



Department  
for Education

# **Draft: Staffing and employment advice for schools**

**Departmental advice for school leaders,  
governing bodies, academy trusts and  
local authorities**

**January 2016**

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# 1. Introduction

## About this advice

1.1 This advice is designed to help employers in all schools with staffing and employment issues, and to inform their decision making. It advises on matters contained within the School Staffing (England) Regulations 2009 (“the Regulations”) and on wider staffing and employment issues. It draws attention to relevant legislation and sources of up-to-date guidance and advice that employers need to consider, some of which may be statutory guidance. The legislation and guidance referenced in the advice is not exhaustive and following it will not relieve governing bodies, academy trusts or local authorities of any duties imposed upon them in their capacity as employers by other legislation.

1.2 Governing bodies, including academy trusts, should ensure that they have access to appropriate professional advice and support from reliable and accredited individuals or organisations. Expert advice can be obtained from local authority HR services and other HR providers, and all schools are likely to benefit from familiarising themselves with the wide range of guidance and advice provided by Acas to help employers with HR and employment matters. An index of Acas’s employer advice is provided here (<http://www.acas.org.uk/index.aspx?articleid=1390>). Any employer can contact the Acas Helpline on 0300 123 1100 for advice or use its online tool - [Acas Helpline Online](#).

1.3 References to academies should be taken to include free schools, university technical colleges (UTCs) and studio schools. Unless otherwise stated, references to the governing body should be taken to refer to the entity that is responsible for exercising governance functions for a maintained school or academy – which in the case of multi-academy trusts may be the academy trust board, a local governing body, or a sub-committee responsible for discharging governance functions. Likewise, references to governors should be taken to mean whoever is responsible for fulfilling governance functions.

1.4 Any reference to ‘all schools’ should be taken to mean that the advice is applicable to all maintained schools and academies. Where the advice is limited to certain types of school, the limitations are explained.

1.5 Whilst academies and free schools are not bound by the Regulations, they may find this advice helpful regarding staffing and employment matters in their capacity as employers.

## Who is this advice for?

1.6 This advice is for:

- School leaders, school staff and governing bodies in all maintained schools and academies.
- Local authorities
- Academy trusts

## Key points

1.7 To provide consistency in the information available to all schools in support of their handling of staffing and employment matters, the Department's statutory *Guidance on Managing Staff Employment in Schools* has been withdrawn. Governors and headteachers of maintained schools, and local authorities no longer need to have regard to this guidance. Instead we expect employers in all schools to make use of this new non-statutory advice, and the sources of help it identifies, when carrying out staffing and employment duties.

1.8 In fulfilling their staffing responsibilities the governing body of a maintained school is free to delegate all of its staffing functions as set out in the Regulations<sup>1</sup> to the headteacher, one or more governors, a committee established by the governing body, or one or more governors together with the headteacher; with the exception of a small number of specific tasks set out in the Regulations.

1.9 In delegating functions, the governing body must not lose sight of the fact that it continues to retain overall accountability for the decisions made by those to which the function has been delegated to. As a result it is important that local procedures are reviewed regularly by the governing body; for example, satisfying themselves that the staffing functions are being addressed and the right people are fulfilling these roles on its behalf.

1.10 Where functions (other than those directly concerning the headteacher) are delegated to one or more governors (without the headteacher), the headteacher has the right to attend and offer advice at all relevant proceedings. Any advice given should be considered by the governor or governors to whom the delegation of authority has been made.

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<sup>1</sup> The School Staffing (England) Regulations 2009, as amended 2012.

## 2. Appointing Staff

### General

2.1 The appointment of staff is an important decision for any school. Accordingly it is essential that a governing body has the skills at its disposal to carry out a thorough and effective selection process. Governors may need to seek help or training, for example, on good interviewing techniques. At least one person on any selection panel should have completed appropriate safer recruitment training (see [Keeping Children Safe in Education - KCSIE](#)). Selection panels should also take into account any advice provided by the school's HR manager or provider. Acas provides employers with a range of advice and guidance on its [Recruitment](#) page. It covers many areas around recruitment that employers and governors who will be involved in the appointment process should familiarise themselves with.

2.2 All schools must appoint staff in accordance with employment law. Maintained schools must also follow the requirements set out in the School Staffing (England) Regulations and appointments in academies must be made in line with any relevant requirements set out in the Funding Agreement.

2.3 With all appointments schools should, prior to appointment, take up references from the applicant's current or former employer, following up with the author of the references if there is anything that requires clarification and/or appears to be contradictory or incomplete. As part of the appointment process for headteachers and teachers the governing body should ask previous employers for details about whether the individual has been subject to capability procedures in the previous two years.

2.4 If the previous employer is a maintained school, its governing body must respond in writing to confirm whether or not that person has been the subject of capability procedures within that period and, if so, the details of the concerns which gave rise to this, along with the duration of the proceedings and their outcome. These provisions do not apply to academies established prior to April 2013. However, it is a requirement that they are included in new Funding Agreements from April 2013. Academies can of course ask for relevant information about a teacher's capability as part of their appointment processes.

2.5 Where the local authority is the employer<sup>2</sup>, a representative of the authority may attend proceedings relating to the selection of any teacher. The governing body must consider any advice offered by the representative. Where the governing body of a maintained school is the employer<sup>3</sup> and where it has been agreed the local authority has advisory rights the governing body must consider any advice offered (see also the advice

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<sup>2</sup> Community, voluntary-controlled, community special or maintained nursery schools (section 35 of the Education Act 2002).

<sup>3</sup> Foundation, voluntary-aided and foundation special schools (section 36 of the Education Act 2002).

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in Sections 5.20 – 5.22). Additionally, faith schools may have an agreement with their Diocese that a representative attends and offers advice that the school should consider in selection proceedings.

2.6 When appointing support staff in community, voluntary controlled, community special and maintained nursery schools – governing bodies will need to be mindful of their obligations under equal pay legislation when making recommendations about support staff pay and grading. Whilst acknowledging the greater autonomy that schools have in respect of support staff appointments, any such recommendations may have implications, for example, in respect of any collective agreements for other staff working for the local authority.

2.7 Within foundation, voluntary aided and foundation special schools, and academies and free schools, the governing body has greater freedoms with regard to the appointment of their support staff. They should establish procedures to make such appointments unless an agreement is reached with the local authority that the LA will make such appointments.

2.8 In compiling job specifications for support staff the governing body should be aware of any agreed local authority job profiles and any associated guidance. The governing body should consider any equal pay and grading issues that the local authority may raise before putting forward a formal recommendation. More general advice on [equal pay](#) is provided by Acas.

2.9 Similarly schools should look to ensure that individual pay decisions for all staff are fully compliant with the Equality Act, and that the duty to have due regard to the matters set out in section 149 of the Act is satisfied. Non-statutory advice to help schools to determine [teachers' pay](#) is provided on GOV.UK.

### Headteacher appointments

2.10 Every maintained school must have a headteacher<sup>4</sup>. Academies and free schools have greater autonomy in determining their leadership structure in accordance with their funding agreement<sup>5</sup>. When appointing a headteacher governing bodies may find it helpful to discuss the appointment with the local authority, or their HR provider, and consider utilising the services of the school improvement partner or an equivalent professional adviser. Given the importance of this decision governing bodies may also find it helpful to secure the services of an experienced professional who can assist in the procedures; or the use of templates provided by the local authority or the HR provider to reassure themselves that they are following a legally sound process.

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<sup>4</sup> Sections 35(3) and 36(3) Education Act 2002.

<sup>5</sup> An example of the Teachers and Staff obligations for academies can be found within a model funding agreement, [here](#)

2.11 The National College for Teaching and Leadership (NCTL) provides practical guidance to help governors in its [Guide to selecting and recruiting a new headteacher](#). This guide has been written in partnership with the National Governors Association (NGA) and is designed to help governors make the right decisions when recruiting and selecting new school leaders.

2.12 In maintained schools the governing body must notify the local authority<sup>6</sup> in writing of any headteacher vacancy, advertise the post as appropriate, and then appoint a selection panel. The governing body must ensure that a member of staff is appointed to carry out the functions of a headteacher pending the appointment of a headteacher or in the absence of a headteacher.

2.13 In all schools governing bodies can adapt the process to suit the individual circumstances of both their own school and the type of appointment they wish to make, subject of course to their statutory responsibilities. In maintained schools the panel established to make the headteacher appointment must seek ratification of its decision from the full governing body.

## Deputy Headteacher appointments

2.14 There is no legal obligation for a school to have a deputy headteacher, or any limit on the number of deputies it may have. Where schools choose to appoint a deputy headteacher they may find it helpful to undertake a similar process to that set out in the headteacher appointments section of this advice. Where a maintained school wishes to appoint a deputy headteacher, the legal requirements concerning notification and advertising will apply as mentioned in paragraph 2.10.

## Discrimination in appointments

2.15 When recruiting staff, employers and governing bodies must be aware of their responsibilities set out in the Equality Act 2010. Schools must not discriminate against any prospective employee on the basis of any protected characteristic (including race, sex or disability) in relation to appointments, pay and conditions.. The Government Equalities Office provides detailed information about the [Equality Act 2010](#), with advice on the Act, and the comprehensive guidance provided by the government in support of the Act can be found at [Equality Act guidance](#). Advice for schools on how the Equality Act affects them and how to fulfil their duties under the Act can also be found on [GOV.UK](#). Further [Guidance for employers](#) is provided by Acas which is intended to help prevent employers from unlawfully discriminating during the appointment process.

2.16 Legislation<sup>7</sup> sets out the circumstances in which maintained schools that are designated by the Secretary of State as having a religious character have additional

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<sup>6</sup> There are special arrangements regarding notification in RC schools – highlighted in more detail in Section 6

<sup>7</sup> Sections 58 & 60 of the School Standards and Framework Act 1998.



scope to take into account certain religious or denominational considerations in making specified employment decisions relating to their staff. Further advice for schools with a religious character is provided at Section 6.

## Agency staff appointments

2.17 It is for governing bodies to decide whether, and what type of, supply cover is necessary, it is also good practice for all schools to establish a cover policy. Where a decision is made to employ agency staff to provide supply cover or fulfil any other job role in the school the governing body must ensure the necessary checks are undertaken to establish an individual's suitability to work with children (see paragraphs 4.3 to 4.12).

2.18 All schools should be mindful of the rights of agency workers; these are set out in regulations<sup>8</sup>. These regulations give agency workers the entitlement to the same (or no less favourable) treatment as comparable employees with respect to basic employment and working conditions, if they complete a qualifying period of 12 weeks in a particular job. Governing bodies should be aware of the guidance that is available to help those employers hiring agency workers to understand the law. Guidance on the recruitment of agency workers is provided on [GOV.UK](http://GOV.UK).) and further information about [agency workers](#) is provided by Acas.

## 3. Transfer of Undertakings (Protection of Employment) (TUPE)

### Transfer of staff

3.1 Governing bodies need to be aware that individuals' terms and conditions of employment are protected by regulations<sup>9</sup> when the school they work for transfers to a new employer. The TUPE rules have implications both for the employer who is making the transfer and the employer who is taking on the transferee, including the contractual liabilities at the time of the transfer and those that are ongoing, such as individuals' continuity of service. These issues can be complicated and the future implications for employees and staff significant, so all schools should make sure they have access to legal advice when staff are transferring. Acas provides extensive information for employers on [TUPE](#), including advice and training.

3.2 Whilst academy trusts are free to appoint new staff in accordance with employment law and in line with the requirements set out in their funding agreements, they should ensure that they understand their contractual obligations towards those staff that transferred from any predecessor school. Many of these staff will have the *School*

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<sup>8</sup> Agency Workers Regulations 2010

<sup>9</sup> The Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014

*Teachers' Pay and Conditions Document* (STPCD), the *Conditions of Service for School Teachers in England and Wales* (known as “the ‘Burgundy Book’”) or the *National Agreement on Pay and Conditions of Service* (“the Green Book”) incorporated in whole or in part into their contracts of employment. The future bearing of these provisions could depend on how they are incorporated into contracts and it is important that the trust obtains advice on these matters from the academy’s HR provider or legal advisor, including whether there is any relevant case law that may be applicable to the transfer.

3.3 Most free schools do not replace existing schools so TUPE will not normally apply in a free school. Guidance for free schools is provided on [GOV.UK](https://www.gov.uk).

3.4 The Department for Business, Innovation and Skills provides extensive guidance on TUPE which can be found on [GOV.UK](https://www.gov.uk).

## 4. Safeguarding and appointment checks

### Safer recruitment

4.1 The governing body in a maintained school must ensure when appointing a member of the school workforce (see also Section 2.1) that at least one member of an appointment panel has undertaken appropriate training in how to take proper account of the need to safeguard and promote the welfare of children when recruiting staff. Academies have responsibilities in relation to the health and safety and protection of their pupils; it would therefore be good practice for appointment panel members in academy schools to be appropriately trained (see also the [‘Keeping Children Safe in Education \(KCSIE\)’ guidance](#)).

4.2 It is important that all schools are familiar with the KCSIE guidance. It contains information on what schools should do and sets out the legal duties with which schools must comply. It should be read alongside [Working Together to Safeguard Children 2015](#) which also applies to all schools.

### Employment checks

4.3 When making appointments, all governing bodies must take into account the requirements of equalities legislation (as referred to in Section 2.14) and best employment practices.

4.4 Once the governing body has chosen a preferred candidate, and before any appointment is made, it must:

- check the identity of the candidate;

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- check their right to work in the United Kingdom. Employers are required<sup>10</sup> to check potential employees' documents before employing them, to ensure they have the right to work in the UK. Advice on the checks required is provided in the Home Office guidance [An employer's guide to right to work checks](#) with further information provided on GOV.UK at [Employers: illegal working penalties](#).

4.5 For anyone that is appointed to teach, governing bodies must check that they are not prohibited from doing so by the Secretary of State. A person who is prohibited from teaching must not be allowed to work as a teacher in a school setting. A prohibition check can be carried out using the [Employer Access Online Service](#) (additional advice regarding the service is outlined in Section 4.19). Further information about prohibition orders is provided in the National College for Teaching and Leadership (NCTL) advice *Teacher misconduct: the prohibition of teachers*. The NCTL's advice on teacher misconduct can be found on GOV.UK ([Teacher misconduct - GOV.UK](#)).

4.6 Governing bodies should also:

- take up references from the applicant's current or former employer; and
- consider asking the candidate's current employer for details of any capability procedures in the previous two years, and the reasons for these.

4.7 When sharing information employers should make sure that they act in accordance with the Data Protection Act 1998 and data protection principles, making sure that the information is provided fairly and lawfully to prospective employers. The Information Commissioner provides advice on employers' responsibilities to ensure employees' personal details are respected and properly protected ([http://ico.org.uk/for\\_organisations/data\\_protection/topic\\_guides/employment](http://ico.org.uk/for_organisations/data_protection/topic_guides/employment)).

4.8 In line with their responsibilities under KCSIE, the governing body must reassure itself that all appropriate suitability checks have been undertaken and that the school keeps a single central record, detailing the range of checks it has carried out on its staff.

4.9 Additionally, a barred list check before appointment must be undertaken if the work is within the scope of 'regulated activity relating to children'<sup>11</sup>. The checks are conducted by the Disclosure and Barring Service (DBS). Governing bodies will usually make the request for the DBS checks through their local authority, which acts as an umbrella body for the DBS; academy trusts will have their own umbrella body arrangements. Employers and governing bodies can obtain further guidance on these checks from the DBS website at [Disclosure and Barring Service - GOV.UK](#). For the majority of work carried out in schools, governing bodies must obtain an enhanced

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<sup>10</sup> The Immigration, Asylum and Nationality Act 2006 and the Immigration (Restrictions on Employment) Order 2007.

<sup>11</sup> As defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

criminal record certificate for employees before, or as soon as practicable after, appointment.

4.10 Where a governing body obtains a criminal record certificate, and the applicant has subscribed to the DBS Update Service, it must consider whether to request update information using the online service. Information is available at the [DBS's Update Service](#).

4.11 The barred list check is a check to establish that the person is not barred from 'regulated activity' – work that a barred person must not do which, in summary, comprises:

- a. unsupervised activities: teaching, training, instructing, caring for or supervising children, or providing advice/guidance on wellbeing, or driving a vehicle that is being used solely for the purpose of transporting children and their carers/escorts;
- b. work carried out in and for the purposes of a limited range of establishments, where that work gives the opportunity to have contact with children: for example, work in schools, children's homes, childcare premises. This does not include work by volunteers who are appropriately supervised unless the volunteer provides certain types of personal or health care to a child<sup>12</sup>.

4.12 Work under (a) or (b) is regulated activity only if done regularly, with the exception of the provision of healthcare or certain types of personal care (for example, helping a child dress) which is always a regulated activity. Most work in a school will be work that individuals must not do if they are barred. Schools must refer to the DBS anyone who has harmed or poses a risk of harm to a child and who has been removed from working (paid or unpaid) in regulated activity, or would have been removed had they not left. The DBS will consider whether to bar the person. Referrals should be made as soon as possible after the resignation or removal of the individual. Guidance on referrals is provided by the DBS at [Disclosure and Barring Service - GOV.UK](#).

## **Mandatory duty to report known cases of female genital mutilation (FGM)**

4.13 Section 5B of the Female Genital Mutilation Act 2003 introduces a mandatory reporting duty which requires regulated health and social care professionals and teachers to report 'known' cases of FGM in under 18s to the police. The mandatory duty to report has been in force from 31 October 2015.

4.14 'Known' cases are those where in the course of their professional duties teachers are either informed by a girl under 18 that an act of FGM has been carried out on her, or they observe physical signs which appear to show that an act of FGM has been carried out on a girl under 18 and they have no reason to believe that the act was a necessary

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<sup>12</sup> The applicable types of personal and health care are specified in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

surgical operation for the girl's physical or mental health or for purposes connected with labour or birth. Further guidance is available in the [multi-agency guidance on FGM](#).

4.15 For teachers, schools will need to consider any breach of the duty in accordance with their existing staff disciplinary procedures. Where the school determines it is appropriate to dismiss the teacher as a result of the failure to comply, or the teacher would have been dismissed had they not resigned, the school must consider whether to refer the matter to the NCTL in their capacity as regulators of the teaching profession.

## Childcare disqualification requirements

4.16 Childcare legislation<sup>13</sup> places additional requirements on schools and academies employing staff working in early years provision with children up to 5, and in later years provision (before and after school childcare) with children who have not attained the age of 8. All schools providing such child care, regardless of the setting, must take appropriate steps to ensure that they are not employing a person disqualified to work with these age groups in a childcare setting. The Department has provided advice for schools explaining childcare disqualification requirements in [Disqualification Under the Childcare Act 2006](#).

4.17 The Childcare (Disqualification) Regulations 2009 require schools to ensure that staff working in specified early or later years provision, and those who are directly concerned in the management of such provision, to provide relevant information about themselves or a person who lives or works in the same household as them. They should also ask for this information as part of the pre-employment checks they undertake on appointing new staff.

4.18 Individuals who are disqualified are not permitted to continue to work in early or later years provision or be directly concerned in the management of that provision. They will usually be able to apply to Ofsted for a waiver of disqualification and further details about how to make an application for a waiver can be found in the fact sheet [Applying to waive disqualification: early years and childcare providers](#), which is published on the Ofsted website.

## The Employer Access Online system

4.19 When making appointments, governing bodies and, where applicable<sup>14</sup>, academy trusts will need to reassure themselves that mechanisms are in place within the school to check that any persons employed to teach there have the required teaching qualifications and have successfully completed statutory induction, if required. The Department's [Employer Access Online](#) provides this information for UK trained teachers.

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<sup>13</sup> The [Childcare Act 2006](#) and the [Childcare \(Disqualification\) Regulations 2009](#).

<sup>14</sup> In respect of SENCOs.

4.20 All governing bodies must make sure that any person employed to teach is not prohibited from teaching by checking the Employer Access Online system which can be accessed from GOV.UK via the [Teacher status checks: information for employers guidance](#).

### **Newly Qualified Teachers (NQTs)**

4.21 Governing bodies must be satisfied that the institution in which the induction of a newly qualified teacher is being undertaken has the capacity to support them and that the headteacher is fulfilling their responsibilities. The Department provides statutory guidance [Induction for newly qualified teachers](#), for headteachers, governing bodies and local authorities on GOV.UK.

### **Teacher qualifications**

4.22 The governing body of a maintained school should be aware that teachers must hold qualified teacher status (QTS) unless they satisfy one of the requirements or conditions specified in the schedule to the appropriate regulations<sup>15</sup>.

4.23 Since 1 April 2012, further education teachers who have been awarded Qualified Teacher Learning and Skills (QTLS) status by the Institute for Learning (IfL) and are members of the IfL are automatically recognised as qualified teachers in schools. This allows them to be appointed to permanent posts in maintained schools and paid on the qualified teachers' pay scales as set out in the School Teachers Pay and Conditions Document. They will continue to be recognised as qualified school teachers providing they remain a member of the IfL.

4.24 The same statutory requirement to hold QTS is not in place for teachers employed by academies unless the academy's funding agreement contains a clause to that effect. There is no requirement for teaching staff in free schools to hold QTS. In all schools, special educational needs coordinators and designated teachers for looked after children must have QTS. All teachers in special academies must hold QTS.

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<sup>15</sup> [The Education \(Specified Work\) \(England\) Regulations 2012](#)

## 5. Staff Management

### Contractual matters

5.1 The employers of all school staff are required to provide their employees with a written statement of particulars which must cover certain minimum requirements such as scale of pay, intervals of pay, hours of work, holidays, sickness benefit, pensions, notice period, title of job, whether fixed or permanent and place of work. Comprehensive guidance is provided on [contracts of employment and working hours](#) on GOV.UK and the [rights and responsibilities at work](#) of both employees and employers are explained in Acas guidance.

5.2 Additionally the [School Teachers' Pay and Conditions Document](#) (STPCD)<sup>16</sup> and the *Conditions of Service for School Teachers in England and Wales* (“the Burgundy Book”) have contractual bearing on many teachers’ contracts, as does the *National Agreement on Pay and Conditions of Service* (“the Green Book”) for support staff. In most cases these documents are incorporated into individual contracts, although where new staff have been appointed by academy trusts, or where contractual changes have been agreed post transfer, they may not be reflected in the contracts of these academy staff. Where the STPCD is relevant to teachers’ pay and conditions, advice to help governing bodies develop their approach to teachers’ and leadership pay is provided on GOV.UK: [School Teachers’ Pay and Conditions: Advice](#).

### Statutory entitlements

5.3 Comprehensive information on [employing people](#) is set out in GOV.UK guidance. This includes details about statutory entitlements to maternity and paternity leave and entitlement to sick pay, which governing bodies should be familiar with. Governing bodies also need to take into account provisions set out in *the Burgundy Book*, for teachers, and *the Green Book*, for support staff. In many cases these will have a bearing on individuals’ contracts.

### Time off and flexible working

5.4 In addition to holiday and other common types of leave, such as maternity, paternity or carer’s leave, there are other employee commitments for which workers are entitled to take time off work, although not all of these will necessarily be paid for by the employer. Governing bodies should familiarise themselves with these entitlements using the advice provided by Acas in [Time off](#).

5.5 All governing bodies should be aware that some people who combine work with caring for dependents have specific rights protected by law. These include various types of leave and the right to be considered for flexible working. More information on the rights of carers and parents can be found in Acas guidance on the [Rights and responsibilities at](#)

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<sup>16</sup> As amended annually.



[work](#). This advice includes detailed information about the rights of parents, including details of:

- Maternity leave and pay
- Shared parental leave and pay
- Adoption leave and pay
- Paternity leave and pay
- Employment rights for fathers
- Parental leave

5.6 Similarly workers with dependents are also entitled to take time off to deal with unforeseen circumstances. Acas provides advice on this, [parents and carers](#) which can be used to help employers deal with these circumstances.

5.7 All employees have a statutory right to ask their employer for a change to their contractual terms and conditions of employment to work flexibly, provided they have worked for their employer for 26 weeks continuously at the date the application is made. An employee can only make one statutory request in any 12 month period. Governing bodies should consider introducing a policy for handling requests to work flexibly. This will help to ensure consistency in handling requests and make it easier to communicate information on the right to request in a transparent manner to all employees. Further advice can be found in Acas guidance on the [right to request flexible working](#).

## **Sickness absence management**

5.8 All schools must ensure that they oversee the health and welfare of their staff, and they should have a clear and understood absence management policy. This helps staff understand what is expected of them and helps school leaders deal with these issues in a fair and consistent way.

5.9 Governing bodies may find it helpful to refer to the Acas [Managing Absence](#) guidance. This will help schools with their policies, providing advice on how to minimise sickness and other absences, such as stress related absences. The Health and Safety Executive also provide extensive advice on [Managing sickness absence and return to work](#), which includes a toolkit to help with absence management.

## **Health and Safety**

5.10 Schools are required to ensure that teachers and other school staff have a sufficient standard of health and physical capacity to undertake a range of relevant activities required of teachers and wider school staff. Advice on this can be found in the [Education \(Health Standards\)\(England\) Regulations 2003](#), including a range of the typical functions of school staff.



5.11 The health standards are intended to help ensure pupils' welfare. This means that a governing body or local authority must not appoint, or continue to employ a person in relevant activities unless they have the health and physical capacity for such employment.

## Appraisal

5.12 The governing bodies of maintained schools must establish procedures for dealing with any lack of capability of staff at the school. Regulations<sup>17</sup> provide that:

- Governing bodies and local authorities must adopt a written appraisal policy which sets out an annual appraisal process for their teachers.
- Governing bodies must appoint an external adviser to advise them in appraising the headteacher.
- Teachers must be told of the standards against which their performance will be assessed.
- Teachers must have objectives which, if achieved, will contribute to improving the education of pupils at that school and to the implementation of the school's improvement plan.
- Teachers' performance must be assessed against their objectives and the relevant standards. For the vast majority of teachers, the relevant standards are the [Teachers' Standards](#).
- Teachers have to be given a written appraisal report which sets out:
  - an assessment of their performance against their objectives and the standards;
  - an assessment of their training and development needs; and
  - where relevant, a recommendation on pay progression.

5.13 As part of its advice on teacher appraisal and capability, the Department has issued a [model policy](#) that schools are free to adopt when managing teacher performance. All schools are free to adapt this policy for support staff. Academies may also choose to use this as a model, subject to any contractual obligations.

5.14 Further advice on staff appraisal can be found in the Acas advisory booklet [How to manage performance](#).

## Discipline and grievance

5.15 Governing bodies should establish procedures for handling disciplinary and grievance procedures in the workplace. They should ensure that members of the schools'

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<sup>17</sup> [The Education \(School Teachers' Appraisal\) \(England\) Regulations 2012](#)

workforce are fully aware of the process by which they can seek redress as a result of any grievance relating to their work at the school.

5.16 Further guidance on disciplinary and grievance matters is provided by Acas in its [Code of Practice on Disciplinary and Grievance](#). Advice for employers on [Taking disciplinary action against an employee](#) is published on GOV.UK.

## Suspensions and dismissals

5.17 Governing bodies should establish procedures for dealing with staff suspensions and dismissals; these will normally form part of the staff disciplinary policy. They should ensure that they are fully aware of their responsibilities under employment law, in both establishing procedures and how those procedures are undertaken. Advice can be found in both of the GOV.UK and Acas publications referenced above.

5.18 The Acas *Code of practice on disciplinary and grievance procedures* provides basic practical guidance for employers, employees and their representatives and sets out principles for handling disciplinary and grievance situations in the workplace. The Code does not apply to dismissals due to redundancy; guidance on handling redundancies is contained in the Acas' advisory booklet on [Redundancy Handling](#). Further advice is also available [here](#). Governing bodies may also find it helpful to refer to the guidance on GOV.UK when they are looking for advice on statutory redundancy provision including calculation of redundancy pay; available [here](#).

5.19 Where a teacher is dismissed for reasons of misconduct, or would have been dismissed had they not resigned first, all schools have a legal duty to consider making a referral to the [National College for Teaching and Leadership](#). Further details can be found in para 5.29.

## Local authority advice

5.20 In community, voluntary controlled and maintained nursery schools, the local authority has a statutory entitlement to send a representative to all proceedings relating to the selection or dismissal of any teacher (including the headteacher and deputy headteacher) and offer advice. If the local authority decides to send a representative they must be allowed to attend. Any advice offered as a result must be considered by the governing body (or those to whom the function has been delegated) when reaching a decision.

5.21 The local authority does not have the same level of entitlement to advise on these issues in respect of foundation, voluntary aided and foundation special schools. The exception would be where an agreement between the governing body and the local authority provides for it to do so. Any agreement must be in writing and give details of what advisory entitlements the authority has been given. Whilst the agreement remains in force any advice offered by the local authority, in accordance with the agreement, must

be considered by the governing body (or those to whom the function has been delegated) when reaching a decision.

5.22 In all circumstances relating to advice offered by the local authority and decisions made by the governing body in the light of such advice, it is recommended that the advice given and decisions subsequently undertaken are fully documented.

## Employment tribunals

5.23 Employment tribunals hear complaints lodged against employers on the grounds that they have discriminated against individuals or failed to respect their rights under employment law. Tribunals can order an employee to be reinstated, and they can award compensation. Guidance on the role of employment tribunals is provided on the GOV.UK website, including advice on [Being taken to an employment tribunal by an employee](#). Acas also provides extensive advice about [employment tribunals](#).

## Settlement agreements

5.24 Settlement agreements are legally binding contracts which can be used to end an employment relationship on agreed terms. They can also be used to resolve an ongoing workplace dispute and can be an effective way of ending an employment relationship. They are entirely voluntary and neither employers nor employees have to enter into them if they do not wish to do so, or they are unhappy with the proposed content. Academy trusts must comply with the [Academies Financial Handbook](#) if they are considering making a settlement agreement.

5.25 Settlement agreements often include a confidentiality clause. The law<sup>18</sup> is clear that confidentiality clauses cannot be used to prevent someone from making a protected disclosure. i.e. whistleblowing. Confidentiality clauses should not prevent an allegation being followed and a decision reached on whether a referral to the DBS and the National College for Teaching and Leadership (NCTL) is deemed appropriate; in these cases it is not appropriate to reach a settlement/compromise agreement. Further information about [whistle blowing for employees](#) is provided on GOV.UK and further advice is provided by Acas [here](#).

5.26 Acas provides a statutory *Code of Practice on settlement agreements* which explains what settlement agreements are. In addition it also provides non-statutory guidance, *Settlement Agreements: A guide* which provides more detailed guidance on their use. Both sets of Acas advice can be found [here](#).

## Right to accompaniment

5.27 Employers and employees should always seek to resolve disciplinary and grievance issues in the workplace. Where this is not possible they should consider using

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<sup>18</sup> The Employment Rights Act 1996.

an independent third party to help. The third party may be internal or come from outside the school, so long as they have had no prior involvement in the disciplinary or grievance issue.

5.28 Employers must allow employees to be accompanied at any formal disciplinary or grievance meeting. The Employment Relations Act 1999 gives the employee the right to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union. Employees may also request accompaniment by members of other professional organisations offering employee support and governing bodies and academy trusts are free to consider any reasonable request for accompaniment. Acas provides advice about representation in its *Code of Practice on Discipline and Grievance* and in supporting guidance, *Discipline and grievances at work*. Both sets of Acas advice can be found [here](#).

### **Referrals to the National College for Teaching and Leadership (NCTL) and the Disclosure and Barring Service (DBS)**

5.29 Allegations of serious misconduct against a teacher may be referred to the NCTL. All employers of teaching staff in schools, including an employment or supply agency, have a legal duty to consider whether to refer a case to the NCTL when they have dismissed a teacher for misconduct, or would have dismissed them had they not resigned first.

5.30 Additionally all schools must make a referral to the DBS if a member of staff has harmed, or poses a risk of harm to, a child, and has therefore been removed from working (paid or unpaid) in regulated activity, or would have been removed had they not left. Referrals should be made to both the DBS and the NCTL in cases where there is alleged serious teacher misconduct involving harm or risk of harm to a child. Further details are available in the Department's *Keeping Children Safe in Education* guidance.

### **Trade unions and disputes with staff**

5.31 Employers must recognise those trade unions with which they have a voluntary recognition agreement or which they are required to recognise by the Central Arbitration Committee<sup>19</sup>. In foundation and voluntary-aided schools, it will be the governing body as the employer that will recognise such unions; for academies and free schools it will be the trust; and for community and voluntary-controlled schools it will be the local authority. Information can be found in Acas advice [Trade union recognition: Know the basics](#) and further guidance for employers is given in GOV.UK's [Employers: recognise a trade union](#).

5.32 Trade union recognition and the continuation of consultation and bargaining rights are protected under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) 2006. This means that for staff transferring from an existing school

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<sup>19</sup> Further information about Central Arbitration Committee can be found at: [Central Arbitration Committee - GOV.UK](#)

to an academy trust, any trade union recognition agreements applying to transferring staff will usually also transfer, as will any collective agreements in force at the time of transfer. Further information about trade union recognition during the creation of a free school, or the conversion from maintained school to academy, is provided in the Acas advice [Working with Trade Unions and Employee Representatives](#).

5.33 If a trade union organises industrial action in a school it must follow the law on balloting for the action to be lawful. Both strike action and action short of strike action may be protected under the same ballot. Unions must give the employer notice of their intention to hold a ballot and the notice must satisfy certain conditions. Industrial action must begin within four weeks of the last day of the ballot and unions must give at least seven days' notice of the beginning of the industrial action to employers. Further information on handling strike action in schools can be found in the Department's advice [here](#).

### **Teachers' Pension Scheme (TPS)**

5.34 The TPS is an occupational, public service pension scheme for teachers. The Department for Education has overall responsibility for the TPS whilst the day-to-day administration is undertaken by Capita Teachers' Pensions. Full information regarding the terms of the TPS and the level and range of benefits available are on the [TP website](#) which presents information from the perspective of both the member and the employer; employers have a crucial role in the successful administration of the TPS. Details of the full range of employer duties are on the [TP Employer Hub](#).

5.35 In academies, the Trust must ensure that all teachers employed at the academy have access to the Teachers' Pension Scheme and, in so doing, must comply with the requirements of this scheme and with [Fair Deal for staff pensions](#) guidance published by HM Treasury.

### **Local Government Pension Scheme (LGPS)**

5.36 Staff working in schools who are not teachers will in most cases be eligible to participate in the Local Government Pension Scheme (LGPS). Details of the scheme are provided via the [LGPS](#) website.

5.37 Academies must, in accordance with the Local Government Pension Scheme Regulations 2013 and with Fair Deal for staff pensions guidance published by HM Treasury, ensure that all affected staff employed in the academy other than teachers have access to the LGPS.

5.38 Where staff are subject to a TUPE transfer from a maintained school to an academy existing staff who are already members of the LGPS or TPS will be unaffected, and after conversion any new staff will also be able to join the LGPS or TPS.

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5.39 Teachers or other staff can choose to opt out of the TPS or LGPS. In such circumstances academies must ensure the opt-out arrangements within the relevant scheme regulations are followed.

## 6. Additional Advice

### Specific appointment matters at schools with a religious character

#### Teachers, head teachers & reserved teachers

6.1 The governing body in a voluntary-aided school may give preference with regard to the appointment, remuneration and promotion of teachers at the school, to persons:

- whose religious opinions are in accordance with the tenets of the school's religion;
- who attend religious worship in accordance with those tenets; or
- who give, or are willing to give, religious education at the school in accordance with those tenets.

6.2 The governing body may also have regard, in connection with the termination of the employment of a teacher at the school, to any conduct by the teacher which is incompatible with the precepts of, or with the upholding of the tenets of the school's religion.

6.3 Where the number of teachers at a foundation or voluntary aided or controlled school with a religious character is more than two, the teachers must include persons who are selected for their fitness and competence to teach religious education in accordance with the school's trust deed or with the tenets of the school's religion and are specifically appointed to do so. These are known as '*reserved teachers*'. The number of *reserved teachers* must not exceed one fifth of the total number of teachers including the head teacher. The head teacher can be selected on these grounds but must count towards the one fifth quota.

6.4 When appointing a head teacher who is not to be a reserved teacher, the governing bodies of foundation and voluntary controlled schools with a religious character may have regard to that person's ability and fitness to preserve and develop the religious character of the school.

#### Support Staff

6.5 In voluntary aided schools with a religious character, employers may 'discriminate' on religious grounds where being of a particular religion or religious denomination is a genuine occupational requirement (GOR). However, it should not be assumed that a blanket approach to GOR can be applied to all support staff. The governing body will be under a responsibility to be able to demonstrate that it is reasonable and proportionate to require an employee to be of a particular religion or belief for the job in question.

6.6 Whilst education and wider equalities legislation<sup>20</sup> grant a degree of discriminatory power to GBs in this respect it remains their responsibility to ensure that the application

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<sup>20</sup> School Standards and Framework Act 1998 (sections 58-60), Education Act 2011, Equality Act 2010

of these powers does not contravene employment law. As a result governing bodies may find it helpful to look at the advice that has been produced in association with the Equality Act which is available on both [GOV.UK](https://www.gov.uk) (employers preventing discrimination) and [Acas](https://www.acas.co.uk) (Equality) websites.

### **Schools of Roman Catholic Religious Orders**

6.7 Regulations<sup>21</sup> set out that if the trustees of a voluntary-aided school under a trust deed are also trustees of a Roman Catholic Religious Order, the selection process for the appointment of a head teacher are modified. The governing body must:

- notify the Major Superior of the vacancy in writing;
- interview those members of the Order who are proposed as candidates by the Major Superior; and
- appoint one of the persons interviewed, unless they fail relevant checks or it has other good reason not to make such an appointment.

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<sup>21</sup> School Staffing (England) Regulations 2009 (regulation 34)





Department  
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