Premature Retirement and Redundancy Policy & Procedure for Teachers 2023 - 27

	Date	Signed
Agreed by Trust Board:	July 2023	Chair of Board James Hargrave
Lead:	HR Committee	
Review date:	April 2023	

Premature Retirement & Redundancy
Policy & Procedure for Teachers

Rationale:

The Teachers' (Compensation for Redundancy and Premature Retirement) Regulations 1997 and the Teachers' Superannuation (Amendment) Regulations 1997 set out the mandatory and discretionary payments which may be made to teachers who are members of the Teachers' Superannuation Scheme, in circumstances where their employment is terminated in the interests of efficiency. In practice the term "interests of efficiency" covers two sets of circumstances.

1. Dismissal by reason of redundancy (whether or not the teacher volunteers for selection);

2. Termination of employment with the teacher's agreement in circumstances of restructuring or reorganisation, or other circumstances approved by the Department for Education, which do not meet the statutory definition of redundancy as set out in the Redundancy section of this policy.

Under the terms of the Education Act 1996 (formerly the Education Reform Act 1988), governing bodies are authorised to make decisions about whether and/or how to use the discretions contained in the regulations cited above. The Trust is the "compensating authority" which pays both mandatory and discretionary compensation. Under the terms of the Education Acts 1996 and 1997 the costs of premature retirement are met from a school's budget share except where it is agreed with the Trust that they shall be met from a different budget which may be retained by the Trust for that purpose.

Aims:

The purpose of this policy is to set out:

1. The circumstances under which the Trust has said that they will accept centrally the cost of any mandatory payments to which teachers retiring in the interest of efficiency are entitled;

2. The extent of discretionary payments which the Trust has said that they will meet;

3. In the case of dismissal by reason of redundancy the basic procedural requirements which the Trust has said that it expects governing bodies to take to ensure that any dismissal will be regarded as fair and not, therefore, susceptible to successful appeal to an industrial tribunal.

Application:

This policy applies to all teachers who are employed by the Trust under a permanent contract of employment in accordance with the terms of employment determined by the School Teachers’

Review Body. These employees are normally members of the Teachers' Superannuation Scheme. It does not apply to temporary employees as defined later in this policy.

Where a teacher is dismissed by reason of redundancy, the Trust's policy is to award compensation up to the level set out in 'Meeting the Costs of Redundancy Compensation' below.

The Trust's policy in respect of teachers who retire prematurely in the interests of efficiency, in circumstances which do not constitute redundancy, is set out in the section below entitled, ‘Premature Retirement Without Redundancy’. The costs of any compensatory benefits associated with such retirements will normally be met from a school's delegated budget, unless the Trust Board agrees in writing that they should be met from elsewhere.

Premature retirement on the grounds of permanent ill-health is excluded from this policy.

Definitions and Explanatory Notes:

"Age" or "Normal" Retirement:

Benefits from the Teachers' Superannuation Scheme are usually payable at age 65. All costs of age retirement are borne by the Teachers' Superannuation Scheme. Teachers who entered pensionable service on or after 1 January 2007 or after a break their final salary NPA will be 65 years old.

Premature Retirement - Approvals Benefits and Costs:

Premature Retirement is retirement before the normal age of eligibility - i.e. before age 65. Teachers must be aged at least 50 before they can be considered for premature retirement in the interests of efficiency. Premature retirement is governed by the Teachers' (Compensation for Premature Retirement and Redundancy) Regulations 1997 and the Teachers Superannuation (Amendment) Regulations 1997.

All proposals for premature retirement in the interests of efficiency which involve the allocation of the cost to a budget other than a school's delegated budget must be agreed in writing by the Trust Board. The Trust may also be required to complete additional certification for the DfE that the retirement meets its criteria.

Teachers who retire in the interests of efficiency, other than on redundancy terms, leave by mutual agreement and are required to confirm this in any correspondence.

Teachers offered premature retirement in the interests of efficiency will receive a pension calculated on the basis of their length of reckonable service. The costs of payment of these benefits before normal retirement date are divided between the Teachers' Pension Scheme and the Trust, according to an actuarial calculation. The closer the teacher is to normal retirement age, (i.e. 66), the smaller is the proportion of the pension and lump sum which is charged to the Trust.

Superannuation benefits are based on final salary in the period preceding retirement, normally the final year, but exceptionally the highest of the past three years. The Secretary of State for

Education may reduce superannuation benefits where the final salary of a teacher has been increased in the period prior to retirement (normal or premature) with the object of increasing his/her superannuation benefits. Teachers' Pensions requests information on the exercise of pay discretion by the Trust in the five years immediately proceeding retirement.

Redundancy:

For statutory purposes an employee is regarded as being dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to:

(a) the fact that the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased or intends to cease to carry on that business in the place where the employee was so employed;

OR

(b) the fact that the requirements of that business for employees to carry out work of a particular kind in the place where they were so employed, have ceased or diminished or are expected to cease or diminish.

Any proposal to dismiss by reason of redundancy must meet one of these statutory definitions.

Temporary Employment:

For the purpose of this policy, the term "temporary employees" includes:

- those subject to fixed term contracts (which through a waiver in the contract may exclude the right to statutory redundancy payments if the appointment is for at least two years);
- temporary appointments (which may also be for a fixed term) for a defined purpose, e.g. cover for long term sickness, maternity leave, etc. It should be noted that open ended temporary appointments which extend beyond two years increasingly reduce the effect of the description "temporary".
- temporary appointments funded by outside agencies and subject to the following wording (or similar) on the letter of appointment:
- "This appointment is funded by (external source) and will continue for as long as this funding, or funding from any subsequent sponsors, is maintained. If the funding ceases the appointment will terminate automatically, and no formal notice will be given, nor will any redundancy compensation be paid.

Redundancy:

Compensatory Benefits on Redundancy

Any teacher dismissed by reason of redundancy, as statutorily defined, and who has at least two years' continuous service as defined in the appropriate orders and regulations, must receive a redundancy payment calculated according to his/her entitlement as set out in the Employment Rights Act 1996 or successor legislation. The amount of a week's pay for the purposes of calculating this entitlement is limited to the statutory maximum.

The Teacher's (Compensation for Redundancy and Premature Retirement) Regulations 1997 (Paragraph 5) allow a severance payment (which includes any statutory entitlement to a redundancy payment) to be calculated on the basis of an actual week's pay where this is greater than the statutory maximum amount of a week's pay referred to above.

The Trust's policy is to make a severance payment (to include any statutory entitlement) based on actual week's pay without applying the statutory maximum. The number of weeks' pay used to determine the payment must be set out in the Employment Rights Act 1996 or successor legislation.

The Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997 (Paragraph 6) make provision for payment of **extended lump sum compensatory payments** in respect of termination of employment. This includes any redundancy or severance payments to which an employee is entitled as set out earlier in this section. Where an employee is aged 50 or over, these extended compensatory payments are an alternative to payment of superannuation benefits (see paragraph below). **The Trust's policy does not include the use of these provisions.**

A teacher who has attained the age of 50 and who is dismissed by reason of redundancy is entitled to receive payment of a premature retirement pension from the Teachers' Superannuation Scheme calculated according to his/her reckonable service. The Trust is required to contribute a proportion of this "basic" pension as set out in paragraph 7 of the Teachers (Compensation for Premature Retirement) Regulations 1997. The Trust's policy is to contribute the employer's share of the teacher's basic pension without additional enhancement.

The regulations make provision for service on which the basic pension is calculated (see above) to be enhanced by added years. The Trust's policy does not include the use of this provision.

A teacher who is aged 60 or over, but under 65, at the time of his/her dismissal by reason of redundancy will be entitled to receive a severance payment as set out above and the superannuation benefits due on normal retirement from the Teachers' Superannuation Scheme.

Meeting the Costs of Redundancy Compensation:

The Trust will normally meet the costs of redundancy compensation set out in the previous section (i.e. a severance payment and, where applicable, the employer's share of the teacher's basic pension) from a budget other than the school's own delegated budget, where the Trust is satisfied that:

- any and every dismissal for redundancy results in an overall reduction in the total complement of teaching staff at the school (and provided that there is no consequential increase in non-teaching staff);
- the school has taken all reasonable steps to avoid redundancy via its planning process as required in the planning section of this policy;

- the Trust's procedural guidance, in the procedure section below, has been followed.

In the following cases the Trust may consider that the total costs of redundancy compensation should be charged to a school's delegated budget:

- where the school is unable to offer evidence of planning for future staffing requirements;
- where there is no resulting overall reduction in the number of teaching staff employed at the school;
- where a redundancy results from a governing body's proposal for restructuring initiated primarily to achieve greater efficiency or effect a cost saving solely within the school;
- where a school has significantly exceeded its staffing entitlement, particularly during the year prior to the proposed date of redundancy, by continuing to recruit to vacant or additional posts on its establishment, or otherwise incurring additional salary costs, and is unable to offer such alternative evidence of planning for a sustainable level of staffing as the Trust may accept;
- if courses of action other than redundancy have not been fully explored, especially where retraining or redeployment within the school could be offered.

Without prejudice to the right of each governing body to determine the number and type of staff employed in its own school, The Trust, in considering whether it is reasonable for the costs of redundancy compensation to be met from the school's delegated budget, reserves the right to consider a school's overall financial position, including any year end balances in excess of a reasonable reserve for contingency.

Where a school governing body determines to award compensatory payments higher than those set out in the Trust’s policy (see above), the cost of additional payments over and above the Trust’s policy will be charged to the school's delegated budget. The Trust Board may determine that all costs, both one off and ongoing, including those normally met from a budget other than the school's delegated budget, must be met from the school's delegated budget.

Procedural Requirements on Redundancy:

Planning:

It is a requirement of this policy that schools should plan their staffing requirements well ahead in the light of known information, especially present and projected pupil numbers, and the formula staffing level upon which the school's budget share is based. Where a school has significantly exceeded recommended staffing levels, or has failed to take action to make any necessary reductions through natural staff turnover, and subsequently dismisses a teacher by reason of redundancy, the Trust may determine that the costs of compensatory payments should be charged to the school's delegated budget.

Schools should review their School Development Plan annually. This will enable governing bodies to carry out the necessary forward planning on the basis of the school's curricular and financial policies for 2--3 years ahead. In particular this should identify the school's likely teaching and managerial staffing needs in the next financial and academic year.

Procedure:

Where the need for a staffing reduction at the end of the school year has been identified as being likely or necessary, the Trust should consider, preferably during the autumn term, whether the reduction can be achieved through normal staff turnover or by internal reorganisation within the Trust.

If it appears unlikely that the necessary staff reduction can be achieved in the course of normal staff turnover, the governing body should prepare a proposal to dismiss by reason of redundancy the number of teachers by which it considers the school is or will be overstaffed. An appropriate representative of the Trust must be invited to attend any meeting of the school's governing body, or a committee of the governing body, at which such a proposal is to be considered. The process of implementation should be delegated to an appropriately constituted committee of the governing body.

The proposal to effect dismissals by reasons of redundancy should be set out in writing to the recognised teachers' associations and communicated to the teaching staff of the school in writing and/or at a meeting convened for that purpose. The CEO or Head Teacher, with advice from the Trust HR caseworker, will advise on the prescribed form of any letters of consultation. Consultation must start by the date agreed with the CEO. The consultation should proceed with a view to reaching agreement, if possible, on:

- avoiding the dismissals;
- reducing the number to be dismissed;
- mitigating the consequences of any dismissals.

Any teaching vacancies which arise during the course of consultation should not be filled on a permanent basis until the outcome of the proposed staff reduction process is clear, unless otherwise agreed in consultation with representative trade unions and the CEO.

The Committee of the Governing Body should consider representations from both individual teachers and their associations and should respond to all representations in such a way as to demonstrate that all points of substance have been considered.

Any teachers offering themselves voluntarily to be dismissed by reason of redundancy should be considered before any procedure of selection for dismissal is concluded. Volunteers need not be accepted if their leaving would not resolve the overstaffing situation. The acceptance of volunteers must be agreed with the CEO.

If no suitable volunteers are forthcoming, the selection committee of the Governing Body should draw up clear and fair criteria for the selection of those to be dismissed. Such criteria should be communicated to teachers in the school, especially to those who may thereby be deemed at greater risk of dismissal, and to their trade union representatives. Any representations about those criteria should be considered, and the criteria should be amended if appropriate.

Any teacher selected for dismissal has the right to make representations to the selection committee, or designated members of it, about its decision. He/she also has the right to appeal against that decision, if it is not modified as a result of representations, to an appeals committee of the Trust Board. Any appeals committee should consist of trust board members (at least three in number) who have not been involved in the selection decision.

At any stage a teacher selected for dismissal should be accorded the right to be accompanied or represented by a trade union representative, a friend or colleague of their choice.

Governing bodies should take appropriate professional advice.

In the case of any teacher employed on a Trust wide basis, the CEO, in consultation with the Trust Board, will decide whether a redundancy situation exists. Where it does exist, normal consultation processes will be followed.

Redeployment

Where teachers are displaced from their current post in a school, redeployment within the school should be considered as a first option.

The CEO/HT will then use his/her best endeavours to redeploy to another Trust school where feasible and appropriate. Any redeployment to another school in the Trust will first be subject to consultation with the appropriate Governing Body.

In order to facilitate redeployment and to assist schools offering a post to a redeployed teacher, the Trust or it's schools are prepared to offer the following assistance in appropriate cases:

- the reimbursement of reasonable expenses incurred in visiting any school (or other place of work) to which a transfer is possible;
- appropriate in-service education and training where this can be shown to be cost effective;
- benefits under the Teachers' Disturbance and Travel Scheme;
- indemnifying the budget of the receiving school against the additional cost of any salary protection due under the provisions of the School Teachers' Pay and Conditions Document.

Premature Retirement in the Interests of Efficiency:

Premature Retirement Without Redundancy:

Premature Retirement may be granted in circumstances which do not meet the statutory definition of redundancy but where, for example, a staffing adjustment or reorganisation is proposed. The relevant statutes and regulations allow the Trust to exercise the following discretions:

- lump sum compensatory payments of up to 66 weeks' pay in defined circumstances (see Compensatory Benefits on Redundancy section earlier in this policy); **or alternatively**

- payment of premature retirement benefits based on the teacher's own reckonable service (see Compensatory Benefits on Redundancy section earlier in this policy); **with or without**

- enhancement of superannuation benefits by the award of added years (see Compensatory Benefits on Redundancy section earlier in this policy).

In any case where it is agreed that the cost of premature retirement will be met from a budget other than the school's delegated budget, the Trust's policy is to grant premature retirement benefits based on the teacher's own reckonable service only (as described in the Compensatory Benefits on Redundancy section of this policy and the second point above).

In allocating any annual budget for premature retirement and redundancy costs, the Trust priority will be given to meeting those costs arising from staff reductions as described in the section on Meeting the Costs of Redundancy Compensation earlier in this policy. Subject to the availability of funding from the appropriate budget, the CEO/Trust Board may consider and approve applications from school governing bodies that a teacher or teachers should retire prematurely in the interests of efficiency. She/he may also consider and approve applications directly from or on behalf of any teacher employed on a Trust wide basis.

Proposals for premature retirement must meet any criteria and conform to any guidance issued by the Department for Education. School governing bodies must also be able to comply with any monitoring and/or certification requirements laid down from time to time by the DfE.

Before exercising the discretion to approve applications for premature retirement, the CEO will consult with the Trust Board and Local Governing Bodies. In considering any application, the School governing bodies and/or Trust will have regard for funds available to meet associated costs.

Bearing in mind the DfE's requirements and funds available, the Trust Board will normally apply this part of the Trust's policy according to the following criteria:

- the teacher's age (teachers asking to be considered under these provisions should normally be aged at least 55 at the projected date of retirement and those closer to age 60 will normally receive preference);

- the extent to which any loss of efficiency by the post holder has or could have a detrimental effect on the functioning of the Trust/School as a whole;

- the postholder's state of health, for which an assessment by an Occupational Health Physician will normally be required;

- subject to the considerations listed above, preference may be given to those with greater length of service with the Trust.

These criteria may be refined or modified from time to time.

If the Trust Board does not agree to fund a premature retirement in the interests of efficiency a governing body may resolve to offer premature retirement to a teacher in the interests of efficiency on their own initiative, provided that their proposal meets any criteria laid down from time to time by the Department for Education and that they have the funds available to meet all associated expenses. In these circumstances the full cost will be charged to the school's delegated budget.

Stepping Down Arrangements

Regulation C2 of the Teachers' Superannuation Regulations introduces a provision from September 1997 which allows a teacher aged 50 or over who has served in a post of responsibility for at least 5 years and who steps down to a post of lesser responsibility, whether with the same or a different employer, to protect his/her pension by electing to pay contributions on the former (higher) salary.

The national salary on which contributions will be paid will be index linked so that the teacher's eventual pensions benefits will be maintained.

The teacher will be responsible for meeting the additional cost of both the employer's and the employee’s element.

The Trust's policy is that the cost of maintaining pension benefits under this regulation should normally be borne by the teacher making the election. In circumstances where a stepping down arrangement would avoid a dismissal by reason of redundancy, the CEO, in consultation with the Trust Board and relevant Local Governing Body, may determine whether or not some or all of the costs of a stepping down arrangement, may be paid by the Trust or relevant school from it’s budget.

Period of Review:

This policy will be reviewed every four years.

Document History

Version	Date	Comments
Issue 1	April 2018	Based on SCC Model Policy
Issue 2	July 23	Amended to reflect if teacher's entered pensionable service on or after 1 January 2007 or after a break their final salary NPA will be 65 years old.