will have completed any necessary adjustments to your appraisal policy and consulted with unions. It may be worth reminding you that all your staff should, in particular, be made aware of your pay policy as this directly affects their pay and conditions.

Forthcoming changes to the pension schemes, TUPE transfers, public sector pay restraints and the STRB's remit on leadership pay and other teacher terms and conditions all make for challenging times in the education sector and emphasise your need to have robust HR processes in place throughout the remainder of this academic year and beyond. ■

Changes to STPCD – since July

The Local Government Association has clarified the following arrangements regarding the changes to teacher pay:

It has been confirmed that holders of TLR1 or TLR2 will also be eligible to receive a TLR3. The Department has removed the requirement that TLR3s for part-time workers should be paid on a pro rata basis and has clarified that the minima and maxima specified are for an individual TLR3, rather than the total annual sum that an individual can receive in TLR3s.

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Current remit for School Teachers' Review Body (STRB)

The STRB has been asked by the Secretary of State for Education to look into providing a simplified and flexible framework for ensuring school leaders' pay is appropriate both to the challenge of the post and the postholder's individual contribution to their school (or schools).

Their remit will include looking at detailed provisions for allowances, other pay flexibilities and safeguarding, all of which could be reformed to allow a simpler and more flexible STPCD. Additionally this may also include the reform of the framework for teachers' non-pay conditions of service.

Their recommendations will be published on 10 January 2014. **educateHR** will feedback information as soon as it is announced. ■

Pay Award for Teachers (2014)

Currently the government is consulting with local authorities on the pay award for teaching staff in 2014. The government has made it clear that it

continued over »»

Point of Interest

The Supreme Court has ruled in favour of female workers who demanded they be paid an equal wage to men employed by the same organisation. The judgement, in the case of *North and Others v Dumfries and Galloway Council*, found that female school staff were "in the same employment", for equal pay purposes, as male manual workers at the same local authority.

It means that female classroom assistants and nursery nurses at local authority schools are entitled to compare their wages to those of their male counterparts working at, for example, leisure centres. The Supreme Court held that working in different locations for the same employer is not a barrier to achieving equality.

wishes to see an average 1% pay award for teachers overall. The Chief Secretary to the Treasury has indicated that the definition of a pay award does not include "recruitment and retention premia". The issues of interest include: should all teachers receive 1% or should it differ between categories? (eg MPR, Unqualified, Leadership) should the award apply to all pay ranges (including allowance ranges) only? should any award be applied to recruitment and retention payments?

We will inform you of the government's conclusions as soon as they are published. ■

Local Government Pension Scheme changes from April 2014

From 2014 the LGPS will change from being a final salary to a 'CARE' scheme. 'CARE' stands for Career Average Revalued Earnings. A person's pension will build up as a proportion of their pensionable pay - 1/49th for each year in the LGPS 2014. So instead of calculating their pension with reference to final salary on retirement, the LGPS 2014 uses the average of annual earnings over their entire membership of the LGPS.

All member benefits built up in the scheme to 31 March 2014 are protected. They will still be based on both the final salary on leaving and the normal pension age in the current scheme.

For up to date details visit: www.lgps2014.org

From April 2014 employees can choose to leave and draw their pension anytime from the age of 55. Pension will be reduced if an employee chooses to retire before their normal pension age and increased if they retire later. Normal pension age for the new scheme pension won't be fixed at 65 as in the current scheme but will be the same as their state pension age – with 65 as the earliest possible age. ■

Support staff pay

Information received from the Local Government Association (LGA) confirms that they have now received the pay claim for 'Green Book' local government services from the NJC unions: *"At a meeting on 5 November the NJC Executive the Trade Union Side formally tabled their detailed pay claim for 2014 for "a minimum increase of £1 an hour on scale point 5 to achieve the Living Wage and the same flat rate increase on all other scale points".*

The National Employers (who negotiate on behalf of local authorities) have undertaken to consult councils through a series

of regional pay consultation briefings that aim to be concluded by 31 January 2014.

As a reminder: from 1 October 2013 Spinal Column Point 4 (SCP4) has been deleted from the NJC pay scales (having fallen below the legal minimum wage). Therefore, employees on SCP4 should have progressed to SCP5 from 1 October and, if automatic increments apply, should further progress to SCP6 with effect from 1 April 2014. (All schools may care to check with their payroll provider that no employee is still being paid at a lower level of remuneration.) The union side, in their letter to the LGA, claim: *"The bottom hourly pay rate in local government is now £6.45, just marginally higher than the National Minimum Wage at £6.31 per hour and £1 an hour lower than the Living Wage of £7.45 per hour outside of London. Had the bottom pay point of £6.30 pence not been deleted on 1 October 2013, the gap between NJC pay and the National Minimum Wage would only have been 1p an hour!"*

NB. Please do not confuse (as some appear to have done) **SCP4** with **scale 4** which is a reference point for local pay bargaining used in bands set by many local authorities.

There also appears to be a degree of confusion (at least in some minds) between "minimum wage" and "living wage". The simplest distinction is that although employers are obliged to pay the minimum wage, there is no legal requirement to pay the living wage. ■

Teacher dismissal and compensation

In the case of Cumbria County Council v Bates, the Employment Appeal Tribunal (EAT) decided that a teacher who had been unfairly dismissed should receive less compensation following his assault on a pupil which resulted in a prison sentence.

After his dismissal from school, the teacher assaulted a 16 year old girl whom he had previously taught. In deciding how much money should be awarded for unfair dismissal the Employment Appeal Tribunal found that because he was given a 6 month prison sentence the teacher had damaged his own chances of getting employment. The school should not therefore have to pay loss of earnings to the teacher for any period that he would not have been available for work as a direct result of his own actions. ■

TUPE and collective agreements

What happens to a collective or national agreement after a TUPE transfer?

The European Court of Justice has finally ruled that a transferee is not bound by any collective agreement made after the expiry of an agreement that was in force at the time of the transfer if the employer was not party to the collective bargaining machinery concerned.

This confirms the so-called “static” interpretation of TUPE legislation (as opposed to the “dynamic” interpretation which would mean that a transferee would be bound to give effect to collective agreements negotiated by a third party from time to time). The outcome of the case is that transferees cannot be bound by collectively agreed terms negotiated post-transfer if the transferee has had no input into the negotiating process.

The long-term implications of this ruling remain unclear, however, academies and non-maintained schools should exercise caution before offering terms and conditions that may be less favourable than other schools in terms of recruitment and retention of staff. ■

Settlement agreements (formerly compromise agreements)

“Settlement agreements are legally binding contracts which can be used to end the employment relationship on agreed terms. Their main feature is that they waive an individual’s right to make a claim to a court or employment tribunal on the matters that are specifically covered in the agreement. Settlement agreements may be proposed prior to undertaking any other formal process. They usually include some form of payment to the employee by the employer and may also include a reference.” (ACAS)

Conversations proposing settlement agreements may be appropriate when it has become clear that a member of staff is on the brink of formal capability proceedings and this arrangement can provide for a dignified and smooth exit to the benefit of all parties. However, as an employer you will need to think carefully about the risks of engaging in negotiations and the impact it will have on the working relationship, particularly if agreement cannot, in the event, be reached. ■

Leave of absence and term-time working

Over recent months we have been supporting a number of schools and academies in dealing with support staff engaged on term-time contracts who consider it appropriate to take (unauthorised) leave during term time, seemingly with impunity.

Our advice has been to deal firmly (but not unreasonably) with each situation on its own merits. If you are experiencing similar circumstances and require guidance please contact us for advice. ■

Grievance and appeals

In a recent Employment Appeal Tribunal case it was held that the employer’s failure to provide an impartial grievance process (by not allowing the employee to appeal to a different manager than the one who had heard the original grievance) could amount to a breach of the implied term of trust and confidence.

The ACAS Code of Practice on Disciplinary and Grievance Procedures states that an employee should be entitled to an impartial appeal of a grievance decision heard by an individual who was not involved in the original decision. Failure to make adequate provision for an independent appeal is highly likely to be considered a serious breach of contract. ■

Fair Deal for staff pensions

Staff whose employment is compulsorily transferred from the public sector to independent providers of public services will generally have a right to continued access to relevant public sector pension arrangements. This “Fair Deal” guidance applies to maintained schools (as well as academies) who, for example, contract out their catering or cleaning provision to a private contractor.

Historically, public sector employers have required private sector contractors to tender for contracts on the basis that if staff transfer to them they will be allowed into a pension scheme certified by the Government Actuary’s Department as being broadly comparable to the public sector scheme (which can be significantly more expensive for the employer).

‘Fair Deal’ guidance requires that staff transferring should remain in the public sector scheme even though they have transferred out of the public sector body’s employment. As the public body the school must, as part of their contract, require the new employer to:

- provide membership of the public sector scheme to the transferring employees, and
- enter into a participation agreement with the public sector pension scheme (which will require certain financial guarantees such as required contributions levels).

You are strongly advised to seek appropriate advice and guidance on such matters before committing to a (TUPE) transfer of staff. ■

Pensions, pooling and academies (Local Government Pension Scheme)

You may be aware that the government is currently consulting on the proposal for pooling the scheme arrangements of academies and the ceding local authority to ensure the stability of a converted academy's employer contribution rates. This consultation closes on 15 November.

To support any stabilising regulatory solution for academies, a guarantee came into effect from 18 July 2013 which means that the Department for Education will meet any outstanding scheme liabilities on the closure of an academy trust.

We will provide information to our clients as soon as it is available. ■

Trade union facility time

The Department for Education has just completed a call for evidence from public bodies about trade union facility time in schools. Trade union representatives are entitled to reasonable paid time off (known as facility time). The DfE is not proposing any change to this legislation, but the interpretation of what is reasonable currently varies widely. The call for evidence set out ministers' proposals and asked questions about how arrangements could be made more transparent and represent a more efficient use of taxpayers' money.

The responses will be used to inform advice to schools which will be published later in the autumn term. The call for evidence closed on 25 October 2013. ■

Press release

A former headteacher who was knighted for his services to education has received a 12 month sentence (suspended for 2 years) after admitting false accounting. The headteacher pleaded guilty to creating a false paper trail on bonus payments and allowances. The bonus payments to staff (including himself) totalled £315,000 and dated back to 2007. The prosecution made it clear that there was no dishonesty in the making or receiving of the payments but that the dishonesty related to false paper trails attempting to legitimise these bonuses (the evidence having established that the supporting documents were all created at the same time).

If you are in any doubt concerning the legitimacy of such payments and allowances please seek our advice, rather than being similarly creative! ■

Disclosure and Barring Service (DBS)

educateHR Ltd is working closely with one of the largest Umbrella Bodies in the UK. They offer an online electronic system with rapid turnaround times (often within 24 to 48 hours), and the facility to check a prospective employee's DBS certificate status online. If you would like further information on how we can support you in undertaking these checks using the online system, do not hesitate to contact us. ■

Cluster support

If you would like continuity of HR support for your school cluster as a group (eg through HR clinics) we are happy to offer customised support and/or training, all of which can be tailored to suit your particular requirements. ■

Mailing list

Although we currently send our newsletters by post (please note that all previous editions remain available for viewing on our website – www.educatehr.co.uk) most of our communication and marketing (such as invitations to briefings and workshops) is done by email.

It has recently come to our attention that several clients have dropped out of contact by virtue of having changed their email address. If you have altered your address lately, or if you have a personal email address that you are happy to give us (or if you simply haven't heard from us recently and would like to) please email us an update and we will ensure that your details on our mailing list are correct. ■

Website

For all our services, please visit our website:
www.educatehr.co.uk

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