

Teaching Assistants – Review of Terms and Conditions

Report of Corporate Management Team

Joint Report of Paul Darby, Interim Corporate Director Resources and Margaret Whellans, Interim Corporate Director Children and Young People's Services

Councillor Jane Brown, Cabinet Portfolio Holder for Corporate Services and Councillor Ossie Johnson, Cabinet Portfolio Holder for Children and Young People's Services

Purpose of the Report

1. To provide Council with an update on the position regarding proposals for changes to Teaching Assistants terms and conditions of employment and to advise Council of an alternative proposal with regard to settling this matter in order to reduce the risk of equal pay challenges to the Council.

Background

2. The terms and conditions of employment for Teaching Assistants employed in County Durham schools provides that, in the main, they work 32.5 hours term-time and are paid as if they work 37 hours per week whole-time. Some also work 37 hours term time and are paid 41.5 hours per week whole time.
3. The vast majority of other authorities across the region and many nationally currently employ Teaching Assistants on a 37 hours per week, term-time basis.
4. The current arrangements create an equal pay risk from employees within the Teaching Assistant group (as some are already paid 37 hours term-time), other school employees as well as wider council employees.
5. Independent barrister's advice has confirmed the equal pay risk and confirms that the most defensible legal position would be to apply a pro-rata position to the Teaching Assistants i.e. salary based on 37 hours per week / term time only arrangements.
6. The risk to the Council of equal pay claims is real and although difficult to quantify, could be significant. Trade Unions have already confirmed that they have been approached by members who are not teaching assistants who have raised that they will make an equal pay claim should the current arrangements continue.

7. Additionally, advice was provided by the Corporate Director of Resources in relation to financial probity and the associated risks should the current situation not be rectified.
8. Taking account of the advice provided and the risk to the Council if the current arrangements continued, agreement was sought to vary the terms and conditions in order that Teaching Assistants would be paid for the hours and the time that they work. As part of this process, compensation amounting to one year's loss in relation to the move to term-time was offered. Additionally schools were asked to confirm that they could provide 37 hours per week work in order to mitigate against loss of salary. The vast majority of schools have already confirmed their willingness to do this.
9. Initial consultation with Teaching Assistants and Trade Unions, with a view to reaching agreement to vary the contracts of employment commenced in October 2015. Taking account of feedback from this exercise, the original proposal was revised and a further consultation exercise commenced in February 2016.
10. Unfortunately, these attempts to reach a collective agreement with Teaching Assistants and Trade Unions were unsuccessful and the Council was left with no alternative but to consider dismissal and re-engagement on new contracts in order implement the change and therefore manage the equal pay risk. Council may recall that the dismissal and re-engagement process was presented as a last resort, this is not however an uncommon process to follow where there is a genuine reason and a clear business case to implement changes to terms and conditions and where attempts to agree any such changes has not been achieved. Although the Council has to date never had to consider dismissal and re-engagement, other councils across the region and nationally have taken such action in order to make required contractual changes in relation to implementation of single status / job evaluation for example where a collective agreement could not be found.
11. After full and careful consideration of all the associated factors, on the 16 May 2016, County Council agreed to the termination and re-engagement of the Teaching Assistants on the basis of revised terms and conditions detailed in the report with the application of one years' compensatory payment.
12. Following this decision, formal consultation commenced with Teaching Assistants and Trade Unions with regard to dismissal and re-engagement on new contracts with effect from 1 January 2017.
13. An Equalities Impact Assessment has been undertaken with support from the Equalities Team and regular reviews have taken place, please see attached at Appendix 2.

Current Position

14. Consultation on the proposal to dismiss and re-engage concluded on 20 July 2016. This process has involved meetings in all schools with affected employees with opportunities for individual consultation meetings with all employees also made available. The main themes with regard to representations made during the consultation process were as follows;

- Impact on finance, health and state of mind and family life;
 - Potential loss of experienced employees;
 - New role on revised terms and conditions is not a suitable alternative to redundancy;
 - Requests for the Council to re-evaluate or regrade the roles in isolation of undertaking a full re-evaluation process;
 - Leave existing employees on their current terms and conditions and apply to new starters only;
 - Re-instate the Special Educational Needs allowance which was removed through single status;
 - Flexibility around the taking of holidays;
 - Retainer payments.
15. All of the issues raised have been given consideration throughout the process to date and a formal response to consultation has been provided to Teaching Assistants. A copy is attached at Appendix 3.
16. Whilst continuing to implement the decision of the County Council to dismiss and re-engage, Officers have also continued to work with local and regional Trade Union representatives with a view to settling the ongoing dispute.
17. As such, Councillors Napier and Brown, together with relevant senior officers of the Council arranged and attended a meeting with regional and local Trade Union representatives and an ACAS mediator in a final attempt to reach an agreement, at which the legal opinion and equal pay risks, plus the approach to date was discussed, together with opportunities for reaching a solution which might avoid the need for dismissal and re-engagement. The outcome of this constructive meeting being that Trade Unions committed to undertake a consultative ballot with their members on the following:
- That the compensatory payment associated with the move to term time working, would be extended from one year to two years;
 - That the new contractual arrangements would be implemented from 1 April 2017 rather than 1 January 2017;
 - That employees would be offered the option of taking the compensation in the form two annual lump sums or by way of monthly payments (on the clear provision that any member of staff taking a lump sum and leaving before the end of the financial year would be required to return that part of the lump sum relating to the period after exit);
 - That this would be a final offer which if not accepted would, be withdrawn and the dismissal and re-engagement process would continue on the basis of one year's compensation with implementation being 1 January 2017, as agreed by Council on 16 May 2016.
18. It was made clear at the ACAS mediated meeting that those present on behalf of the Council were not in a position to make a revised offer without County Council approval. Therefore, this special meeting of the County Council was called to enable consideration of this alternative option.

19. Additionally, there continues to be a commitment from Human Resources to work with Trade Union representatives and Head Teachers to review the jobs of Teaching Assistants where appropriate and on an individual basis.
20. Whilst the decision of the County Council in May 2016 continues to be progressed in line with the agreed timescales, Trade Unions have committed to undertake a consultative ballot of their members for 2 weeks from 14 September 2016, should the Council decision be to agree to this final offer. The results of the ballot would be known by no later than 29 September 2016. Therefore, the ballot process will run in parallel to the ongoing dismissal and re-engagement process.
21. Should agreement not be reached through the ballot, notice of dismissal would therefore be issued in line with the Council's previously agreed timescales, with implementation of the change being from 1 January 2017. Also as previously agreed, and only on the basis that this exercise progresses to dismissal and re-engagement, affected employees will have access to an officer led appeals mechanism. This process will allow for individual statements of case to be made by employees which will be heard by a panel of officers supported by a representative from Legal Services. If required it is intended that this process be conducted during November and December 2016, concluding ahead of changes being made from 1 January 2017.
22. The Council's resolution of the 16 May 2016 was based upon the fact that no agreement could be reached with the Trade Unions but the ACAS mediated option now provides a possible alternative, subject to the outcome of a Trade Union ballot, to dismissal and re-engagement.
23. Should agreement be reached, the ongoing dismissal and re-engagement process would cease immediately and the agreed way forward would be communicated accordingly.

Conclusion

24. The Council has remained committed throughout to resolving this dispute as evidenced by the involvement of ACAS and the revised final offer considered as part of this report.
25. It is open to the County Council to stand by its original resolution, whereby the agreed exercise of dismissal and re-engagement, based upon a package of one year's compensation is implemented rather than the new option which increases that compensation. However, the advantage of seeking agreement to this new option is, if successful, it would remove the need to dismiss and re-engage circa 2,600 employees.
26. Whilst aiming to resolve this matter on the basis of two years compensation is not free of risk as it allows some time-limited preservation to an identified inequality, it provides a similar timescale of protection to that agreed with the Trade Unions in the job evaluation exercise, though this is longer than the current pay protection policy. The pay protection policy does not strictly apply in these circumstances and the Council could if it were minded offer no compensation payment under a dismiss and re-engagement exercise. It is recommended however that Council agree to the possibility of agreement being reached, details as set out in paragraph 17 of this report.

Recommendations

27. Council is asked to agree:

- i. To note the alternative approach and revised final offer developed as a result of discussions with Trade Unions and supported by an ACAS mediator as outlined in paragraph 17 of the report.
- ii. As a final attempt to resolve the ongoing dispute with Teaching Assistants and subject to agreement through a Trade Union consultative ballot process to extend the amount of compensation associated with the move to term time working, to two years with changes to be implemented from 1 April 2017, whilst continuing to implement the Council decision of 16 May 2016 within the agreed timescales.
- iii. To note the process as referenced in Paragraph 21 for implementing the original Council decision of 16 May 2016, including process for dealing with appeals should it be necessary to progress to dismissal and re-engagement.

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Appendix 1: Implications

Finance

The proposed changes will reduce the annual cost to schools of employing teaching assistants by around £4.700 million. The proposed revision to the compensation period will delay this reduction by one year.

Staffing

Potential changes to terms and conditions of employment for a large staff group and the associated risks as highlighted in the report to Council on 16 May, 2016

Risk

The equal pay risks are as those set out in the Council report of 16 May 2016. There has been no changes to the risk previously identified and the legal advice remains as previously reported.

Equality and Diversity / Public Sector Equality Duty

The equality impact assessment has been updated in August 2016, is attached at Appendix 2 and identifies the following:

- **Gender**
The removal of the 2004 local collective agreement and implementation of the stated proposals will potentially have a greater impact on females than males (M: 4.58%/F: 95.42%). However not making these changes presents a significant risk to the council of equal pay claims from other school based employees and/or employees from the wider council.
- **Age**
Approximately 92% of employees affected fall between the age range of 25-64 (25-44:45.5%, 45-64:47.2%). There is no further evidence to suggest that the proposals disproportionately affect one age group over another.
- **Disability**
Of the affected employees, 1.2% have a reported disability, however there is no evidence to confirm that the proposals would have a disproportionate effect on the basis of disability.
- **Race/Ethnicity; Religion or belief; Sexual Orientation**
No evidence to confirm that there would be an adverse impact on the basis of the above protected characteristics.

Accommodation

None

Crime and Disorder

None

Human Rights

None

Procurement

None

Disability Issues

None

Consultation

This proposal has arisen during the consultation on the proposals to dismiss and re-engage Teaching Assistants, in line with Council decision on 16 May, 2016.

Legal Implications

Potential claims of constructive dismissal, equal pay and claims in respect of section 145B of the Trade Union Labour Relations (Consolidation) Act whereby an employee who is a member of a recognised trade union has the right not to have an offer made by the employer to prohibit terms and conditions being determined by collective agreement.

Appendix 2

Durham County Council – Altogether Better equality impact assessment form

NB: Equality impact assessment is a legal requirement for all strategies plans, functions, policies, procedures and services. We are also legally required to publish our assessments.

You can find help and prompts on completing the assessment in the guidance from page 7 onwards.

Section one: Description and initial screening

Section overview: this section provides an audit trail.	
Service/team or section: Resources	
Lead Officer: Team Leader Advice & Support (Schools/Business Development), Senior HR Officers and HR Officers	Review date: November 2015 / February 2016 / May 2016 / August 2016
Subject of the Impact Assessment: (please also include a brief description of the aims, outcomes, operational issues as appropriate)	
Review of terms and conditions of classroom based support staff	
<p>As a result of a collective agreement made in 2004, the majority of teaching assistants are being paid full time (37 hours per week) whole time (52 weeks a year) but are actually only working 32.5 hours, term time only which is in line with the agreement.</p> <p>The current position in Durham is not sustainable in the long term, given that there are a wide variety of contracts in place leaving the Council open to challenges specifically in relation to equality and fairness.</p> <p>All other employees within the Council are paid only for hours actually worked. The Council must address inequality to avoid equal pay claims; as such consultation with Trade Unions began on the following proposals between 11 November- 7 December 2015 and then again between 22 February and 24 March 2016.</p> <ul style="list-style-type: none">• Pay will be calculated according to the hours actually worked.• Employees will be paid on a Term Time Only basis of 39 weeks per year. (38 weeks plus 5 days)	

In order to mitigate against potential loss in pay those employees who are currently paid 37 hours but do not work 37 hours it was proposed to offer a 37 hour per week contract from the date of implementation where a business case to do so applies. Part time staff would be offered a pro rata increase in contracted hours from the date of implementation subject to the agreement of the Head Teacher. This may require staff to agree to some additional duties equivalent to their current grade as directed by the Head Teacher. A one off lump sum compensatory payment was also payable equivalent to one year's loss in salary in moving from a whole time to term time only contract.

Further Consultation (22 February - 24 March 2016)

In response to consultation feedback on one of the major themes around the financial impact of affected employees a further proposal, in addition to offering additional contracted term-time hours, was made during the second consultation as follows:

- That the change from whole-time to term-time be implemented on a phased basis, over a period of 3 years commencing 1 September 2016. This would mean an approximate 2 weeks reduction to whole-time salary in each of the 3 years;
- That a compensatory payment for early agreement would continue to apply and that this would also be phased over 3 years, by way of 3 annual instalments, to mitigate the impact of the reduction in whole time salary as outlined in the paragraph above.

Following the closure of both consultations a summary response to the consultation was prepared based on the feedback provided and the main themes raised during consultation were comments/questions in relation to the following.

- Pay Protection Policy
- Redundancy
- Flexi-time
- Annual Leave
- Pay and Grading
- Working Hours/Time
- Teachers Terms and Conditions of Employment
- Job Evaluation
- Retaining the same Terms and Conditions
- Compensatory Payment Arrangements.

Please refer to the 'Response to Consultation' documents of 22 February 2016 and 18 April 2016 which are available at www.durham.gov.uk/newera.

Proposal to dismiss and re-engage

The Council failed to reach agreement with Trade unions on varying the 2004 local collective agreement in accordance with the above proposals and as such Full Council agreed on 16 May 2016 to propose to dismiss all classroom based support staff from their current contracts as of 31 December 2016 and to re-engage them onto new contracts under the new terms and conditions (please see below) with effect from 1 January 2017- subject to consultation.

- Pay will be calculated according to the hours actually worked.
- Employees will be paid on a Term Time Only basis of 39 weeks per year (38 weeks plus 5 CPD days) plus annual leave and statutory holiday entitlement
- Employees will be offered 37 hours (pro rata for part time employees) subject to the agreement of the Head Teacher to mitigate against some of the potential financial loss.

All eligible employees will also be entitled to a one off compensatory payment payable in January 2017 equivalent to the loss of 1 years' salary in moving from a whole time contract to a term time only contract.

Consultation commenced with all LA maintained schools and faith schools from 23 May 2016 for a period of 45 days. Consultation closed on 20 July 2016. In addition to consultation with Trade unions, group consultations meetings have been conducted in each individual school with affected employees and where requested an individual meeting has taken place.

Subject to the outcome of the consultation, the decision taken by Council on 16 May, 2016 was that notice will be issued to all affected employees by early October 2016. All affected employees will have statutory right to appeal this decision following the issue of notice.

It was also agreed that new employees to the council from 1st June 2016 will be appointed on the new terms and conditions.

The main themes with regard to representations made during the consultation process were as follows;

- Impact on finance, health and state of mind and family life;
- Potential loss of experienced employees;
- New role on revised terms and conditions is not a suitable alternative to redundancy;
- The Council should re-evaluate or regrade the roles;

- Leave existing employees on their current terms and conditions and apply to new starters only;
- Re-instate SEN allowance;
- Flexibility around the taking of holidays;
- Retainer payments.

All of the issues raised have been given consideration throughout the process to date and a formal response to consultation is attached at Appendix 3.

From an equalities perspective, feedback received through consultation highlights that the proposals affect significantly more females than males (please see Section Two – Gender) and identifies that some Teaching Assistants may have difficulties in undertaking any additional hours offered due to disability or family circumstances/commitments (please see Section Two – Gender and Section Two – Disability).

Both during and post the consultation period, the Council has continued to work with Trade Unions in order to try and reach a collective agreement to implement the change.

On 27 July 2016, a meeting was held with Trade Unions and supported by an ACAS mediator. The outcome of this meeting being that Trade Unions committed to undertake a consultative ballot with their members on the following:

- That the compensatory payment would be extended from one year to two years;
- That the new contractual arrangements would be implemented from 1 April 2017 rather than 1 January 2017;
- That employees would be offered the option of taking the compensation in the form two annual lump sums or by way of monthly payments (on the clear provision that any member of staff taking a lump sum and leaving before the end of the financial year would be required to return that part of the lump sum relating to the period after exit);
- That this would be a final offer which if not accepted would, be withdrawn and the dismissal and re-engagement process would continue on the basis of one year's compensation with implementation being 1 January 2017, as agreed by Council on 16 May 2016.

Who are the main stakeholders: General public / Employees / Elected Members / Partners/ Specific audiences/Other (please specify)
Employees/Schools/Elected Members/Trade Unions

Is a copy of the subject attached? Yes

Initial screening :

Prompts to help you:

Who is affected by it? Who is intended to benefit and how? Could there be a different impact or outcome for some groups? Is it likely to affect relations between different communities or groups, for example if it is thought to favour one particular group or deny opportunities for others? Is there any specific targeted action to promote equality?

Is there an actual/potential negative or positive impact on specific groups within these headings?

Indicate :Y = Yes, N = No, ?=Unsure

Gender	Y	Disability	?	Age	Y	Race/ethnicity	N	Religion or belief	N	Sexual orientation	N
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How will this support our commitment to promote equality and meet our legal responsibilities?

All other employees within the Council are paid only for hours actually worked and the council must address inequality to avoid equal pay claims. The implementation of any proposal will be in line with agreed HR procedures to ensure fair treatment.

What evidence do you have to support your findings? (the information below includes Faith Schools and Academic Supply and is based on the loss when assuming the employee will undertake the additional hours offered)

2601 employees are affected by the proposals. Of these, 16.5% have no salary impact, 80% will see an annual reduction in gross salary of less than £3 000 and 3.5% will see an annual reduction in gross salary of over £3 000.

Quantitative data from Resourcelink (the DCC Human Resource Information system) identifies that removal of the 2004 local collective agreement and implementation of the stated proposals will potentially have a greater impact on more females than males.

The data also suggests that it could have greater adverse impact on part time workers who have care responsibilities and are not able to undertake additional working hours and will therefore experience a greater financial impact.

Although there is no data to suggest that this proposal would have a disproportionate adverse impact on the basis of disability, reasonable adjustments will be made for disabled staff where required to undertake any additional hours/duties offered.

The contribution rate the employee pays into the pension scheme will be reassessed as a result of the reduction in pensionable pay and if the employee moves into a lower pensionable pay band the employee may end up paying pension contributions at a lower rate. However an overall reduction in pensionable pay will lead to a lower pension pot. Employees retiring within the next 10 years will be able to use a three year average pensionable pay figure to calculate pension benefits for membership earned before April 2014, looking back up to 13 years before the date the employees leaves/retires and using financial years. This should ensure that an employees who leave/retire within the next 10 years should not have their pension benefits earned before April 2014 adversely affected by the reduction in pay.

Decision: Proceed to full impact assessment – Yes Date: November 2015

If you have answered 'No' you need to pass the completed form for approval & sign off.

Section Two: Identifying impacts and evidence- Equality and Diversity

Section overview: this section identifies whether there are any impacts on equality/diversity/cohesion, what evidence is available to support the conclusion and what further action is needed.			
	Identify the impact: does this increase differences or does it aim to reduce gaps for particular groups?	Explain your conclusion, including relevant evidence and consultation you have considered.	What further action is required? (Include in Sect. 3 action plan)
Gender	<p>Significantly more females than males will be impacted on by the proposal as they make up the vast majority of classroom based support roles and will experience a financial loss as a result.</p> <p>If a collective agreement is reached (subject to TU ballot) employees will be offered a contract of 37 hours per week (subject to HT agreement, pro rata for part time staff) and a compensatory payment to the equivalent of 2 years loss in salary for the change from a whole time to term time. Implementation of new contractual arrangements will take effect from 1st April 17.</p> <p>If the proposal to dismiss and reengage is implemented this would continue on the basis of 1 year's compensation with implementation being 1st January 2017.</p> <p>Potential adverse impact on part time workers who have care</p>	<p>Current affected employees workforce data: (May 2016)</p> <p>M:4.58%</p> <p>F:95.42%</p> <p>This gender split was also reflected in the consultation where responses indicated that the vast majority of people affected are female. Anecdotal evidence from the consultation indicated that some affected staff may have difficulties in undertaking any additional hours offered due to family commitments.</p> <p>National evidence indicates that women are more likely than men to have caring responsibilities.</p>	<p>Employees will be offered a contract of 37 hours per week-subject to head teacher agreement (pro rata for part time staff).</p> <p>A compensatory payment will be payable equivalent to 1 or 2 years loss in salary for the change from a whole time to term time contract.</p> <p>The gender profile highlights those pregnant / on maternity leave will need to be fully engaged in the process.</p> <p>45 day Consultation has to take place with Trade unions and affected employees (23/05/16-20/07/16).</p>

	<p>responsibilities and are not able to undertake additional working hours. This may have a greater impact on women. Consideration for flexible working will be considered using existing school procedures for those with care responsibilities.</p> <p>Although implementation of the proposed new terms and conditions will have a financial impact on a workforce which is predominantly female, not making these changes presents a risk to the council of equal pay claims from other school based employees and/or employees of the wider council.</p> <p>Overall there is a positive impact with regard to equal pay within the Teaching Assistant group, other school based support staff and employees across the wider Council. However, in achieving this, significantly more females than males will be affected by the proposal.</p>		<p>Appropriate change management processes to be followed in line with employment law to ensure fairness.</p> <p>All affected employees will have the right of appeal.</p>								
Age	<p>The age range which are most affected are those that fall between the age of 25 and 64. There is no further evidence to suggest that the proposals disproportionately affect one age group over another.</p>	<p><u>Age Profile</u></p> <table data-bbox="1039 1177 1447 1315"> <tr> <td>16-24</td> <td>6.5 %</td> </tr> <tr> <td>25-44</td> <td>45.5 %</td> </tr> <tr> <td>45-64</td> <td>47.2 %</td> </tr> <tr> <td>65+</td> <td>0.8 %</td> </tr> </table>	16-24	6.5 %	25-44	45.5 %	45-64	47.2 %	65+	0.8 %	<p>45 day Consultation has taken place with Trade unions and affected employees (23/05/16-20/07/16).</p>
16-24	6.5 %										
25-44	45.5 %										
45-64	47.2 %										
65+	0.8 %										

	<p>Approximately 20% of staff affected are approaching or are already 55 and above. Following agreed HR procedures will ensure older staff do not feel pressurised into retirement however some staff may explore early retirement where they feel the post offered is not a suitable alternative.</p> <p>The contribution rate the employee pays into the pension scheme will be reassessed as a result of the reduction in pensionable pay and if the employee moves into a lower pensionable pay band the employee may end up paying pension contributions at a lower rate. However an overall reduction in pensionable pay will lead to a lower pension pot. Employees who leave/retire within the next 10 years should not have their pension benefits earned before April 2014 adversely affected by the reduction in pay.</p> <p>Proposals are not expected to have an adverse impact on students as classroom based support will continue with some staff possibly working longer hours.</p>		<p>Appropriate change management processes to be followed in line with employment law to ensure fairness.</p> <p>Consideration to be given to the financial impact on school budgets should affected employees eligible for early retirement state that the post offered is not a suitable alternative due to the financial reduction in salary.</p> <p>All affected employees will have the right of appeal.</p>
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Disability	<p>There is some limited evidence to confirm that the proposals would have a disproportionate adverse effect on the basis of disability.</p> <p>Reasonable adjustments will be made for disabled staff where required to undertake any additional hours/duties offered. This will include consideration for flexible working using existing school procedures to assist disabled employees being able to undertake the additional hours wherever possible.</p>	<p>Current affected employees workforce data: (May 2016)</p> <p>Of the affected group 1.2% have a reported disability.</p> <p>Anecdotal evidence from the consultation indicated that some affected staff may have difficulties in undertaking any additional hours offered due to disability.</p>	<p>Ensure reasonable adjustments are made for disabled staff where required.</p> <p>Appropriate change management processes to be followed in line with employment law to ensure fairness.</p> <p>All affected employees will have the right of appeal.</p>
Race/Ethnicity	<p>There is no evidence to confirm that the proposals would have a disproportionate adverse effect on the basis of race/ethnicity.</p>	<p>11.40% Unknown or undisclosed. 87.50% White British 1.10% Other.</p>	<p>All affected employees will have the right of appeal</p>
Religion or belief		<p>Staff disclosure rates for religion or belief are extremely low therefore there is insufficient evidence to ascertain impact.</p>	<p>All affected employees will have the right of appeal</p>
Sexual orientation		<p>Staff disclosure rates for sexual orientation are extremely low therefore there is insufficient evidence to ascertain impact.</p>	<p>All affected employees will have the right of appeal</p>

How will this promote positive relationships between different communities?

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Section Three: Review and Conclusion

Summary: please provide a brief overview, including impact, changes, improvements and any gaps in evidence.

The main driver behind these proposals is one of equity and fairness. The implementation of Single Status has ensured that all jobs have been evaluated and graded in a consistent and objective way. It is now essential that all terms and conditions and in particular the principle of paying for actual hours and weeks worked is applied consistently across all schools in order to prevent future equal pay claims.

Overall there is a positive impact with regard to equal pay within the Teaching Assistant group, other school based support staff and employees across the wider Council. However, in achieving this, significantly more females than males will be affected by the proposal.

Calculating pay on hours actually worked and on a term-time only basis will have a proportionately greater adverse impact on women as currently 95.42% of affected employees are women. The majority of employees are aged between 25-64, with approximately 20% of staff approaching or over 55 years, so there are some impacts in terms of age.

Employees will be offered a contract of 37 hours per week- subject to HT agreement (pro rata for part time staff). In line with the County Council decision of 16 May , 2016 a compensatory payment will be payable in January 2017 equivalent to 1 years loss in salary for the change from a whole time contract to term time only. This will help to mitigate some of the financial loss. It is recognised that staff with care responsibilities/disability may not be able to take advantage of the opportunity of working 37 h/pw (or pro rata) and consideration for flexible working/reasonable adjustments, in line with existing school procedures, will be followed.

Both during and post the consultation period, the Council has continued to work with Trade Unions in order to try and reach a collective agreement to implement the change. On 27 July 2016, a meeting was held with Trade Unions and supported by an ACAS mediator. The outcome of this meeting being that Trade Unions committed to undertake a consultative ballot with their members on the following;

- That the compensatory payment would be extended from one year to two years;
- That the new contractual arrangements would be implemented from 1 April 2017 rather than 1 January 2017;
- That employees would be offered the option of taking the compensation in the form two annual lump sums or by way of monthly payments (on the clear provision that any member of staff taking a lump sum and leaving before the end of the financial year would be required to return that part of the lump sum relating to the period after exit);
- That this would be a final offer which if not accepted would, be withdrawn and the dismissal and re-engagement process would continue on the basis of one year's compensation with implementation being 1 January 2017, as agreed by Council on 16 May 2016.

Appropriate change management processes will be followed in line with employment law to ensure fairness throughout.

Action to be taken	Officer responsible	Target Date	In which plan will this action appear
Employees offered a contract of 37 hours per week- subject to HT agreement (pro rata for part time staff).	HR Leads/Head Teachers	Quarter 1 2017	Teaching assistants Project Plan
45 day consultation to take place with Trade Unions and affected employees	HR Business Lead-Schools	23 May-20 th July Complete	Teaching assistants Project Plan
A compensatory payment will be payable equivalent to 1 or 2 years loss in salary for the change from a whole time contract to term time only.	HR Business Lead-Schools	Quarter 1 2017	Teaching assistants Project Plan
Consideration to be given to the financial impact on school budgets should affected employees eligible for early retirement state that the post offered is not a suitable alternative due to the financial reduction in salary.	HR Business Lead-Schools	October - January 2016	Teaching assistants Project Plan
All employees will be offered the right of appeal	HR Business Lead-Schools	October-January 2016	Teaching Assistants Project Plan
Pregnant employees / those on maternity leave will be fully engaged in the process.	HR Business Lead - Schools-	Throughout process.	Teaching assistants Project Plan
When will this assessment be reviewed?	Date: October 2016		
Are there any additional assessments that need to be undertaken in relation to this assessment?	If agreement should not be reached and an alternative process is followed- this assessment should be reviewed.		
Lead officer - Interim Corporate Director Resources			Date: August 2016
Service equality representative - Research and Equalities Manager			Date: August 2016

Please email your completed Impact Assessment to the Equality team - equalities@durham.gov.uk

**Proposed Changes to Teaching Assistants'
Terms and Conditions of Employment**

Response to the Consultation Exercise



September 2016

Proposed Changes to Teaching Assistants' Terms and Conditions of Employment

Introduction

This document provides a response to the most recent consultation exercise in connection with proposed changes to the terms and conditions of employment of Teaching Assistants employed by the Council/School.

Initial consultation on the proposed changes commenced in November 2015 with Trade Unions and those individuals potentially affected. Letters were issued to the relevant employees on 11 November 2015 that outlined the proposed changes, highlighted the individual impact in relation to the change, and provided the opportunity for individuals to provide feedback on the proposal.

In response to the feedback received, the proposals were amended and a second consultation commenced in February 2016. Letters were issued to employees on 22 February 2016 and the consultation ended on 24 March 2016.

Agreement to change terms and conditions was not reached and following a decision by Council to propose to dismiss and re-engage, S188 documentation was issued on 23 May 2016. Consultation on this proposal commenced in June 2016, all employees were offered the opportunity to attend a consultation meeting as well as to submit representations to the consultation team email address. Consultation ended on 20 July 2016.

The Council wishes to thank all colleagues who provided feedback, views and suggestions throughout the consultation periods. This document gives further information for those affected and provides a summary of feedback received to date alongside the Council's response to the suggestions and views that were submitted.

Current Position

The majority of Teaching Assistants currently receive a 'whole time' salary, (i.e. paid for 52 weeks per year); however they work term time only. Additionally, many Teaching Assistants receive 37 hours salary when they are contracted to work only 32.5 hours per week.

As outlined throughout the consultation processes, this has created an inequality in relation to terms and conditions within schools and also when compared with other council employees, whereby other employees are paid only for the hours and weeks that they actually work. A proposal to dismiss and re-engage in order to apply a consistent approach to all Teaching Assistants' terms and conditions of employment was provided to those potentially affected and a consultation exercise commenced on the proposal for change.

Consultation

Teaching Assistants undertake a very valuable role within the school context. The matter under consideration within the consultation exercise is one of equality and mitigating an identified equal pay claim risk to the Council/school, associated with the existing terms and conditions and working arrangements of Teaching Assistants.

Questions regarding the decision to change the terms and conditions of Teaching Assistants were addressed during consultation meetings or answered in the frequently asked questions or through the consultation email.

All representations made during the consultation meetings and emails to the school consultation email address have been considered and categorised into themes and incorporated into this consultation response.

Key Themes

The key themes raised through the consultation process were comments and questions relating to:

- Personal Impact.
- 2004 Local Collective Agreement.
- Classed as non- teaching.
- Pay Protection Policy.
- Annual Leave and Flexi-time.
- Pay and Grading.
- Teachers Terms and Conditions of Employment.
- Job Evaluation.
- Retaining the same Terms and Conditions.
- Retainer.
- Compensatory Payment Arrangements.

Personal Impact

Concerns were raised throughout the consultation about the personal impact the proposals would have on individuals, both financially and in terms of personal feelings. The Council are aware of the diverse nature of the roles that Teaching Assistants undertake and the dedication of employees is not in question. The role of Teaching Assistant is valued and the Council re-iterate that this exercise is not to de-value Teaching Assistants; it is to ensure all council/school employees are paid only for the hours and weeks they work.

Employees were very concerned about the impact the reduction in salary would have to themselves and their families. In order to mitigate some of the reduction in salary Head Teachers were asked to consider, where there is a business case, the offer of additional hours up to 37 hours work a week (pro-rotata where applicable for part time teaching assistants). This would enable those who are currently on a salary of 37 hours a week to be contracted for the 37 hours per week and therefore not see a reduction in their weekly wages. The majority of schools have confirmed that in principle this is possible and dialogue is continuing with Head Teachers in this regard. Head Teachers are encouraged to discuss the working arrangement of these hours as soon as possible.

The proposal is for Teaching Assistants to be contracted for 39 weeks per year. Requests were made from Trade Unions to consider an increase in the contracted weeks. The proposal remains at 39 weeks however individual schools may give consideration to their own business need and increase the working weeks as required e.g. term time contract plus one week.

2004 Local Collective Agreement

Many questions were raised regarding why the 2004 Local Collective Agreement had been created and why the inequality issues this agreement created had not been addressed during Job Evaluation in 2012.

Job Evaluation sought to evaluate roles and pay employees equal pay for jobs of equal worth and did not seek to change the working arrangements at that time, providing Teaching Assistants with the additional benefit of the 2004 Agreement for longer.

Classed as Non-Teaching

Representations were made as to why the payslip for Teaching Assistants states 'Non-Teaching'. This term is referred to because Teaching Assistants are on non-teaching terms and conditions (Green Book).

Pay Protection Policy

Employees again asked whether or not the Council's current Pay Protection policy could apply in this exercise to match the two years compensation that was paid following Job Evaluation in 2012. Since 2012 the Council's Pay Protection policy has been reduced and is payable for one year only. Furthermore this policy does not cover reduction in hours and therefore would not apply in the circumstances.

Annual Leave and Flexi-Time

Requests continue to be made for Teaching Assistants to have the ability to take their annual leave when they wished to, as other council employees do and it has been queried as to why Teaching Assistants could not be part of the flexi-time scheme.

Due to the nature of the role and the requirement to be classroom based working with the pupils, classroom based employees do not generally take annual leave outside of school holidays. Schools do consider leave of absence requests in exceptional circumstances.

The majority of school based jobs are unsuitable for the application of flexi-time given the business needs of the school, especially where there is a requirement to be classroom based with the children. Flexi-time does not apply to all other council jobs as a matter of course. Many jobs across the Council, due to service requirements do not have flexi-time arrangements in place and all requests for annual leave are subject to business need.

Pay and Grading

Representations were made that the grades of Teaching Assistants in County Durham were lower than other Local Authorities in our region.

There is a range of pay grades associated with Teaching Assistants on a regional basis and the Council grades are comparable with several of these. Equity is sought amongst Durham County Council/school employees and not other Councils.

Teachers' Terms and Conditions of Employment

Suggestions continue to be made that Teaching Assistants could be treated as Teachers and employed under Teaching terms and conditions.

Teachers' conditions of service are national conditions of service and nationally there are no plans to incorporate Teaching Assistants into these. The role of Unqualified Teachers does fall within these terms and conditions, however this role is different to that of a Teaching Assistant and requires different skills and training as they work to a teacher's job description and to Teachers' Standards.

Job Evaluation

Requests continued to be made by employees and Trade Unions for a new job evaluation exercise to be undertaken in relation to Teaching Assistant roles only.

This is not a proposal in relation to changing the job role, but a proposed change to terms and conditions of employment in relation to hours of work. Where the duties of a teaching assistant's role have changed since 2012, individual schools may review job descriptions which in turn may impact upon the job evaluation outcome should there be a genuine increase in responsibility. This could result in an increase in grading.

Additionally, the knowledge and skills required for working with children with special educational needs were consolidated into grades through the job evaluation exercise back in 2012 following removal of the Special Educational Needs allowance as part of the council's collective agreement 2012.

Retaining the Same Terms and Conditions

Representations were again received for the Council to agree to Teaching Assistants remaining on their existing terms and conditions and appoint new Teaching Assistants on the proposed revised terms and conditions.

The Council had considered this proposal during the first consultation process however as previously explained this option would create a two tier workforce which would likely remain for the foreseeable future. This would therefore perpetuate an inherently unfair system for those doing similar work with no reasonable timescale to reduce the equal pay risk. It is therefore not considered an option for the Council.

Retainer

The payment of Retainers to some employees in educational establishments during school holidays was queried by affected employees.

Trade Unions have also made representation as part of the consultation process regarding retainer payments and suggested that the council consider paying this to Teaching Assistants as a way of resolving the current situation.

The retainer allowance is paid to specific groups only, consistent with National Terms and Conditions. The rationale for such payments (as set out in the Green Book) is for retention of groups of employees where the hours worked are extremely limited and there is no scope to increase or vary rates of pay for these groups in line with the National Agreement.

Paying a retainer allowance to Teaching Assistants would create an equal pay risk with regard to other term-time and part-time employees, both within and outside of schools.

Compensatory Payment Arrangements

Issues were raised from Trade Unions and Individuals regarding the payment of a one off lump sum in January 2017 adversely affecting employee's tax credit payments. As detailed in the response to Trade Unions letter dated 29 June 2016, Trade Unions requested that 3 options be considered pending feedback from Teaching Assistants:

- Three years phasing in of the revised terms and conditions i.e. a reduction of two weeks each year over the three year period and a compensatory payment of two weeks to be paid each year;
- The compensatory payment to be paid over 12 months commencing 1 January 2017;
- Continue with the proposal to pay a one off lump sum payment during January 2017.

Consideration was given to all options and forms the basis of the Next Steps. Compensatory payments do not apply to casual employees.

Next Steps

In a final attempt to reach an agreement, a meeting called by the relevant Cabinet Members, together with relevant senior officers of the Council and attended by regional / local Trade Union representatives and an ACAS mediator, was held after the consultation period ended. At this meeting, the legal opinion and equal pay risks the Council faces with regards to the existing position, plus the approach to date was discussed, together with opportunities for reaching a solution which might avoid the need for dismissal and re-engagement. The outcome of this constructive meeting being that a report will be presented at Council on 14 September 2016 asking for Council agreement to make a final offer to Teaching Assistants which extends the amount of compensation payable to two years with a revised implementation date of April 2017.

The report to Council will be published on the Council website on 6 September 2016. This report will also be added to the New Era website from this date.

The outcome of the Council decision will be publicised on the New Era website on 14 September.

Should the proposal be agreed by Council, Trade Unions have committed to undertake a consultative ballot with their members on this final offer to determine if agreement can be achieved to vary the Collective Agreement. Should agreement not be achieved through this ballot, the dismissal and re-engagement process will continue in line with the timescales and compensation package agreed by Council in May 2016.

The outcome of the ballot will be published on the 29 September 2016.

Although the Council does not propose any redundancies, statutorily we are obliged to follow a redundancy process in order to implement the change. As part of this process and in advance of notice of dismissal, those affected by the change may request a further individual meeting to discuss their circumstances. The purpose of this meeting is not for consultation but to answer questions in relation to personal circumstances.

These meetings will be held between 12 – 23 September 2016, and a list of locations is available on the new era website www.durham.gov.uk/newera. To request a meeting please email schoolconsultation@durham.gov.uk stating your name, school, preferred location and session time and a time will be sent to you. Deadline for requesting a meeting is 5pm on Wednesday 14 September 2016.

Should it be necessary to continue with the dismissal and re-engagement process, letters containing new contracts will be issued in early October 2016. This will include information in relation to the right of appeal.

I would emphasise that the Council will endeavour to support and assist all affected employees during this process.

If you have any questions or comments on the issues noted in this document, please do not hesitate to contact 03000 266 688 or email schoolconsultation@durham.gov.uk