

Title of Report:	Recognising Continuous Service for Employees Transferring From Academies
Report to be considered by:	Personnel Committee
Date of Meeting:	14 December 2011
Forward Plan Ref:	PC2385

Purpose of Report: To outline the Council's policy on recognition of service in academies for employment purposes.

Recommended Action: To confirm the proposed approach not to recognise continuous service with academies for occupational benefits of sick pay, annual leave and maternity.

Reason for decision to be taken: Local authorities have discretion over whether to recognise service with academies for occupational benefits. The Council needs a clear statement on whether it will use this discretion or not so that prospective employees are aware of the implications.

Other options considered: To recognise academy service. Rejected because of potential complications, especially where academies use their powers to diverge from national conditions of service.

Key background documentation:

- Local Government Employers website advice
- Green Book (National Joint Council conditions of service for local government services)
- School Teachers' Pay and Conditions Document
- Burgundy Book (Conditions of Service for School Teachers in England and Wales)

The proposals will also help achieve the following Council Plan Theme:

CPT14 - Effective People

The proposals contained in this report will help to achieve the above Council Plan Priorities and Themes by:

ensuring clarity for current and prospective employees about their terms and conditions of service.

Portfolio Member Details	
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Date Portfolio Member agreed report:	27 October 2011

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Implications

Policy:	This decision introduces a new policy.
Financial:	n/a
Personnel:	This decision affects new staff appointed to the Council from academy schools.
Legal/Procurement:	n/a
Property:	n/a
Risk Management:	The risks are that employees from academy schools will be put off applying for posts in maintained schools. This is mitigated by the fact that the proposed policy is in line with that adopted by neighbouring authorities.
Equalities Impact Assessment:	This policy will have no differential impact on employees with protected characteristics as it applies equally to all applicants.
Corporate Board's Recommendation:	Corporate Board agreed with the proposed approach not to recognise continuous service with academies for occupational benefits of sick pay, annual leave and maternity.

Executive Summary

1. Introduction

- 1.1 The Government's programme of encouraging maintained schools to become academies means that schools in West Berkshire are increasingly likely to appoint staff (teachers and support employees) who come to them directly from academy schools.
- 1.2 Academy employment is not service in local government for the purpose of entitlements to occupational schemes for sick pay, annual leave and maternity pay and leave. However, the Council could choose to recognise academy service for this purpose when new employees transfer directly from academies.
- 1.3 The Council, therefore, needs to have a clear policy on whether or not it will recognise employment service with academies for occupational scheme benefits so that prospective employees can be fully informed about the implications of transferring into a West Berkshire Council school, or to direct employment with the Council.

2. Proposals

- 2.1 It is proposed that the Council does not recognise academy service for the purpose of calculating entitlements to occupational scheme benefits.

3. Conclusion

- 3.1 This policy is a robust approach which will enable us to respond not only now, but in the future when academies exercise their right to negotiate their own terms and conditions of service for staff. It will ensure that we are in line with the policy in other authorities in the South East region.

Executive Report

1. Introduction

- 1.1 The Government's programme of encouraging maintained schools to become academies means that schools in West Berkshire are increasingly likely to appoint staff (teachers and support employees) who come to them directly from academy schools.
- 1.2 Some terms and conditions entitlements for local authority employees are dependent on their continuous local authority service. Under national agreements, employees who transfer into the service of one local authority from another local authority (or between schools in the local authority) have their continuous service preserved for entitlements to occupational sick pay, annual leave and maternity (and adoption) pay and leave.
- 1.3 Academies are not bound by national conditions of service (see 2.2 below), and are not local authority schools. This means that local authorities are not bound to recognise continuous service with academies for the purpose of calculating entitlement to occupational scheme benefits. However, the Council does have the discretion to recognise such service if it chooses to do so.
- 1.4 The Council, therefore, needs to have a clear policy on whether or not it will recognise employment service with academies for occupational scheme benefits so that prospective employees can be fully informed about the implications of transferring into a West Berkshire Council school, or to direct employment with the Council.
- 1.5 Throughout this report, employment in a West Berkshire school should be taken to refer to community schools as well as foundation and aided schools which are maintained by the authority.

2. Staff transferring to academies

- 2.1 Staff who transfer to the employment of an academy as a result of a change in the school's status during their employment have protected employment rights under TUPE. Therefore, in the immediate future when schools convert to academy status, teachers and support staff will retain their current contractual rights.
- 2.2 This means that the statutory School Teachers' Pay and Conditions Document (STPCD) will be incorporated into their contracts, as will the Conditions of Service for School Teachers in England and Wales ('Burgundy Book') and any local agreements between the local authority and the recognised teacher unions. Similarly, whatever arrangements currently apply to school support staff - whether this is based on the national agreement negotiated within the National Joint Council for local government services ('Green Book') in respect of staff in community schools, or other local arrangements which apply to staff in foundation schools and voluntary aided schools - will transfer. For newly-appointed staff, however, the academy will be able to determine new pay and conditions arrangements.
- 2.3 An employee who transfers under TUPE to an academy will have continuity of service preserved for redundancy entitlements. In addition, an employee who

voluntarily goes to work for an academy (and not under TUPE) will have that period of employment counted as continuous service within local government under the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999 ('The Modification Order').

3. Staff transferring from academies into West Berkshire employment

- 3.1 Paragraphs 3.2 to 3.5 below refer to the statutory position, over which the Council has no discretion. Paragraphs 3.6 to 3.12 set out the proposed approach to matters over which the Council may exercise its discretion.
- 3.2 Some statutory employment rights and entitlements depend on continuous service with the current employer. The right not to be unfairly dismissed, for example, comes into effect after one year of continuous service. Some entitlements to statutory maternity/adoption pay and leave depend on at least 26 weeks' service.
- 3.3 All employees with at least two years' continuous service with their current employer have a statutory right to a redundancy payment if their employment ends by reason of redundancy. In the case of someone employed by West Berkshire Council, this means two years continuous employment with WBC; previous continuous service with another local authority does not count for this right.
- 3.4 However, when it comes to service for the purpose of calculating the actual redundancy payment due, all continuous local authority service is counted, as well as any service with an organisation covered by the Modification Order. Academies are covered by the Modification Order. In effect, any previous academy continuous service will be counted, but only if the redundant employee has two or more years' continuous service with WBC at the point of dismissal.
- 3.5 It follows that an employee joining a West Berkshire school (or the directly employed staff of the Council) directly from an academy will have continuous service calculated as follows for statutory entitlements;

Entitlement	Continuous service date
Not to be unfairly dismissed	After 1 year from date of this appointment to WBC
Right to a redundancy payment	After 2 years from date of this appointment to WBC
Continuous service for purpose of calculating a redundancy payment	From date of continuous employment with any school or other authority covered by Modification Order (including academies)
Statutory entitlement to maternity pay and leave	Based on continuous service from date of this appointment to WBC

- 3.6 Entitlement to occupational scheme benefits, such as occupational sick pay, occupational maternity/adoption pay and leave, and enhanced annual leave, depends (in most cases) on continuous local authority service. The council has discretion over whether it chooses to include service with academies.
- 3.7 **It is proposed that the Council does not recognise service with academies for the purpose of calculating entitlements to occupational scheme benefits.** In the short term, especially where many staff will be returning to local authority

employment having been TUPE transferred to academies, this may seem unfair. They will probably still be on national conditions of service and did not choose to transfer out of local authority employment.

- 3.8 However, any policy has to be fit for the future. Academies will start to negotiate their own terms and conditions, which may diverge significantly from national conditions, and it will become more difficult to justify preserving service in these circumstances. Employees will choose to move between employment at academies and local authority maintained schools and they will have to accept that continuity of service will be broken in these circumstances.
- 3.9 Other local education authorities in the South East region have opted not to recognise academy service for occupational scheme purposes and we would, therefore, be out of line if we did so.
- 3.10 The impact of this proposal would be as follows;

Entitlement	Teachers	Support staff
Occupational sick pay entitlement	Based on cumulative service as a teacher in a LA maintained school	<i>Based on continuous service from date of this appointment to WBC</i>
Annual leave entitlement	n/a	<i>Based on continuous service from date of this appointment to WBC</i>
Occupational maternity leave and pay	<i>Based on continuous service from date of this appointment to WBC</i>	<i>Based on continuous service from date of this appointment to WBC</i>

- 3.11 Where an employee transfers, without a break, from another local authority which has recognised previous continuous service with an academy for occupational benefits, the date of continuous service will be the date on which that authority deemed continuous service to start.
- 3.12 All contracts of employment for schools would include the following paragraphs to explain how continuous service is calculated;
- (1) “Service with academies will not be counted for the purpose of continuous service for employment rights, or entitlement to WBC occupational benefits (such as sick pay, annual leave and maternity benefits) which are dependent on continuous local government service.
 - (2) Employees who transfer to WBC from academies will have their continuous service date for occupational entitlements calculated as the date on which their continuous service with West Berkshire Council began.
 - (3) Continuous service for the purpose of calculating statutory redundancy payments will include any period of continuous service with an academy (under the Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order).”

4. Conclusion

- 4.1 Adopting the approach outlined above will ensure that prospective employees and school managers are clear about the impact of transferring from academies into the employment of the Council.

Appendices

Appendix A – Equality Impact Assessment – Stage One

Consultees

Local Stakeholders: Not consulted

Officers Consulted: Caroline Corcoran, Ian Pearson, Andy Tubbs, Corporate Board

Trade Union: Not consulted

APPENDIX A

Equality Impact Assessment – Stage One

Name of item being assessed:	Corporate Board Report - Recognising continuous service for employees transferring from academies
Version and release date of item (if applicable):	September 2011
Owner of item being assessed:	Human Resources
Name of assessor:	Jane Milone
Date of assessment:	11 th August 2011

1. What are the main aims of the item?
To clarify that the Council will not use discretion to recognise employment service in academies for the purpose of calculating entitlement to occupational scheme benefits

2. Note which groups may be affected by the item, consider how they may be affected and what sources of information have been used to determine this. (Please demonstrate consideration of all strands – Age, Disability, Gender, Race, Religion or Belief and Sexual Orientation.)
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Group Affected	What might be the effect?	Information to support this.

Further comments relating to the item:
This policy will apply to all new employees transferring from academies equally. There will be no differential impact on any group with a protected characteristic.

3. Result (please tick by double-clicking on relevant box and click on 'checked')
<input type="checkbox"/> High Relevance - This needs to undergo a Stage 2 Equality Impact Assessment
<input type="checkbox"/> Medium Relevance - This needs to undergo a Stage 2 Equality Impact Assessment
<input type="checkbox"/> Low Relevance - This needs to undergo a Stage 2 Equality Impact Assessment
<input type="checkbox"/> No Relevance - This does not need to undergo a Stage 2 Equality Impact Assessment

For items requiring a Stage 2 equality impact assessment, begin the planning of this now, referring to the equality impact assessment guidance and Stage 2 template.

4. Identify next steps as appropriate:	
Stage Two required	
Owner of Stage Two assessment:	
Timescale for Stage Two assessment:	
Stage Two not required:	

Name:

Date: