

## Continuous Service

### Guidance for Schools and Academies

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## 1. Introduction

- 1.1 This guidance sets out what continuous service in employment means for schools within North Yorkshire, including any differences for maintained schools and academies. It explains what effect employment with one employer without a break in the contract of employment has on terms and conditions, confirms what constitutes a break in service and details the conditions of service which transfer between employers.
- 1.2 The specific advice contained in the document for academies, assumes that they apply the Green Book, the Burgundy Book and the School Teachers' Pay and Conditions Document. Should an academy not apply these terms and conditions they are advised to contact NYHR for further guidance.

## 2. Who is the employer?

- 2.1 It is important to understand, when considering continuous service, who the employer is. For maintained schools in North Yorkshire, the County Council is the employer of all staff. This includes maintained nurseries and voluntary controlled schools.
- 2.2 The arrangements in Academies, VA schools, free schools, independent schools and UTCs are different and in these settings, all staff are employed by the Governing Body or Trust Board, whichever is relevant.

## 3. What is continuous service?

- 3.1 Continuous service is relevant when determining an employee's eligibility to employment rights and some terms and conditions of service. Within local government different entitlements can depend on different service dates:
  - **Continuous service** is where an employee has worked for **one employer** without a break. For NYCC maintained schools this will be the continuous period when an employee first commenced either with another NYCC maintained school or within the Council's corporate services. For academies, this will be service with their academy trust only (unless the employee has transferred to the trust under [TUPE](#)).
  - **Continuous local government service** is service, without a break, with any organisation to which the Redundancy Payments (continuity of Employment in Local Government etc.) (Modification) Order 1999 (as amended) applies (referred to as the Modification Order)

## 4. What constitutes a break in service?

- 4.1 A break in service is relevant when considering an employee moving between two posts in their current school or when an employee starts work with a new school having previously worked for another local authority or modification order body.

### ***Statutory break in service***

- 4.2 For service to be considered continuous, the employee must not have a period of at least one week/7 calendar days between employments, ending at midnight on a Saturday. This is the statutory definition of a break in service.
- 4.3 Usually, when moving between posts with their current employer, an employee's service will be continuous, however, the situation may arise that an employee has a gap between one post and the next, possibly, for example, as the result of the end of a temporary contract. Where a break between roles does arise, consideration should be given to the reason for the end of the first contract and that the termination of this contract was dealt with lawfully.

A teaching assistant leaves their post in a school in York on Monday, 31<sup>st</sup> October, and starts employment with NYCC on Thursday, 10<sup>th</sup> November. Even though they have been out of employment for 9 days this does not constitute a break in service because the period did not include a week ending on a Saturday. They, therefore, retain their local government continuous service but, as they have moved to a new employer, lose their previous continuous service.

### ***Other situations where a break in service may be disregarded***

- 4.4 If a break arises as a result of a **temporary cessation of work**, this may not constitute a break in service and such instances should be considered on a case by case basis and advice taken from HR. Breaks arising as a result of the temporary cessation of work can only be disregarded when they arise during continuous employment with one employer.
- 4.5 **Unpaid leave** provided for within the contract of employment, for example, unpaid sick leave, unpaid maternity leave and unpaid leave of absence, will not constitute a break in service, though some conditions of service will be suspended for the duration of the break e.g. pay.
- 4.6 Periods of absence as a result of taking **lawful industrial action** do not count towards continuous service, but this is not treated as a break.
- 4.7 In some situations a break of up to 26 weeks arising as a result of an employee's **resignation or dismissal on grounds of ill-health** may be disregarded. This would only apply to an employee leaving and then re-joining the same employer and would not apply to employees joining the school having left their previous employer due to ill-health.
- 4.8 Continuity is also not broken where an employee is **customarily absent from work at a particular time**, but is regarded as continuing in the

employer's employment during this time. This is a statutory provision which may be relevant, for example, for a term-time only worker who is paid a retainer or a supply teacher paid on the basis of 1/195<sup>th</sup> per day, during school closure periods (but also see **teaching staff** below).

### **Teaching Staff**

- 4.9 The Burgundy Book additionally states that **a period of school closure** would not normally constitute a break in continuity of employment for a member of teaching staff.

### **Support Staff**

- 4.10 The Green Book provides that, when an employee returns to local government service after a break for maternity reasons or for reasons connected with caring for children or other dependants, the employee will be entitled to have previous service taken into account for the purposes of annual leave and the occupational sick pay and occupational maternity schemes. This is subject to the break being no more than eight years and the employing entering into no other paid full-time employment (30 hours or more) during that period. For the purposes of annual leave the eight years' time limit does not apply.

## **5. Why is continuous service important?**

- 5.1 All employees can accrue both **statutory** and **contractual** entitlements based on their continuous service record no matter how many hours they are contracted to work. However, the terms and conditions under which someone is employed will determine which occupational entitlements are dependent on continuous service and these differ between teaching and support staff.

## **6. What is the difference between contractual and statutory entitlements?**

- 6.1 It is important to understand which entitlements are statutory (conferred by statute) and which are contractual (conferred by the contract of employment and terms and conditions of service).

- **Contractual** (or occupational) entitlements are based on **continuous local government service**
- **Statutory** entitlements are based on **continuous service** with the current employer

## **7. What entitlements do continuous local government service affect?**

- 7.1 Continuous local government service can affect an employee's contractual entitlements to:

- Redundancy pay

- Annual Leave (support staff only)
- Occupational Sick Pay
- Occupational Maternity Pay
- Occupational Adoption Pay

7.2 The effect of continuous local government service will depend on the terms and conditions under which an individual is employed. The contractual and statutory entitlements which arise for both teaching and support staff as a result of continuous service provisions are summarised in tables 1 – 5 at the end of this guidance document.

## **8. What entitlements do continuous service affect?**

8.1 Continuity of service with the current employer affects an employee's statutory entitlement to:

- Statutory Maternity Pay
- Statutory Sick Pay
- Statutory Adoption Pay
- Statutory Shared Parental Pay
- Notice periods
- The right to claim unfair dismissal

8.2 The effect of continuous service will depend on the terms and conditions under which an individual is employed. The contractual and statutory entitlements which arise for both teaching and support staff as a result of continuous service provisions are summarised in tables 1 – 5 at the end of this guidance document.

A teacher commenced in a NYCC maintained school on 1<sup>st</sup> September. They had 5 years' previous continuous local government service with another school outside the County. The teacher notifies you that she is pregnant and is due to give birth at the end of March. The teacher will not be entitled to Statutory Maternity Pay paid by the school as she does not have 26 weeks' statutory service at the 15<sup>th</sup> week before her expected week of childbirth. However, she will be entitled to Occupational Maternity Pay as she has at least one year's continuous local government service at the 11<sup>th</sup> week before she is due.

## **9. Where do contractual rights come from?**

9.1 Contractual rights are those which are detailed in the employee's statement of particulars (also known as contract of employment) and the terms and conditions which cover their employment. Terms and conditions can be detailed in more than one document.

- 9.2 Teaching and support staff are employed on different terms and conditions and, therefore, different entitlements may arise as a result of the effects of continuous service.
- 9.3 For teaching staff, terms and conditions are contained in the Burgundy Book, the School Teachers' Pay and Conditions Document and other local agreements and policies and procedures which apply to their employment e.g. the school's policies on pay, maternity pay, leave of absence, etc.
- 9.4 For support staff, terms and conditions are contained in the Green Book, the NYCC collective agreement on pay and conditions and policies and procedures adopted by the school e.g. maternity pay, leave of absence, etc.

## **10. Which employers are recognised for continuous service?**

- 10.1 The modification order lists related employers which schools and academies must recognise for continuous service for some conditions of service. Generally, this includes local authorities, other public bodies and all schools, including academies. The full list of bodies included is available [here](#).
- 10.2 To aid recruitment and the free movement of staff, North Yorkshire CC has chosen to recognise continuous service with academies for teaching staff for the purposes of some contractual entitlements; occupational maternity and sick pay schemes. This is a local agreement which applies to NYCC maintained schools only. This service is already recognised for support staff as this is a provision under the Green Book.
- 10.3 Academies are not bound by this agreement and it is for their trust boards to decide whether or not they will recognise any previous service (though they must recognise previous continuous local government service for the purposes of calculating redundancy payments). However, tables 3 and 4 show the different provisions which would apply depending on whether an academy has adopted this decision (table 3) or not adopted it (table 4).
- 10.4 NYCC has also recognised service with a small number of specific partner organisations for some terms and conditions of service. Service with these organisations will only be recognised where the service is relevant to their role in the County Council and is in the interests of the service (e.g. addressing recruitment difficulties) but is entirely at the discretion of NYCC. These organisations are: the NHS, National Children's Home, Barnardos, NSPCC, Public Health England and the Skills Funding Agency. Maintained schools who have recruited a new employee from one of these organisations should take advice from HR regarding the application of this provision.

## **11. What is the impact of TUPE on continuous service provisions?**

- 11.1 Where an employee is TUPE transferred their continuous service date is transferred with them and they retain continuity of service for both statutory

and contractual entitlements for the duration of their employment with their new employer.

- 11.2 Where employees transfer to an external employer under TUPE and are then later transferred back into local government under TUPE, all previous service including service with the contractor who had employed them would be counted as continuous regardless of the length of time between the transfers.
- 11.3 Where an employee is TUPE transferred to NYCC from a non-modification order employer and they subsequently move onto NYCC terms and conditions, then all their continuous service from their original employer will be taken into account when assessing their entitlement to service based conditions e.g. annual leave.

### ***Support Staff only***

- 11.4 If an employee who was transferred out of NYCC e.g. to a privately owned organisation, and then returns voluntarily to local government employment, without a break in service, then they will keep all their previous continuous service entitlements to:
- annual leave
  - occupational maternity pay
  - occupational adoption pay, and
  - occupational sick pay
- 11.5 This is subject to the return to local government service being within **five years** of the original transfer. In such situations the previous continuous service **will not** count towards the calculation of a redundancy payment.

## **12. How does continuous service apply in redundancy situations?**

- 12.1 For both support and teaching staff, redundancy pay is calculated based on their period of continuous local government service i.e. on service with modification order bodies which includes Academies. However, care should be exercised around notice periods as these depend on continuous service only and, therefore, in a redundancy situation a different date may apply.

A teacher is being made redundant on 31<sup>st</sup> December. They have been with the school for 9 years, but prior to this they had 5 years' previous continuous service with another Local Authority. The service which should be used to calculate their redundancy payment is 14 years. In terms of notice, they are entitled to the greater of their statutory or contractual notice. In this case their statutory notice (9 weeks) exceeds their contractual notice (two months) so they would receive statutory notice.



- 12.2 There are particular arrangements which apply when an employee has been notified that they are to be made redundant and subsequently receive an offer of alternative employment with a modification order employer.
- 12.3 All continuous service with modification order bodies, counts towards the entitlement to, and calculation of, a statutory redundancy payment, **apart from any period in respect of which a redundancy payment has been paid.**
- 12.4 If a redundant employee is offered alternative employment either with their own school or another modification order body, whether in writing or not, **before the date of termination** of the employee's contract, **and starts the new job within four weeks of the date of redundancy**, no redundancy payment is due and continuity of service for statutory redundancy purposes is preserved. Continuity of service for other statutory and contractual entitlements will depend on whether there was a week's break (Sunday to Saturday).
- 12.5 If the offer of alternative employment is made **after the date of termination**, a dismissal will have taken place and **the entitlement to a redundancy payment remains**, regardless of when the new job starts. However, if the new employment commences without there having been a week's break (Sunday to Saturday) the usual rules regarding continuity of service will apply, with the exception that previous continuous local government service will not be included in any subsequent redundancy situations.

### **13. What is concurrent service?**

- 13.1 If an employee holds two or more separate contracts of employment with a single employer, to undertake different roles, this is classed as having **concurrent** employment. Often, when employees have concurrent employment, they will have different start dates for each contract. Which service date is relevant to determining entitlements will depend on the circumstances of the case and whether the contracts are truly discrete.

### **14. What are the rules for concurrent employment and redundancy?**

- 14.1 The basic rule is that contracts should be treated entirely separately, so that any redundancy calculation should be based on the length of service of the contract from which the employee is being made redundant.
- 14.2 Only the pay earned under the contract from which the employee is being made redundant is taken into account for the redundancy payment.
- 14.3 The only exception to this service rule is, if, at the time of the redundancy, the employee is employed under only one contract but in the past there have been one or more overlapping contracts. In such cases, length of service can be counted back to the start of the first contract if service has been continuous.



## **15. What are the rules for concurrent employment and statutory rights?**

### ***Unfair dismissal and statutory notice***

15.1 For the purposes of the right to claim unfair dismissal and the statutory right to notice of dismissal by the employer, the same principles for calculating continuous service as in redundancy situations should be followed i.e. contracts should be treated separately.

### ***Statutory Sick Pay (SSP)***

15.2 Under guidance from HMRC it is possible for an employee who has two contracts with the same employer to be incapable of work under one of them but capable of carrying out the other.

15.3 Where employees, who have two or more concurrent contracts, are paid through ESS then their earnings will be aggregated for the purpose of National Insurance Contributions (NICs). This means that the employee must be incapable of working under all contracts before becoming entitled to SSP. However, Occupational Sick Pay (OSP) may still be payable in such situation, please see below regarding contractual rights.

15.4 Schools who use alternative payroll providers, will need to ascertain from their provider whether or not earnings are aggregated for NICs purposes. Should schools not aggregate earnings for NICs for employees with multiple posts, then an employee may have multiple entitlements to statutory payments e.g. SSP, SMP, SAP (subject to them meeting the NI lower earnings limit in all posts).

### ***Statutory Maternity and Adoption Pay***

15.5 As ESS aggregates its payment of NICS for the employee, the contracts of employment for multiple postholders are effectively combined for statutory pay purposes and only one entitlement arises. Therefore, the employee would have to stop working under all contracts before they could start to receive their Statutory Maternity or Adoption Pay. In practice, this will likely mean that the employee will commence their maternity or adoption leave on the same date for all their posts.

15.6 Schools who do not aggregate earnings for NI purposes should see the guidance under ***Statutory Sick Pay*** above.

## **16. What are the rules for concurrent employment and contractual rights?**

### ***Support Staff***

16.1 Under the Green Book, entitlements to annual leave, occupational sick pay and the occupational maternity scheme are calculated using continuous

local government service. For these entitlements it has been advised by the National Joint Council that service should be based on the whole record of continuous service so that, if there were concurrent contracts with one employer, they would not be treated separately.

***Teaching Staff***

- 16.2 The Burgundy Book does not include any guidance regarding the treatment of concurrent employment in relation to continuous service and contractual rights. Each case should be considered on its merits and its specific facts.

**Table 1 - NYCC maintained school – teaching staff**

<b>Teaching Staff</b>			
<b>Entitlement</b>	<b>Previous employment</b>		
	<b>Maintained school in NYCC</b>	<b>Other modification order employer e.g. academy, non-NYCC school</b>	<b>Other e.g. agency</b>
<b>Redundancy Pay</b>	Continuous LG service	Continuous LG service	Service with NYCC only/ start date with school
<b>Occupational Maternity Pay</b>	Continuous LG teaching service	Continuous LG teaching service	Teaching service with NYCC only/ start date with school
<b>Statutory Maternity Pay</b>	Service with NYCC only/ including continuous service from all previous NYCC schools	Service with NYCC only/ start date with school	Service with NYCC only/ start date with school
<b>Occupational Sick Pay</b>	Continuous LG teaching service plus aggregated periods of previous teaching service in schools and academies	Continuous LG teaching service plus aggregated periods of previous teaching service in schools and academies	Aggregated periods of previous teaching service in schools and academies
<b>Statutory Sick Pay</b>	Service with NYCC only/ including continuous service from all previous NYCC schools	Service with NYCC only/ start date with school	Service with NYCC only/ start date with school
<b>Occupational Adoption Pay</b>	Continuous LG teaching service	Continuous LG teaching service	Service with NYCC only/ start date with school
<b>Statutory Adoption Pay</b>	Service with NYCC only/ including continuous service from all previous NYCC schools	Service with NYCC only/ start date with school	Service with NYCC only/ start date with school
<b>Statutory Shared Parental Pay</b>	Service with NYCC only/ including continuous service from all previous NYCC schools	Service with NYCC only/ start date with school	Service with NYCC only/ start date with school
<b>Notice period</b>	Service with NYCC only/ including continuous service from all previous NYCC schools	Service with NYCC only/ start date with school	Service with NYCC only/ start date with school
<b>Right to claim unfair dismissal</b>	Service with NYCC only/ including continuous service from all previous NYCC schools	Service with NYCC only/ start date with school	Service with NYCC only/ start date with school

**Table 2 - NYCC maintained school – support staff**

<b>Support Staff</b>			
<b>Entitlement</b>	<b>Previous employment</b>		
	<b>Maintained school in NYCC</b>	<b>Other modification order employer e.g. academy, non-NYCC school</b>	<b>Other e.g. private sector</b>
<b>Annual Leave</b>	Continuous LG service*	Continuous LG service*	Service with NYCC only/ start date with school**
<b>Redundancy Pay</b>	Continuous LG service	Continuous LG service	Service with NYCC only/ start date with school
<b>Occupational Maternity Pay</b>	Continuous LG service*	Continuous LG service*	Service with NYCC only/ start date with school**
<b>Statutory Maternity Pay</b>	Service with NYCC only/ including continuous service from all previous NYCC schools	Service with NYCC only/ start date with school	Service with NYCC only/ start date with school
<b>Occupational Sick Pay</b>	Continuous LG service*	Continuous LG service*	Service with NYCC only/ start date with school**
<b>Statutory Sick Pay</b>	Service with NYCC only/ including continuous service from all previous NYCC schools	Service with NYCC only/ start date with school	Service with NYCC only/ start date with school
<b>Occupational Adoption Pay</b>	Continuous LG service*	Continuous LG service*	Service with NYCC only/ start date with school**
<b>Statutory Adoption Pay</b>	Service with NYCC only/ including continuous service from all previous NYCC schools	Service with NYCC only/ start date with school	Service with NYCC only/ start date with school
<b>Statutory Shared Parental Pay</b>	Service with NYCC only/ including continuous service from all previous NYCC schools	Service with NYCC only/ start date with school	Service with NYCC only/ start date with school
<b>Notice period</b>	Service with NYCC only/ including continuous service from all previous NYCC schools	Service with NYCC only/ start date with school	Service with NYCC only/ start date with school
<b>Right to claim unfair dismissal</b>	Service with NYCC only/ including continuous service from all previous NYCC schools	Service with NYCC only/ start date with school	Service with NYCC only/ start date with school

\* [excluding breaks if left for maternity reasons](#)

\*\* [TUPE out and return within 5 years](#)

**Table 3 – Academy – teaching staff (recognising previous service with schools and academies)**

<b>Teaching Staff – if applying Burgundy Book and recognising previous service with schools and academies</b>			
<b>Entitlement</b>	<b>Previous employment</b>		
	<b>Another academy in same Trust</b>	<b>Another school or Academy not in the Trust</b>	<b>Other e.g. agency</b>
<b>Redundancy Pay</b>	Continuous LG service	Continuous LG service	Service with Trust only/ start date with Trust
<b>Occupational Maternity Pay</b>	Continuous LG teaching service	Continuous LG teaching service	Service with Trust only/ start date with Trust
<b>Statutory Maternity Pay</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust
<b>Occupational Sick Pay</b>	Continuous LG teaching service plus aggregated periods of previous teaching service in schools and academies	Continuous LG teaching service plus aggregated periods of previous teaching service in schools and academies	Aggregated periods of previous service in schools and academies
<b>Statutory Sick Pay</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust
<b>Occupational Adoption Pay</b>	Continuous LG teaching service	Continuous LG teaching service	Service with Trust only/ start date with Trust
<b>Statutory Adoption Pay</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust
<b>Statutory Shared Parental Pay</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust
<b>Notice period</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust
<b>Right to claim unfair dismissal</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust

**Table 4 – Academy – teaching staff (not recognising previous service with schools and academies)**

<b>Teaching Staff – if applying Burgundy Book but not recognising previous service with schools and academies</b>			
<b>Entitlement</b>	<b>Previous employment</b>		
	<b>Another academy in same Trust</b>	<b>Another school or Academy not in the Trust</b>	<b>Other e.g. agency</b>
<b>Redundancy Pay</b>	Continuous LG service	Continuous LG service	Service with Trust only/ start date with Trust
<b>Occupational Maternity Pay</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust
<b>Statutory Maternity Pay</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust
<b>Occupational Sick Pay</b>	Aggregated periods of previous service in LEA schools plus continuous service with all Trust schools	Aggregated periods of previous teaching service in LEA schools	Aggregated periods of previous teaching service in LEA schools
<b>Statutory Sick Pay</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust
<b>Occupational Adoption Pay</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust
<b>Statutory Adoption Pay</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust
<b>Statutory Shared Parental Pay</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust
<b>Notice period</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust
<b>Right to claim unfair dismissal</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust

**Table 5 – Academies – support staff**

<b>Support Staff – If applying Green Book</b>			
<b>Entitlement</b>	<b>Previous employment</b>		
	<b>Another academy in same Trust</b>	<b>Another school or Academy not in the Trust</b>	<b>Other e.g. private sector</b>
<b>Annual Leave</b>	Continuous LG service*	Continuous LG service*	Service with Trust only/ start date with Trust **
<b>Redundancy Pay</b>	Continuous LG service	Continuous LG service	Service with Trust only/ start date with Trust
<b>Occupational Maternity Pay</b>	Continuous LG service*	Continuous LG service*	Service with Trust only/ start date with Trust **
<b>Statutory Maternity Pay</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust
<b>Occupational Sick Pay</b>	Continuous LG service*	Continuous LG service*	Service with Trust only/ start date with Trust **
<b>Statutory Sick Pay</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust
<b>Occupational Adoption Pay</b>	Continuous LG service*	Continuous LG service	Service with Trust only/ start date with Trust **
<b>Statutory Adoption Pay</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust
<b>Statutory Shared Parental Pay</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust
<b>Notice period</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust
<b>Right to claim unfair dismissal</b>	Service with Trust only/ including continuous service from all previous Trust schools	Service with Trust only/ start date with Trust	Service with Trust only/ start date with Trust

\* excluding breaks for maternity

\*\* TUPE out and return within 5 years