

news and articles of special interest for
headteachers and senior managers

Welcome...

Once again we find ourselves faced with further changes to the pay and conditions of teaching staff...

...although perhaps less contentious than previous revisions; at least PPA time and 'rarely cover' restrictions remain despite the Department recommending their removal. Another important change to legislation relates to the deregulation of statutory staffing guidance for maintained schools, another example of the additional flexibilities introduced by the coalition government.

Leadership pay, allowances and safeguarding – STRB 23rd Report

It is clear that the school landscape is changing rapidly. Modifications to school structures are giving rise to a broader range of leadership roles eg multi school leadership/executive headship, heads taking on wider school improvement (NLE), system leadership and development of teaching schools. These changing models mean that it is becoming increasingly difficult to adequately or appropriately reward for new roles using the current framework as set out in the STPCD.

In the light of this the STRB set out recommendations which they consider provide "greater autonomy for schools within a broad national framework. Our proposals on leadership pay are consistent with the approach now implemented for classroom teachers, with the removal of spine points and progression linked to a judgement on individual performance against objectives. Removal of unnecessary prescription on differentials on both TLR payments and on pay of leaders will further enhance the flexibilities available to schools".

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Summary of recommended changes

Leadership

A simple three-stage process to guide governing bodies in setting pay for heads and wider leadership group, taking account of challenge of the role.

Relevant allowances to be subsumed into the pay setting arrangements for base pay.

The removal of spine points and fixed differentials.

Pay progression for the leadership group that better reflects individual performance.

Scope for governing body discretion to set pay up to 25% above the broad bands, and exceptionally beyond that, if supported by a business case.

Providing formal headroom above the current leadership range for the biggest leadership roles in executive management of multiple large schools.

Scope for fixed-term contracts in specific identified circumstances with provision for reward linked to delivery of defined target outcomes.

Point of Interest

Dolphin -v- Hartlepool Borough Council

Supervisory assistants, secretaries, clerks and teaching assistants in voluntary-aided schools employed by the governing body claimed equal pay with manual staff employed by Hartlepool Borough Council. As the law does not allow equal pay claims between employees with different employers, the women in Dolphin argued that, in practice, the governing body followed the same terms and conditions as the local authority collective agreement.

The EAT said the collective agreement could not overcome the fact that they had separate employers from the men. Staff working in voluntary-aided, foundation, trust and academy schools cannot therefore compare themselves to those working in other parts of local authority employment.

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TLR/Allowances/Safeguarding

Retention of the existing broad framework, but removal of the current differential levels of TLR payments.

Recruitment and retention benefits and incentives to be limited to housing/relocation allowances for head teachers and other members of the leadership group where pay has been set under the new arrangements.

A discretionary payment may only be made to head teachers for additional responsibilities undertaken on a temporary or irregular basis.

Consolidation of the current safeguarding provisions into one simplified section of the STPCD.

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

Non-pay conditions

The list of 21 administrative and clerical tasks at Annex 3 to Section 2 to be removed from the STPCD. Similarly Section 4 guidance to be removed from the STPCD (therefore no reference to 'gained time' or 'no detriment').

Michael Gove has confirmed that he has accepted these recommendations however, statutory consultation is currently underway with NEOST (employer side). Gill Meeson will be holding a seminar focusing on STPCD recommendations and changes following ratification of the revised document once this is announced. ■

Local government pay offer 2014

Council employees have been offered a pay increase from 1 April 2014.

Local Government formal offer to unions on 20 March 2014:
"The National Employers wish to see an increase to the current 14p headroom between the bottom rate in local government (£6.45) and the National Minimum Wage (NMW) (£6.31). With the NMW due to increase by 3.0% to £6.50 on 1 October, applying an uplift of 1.0% to our bottom rate would take it to £6.51, and members were not willing to see the gap reduce to just one pence.

After considering a number of options members have decided to make an offer that would put our bottom rate at 25p above the NMW and for the subsequent five pay points to be increased by different cash figures to ensure differentials between pay points are continued."

The majority of employees – those on salaries starting at £14,880 per annum – will receive an uplift of one per cent, with those on lower salaries receiving a slightly higher increase (thus reducing (marginally) differentials between grades). Scale point 5 will then equate to £6.75 an hour, and scale point 10 to £7.35, with a 1% increase to all pay points 11 and above. This offer is currently subject to consultation. ■

Living wage and equal pay claims

To bring an equal pay claim employees must identify as a comparator any employee of the opposite sex who is employed by the same employer. As we have stated previously employees at community and voluntary controlled schools, whose terms and conditions of employment lie with the local authority, are able to compare themselves with other employees of the local authority including those working for other community and voluntary controlled schools.

Voluntary-aided schools, foundation schools, independent schools and academies are, however, in a different position. As the local authority is not the employer of staff, equal pay claims can only be brought by employees within those individual schools, (ie employees can only claim comparison with "comparators" employed by the same establishment).

To clarify the position for schools where the LA is not the employer – in terms of living wage equal pay claims a case can only be brought where different pay arrangements exist under the same employer. ■

Abolition of statutory guidance relating to the appointment, discipline, suspension and dismissal of staff

Schedule 14 of the Deregulation Bill 2014 removes the requirement that schools must have regard to statutory guidance issued by the Secretary of State relating to the appointment, discipline, suspension and dismissal of staff – both section 35(8) and section 36(8) of the Education Act 2002 will cease to have effect from 1 September 2014.

The government aims are to simplify the requirements within the regulations in respect of governing bodies' roles and responsibilities in staffing matters by removing unnecessary prescription, thus allowing governing bodies more autonomy in managing their processes and procedures.

The government believe that head teachers, governing bodies and local authorities are best placed to make decisions on staffing matters. They feel that they do not need statutory

guidance; however, the government has confirmed that schools will have access to the latest information to ensure that their decisions are well informed. A package of non-statutory advice is being developed which replaces the previous guidance.

The view of unions is very different and during the consultation period they expressed concern about the proposals to remove the statutory nature of such guidance. Unions considered statutory regulation to be both necessary and effective as a protection not only for the workforce but also for schools. They felt that the burden would increase in schools as they are required to develop their own guidance; however the government has announced a package of guidance to support schools in this new approach.

Schools may consider it necessary to amend their policies in the light of these changes. ■

Dismissal and notice periods where the LA is the employer

In a recent employment appeal tribunal case involving Birmingham City Council the EAT considered '*whether decision by governors of a community school to dismiss a teacher had the effect of giving her notice to terminate her contract of employment*'.

In summary, the governing body dismissed the teacher on grounds of capability after long periods of sickness. The date of the hearing was 28 February and the teacher was informed that her dismissal date was 28 February and that she was entitled to contractual notice pay up to 30 April (2 months).

Under the School Staffing (England) Regulations 2009 (Regulation 20 (2) (b)), the LA must issue the notice of dismissal (as the employer). The LA wrote to the teacher on 29 February to confirm the governors' decision and she received the letter on 1 March. Because that letter did not reach her until 1 March it was argued that it did not give her the contractual notice to which she was entitled. The EAT confirmed the decision of the original employment tribunal that her dismissal did not take place until 1 March and so she was entitled to an additional 3 months' notice (until 31 August) in line with the Burgundy Book Section 3 paragraph 4.

This is a salutary lesson for schools to ensure that the LA is notified in sufficient time to enable the formal notification of dismissal to reach the employee before the relevant deadline. ■

Right to request flexible working – imminent changes

On 30 June 2014 the Flexible Working Regulations will be amended. This will mean that the right to request flexible working will be extended to cover all employees after 26 weeks' service, rather than only those with children under the age of 17 (18 if the child is disabled) and certain carers. These changes:

replace the current "right to request" procedure with a duty on employers to deal with requests in a "reasonable" manner, and within a "reasonable" period of time

create a statutory code of practice to give guidance on the meaning of "reasonable" to employers, and

provide guidance to employers on how to prioritise conflicting requests that are received at the same time.

As before, this remains a right to request flexible working rather than a right to insist on such arrangements. All requests, however, must be considered seriously and a good business case must be in place before any such requests can be turned down. For detailed information on how to deal with such requests contact Gill Meeson. ■

Disclosure and barring service (DBS)

We are often asked about keeping documents in relation to DBS checks. The following information should be observed in relation to certification information:

Retention – Once a recruitment (or other relevant) decision has been made, DBS disclosure information should not be stored for longer than is necessary. This is generally for a period of up to six months to allow for consideration and resolution of any disputes or complaints (such as discrimination claims from unsuccessful applicants). If, in exceptional circumstances, you deem it necessary to keep such information for longer than six months, consideration should be given to the Data Protection rights of the individual.

Disposal – Once the retention period has elapsed, you should ensure that any DBS disclosure information is destroyed and while awaiting destruction, DBS disclosure information should be kept securely. A record of the date of issue of a disclosure, the name of the subject, the type of disclosure requested, the position for which the disclosure was requested, the unique reference number of the disclosure and the details of the recruitment decision taken should however be securely stored indefinitely for monitoring purposes.

For the avoidance of doubt, we would also point out that there is no requirement for 3 yearly checks to be carried out and never has been – this appears to be a particularly widespread urban myth. ■

TUPE changes – 2014

The main changes to the TUPE regulations are as follows:

Currently, the outgoing employer must provide employee liability information no fewer than 14 days before a TUPE transfer – this minimum period will be extended to 28 days (from 1 May 2014).

It will now be possible to renegotiate terms that are derived from collective agreements one year after a TUPE transfer, although this will only be the case where the changes are no less favourable to the employee overall.

In order for a change in service provider to be a relevant transfer under TUPE, the activities carried on after the alleged transfer must be “fundamentally or essentially the same” as those carried on before it. ■

Effective use of teaching assistants

In an increasingly results driven arena with changing educational priorities and progressive budgetary constraints, it is vital that schools obtain best value for money in the organisation of their staffing. According to the Education Endowment Foundation, research that examines the impact of TAs providing general classroom support suggests that students in a class with a teaching assistant present do not, on average, outperform those in one where only a teacher is present.

Research which focuses on teaching assistants who provide one to one or small group support show a stronger positive benefit of between three and five additional months on average. Often support is based on a clearly specified approach which teaching assistants have been trained to deliver. Overall the evidence base on the effectiveness of teaching assistants is somewhat limited.

The Sutton Trust-EEF Teaching and Learning Toolkit is an accessible summary of educational research which provides guidance for teachers and schools on how to use their resources to improve the attainment of disadvantaged pupils. It helps you to consider how you deploy and utilise your teaching assistants and asks you to consider:

the ways in which your school trains and supports TAs, and the teachers they work with, which has a large bearing on their impact on learning

identifying specific activities where TAs can support learning, rather than simply managing tasks

ensuring that teachers do not reduce their support or input to the pupils supported by TAs

how you will assess and evaluate the impact of your deployment of TAs. ■

Continuing professional development (CPD)

In addition to supporting you through the myriad of difficult staffing issues, we can also help you to take a proactive approach to CPD for all staff, by having a planned schedule of in-house events throughout the school year.

We can take an unbiased and unfettered view of the CPD requirements of your team and create a package that suits their individual identified needs. We can devise a tailored programme of self-help for your school/academy/cluster group based on a comprehensive audit of your team’s skills, experience and competencies, allowing you to harness talent and optimise the deployment of your staff, both teaching and support.

Often middle management (such as TLR holders) lack the wider management experience or need coaching in particular areas eg appraisal, disciplinary, time management, the art of delegation, communication in the workplace etc.

Programmes can be delivered in a single workshop or seminar or, alternatively, in modular sessions, subject to your needs, but each will be preceded by a full diagnostic assessment to establish your exact requirements. Contact Gill Meeson for further details.

Cluster support

If you would benefit from specific HR support within your Cluster Group we are always happy to discuss your requirements and devise ways in which we might help. ■

Human Resources services

If you are reviewing your HR provision and would like to hear more about what we have to offer in relation to HR Consultancy/ Advisory, HR Administration, Disclosure and Barring, Recruitment, Occupational Health, Payroll and Pension Services etc where we offer proactive, pragmatic and personalised services do not hesitate to contact Gill Meeson for a ‘no obligation’ quote.

It may be worth pointing out that being signed up to provision elsewhere (such as local authority HR) does not preclude seeking alternative input and advice on an ad hoc basis, and also that any long-term agreements signed should be capable of being terminated by means of giving notice in accordance with the terms of the relevant SLA eg 3 months’ notice. ■

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