

Sir Stuart Carlton
Corporate Director - Children and Young
People's Service

Howard Emmett
Assistant Director – Resources
County Hall, Northallerton
North Yorkshire, DL7 8AE

Contact: Schools Finance Team
E-mail: schoolsfinanceteam@northyorks.gov.uk

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Dear Colleague

Important Development: Schools Outsourcing Services / Re-Procuring Outsourced Contracts

There has recently been an important development in respect of when the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) is applicable in the outsourcing of services or the re-procuring of existing outsourced contracts if any transferring staff are members or eligible members of the North Yorkshire Pension Fund (NYPF).

Where there are TUPE implications, the NYPF requires the Local Authority to be a contracting party on the contract. This means that when staff transferring to a new contractor or employer are members of the NYPF, the Local Authority must be a contracting party and a signatory to the contract.

This requirement applies in the following situations:

- Schools outsourcing services (e.g., catering, cleaning, wraparound care provision etc.)
- Schools re-procuring an existing outsourced contract
- Schools taking up an extension clause on an existing contract

In these instances, schools are required to:

1. Check with their payroll provider to determine if any staff transferring employment are members of the pension fund. This should include any staff that have opted out of the pension fund and are therefore classed as eligible members
2. Obtain advice from North Yorkshire Council (NYC) Legal Services on the terms of the contract and use NYC contract terms and conditions (good practice for any contract).
3. Indemnify the Local Authority against any breaches of the contract which have not been caused by the negligence or fault of the Local Authority
4. Provide evidence that an appropriate procurement process has been undertaken, including company financial checks (required for Local Authority signature to the contract).
5. Have the contract approved and signed by NYC.

In the event of a school electing to use third-party procurement or legal advice in respect of an outsourced contract where staff transferring are members or eligible members of the NYPF, the school is asked to ensure that the procurement or legal service provider is made aware of the requirements detailed in this

letter. Where a school elects not to use NYC contract terms and conditions, the Local Authority will be required to take legal advice on the contract prior to signature; any costs associated with the provision of the advice to the Local Authority will be required to be charged to the school budget.

Schools are also reminded of the following requirements and responsibilities in respect of outsourced services and contracts where staff are members of the NYPF:

- Ensure that staff pension arrangements and transfer timescales are considered at the start of the procurement process.
- Allow at least an 8-week lead time to set up an Admission Agreement with the contractor, NYC, and the NYPF prior to the date of staff transfer.
- Ensure financial checks are undertaken on companies as part of the procurement process.
- **Under the Fair Deal guidance, staff retain the right to participate in the Local Government Pension Scheme (LGPS). Unless an Admission Agreement is in place at the date of the transfer to the contractor, transferred staff will lose their right to participate in the LGPS. In such cases a 'broadly comparable' pension scheme must be provided; this is often difficult to achieve and can be costly.**

Please contact the relevant service area for advice and guidance in respect of outsourced contract arrangements where there is a TUPE requirement. Service contact details are provided below:

Legal Services	e-mail:	schoolslegaladvice@northyorks.gov.uk
Payroll Services	contact:	School's dedicated payroll adviser
HR Services	e-mail:	NYES.HR@northyorks.gov.uk
NYPF	e-mail:	pensions@northyorks.gov.uk
Schools Finance Team	e-mail:	Schoolsfinanceteam@northyorks.gov.uk

Yours sincerely



Howard Emmett
Assistant Director - Resources