



NYHR Key Updates September 2019

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NYHR Advisory service

The NYHR Advisory service operates as a hotline with **desk based staff** available to take queries during office hours. It is your point of contact for queries relating to the interpretation of HR policies, procedures and statutory staffing related documents, including terms and conditions. Contact the team on [01609 798343](tel:01609798343) or alternatively by email at: NYHR@northyorks.gov.uk. We also have a **Live Chat** facility available at <http://cyps.northyorks.gov.uk/hrpages>.

All Schools and Academies also have a **team of Advisers** who are your key contacts for casework and HR Support who **work flexibly across the County**. All HR Advisers and Senior HR Advisers are managed by our Principal Advisers, [Mairi Reed](#), [Harry Rashid](#) and [Julie Boucher](#). The HR Advisory Service is overseen by [Penny Yeadon](#) as Head of HR.



Policy update

Below are details of the HR policies which have recently been developed or revised. The complete list of the HR policies on CYPs Info is regularly updated and is available [here](#).

School Pay Policy 2019/20

Again this year, there have been a significant delay in the DfE publishing its proposals for the uplift to teachers' pay. **Consultation concluded on 13 September** and the [School Teachers Pay and Conditions Document](#) was **published on Friday 20 September**. The NYCC [model School Pay Policy 2019/20](#) has now been published and is available on CYPsInfo.

The headline news from the STPCD was confirmation of **a 2.75% pay award across all teaching ranges and allowances**. Whilst schools and Academies have the discretion to determine the **number and value of any discretionary pay points** between the maxima and minima, many have continued to retain similar pay structures e.g. 6 points on the MPR. It is notable that, despite removing pay reference points for the last few years, the Local Government Association have reverted this year **to publishing reference points again** - [LGA Pay Reference Circular](#).

Additionally, the circular makes provision for the fact that schools made varying decisions on the **application of the pay award in 2017**. Schools within North Yorkshire generally applied a 1% increase to the pay reference points (M2-M5) in that year and not the 2% which was applied to the maxima and minima. The approach elsewhere was mixed. Given there has been a return to national pay reference points, now may be an opportunity **for schools and Academies to benchmark their current pay scales against these reference points either this year or plan ahead to build into the budget for next year**.

The [remit to the STRB for 2020](#) has also been published and this requests that consideration is given to a **substantial increase in the starting salary for teachers** to enable the Government to achieve its target of a **£30,000 minimum salary by September 2022**. The remit also asks the STRB to **provide advisory pay points** and anticipates a **flatter progression structure** i.e. fewer points on the MPR and UPR which may well mean that there could be a return to national pay reference points.

The [NYCC school Model Pay Policy](#) has now been published should Academies wish to use this as the basis for their own Policy. This has **been consulted on with the NY Professional Associations** but Trusts and schools not in the PAFA agreement or outside of North Yorkshire will need to undertake consultation on their updated policies.

In response to feedback from some Academy clients **we are developing an Academy model Pay Policy**. This policy will provide a comprehensive framework within which Trusts will be able to **consider their pay discretions and record their pay decisions**. We will be working with all Trusts over the coming year to support them in the **complex pay decisions** they need to make and to **negotiate a Trust position** in relation to the application of their available discretions.

Appraisal Policy

A new **model Academy Appraisal Policy** was recently published by NYHR and communicated through the Red Bag. This policy has been developed specifically for use within Academies and **covers teaching and support staff**. The policy has been consulted on with the Professional Associations and Unison.

The Secretary of State for Education issued a letter to Local Authorities and Academy Trusts on 17 July, 2019, around reducing workload and the use of data in schools. A copy of the letter is available [here](#). The letter highlights revised guidance regarding **restrictions on the use of pupil assessment data in performance management discussions**. Further information is available within the following documents '[Making data work](#)' and '[Implementing your school's approach to pay: guidance for maintained schools, academies and local authorities](#)'.

Recommended actions

- If Academies have not already done so, it is recommended that this policy is progressed through their approval process for adoption in preparation for the new appraisal cycle
- Academies who are not part of the PAFA agreement will need to undertake local consultation through their agreed mechanisms prior to adoption

Workplace Health and Wellbeing Strategy

A model Workplace Health and Wellbeing Strategy has been developed to help schools and Academies demonstrate their **commitment to staff wellbeing** and develop effective practices to support this.

The Strategy states the school/Trust's commitment to **supporting and promoting employee wellbeing**, sets out its **aims and objectives** and details **roles and responsibilities**. The Strategy is supported by a **toolkit** which enables schools to develop an **action plan** relevant to their setting.

Each school will have its own approach to wellbeing which should be tailored to meet the specific challenges and needs of their setting. **Section 1 of the toolkit** provides suggested actions with regard to **developing the school's approach to wellbeing** and **identifying priority areas** to be addressed through the action plan. This Strategy could be adopted at Academy or Trust level.

Recommended actions

- Progress through approval process for adoption at an Academy or Trust level
- Academies who are not part of the PAFA agreement will need to undertake local consultation through their agreed mechanisms prior to adoption
- Consider how to communicate and engage with the whole staff team/all Trust staff around wellbeing and develop an action plan

Policies coming soon

Early Retirement Policy – due October 2019

Academy Trusts should have **clear rules and processes** around their arrangements for the **early payment of pension entitlements**. An **Academy Early Retirement Policy** has been developed to support Trusts to detail their processes for members of both the **Teachers' Pension Scheme** and the **Local Government Pension Scheme**. We are currently consulting on this Policy which should be available soon.

Depending on local delegation decisions, **maintained schools outside of North Yorkshire** may be covered by their local Council's arrangements and are, therefore, **advised to check with their LA**.

Recruitment and Selection – due January 2020

We are also reviewing the school **Recruitment and Selection Policy** and updating the forms and guidance in the recruitment area on CYPInfo. As part of this review we are considering our guidance around when, during the recruitment process, **criminal conviction information** is requested from applicants. The revised policy is scheduled for release by the **start of 2020**.

Employment law update

Day 1 Statement of Particulars

We are expecting a range of new employment rights to be implemented as a result of the **Government's Good Work Plan** published in December 2018. The Plan sets out the vision for the future of the UK labour market and how the recommendations from the Taylor Review of Modern Working Practices will be implemented.

The **first provision** due to be implemented is the right for **workers and employees** to receive a **written statement of particulars from day 1 of their employment**. Currently, this must be issued within 8 weeks of commencement and is a right for employees only. From 6 April 2020 it is proposed that this right will be **extended to workers so will apply to casual, relief and supply staff** and an **increased range of terms** will need to be included.

In preparation for this we are working with colleagues in ESS to review documentation and processes to ensure schools can be compliant with this requirement. The impact for schools who use ESS is that they will need to **submit new starters information early enough** to enable statements to be issued by the start date.

Further **information and guidance** will be issued over the coming months. This will cover arrangements for those schools which do and those which don't buy in to ESS.

Employment law update (continued)

Part-year workers

There has been an **important recent Court of Appeal judgement** which will potentially have an impact on the **pay and leave of term time workers within schools**.

What was the judgement of the case?

In August, the Court of Appeal, in **Harpur Trust v Brazel**, ruled that **part-year employees should not have their statutory holiday entitlement pro-rated** to take into account the fact that they do not work full year. In addition, it ruled that the **practice of using 12.07% to calculate holiday pay was incorrect**, even though this was the calculation approved by Acas.

The Court held that there was **nothing in the legislation** which justified pro-rating leave for part-year employees and that, although the law is designed to **prevent less favourable treatment of part-time employees**, it doesn't necessarily follow that they cannot receive **more favourable treatment**.

Therefore, **part-year employees should still receive 5.6 weeks' paid leave** (the statutory entitlement which includes bank and public holidays) a year and it is **not acceptable to pro-rata their entitlement** to reflect the fact that they are only working for part of the year. Further, for employees working **irregular hours**, holiday pay should be calculated on the date they take holiday, by looking back at the **previous 12 weeks' pay**, excluding weeks when there were no earnings.

The Harpur Trust **has not ruled out** a further appeal to the Supreme Court.

So who does the judgement affect?

The main group of staff affected by this decision are **term-time only support staff**. Many of the TTO calculations currently used will **include the practice of pro-rating leave** based on the weeks worked within the year.

In addition, the judgement will impact on the **calculation of holiday pay** for any **permanent employees whose earnings fluctuate week-by-week**. By definition, casual and relief workers are not covered by this judgement, however, care needs to be exercised to ensure such workers do not gain additional employment rights by virtue of working regularly.

What does this mean for term-time only workers?

Following the Court of Appeal decision, part-year employees must receive 5.6 weeks' paid leave each year. Whether this affects the term-time only employees in your school **will depend on the calculation used**. Any school or Trust which offers a **minimum of 26 days annual leave plus bank and statutory holidays** on commencement and applies the Green Book advisory, or a more generous, formula will not need to make any adjustments (assuming a minimum of 38 weeks worked).

Employment law update (continued)

So, what do we need to do?

Right now, we don't know **if this decision will be appealed** to the Supreme Court. But it's important that employers **assess the impact** this will have on their school or Academy.

NYHR would recommend:

- **Discuss with your NYHR representative** to consider the impact on a your Trust or school, taking into account the local TTO formula and leave entitlement
- **Assess which members of staff are potentially affected** by this decision (NYHR can help with this where the Trust/school contracts with ESS for payroll services) and **estimate the cost** of implementing any changes. This should include looking at the **working patterns of casual and relief staff** to ensure they are not working regularly and consider **putting them on a fixed hours contract** if they are.
- **Consider the options** at a meeting of the Trust Board or Governing Body as determined through your scheme of delegation:
 - **Do nothing and wait and see if there is an appeal** There is the risk of legal challenge to the Trust or school if this option is taken, however, it is suggested that employers consider discussing and agreeing this approach with their recognised union
 - **Implement a minimum of 5.6 weeks leave** for all TTO staff and revise calculation methods for **holiday pay for variable hours workers**. Should this approach be adopted decisions will need to be made around calculation methods, an implementation date and how additional payments will be made. It is recommended that documentation allows for the payment to be removed unilaterally at a later date should the decision be overturned at future appeal e.g. non-consolidated payments
- Consider the extent to which you wish to **consult with recognised unions** regarding the proposed changes. There is a risk of a **claim for two years' pay arrears**, however, once three months has passed since the last 'unlawful deduction' a claim cannot be made. A Trust or school could take a low profile approach and implement without any union consultation. Although we are not necessarily advocating this as a position, some schools may feel this is a pragmatic approach. However, it would not be possible to implement on a non-consolidated basis if this approach was taken i.e. there would need to be contractual documentation or a collective agreement confirming that the payment could be unilaterally withdrawn.

NYHR have produced a [template report](#) which outlines the Court of Appeal judgement and the options which employers need to consider, for Trusts and schools to take to board or Governing Body meetings.

FAQs - Training days and support staff

This guidance will apply to any support staff employed under Green Book terms and conditions of service. Trusts or employers who have agreed alternative terms and conditions in this area should refer to those arrangements or contact NYHR for further guidance should they have any queries.

Are support staff expected to attend training days?

This will depend on the contractual arrangements for each member of staff which will be detailed in their statement of particulars. Generally, term time only support staff will be contracted to work 39 weeks per year i.e. 38 teaching weeks and 5 training days, and these staff would be required to attend training days which fall on their working days.

However, some TTO staff may only be contracted to work 38 weeks per year and these employees are not required to work on training days.

TTO staff who work additional weeks and full-year staff would be expected to attend work on training days which fall on their working days provided that they have not had annual leave agreed for that day.

Can part-time staff be required to attend training days which fall on their non-working days?

No, support staff cannot be required to attend training which falls on their non-working days or outside their normal working hours, unless there is an express provision within their statement of particulars requiring this. However, it is likely that attendance at such sessions would be beneficial to the individual and, therefore, a mutual agreement could be reached for them to work on their non-working day or outside their normal working hours. Attendance on a training day must be recompensed either with the equivalent time off their contracted working days, where this is possible, or paid additional hours for these days/hours.

Can staff who only work pupil contract days (38 weeks) be required to attend training days?

No, but as above, these staff can be invited to attend relevant training sessions for which they should receive additional pay or be given time off in lieu.

Are support staff entitled to 5 training days like teachers?

Support staff do not have an entitlement to training days in the same way as teachers and do not have the contact/non-contact time distinction that teachers have. Therefore, it is contractually acceptable for a part-time TTO employee to be required to work with pupils on every day of the year, if none of the training days fall on their working days. This being said, all staff should be given the same access to training and arrangements should be put in place to ensure that all employees receive appropriate professional development.

FAQs - Training days and support staff (continued)

Can support staff be required to attend twilight training sessions?

Again, this will depend on the contractual arrangements of the member of staff. Employees cannot be required to attend work outside their normal working hours, therefore, if the twilight session finishes after the end of their normal working day the school cannot require that the employee remains after this time, though the employee may agree to do this.

However, if one or more training days have been replaced with twilight training sessions the working arrangements of TTO staff may need to be reviewed to take into account any changes to working hours e.g. reduction in the number of days worked per year with hours made up through twilights. This should be approached in the same way as any other contract variation and the preferred approach would be to reach agreement with individual employees. If this is not possible schools should take advice from their HR contact.

What work can support staff be required to undertake on a training day?

Support staff can be required to undertake any of their normal duties during their contracted hours and, if the development activities being undertaken on the training day are not relevant to their job role, they can be directed to other normal duties.

Encouraging EU Workers to apply for Settled/Pre-Settled Status

As the uncertainty over Brexit continues, we strongly recommend schools and Academies **engage with any EU workers** to promote their ongoing commitment and support and provide reassurance of the stability of working in the UK post Brexit, whilst **encouraging them to apply for pre settled/settled status as soon as possible**.

For information regarding eligibility and **to apply for pre-settled or settled status** please visit the [GOV website](#).

NYCC provides an ID verification service for anyone who works or lives in the County which can be accessed [here](#). For the first part of the application process, individuals need a **compatible Android phone** or tablet to scan their identity documents. For residents of North Yorkshire, if their device is not an Android or does not have near field communication (NFC) they can make an appointment to bring ID documents to **nominated NYCC registration office**, where it can be scanned.

Further general advice for schools and Academies on how to prepare for Brexit is available from the DfE [website](#).

Safeguarding Update

Keeping Children Safe in Education has been updated and a **revised September 2019** version is now available [here](#). This replaces the previous September 2018 version.

There have been **minimal amendments in parts three and four, Safer recruitment and Allegations of abuse made against teachers and other staff**. The relevant changes made are:

- wording at paragraph 157 has been changed for **overseas trained teachers** and directs to Gov.uk as guidance on this is currently being revised
- paragraph 173 **reaffirms the requirement to carry out a section 128 check for Governors in maintained schools**
- paragraph 174 contains new guidance confirming that **DBS checks are not mandatory for associate members** appointed to serve on a committee of the governing body

A summary of the substantive changes to the document are detailed in Annex H, pages 108 – 109.

Actions

- Schools are advised to ensure that **they have undertaken a Section 128 check**, through the [DfE on-line services](#), for **all full members of the Governing Body for maintained schools or those taking part in the management of independent schools, including Academies**. NYHR recommend that this is recorded on the school's single central record – further information is available in our [Single Central Record Guidance](#).

Fixed Term Contracts – Beware!

The use of fixed term contracts in schools is very common. However, employers need to be aware that employing staff on a fixed term basis **doesn't always provide the flexibility to end contracts** that you might expect.

In 2002 the law afforded much more protection to staff on fixed term contracts but this limited the potential uses for the employer. Schools should be aware ending a fixed term contract is still a **dismissal in law** and it is necessary to demonstrate a **valid reason for the dismissal to be deemed 'fair'**. Furthermore, any staff that are dismissed are entitled to the right of appeal.

Fixed term contracts are suitable for a role with a **clear end point** and justification for it being a **temporary assignment**. This could be cover for **sickness or maternity leave** or to complete a **specific project or task**. However, ending fixed term contracts needs to be approached with care. When fixed term contracts are used for reasons other than sickness or maternity cover, often the reason for ending the post will be that work has reduced or ceased, **making the post redundant**. In these scenarios, employees with the qualifying period of **2 years' continuous local government service** may be entitled to a **redundancy payment** and, if they are over 55 and a member of the LGPS, pension release.

Further guidance and template letters can be found on [CYPInfo](#).

NYHR Training

Our training courses provide practical tools and guidance to develop the skills, knowledge and confidence essential in managing staff. All our training courses are delivered in small groups creating an opportunity to interact with colleagues, gain practical strategies and reflect on current practice.

Code	Date	Name	Venue
HR-1119-T004	20 th November 19	Holding People to Account: Developing Performance and Capability Develop a proactive approach to managing performance and improving accountability, working with the relevant policies and action plans to effectively deal with underperformance and capability.	Northallerton
HR-1119-T005	28 th November 19	How to succeed with HR issues Confidence to make informed decisions about the employment of staff, from selecting the right contract and following policies through to notice periods and the end of the employment contract.	Skipton
HR-0120-T001	30 th January 20	Appraisal Engage and motivate staff through effective appraisal discussions and setting SMART objectives so that they know what is expected of them and how they contribute to the success of the organisation	Ripon
HR-0220-T001	5 th February 20		Northallerton
NYS-320-T004	3 rd February 20 10 th February 20	Mental health first aid Adult 2 day course Mental Health First Aid teaches people how to recognise those crucial warning signs of mental ill health, how to identify, understand and help a person who may be developing a mental health issue. The training is accredited by Mental Health First Aid England, delivered by Approved MHFA Instructors.	York
NYS-0320-T004	4 th March 20 11 th March 20		Boroughbridge
HR-0320-T002	10 th March 20	Challenging conversations Empowers individuals to have those difficult conversations across a wide range of people and situations that will move the issue forward, and engage individuals in solution focused discussion.	Ripon

Visit www.nyeducationservices.co.uk now to book a place