Schools' Reorganisation, Redundancy and Redeployment Policy and Procedure

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Signed by the Chair:

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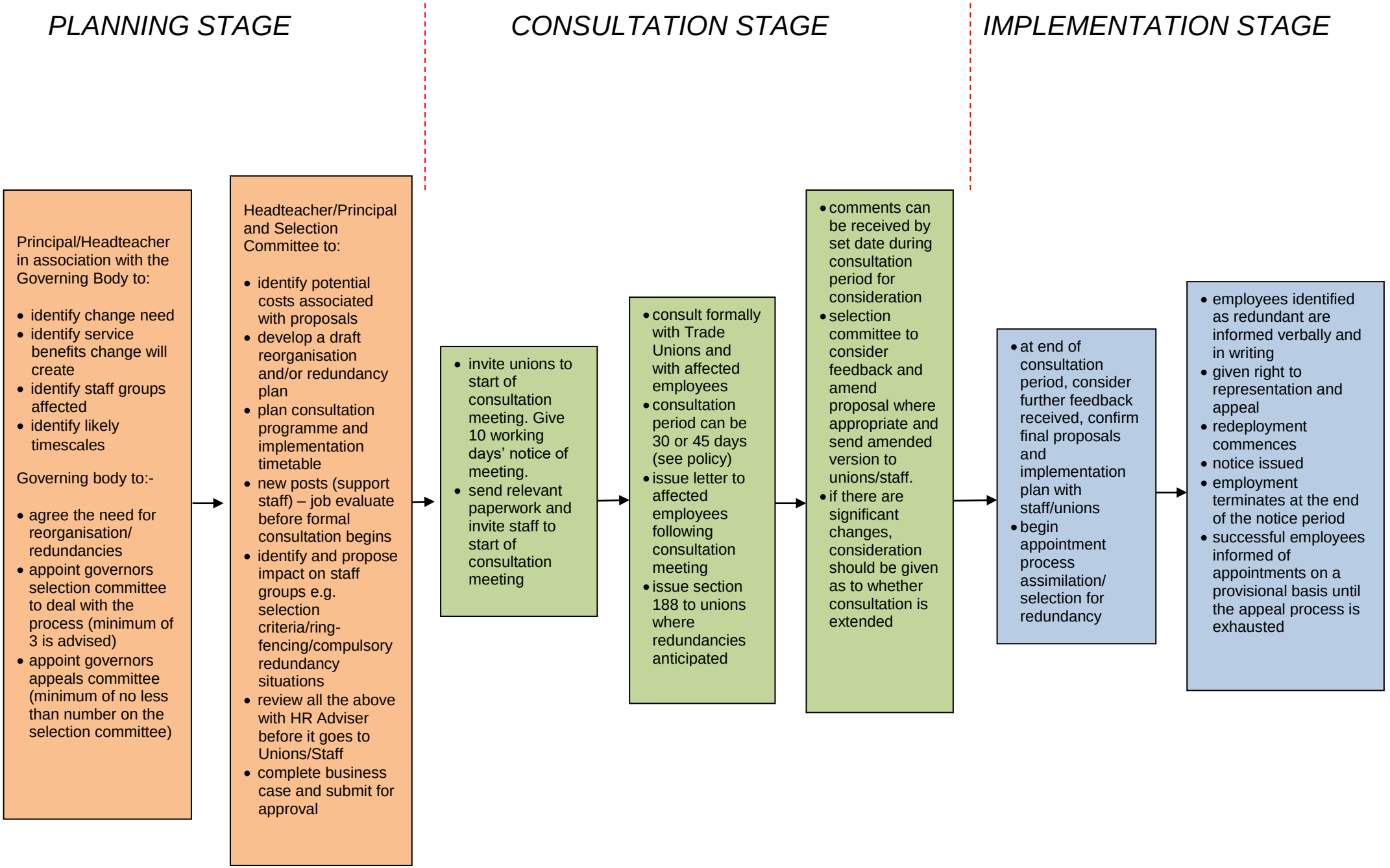
PLANNING STAGE
CONSULTATION STAGE
IMPLEMENTATION STAGE
Principal/Headteacher in association with the Governing Body to:
identify change need
identify service benefits change will create
identify staff groups affected
identify likely timescales
Governing body to:-
agree the need for reorganisation/ redundancies
appoint governors selection committee to deal with the process (minimum of 3 is advised)
appoint governors appeals committee (minimum of no less than number on the selection committee)
Headteacher/Principal and Selection Committee to:
identify potential costs associated with proposals
develop a draft reorganisation and/or redundancy plan
plan consultation programme and implementation timetable
new posts (support staff) – job evaluate before formal consultation begins
identify and propose impact on staff groups e.g. selection criteria/ring-fencing/compulsory redundancy situations
review all the above with HR Adviser before it goes to Unions/Staff
complete business case and submit for approval
invite unions to start of consultation meeting. Give 10 working days' notice of meeting.
send relevant paperwork and invite staff to start of consultation meeting
consult formally with Trade Unions and with affected employees
consultation period can be 30 or 45 days (see policy)
issue letter to affected employees following consultation meeting
issue section 188 to unions where redundancies anticipated
comments can be received by set date during consultation period for consideration
selection committee to consider feedback and amend proposal where appropriate and send amended version to unions/staff.
if there are significant changes, consideration should be given as to whether consultation is extended
at end of consultation period, consider further feedback received, confirm final proposals and implementation plan with staff/unions
begin appointment process assimilation/ selection for redundancy
employees identified as redundant are informed verbally and in writing
given right to representation and appeal
redeployment commences
notice issued
employment terminates at the end of the notice period
successful employees informed of appointments on a provisional basis until the appeal process is exhausted

1.0 Aims and Scope of the Policy

1.1 This policy applies to teaching and support staff in schools and colleges.

1.2 The policy sets out the legal requirements and practice required to manage situations of Reorganisation, including Redundancy if all alternatives have been considered to avoid a redundancy situation.

2.0 Roles and Definitions

2.1 **Headteacher**

It is the responsibility of the Headteacher to:

- project manage the school reorganisation/redundancy programme, allocating school resources as required.
- provide information to staff, trade unions and Governors, in liaison with the Human Resources Adviser.
- provide advice to the Governors' Selection and Appeals Committees on redundancy/reorganisation selection matters.
- ensure completion and signing of the Business Case for submission and approval (see section 5.3)

2.2 **Governing Body**

It is the responsibility of the Governing Body to:

- ensure that this policy and procedure has been adopted and copies are readily available to all staff and to the representatives of all recognised Trade Unions
- form Selection and Appeals Committees at the outset of the process to deal with matters of reorganisation/redundancy selection.
- ensure availability/attendance on the key dates agreed when mapping out the process timeline (appropriate committees)
- ensure that accurate records are kept of the decision making process and reasoning at each stage of the process.
- ensure that they are clear about the financial position of the school and should consider advice from e.g. School Improvement Service, Financial Management Service and NYHR before commencing formal consultation with staff and Trade Unions.
- ensure any conflicts of interest are declared when the committees are being appointed

2.3 **The Authority**

The Authority will support schools in the implementation of this policy in line with its service level agreement.

Advice is available to the school (and will be taken up as appropriate) from the School Improvement Service, the Financial Management Service and NYHR. Other specialist advice may also be called upon, as appropriate.

As the employer of maintained schools the local authority has a statutory entitlement to send a representative to all proceedings relating to the selection or dismissal of any school staff and offer advice. If the local authority decides to send a representative they must be allowed to attend.

Any advice offered by the local authority at these proceedings must be considered by the governing body (or those to whom the function has been delegated) when reaching a decision.

All advice offered by the local authority, and decisions made by the governing body in the light of that advice should be fully documented.

2.4 **Definitions**

In this document: -

- the word 'school' will be taken to denote schools and colleges that have adopted this procedure
- the word 'manager' will be taken to denote the Headteacher or other school manager, as appropriate
- the word 'union' will be taken to denote unions that are recognised by NYCC for collective bargaining purposes
- The words 'working days' will denote the days on which the Authority is open for normal business (i.e. excludes weekends and public holidays). In schools 'working days' are defined as those days on which the school is open to pupils or for designated staff training days. For school staff who work 'full year' it will also include those days on which they are contracted to work in the school closure periods. The number of working days is not affected by whether an employee is contracted to work full-time or part-time.

3.0 Context

This policy and procedure should be read in conjunction with reference to supporting documents in the toolkit (which can be accessed on the cyps.info website).

4.0 Prior to commencing a reorganisation/redundancy process

4.1 The Governing Body should consider alternatives to redundancy / reorganisation as part of its on-going workforce planning process. The following strategies should be considered:

- natural turnover
- the ending of temporary/fixed term contracts. *HR advice should be sought when it is proposed to terminate a contract of this nature*
- terminating engagement of relief staff and staff employed via agencies
- adjustment to existing variable hours contract(s)
- filling any essential vacancies from existing employees
- job sharing
- voluntary redeployment
- trying to make savings in other areas
- voluntary transfer (see 7.5)

5.0 Planning stage

5.1 Identifying the need for a School Staffing Review

The need to make a change to the school's current staffing structure* may arise for a number of reasons, such as:

- new initiatives at either a local or national level
- a change in the number or type of pupils
- improved/best practice ways of working
- budgetary restrictions
- school closures

It is the Governing Body's responsibility to define the service to be provided within the school and to formulate the most appropriate staffing structure to deliver that service, taking into account recommendations from the Headteacher, and advice from authority representatives.

Where it has been identified that there is a need to review the school's staffing structure, where more than minor changes are required, the decision to undertake a review must be made by the full Governing Body. This decision must be taken and minuted prior to further steps being taken.

*When undertaking a review of the TLR structure, in most circumstances the same principles of this policy and procedure may apply in relation to the planning, consultation and implementation stages. However, different safeguarding provisions apply to the removal or change of a TLR under the STP&CD and any appeal process would be dealt with under the school's pay policy.

Toolkit - Appendix A this timescale planner supports setting out of the timescales and steps associated with the whole process

5.2 Appointing the Committees

The Governing Body must set up two committees of governors to deal with the review: a 'Selection Committee' and an 'Appeal Committee'. These committees should be nominated and agreed by the fully quorate Governing Body. The Governing Body will delegate authority to both committees to make decisions on its behalf before the start of a process, and as such all committee meetings should be minuted on behalf of the full Governing Body.

The following guidelines should be adhered to when appointing the committees:

- consider whether any governor has any conflict of interest that would prevent them from being a member of the committee
- each committee should nominate one member as Chair
- the same governors cannot sit on both committees
- staff governors should not be on either committee
- the Headteacher should attend meetings in an advisory and information giving capacity and has a right to do so
- ideally, both committees should have an appropriate gender and ethnic mix in its panel membership, if possible
- committee members must be able to commit to a series of meetings throughout the process (as identified in Appendix A)

<u>The Governors' Selection Committee</u>

The Governors Selection Committee should have a minimum of three non-staff members wherever possible. In exceptional circumstances, where it is not reasonably practical to comply with this requirement, there may be two members. However, you may wish to consider using a governor from another school to ensure you have a committee of three. The committee cannot be changed once the process has begun i.e. introduce a new member for someone who has dropped out.

The responsibilities of the Selection Committee are:

- to consider and agree the proposals for the new structure
- to identify the impact on different staff groups – see the categories at section 9.0
- to establish criteria/selection processes by which staff would be identified for positions in the new structure and/or establish criteria/processes by which staff would be identified for redundancy, within a ring-fence group. Criteria should be proposed early enough in the process to allow for meaningful consultation
- to consult with recognised Trade Unions and members of staff in relation to the staffing review and to respond to feedback received during the consultation
- to consider voluntary applications for redundancy (where it is applicable to do so), reduction in hours, and/or redeployment
- where ring-fences apply, to select and appoint to the posts within the structure/select employees for redundancy
- to hear and respond to representations from employees

The Governors' Appeals Committee

The Appeals Committee must have at least the same number of members as the Selection Committee. Members must not have been previously involved in the process.

The Appeals Committee will:

- hear appeals from employees against the decision of the Selection Committee
- consider whether to uphold the Selection Committee's decision and inform employees accordingly

The Corporate Director – Children and Young Peoples' Service or their nominated representative has the right to attend at both Committee stages for the purposes of giving advice (in most cases this will be a representative from NYHR).

5.3 Completing the business case for requesting the funding of redundancies from the LA

As a consequence of financial challenges and the need to monitor all spending, there is a robust process for consideration of requests to fund redundancies in schools. Schools will need to submit a fully completed business case to apply for funding of redundancies (Appendix B and associated guidance) prior to the start of the redundancy process. Each business case will be considered by a panel of senior Local Authority officers and further information may be requested to support this decision. If the business case is approved, the relevant costs associated with a redundancy (excluding pension costs) will be met by the Local Authority, subject to conditions set out below, through a limited lump sum budget de-delegated for this purpose. Where a business case is not approved any costs associated with redundancy will be a cost to the school.

The local authority no longer supports enhanced voluntary redundancy payments for teaching staff, and will only meet the compulsory redundancy element of costs of a teacher, regardless of whether the redundancy is voluntary or compulsory. Schools wishing to exercise their discretion to offer an enhanced payment to teachers will have the additional costs charged to the school budget and will need to be aware of any precedence set in making such a payment.

For support staff the calculation of an actual week's pay continues to be used for both voluntary and compulsory redundancy payments.

Each business case will be considered on its merits and in line with the local authority discretions in operation. Early submission of the business case to the panel is essential to determine whether the cost of resulting redundancies will receive LA support.
Completed business cases to be emailed to redundancybusinesscase@northyorks.gov.uk - these can be submitted via your HR contact.

5.4 Preparing the consultation documentation

Planning for a reorganisation and/or redundancy process is paramount and initial plans, usually drafted by the Headteacher, should where applicable:

- identify the need for the proposed changes and why they are required (the business case). This should include deployment, budget, benchmarking (comparative data) and costing information as appropriate
- identify the potential impact the changes will bring about
- identify the staff likely to be affected (pool) and seek to avoid/minimise potential redundancies.
- Seek to obtain (via HR), at the earliest opportunity, estimates for any potential redundancy payments, and pension strain costs (see section 14.0)
- provide existing and proposed structures detailing unchanged posts, deleted posts, changed posts and new posts and any ring-fencing arrangements (see section 9.0) or posts that are in a compulsory redundancy situation if it is clear that individual posts are affected.
- provide existing and proposed job descriptions and person specifications
- ensure any new posts have been job evaluated (support staff only). Early liaison with JE team to ensure any new Job Descriptions have been evaluated, and salary scales determined, before consultation commences.
- communicate any proposed selection criteria/methods during consultation period
- agree a timescales at the outset for consultation and implementation (Appendix A) indicating when activities should be carried out, who is responsible for the required actions and who should be involved
- provide contact details of the person to whom written comments should be made during the consultation
- take into account employment law considerations such as the treatment of part-time employees, those on fixed-term contracts and expectant mothers/those on maternity leave
- ensure that those staff absent from school e.g. on sickness leave, maternity or paternity leave, secondments, etc. are included in the consultation process

5.5 Proposing Selection Methods

Employees can be selected for redundancy by volunteering, being selected by application of selection criteria or via the process of appointing to the new posts/new structure, i.e. where they are not successfully appointed to a post. If a post is deleted from the structure and there are no suitable posts for the post holder to be ring-fenced to in the new structure from the outset and no suitable alternative is available, compulsory redundancy will apply.

Prior to the start of consultation it is advised that the selection committee, advised by the Headteacher and HR, formulate the proposed selection/ assessment methods that are to be used to appoint to a new structure. Selections methods can include interviews, completion of skills audits or other assessment tests.

Where skills audits are the chosen method, the committee will need to formulate selection criteria (including weightings). The criteria will need to be consulted upon with unions and staff. Where possible, criteria should be available for consultation at the start of the 30 days to avoid delays in the process.

Selection Criteria

Care must be given to criteria that could give rise to any form of discrimination, particularly for part-time employees.

The following sets out examples of selection criteria – they are not mutually exclusive or in priority order.

- volunteers, if applicable

This may include volunteers for reduction in hours as well as for redundancy. (Employees who volunteer to reduce their hours to avoid redundancy should, where possible, be offered increased hours if they become available in the future). If there are more volunteers than redundant posts, a mechanism will be required to select volunteers. Governors may choose to apply criteria in the

same way as they would for compulsory redundancy. Therefore, the employee(s) chosen will be the one(s) that will least affect the successful running of the school.

If there are no suitable and acceptable volunteers, from within a ring-fence, then the following criteria will be considered:

- area of responsibility
- relevant qualifications
- relevant skills
- experience (but avoid reference to minimum durations i.e. 3 years' experience….)
- curricular and pastoral needs of the school, with reference to the school improvement plan
- evidence from performance appraisals
- termination costs*

Tie Breaks

In the vast majority of cases, the above criteria will be sufficient to select individuals for redundancy. However, where further criteria are required to select between employees then consideration may be given to the following:

Using the scores in one of the above criteria areas e.g. 'curricular and pastoral needs of the school' as the determinant i.e. the employee(s) with the lowest scores in this area would be selected for redundancy. If this fails to select between the candidates then the scoring of a second area of the set criteria may be taken into consideration e.g. the scores given to both candidates for 'relevant skills'

In the highly unlikely event of it still not being possible to make a selection for redundancy based on the above criteria then the selection committee will use a predetermined 'tie break' criterion in order to conclude the process. A pre-determined tie break may be attendance, capability or disciplinary, but advice should be sought from HR as ***the use of attendance, capability or disciplinary as a tie break may attract more challenge from professional associations***

**When formulating the selection criteria, consideration must be given to the cost of each individual redundancy (particularly related to LGPS pension costs). If there is a discriminatory effect then it must be determined whether this is a proportionate means of achieving a legitimate aim. HR advice should be taken on this subject.*

☞ **Note: It is very important that selection criteria (including 'tie break') are consulted upon, and where possible agreed with staff and trade union representatives, prior to staff being asked to complete skills audits.**

Interviews

Staff and unions should be consulted when interviews are to be used as the chosen method of selection. The selection committee should conduct all interviews, with support from the Headteacher in an advisory capacity, and it is advised that interview questions are agreed by the committee and linked to the job description and person specification for the role. A clear scoring system should be established prior to interviews commencing and answers and scores should be clearly recorded.

5.6 Costs associated with Reorganisation/Redundancy

The LA will only fund redundancy payments (this does not include pension costs – see below) where a business case has been approved (see 5.3).

Governors can decide to calculate compulsory redundancy payments on the basis of increasing the calculation of up to the actual week's pay, but this additional benefit would have to be found from the school's delegated budget.
Pay in lieu of notice, holiday pay, etc. cannot be offset against the statutory redundancy payment to which the employee is entitled.

In considering whether to agree to fund the cost of any redundancy the LA will take into account whether or not less costly selection could lawfully have been introduced.

Support staff in the local government pension scheme who are made redundant when they are 55 years or over, can gain access to their retirement benefits (see 14.0). These pension costs can be substantial and the school will be required to meet the full cost in relation to this. HR can arrange for benefit estimates to be provided on request prior to any final decision being made.

If the school fills the post again within 12 months of the redundancy taking effect, the cost of any redundancy pay may be charged to the school's budget. If the role is declared as redundant, there would need to be a verifiable and unforeseen change in circumstances for the school to justify re-appointing within this timeframe

6.0 Redundancy/reorganisation during maternity/paternity/adoption leave

When dealing with redundancy/reorganisation situations, managers need to ensure that all staff, including those who may be absent from work due to maternity leave or other reasons, are consulted and kept informed.

- it is automatically an unfair dismissal to select a woman for redundancy on the grounds of her pregnancy but this does not prevent women who are pregnant from being selected for redundancy on any of the grounds being applied to the staff group affected.
- redundancy during maternity, paternity or adoption leave will end the contractual obligations to both occupational maternity pay and additional paternity leave pay and the right to return. Statutory Maternity Pay (SMP) payments and Additional Statutory Paternity Pay payments are not affected and continue until the end of the Maternity Pay Period.
- any payments made to the employee in respect of occupational maternity pay go towards meeting the employer's obligation in respect of notice pay.
- an employee on ordinary maternity leave or additional maternity leave or additional paternity leave or adoption leave, who is given notice on the grounds of redundancy must be given priority redeployment status.
- if a woman who is pregnant or on maternity leave or a man on extended paternity leave is dismissed she/he is entitled to a written statement of the reason for dismissal. This does not have to be requested by the employee.

7.0 Consultation stage

Consultation, communication and involvement are vital to the change process whether or not it will involve redundancies. Good practice is to ensure the matters discussed at the formal consultation meeting with staff do not come as a complete surprise to them. Therefore, the Headteacher may make a judgement as to whether it is appropriate to share information with the staff group affected on an informal basis prior to formal consultation commencing or at least have a discussion with staff who are personally affected by the proposals. Consultation should be timely and meaningful. Management must consider and respond to any questions, comments or suggestions put forward by employees or union representatives and, if rejecting suggestions, give sound business reasons for doing so.

Therefore it is helpful to establish from the outset how the selection committee/headteacher will respond to feedback and communicate this to staff. For example, if it is a large reorganisation, it may be useful to set up a generic email and then generate a set of FAQ's in response to comments received and only respond directly to individuals, when requested.

Consultation includes:

- all employees who may be dismissed on the grounds of redundancy (whether voluntary or compulsory) or whose post may be affected in more than a minor way, including those on sickness/maternity/other leave (the redundancy pool)
- those who may be indirectly affected by measures taken in connection with redundancies e.g. staff having to take on re-allocated work.

Consultation may also include employees from outside the 'pool' to ascertain whether any staff wish to volunteer for redundancy so that an employee from within the pool may be substituted into the vacant post if suitable (known as 'bumping' - see 12.8). This may include volunteers from other North Yorkshire schools.

It is advisable that the selection committee meet midway during the consultation period to consider any comments/feedback received from staff by that point and staff/unions should be made aware of this at the start of consultation. A meeting of this nature is good practice and can allow for changes to be made to the original proposals for consideration for the remainder of the consultation period with staff and unions. In some circumstances it may even be possible to halt the process at this point if an appropriate outcome is agreed. This can avoid delays in the process when there are significant changes to proposals following the 30 day consultation period and further consultation may need to be considered.

7.1 Timescales (legal requirement)

No of employees to be made redundant at one establishment	Timescale (before the first redundancy notice is issued)	Requirement (relating to any individual school establishment)
Less than 20 employees	30 calendar days	By NYCC*
20 – 99 (over a period of 90 days or less)	30 calendar days	**Statutory** Notify the Department for Business, Energy & Industrial Strategy on Form HR1 (copy to Union reps)
100 or more (over a period of 90 days or less)	45 calendar days	**Statutory** Notify the Department for Business, Energy & Industrial Strategy on Form HR1 (copy to Union reps)

*There is no minimum statutory consultation period when making less than 20 employees redundant; however, the agreed minimum consultation period for NYCC is 30 calendar days.

The formal consultation period begins on the date that staff are formally informed of the redundancy situation, and notification is made to the Trade Unions using the section 188 letter (Appendix F, which is issued where there may be <u>any</u> redundancies in an individual school).

7.2 Trade Unions meeting

Collective consultation allows Trade Unions to play an active part in the process.

Where a redundancy/reorganisation situation has been identified the Headteacher (on behalf of the Governors' Selection Committee) should write (giving 10 working days' notice) to all the County representatives of the recognised trade unions (only), inviting them to attend a meeting to discuss the situation (Appendix C & D). A representative from NYHR will normally also attend this meeting. Headteachers should endeavour to give reasonable notice of the meeting and normal practice is to hold the meeting immediately prior to the staff meeting, on the same day. Headteachers should include, *where relevant*, the following documentation with the invite letter to unions-

- financial Outturn Statement (showing the schools actual net expenditure)

- 3 year forecast - **current** year financial plan plus two subsequent years (including pupil and staffing numbers/assumptions) and indicating normal capitation funding and any additional time-limited funding
- 3 year forecast - financial forecast including **proposed** staffing changes
- curriculum plan (Secondary schools only) – existing and proposed
- class structure plan – existing and proposed
- staffing structures – existing and proposed
- draft job descriptions/person specifications for new or amended posts (job evaluated where required)
- proposed posts at risk of compulsory redundancy
- proposed ring-fence 'pool' for consideration of potential redundancies (including names of the affected staff)
- proposed selection criteria and method of selection e.g. skills audits, ring fencing, slotting in, interviews/assessments etc. – *if established at this stage*.
- draft timetable of key dates in the process (Appendix A)

Provision of the information contained in the section 188 letter (Appendix F) is a legal requirement if redundancies are anticipated. Requests from Trade Unions should be addressed to the Chair of the Selection Committee, unless otherwise specified, and replied to as soon as possible after receipt.

Unions undertake to keep the information confidential from school staff prior to the staff meeting unless advised otherwise.

7.3 Staff meeting

All staff potentially affected by the staffing review must be invited to a staff meeting to initiate the formal consultation process (Appendix E). This is organised by the Headteacher and usually attended by representatives of both the Selection Committee and NYHR. This meeting is usually held directly after the initial meeting with Trade Unions to allow them to attend to support their members.

The purpose of the meeting is to:-

- start the consultation process
- explain the situation and proposals (including current and proposed structures) and to discuss possible options/alternatives
- explain the process to be followed and associated timescales
- provide appropriate written information*, including Appendix G1, G2 or G3 – *HR can advise on which information sheet for staff is applicable*
- explain the impact on staff groups or post holders and where ring-fencing applies, the proposed selection criteria and methods (if available), job descriptions, etc.
- highlight the opportunities for staff, where applicable
- listen to any concerns raised and to explain the consultation process
- answer any immediate questions from members of staff and union representatives
- outline the support available
- record the start of consultation - notes should be taken and circulated

*The information shared at this meeting is usually provided in the form of a "consultation pack" including the above elements which is provided to each member of staff. This might be done by posting the information to a staff intranet site. Staff should also be sent a letter following the staff meeting summarising the main points that were discussed at the staff meeting (Appendix H1, H2 or H3)

Union Representatives may want to discuss the proposals in private with their members following the consultation meeting, and rooms should be made available for this.

Employees who may be affected by the review are:

- entitled to explore their options on a 'without prejudice' basis

- expected to engage in the consultation process and with the method of selection as appropriate i.e. complete a skills audit form, make expression of interest, attend relevant interview/selection processes where appropriate.
- entitled to request confidential estimates of redundancy pay
- entitled to make application for voluntary redundancy where it is applicable to do so, re-deployment, reduction in hours as appropriate
- entitled to request individual meetings with the Headteacher/senior manager

Written responses to the consultation should be addressed to the Chair of the Governors' Selection Committee.

7.4 Voluntary Redundancy (see also notes below)

In situations where there is a ring-fence of more staff to the number of posts available in the new structure, the school may seek volunteers for redundancy.

- employees considering voluntary redundancy are entitled to request an estimate of their redundancy payment from HR on a confidential and without prejudice basis.
- applications for voluntary redundancy are made to the Chair of the Selection Committee within the agreed period for volunteering (normally the within the 30 day consultation period). If a volunteer is accepted they should be notified of this in writing (Appendix I1)
- the Governors Selection Committee will consider applications for voluntary redundancy prior to starting any methods of selection.
- any requests for voluntary redundancy will be given full consideration, but there is no obligation on the part of the school to accept the application. However, if governors reject an application for voluntary redundancy and, instead, proceed with compulsory redundancy they will need to have a sound business case for doing so.
- if there is more than one applicant for voluntary redundancy in a particular pool then agreed criteria should be used in order to select the applicant(s) (see para 5.5) – (Appendix I3)
- if a volunteer(s) comes forward but is/are not accepted by the Selection Committee (Appendix I2) then staff will be notified and there will be a further period of up to 5 working days allowed for other members of staff, within the ring-fence, to consider volunteering for redundancy. If any further volunteers come forward they will be considered by the Selection Committee before compulsory selection is implemented.

☞ **Notes:** (i) Accepted volunteers for redundancy must be offered a right to representation (and subsequent appeal). Although unlikely to be taken up very often, this is a best practice requirement and must be complied with.
(ii) There is now no difference in calculation of redundancy between voluntary and compulsory terms. Teachers will always be capped at the statutory limit of a weeks' pay, and only enhanced at schools discretion (and cost); and support staff will always be based on the value of their actual weeks' pay.

7.5 Voluntary Transfer

Where a school structure is under review and redundancies are anticipated, and it is known that there are vacancies in neighbouring schools, the Headteacher may approach that school to see if voluntary transfer is an option. If staff affected by the review would like to consider this, they should discuss this with their Headteacher. There is no obligation on school's to accept staff from neighbouring schools. (See 12.8)

7.6 End of consultation period

Following the end of the consultation period, the full Selection Committee should meet to consider any comments and suggestions from Trade Unions and staff regarding the staffing review proposal, as outlined in the consultation document. The Selection Committee should either approve the proposal or consider amendments, which may be subject to further consultation if applicable. Any volunteers should be considered at this stage and agreed if appropriate (Appendices I1, I2, I3).

Once the proposal has been approved, the Headteacher should ensure that Trade Unions and staff are advised of this, through appropriate communication channels, and also advise them of the date on which the implementation plan will commence.

8.0 Selection and Appointment Stage - Principles

8.1 Appointment to the new structure should, in most instances, take place top down appointing to the most senior posts first. Appointment to the posts should be based on the following guidance. Depending upon changes to the posts in the structure, recruitment and selection to the posts may take place on the basis of ring fenced posts (see 9.6).

8.2 As soon as appointment decisions are made, the applicants must be provisionally offered the posts and asked to confirm their acceptance of the offer, in writing. Where applicants decline their offer this must also be in writing, stating the reasons.

8.3 Where posts in the revised structure are not appointed to, then those posts may be advertised through normal recruitment procedures, after consideration of any displaced individuals, if appropriate.

☞ **Note:** Posts must be offered provisionally because if a representation or appeal hearing overturns a decision it may be necessary to consider changes or recommence the process.

9.0 Selection and Appointment Stage - Implementation

☞**Note:** For staff reorganisations see 9.1 to 9.7, for selection via skills audit see 9.8

9.1 Unchanged Posts – Direct Assimilation

Where an employee's post is unchanged in the new structure, and there is the same number of posts as current post holders, they should be directly assimilated into the post without the requirement to participate in a selection process. This is often referred to as 'slotting in'.

9.2 Unchanged Posts – Reduction in the Number of Posts

Where there are unchanged posts in the new structure but there is a reduction in the number of posts versus the number of postholders, this group of staff should be ring fenced for the posts, and a competitive selection process should take place involving the Governors' Selection Committee. The selection process should either be via the use of selection criteria (see 5.5), or be via a competitive interview/selection process. If an employee is unsuccessful at being appointed to a post following a competitive selection process, they would then be 'at risk' of compulsory redundancy and consideration of redeployment should take place with the local authority (see Section 12)

9.3 Deleted Posts

Where employees' existing posts are deleted as part of the new structure, they should be ring-fenced for other posts in the structure, where applicable. See information on ring fencing below (9.6). If an employee is unsuccessful at being appointed to a post following ring-fencing they would be at risk of compulsory redundancy.

If there are no posts within the new structure to which an employee can be ring fenced, they will be at potential risk of compulsory redundancy from the outset.

Consideration of redeployment should take place with the Local Authority in both scenarios (see Section 12)

9.4 Changed Posts

Where there are changed posts within the proposed new structure, consideration will have been given when drafting the proposal for consultation as to which employees, if any, should be ring fenced for each post(s), depending upon suitability in relation to the person specification(s). Please refer to information on ring fencing below (9.6).

Where there are equal numbers of posts to suitable employees and changes to posts are minimal, slotting in may be considered.

Employees in a ring fenced group should be invited to apply for the changed posts, and may be required to complete a preference form. Selection should be by the chosen selection methods, following consultation.

Where employees are unsuccessful in gaining a post in the new structure, they must be given the reason in writing and advised of their status: i.e. whether there will be other posts in the structure they can be considered for, or notified that they are now 'at risk' of compulsory redundancy, and consideration of redeployment should take place with the Local Authority, see Section 12.

9.5 New Posts

Where there are new posts in the structure employees should be ring fenced to apply for the new posts, depending upon suitability in relation to the person specification(s). Selection should be by the chosen selection methods, following consultation.

Where applicants are unsuccessful they must be given the reasons in writing.

9.6 Ring Fencing Employees

Ring fence eligibility must be based on:

- posts in the new structure which include areas of work within the new post(s) that the employee is currently responsible for.

- the existing grade of the employee and proposed grade of the new post. However, it must be noted that the primary aim is to avoid redundancies and therefore if an employee meets the selection criteria for a higher banded post on the revised structure and a post at an equal pay band is not available to them then they should be eligible for ring fencing for the post.

There may be different levels of ring fencing, depending on the breadth of the reorganisation. In some instances, employees in ring fenced groups will have more than one post to apply for. Where this is the case they will be given the opportunity to indicate their choice.

The ring fencing selection arrangements will form part of the consultation process and will take place before consideration is given to the need for internal or external advertisement.

9.7 Offers of suitable alternative employment

Where an employee indicates that they do not feel that the offer of a changed or new post constitutes suitable alternative employment a discussion will take place between the employee, their manager and a representative of HR. The employee may seek trade union advice prior to the meeting and may be accompanied, if they wish. Where an offer of suitable alternative employment is declined and no other suitable posts are available, the employee will be given notice to terminate their post (See section 11).

Employees who unreasonably refuse an offer of suitable alternative employment will lose their entitlement to redundancy pay. Reasonableness of a refusal will include consideration of an employee's individual circumstances connected with pay, status, travel and duties of the post concerned. The employee will be required to provide evidence that they have made every reasonable effort to seek alternative work and their reason for refusal of offers of such work should be made in writing.

Following the implementation stage, provisional offers should be made to all successful and unsuccessful individuals both verbally and in writing. See toolkit for applicable letters, Appendices M1, M2, M3, M4

9.8 Selection through the completion of skills audits

Where the chosen method of selection is via the completion of a skills audit, information gathered will provide the sole source of information from which the selection committee will make their selection decision. It is therefore important that employees engage fully with these methods of selection.

Where affected individuals complete a skills audit they will be asked to sign to confirm it is factually complete and accurate. The Headteacher should meet with all staff involved to explain this process and issue Appendix J to all affected staff. Staff will be advised of a deadline for return of their completed audits. The Headteacher will then verify the information provided and will discuss with individual staff any points of clarification. The Headteacher will then 'anonymise' the audits prior to the Selection Committee members receiving them.

Where it is recognised by the Headteacher that a member of staff has omitted a significant piece of information from their skills audit the Headteacher may point this out to the individual but should also ask all staff in the pool whether they also wish to add to/amend their skills audit forms.

Where a disagreement exists between an employee and the Headteacher as to the accuracy of a completed skills audit the Selection Committee should be made aware of the nature of the disagreement and each party should be allowed to state their case (in writing) to the Selection Committee. The Selection Committee will then determine the information to be taken into account.

Any staff choosing not to complete a skills audit will be scored zero. Staff unable to complete audits (this would apply only in extreme circumstances) can be assisted by the Headteacher. Late submissions will be at the discretion of the Selection Committee.

The Selection Committee will then apply the criteria, score the skills audits and notify individuals of their decision verbally and in writing.

A blank sample skills audit form and scoring matrix are available in the toolkit (Appendix K and L)

10.0 Representation and Appeal Hearings

10.1 Employees who are selected for redundancy:

- have the right to representation against the decision made by the Selection Committee to nominate their post as redundant
- have the right of appeal against the decision of the Selection Committee to the Appeals Committee.
- have the right to be represented by a Trade Union representative or work colleague at both hearings.

10.2 The employee must set out, in writing, the specific details of the grounds for representation and any subsequent appeal, which broadly may include;

- due to procedural fault(s) and/or;
- alleged unfair selection

10.3 Notice of Representation and Appeal Hearing

Employees must be given 10 working days notice of the date of the representation hearing (Appendix N1). This date would normally have been set at the point of determining the timescale planner (Appendix A). A suitable gap of time will be provided between the representation hearing and any resulting appeal hearing.

Employees are required to confirm attendance and the name and status of their representative as appropriate. If the employees chosen representative is unavailable to attend at the time of the proposed hearing, and the employee proposes an alternative time that is reasonable and falls before the end of the period of five working days after the original hearing date, the employer must postpone the hearing to the time proposed by the employee (ERA 1999, section 10). An HR representative may also be present to provide advice to the Committees.

Order of proceedings for representation and appeal hearings can be found in the toolkit, Appendix O.

10.4 Representation Hearing

The Selection Committee will hear representations and decide whether or not to reconsider their decision(s) as a consequence. The outcome of the hearing must be put in writing to the employee (Appendix P). Where a decision to select an employee for redundancy is confirmed, notice may be issued prior to any representation hearing taking place.

10.5 Appeal Hearing

The employee will have first made representation to the Selection Committee and will be appealing against the decision of that Committee to an appeal panel of governors. The outcome of the appeal hearing must be put in writing to the employee (Appendix Q).

☞ **Note** Where a proposal/decision is reversed by the Selection Committee or overturned by the Appeals Committee then careful thought (along with HR Advice) will need to be given as to how to proceed. It may be necessary for the process to be completely re-started. Further consultation with the trade unions should take place.

10.6 Notifying the Local Authority

Before notifying the LA (NYHR) of any redundancies, governors should ensure that employees affected have been notified of the decision and made aware of their right to representation and appeal. Following the end of the appeals process provisional appointments should be confirmed, if appropriate.

11.0 Notice periods

The statutory notice period for teaching and support staff is one week for every year of continuous service up to a maximum of 12 weeks. Contractual notice periods are often longer than this minimum entitlement. Whichever is the longer of the statutory or contractual notice period must be provided.

Staff group	Notice period (contractual)
Teaching staff (2 months - but 3 months	31 October for redundancy at 31 December 28/29 February for redundancy at 30 April

ending at the end of the academic year)	31 May for redundancy at 31 August
Support staff	Stated in individual contracts (not bound by term dates)

The school must notify the LA of any redundancies once the selection process has been completed; notice is then issued by the LA unless it is an Aided, Foundation or Academy school where Governors can request that the LA issue notice on their behalf or they can issue notice themselves (Appendix R) and provide copies to the Local Authority.

In some circumstances, it may be necessary for notice to be issued prior to any representation hearing (and any subsequent appeal hearing) being held. If at the hearing(s), the decision is reversed, notice can be rescinded.

12.0 Redeployment

12.1 Purpose and Principles

The purpose of redeployment is to facilitate recruitment into an alternative post, where the skills and abilities of the employee can be used positively. It is a requirement that both employer and employee fully participate in the process and are able to demonstrate reasons if redeployment has been unsuccessful.

Schools should consider redeployment wherever the minimum requirements of the person specification are met or where it is possible to demonstrate they would be met, with training, within a 3 month period (see 12.9).

Under LMS each Governing Body has responsibility for the employment of staff in school. The Authority can therefore only request consideration of individual appointments and cannot place staff into schools.

12.2 Eligibility for redeployment

Where an employee has more than 12 months continuous service, redeployment will be sought in accordance with this procedure when staff are under notice of redundancy or where it is clear at the outset there is likely to be no post for them at the end of the restructure.

12.3 Factors defining suitable alternative employment

Pay	For support staff, the school has the discretion to protect earnings for a time limited period (maximum 1 year) against a significant fall in the current rate of pay. If applied this is normally payable by the school.
Status / grade	Where possible employees should be redeployed to a similar post with the same status and grade.
Location	Consider the degree of disruption likely to be caused by a change in location, taking into account the individual's personal circumstances and additional expense and travelling time incurred
Working environment	This may be an issue for those who may have a disability or health complaint
Hours of work	Should be similar, where possible, and take account of the individual's circumstances if they are increased / decreased.

12.4 Employees' and Schools' rights and responsibilities

Employees who are eligible for redeployment are expected to:

- register on the NYCC online Talent Pool
- keep a record of posts they have applied for and the outcomes;
- be able to provide reasons for not pursuing, or accepting offers of, redeployment.

Schools are required to give employees who are eligible for redeployment:

- reasonable paid time off to meet with their Trade Union representative;
- reasonable paid time off for interviews and to look for work (legal minimum of 40% of one week's work i.e. 2 working days during the notice period for a full-time employee);
- access to the Health Assured employee assistance programme.

12.5 Redeployment process

- where an employee meets the essential criteria of a school vacancy, the Resourcing Solutions team can, at the employees request, contact the school and request that the employee is considered to be invited for interview.
- where an employee meets the essential criteria of a NYCC Directorate vacancy the Resourcing Solutions team will, at the employees request, contact the manager of the vacancy and request that the employee is considered to be invited for interview.
- if more than one redeployee is suitable, all should be considered in accordance with the normal selection procedure for the post.
- if, following interview the employee and recruiting school agree the post as suitable, a formal offer subject to trial period should be made in writing.
- following an interview the school should notify NYHR of the outcome.
- if the employee does not consider the post as suitable, pre or post interview, they must submit their reasons in writing to NYHR.
- where redeployment is being considered to a lower graded level, the individual and school should contact NYHR for further details of the implications for the employee and school. Payment protection does not apply to employees redeployed between or from schools unless in exceptional circumstances and where agreed with the school the employee is joining prior to the alternative post being accepted.
- an employee selected for compulsory redundancy or accepted for voluntary redundancy will not be entitled to a redundancy payment if they are offered and accept employment with the Authority or an associated employer (as defined by the Local Government Modification Order) before their existing contract ends, to commence within 4 weeks of their existing contract ending. In these circumstances, the new employment would be regarded as continuous service.

12.6 Refusal of alternative employment

Employees who unreasonably refuse an offer of suitable alternative employment will lose their entitlement to redundancy pay.

Reasonableness of a refusal will include consideration of an employee's individual circumstances connected with pay, status, travel and duties of the post concerned. The employee will be required to provide evidence that they have made every reasonable effort to seek alternative work and their reason for refusal of offers of such work should be made in writing.

12.8 Direct substitution ('bumping')

Where a school structure is under review, as a means to avoiding compulsory redundancy it may be reasonable to displace an employee in a post not at risk (including in another school), in order to retain an otherwise redundant member of staff. NYHR should be contacted where this is being considered by the school.

- the displaced employee must be willing to volunteer for redundancy
- the volunteer must be skills cross-matched with the redundant post-holder
- the Headteacher/Governors at the receiving school will decide if the match is suitable in accordance with the redeployment process.
- early consultation with NYHR is recommended.

12.9 Trial Periods

Where alternative employment is taken up the individual is entitled to a minimum 4 week trial period in the new post (the time period can be extended for up to a total of 3 months for training purposes only, provided this is agreed in advance of the new post starting and is recorded in writing). An induction plan should be produced detailing any agreed support and development activities.
Either the employer or the employee can end the employment during or at the end of the trial period if they deem it unsuitable. If the employee unreasonably rejects the new post (or works in it beyond the end of the trial period) a redundancy payment will not be made. *HR advice should be sought in these circumstances.*

13.0 Redundancy payments

13.1 Entitlement

Redundancy payments apply to teaching and support staff who have at least two years continuous service at the date of termination. This service may be as a result of an established contract, a number of continuous fixed term contracts or may result from an employee's earlier unbroken service with an associated employer under the Local Government Modification Order.

Redundancy pay is calculated as outlined below and each redundant employee must be given a written statement showing how the calculation was made, which will normally be provided by the Local Authority.

Note 1: There will be no monetary difference whether a member of staff leaves on a voluntary or compulsory redundancy basis. In either event, support staff calculation will be based on 'actual' weeks' pay*, whereas teaching staff will have the statutory limit applied (unless the school enhance voluntary terms at their own cost) – see Section 13.3.

*Note 2: When calculating redundancy payments NYCC will use the employee's actual weekly pay plus the applicable employer pension contribution rate, where the total does not exceed the statutory weekly capped amount. Where these combined payments exceed the statutory weekly capped amount the higher of actual weekly pay or the statutory weekly amount will be used. These entitlements will be applied to part-time staff on a pro rata basis.

13.2 Support Staff Pay Calculation

Starting from the date of redundancy and counting backwards, for each completed year of service, redundancy pay is calculated as follows: -

For each completed year up to the age of 21 – 0.5 week's pay for each completed year of service
For each completed year aged between 22 – 40 years of age – 1 week's pay for each completed year of service
For each completed year aged 41+ years of age – 1.5 weeks' pay for each completed year of service

A maximum of the last 20 years service is taken into account in all redundancy payments

- the payment is calculated on the basis of a week's pay, the employee's age and length of service.

- the authority disregards the statutory limit on a week's pay (£508 as at April 2018) in calculating support staff redundancy pay.

- the first £30,000 of a Redundancy Payment is normally paid free of tax.

13.3 Teaching Staff Redundancy Pay

For teaching staff the calculation is based on the calculation detailed in 13.2, but with the application of the statutory limit on a weeks' pay (£508 as at April 2018). With reference to Section 5.3, schools will have discretion to enhance payments to preserve 'voluntary' redundancy terms (removal of statutory limit) at their own cost.

14.0 Pension benefits

Employees who are redundant and who are members of the Local Government Pension Scheme (LGPS) may be entitled to certain pension benefits. In such circumstances these benefits will include:

- pension payments as they have accrued at the date of redundancy/retirement and as they may be subsequently adjusted

- where appropriate, a lump sum payment calculated on reckonable service at the date of redundancy/retirement

From the 31st March 2010, to qualify for such entitlements employees must be members of the LGPS and, as at leaving date, have attained the age of 55 years and whose employment is terminated in accordance with Regulation 19 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (or any subsequent amending regulation).

These payments can be substantial ***and the school will be required to meet the full cost in relation to this***. HR will arrange for benefit estimates to be provided on request prior to any final decision being made, but schools are urged to request these early to ensure that any proposals are based on full understanding of the financial implications.

It is not NYCC policy to grant premature, unreduced retirement benefits when members of the Teachers' Pension Scheme are made redundant. Members of the Teachers' Pension Scheme should contact Capita Teachers' Pensions directly on 0845 6066166 or www.teacherspensions.co.uk for information on the effect of redundancy on their pension entitlements and the options available to them. For example - Employees aged 55 or over may be able to apply to access actuarially reduced benefits if they satisfy the criteria.