



**The  
Three  
Rivers**  
Learning Trust

<b>Name of Policy</b>	<b>Alternative Employment</b>
<b>Policy Number</b>	<b>H1</b>
<b>The Three Rivers or name of school</b>	
<b>Named Person(s)</b>	<b>AVEC</b>
<b>Review Committee</b>	
<b>Last review date</b>	Autumn 2020
<b>Next review date</b>	Autumn 2021

## Scope

The provisions of this policy will apply to all staff directly employed by the Three Rivers Learning Trust.

## Purpose

The first purpose of this policy is to set out when and how employees "at risk" of dismissal within the Trust should be considered for alternative employment. The second purpose is for each Academy to identify how it will consider employees "at risk" of dismissal in other academies that are part of the Trust for vacancies that could be suitable alternative employment.

Employees within the scope of this policy/procedure are:

- all permanent employees and those fixed-term employees with at least one year of continuous service with the Trust; and
- who are "at risk" of dismissal or under notice of dismissal for reasons of:
  - redundancy
  - lack of capability due to ill health or disability
  - lack of capability due to poor performance
  - misconduct (except gross misconduct)
  - contravention of a statutory enactment; or
  - any other substantial reason including the non-renewal of a fixed-term contract following the return of the substantive post holder.

Employees in scope of this policy/procedure based on the above criteria will be referred to as being "at risk" throughout this document.

## Policy statement

The Trust is committed to protecting and maintaining employment as far as is reasonably practicable as this enables valuable knowledge, skills and experience to be retained within the workforce. This approach is fully supported by all teaching and support staff unions.

The board of directors recognises its legal obligation to offer, where a suitable post exists, alternative employment within the academy to its own staff who come within scope of this procedure. It will also take all reasonable steps to support employees who cannot be retained in this way to obtain alternative employment in the Trust.

This policy/procedure reflects the commitment of the board of directors to:

- avoid unlawful discrimination on the basis of any of the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation
- treat employees with dignity and respect
- ensure that directors and school leaders follow this policy/procedure and are committed to avoiding dismissals
- support them to do so by ensuring that they understand their responsibilities and have access to appropriate training.

## **Legal considerations**

**Action short of dismissal:** Before dismissing an employee, employers must be satisfied that they have taken all reasonable action short of dismissal. This includes considering alternative employment for an employee before the dismissal takes effect. The only exception is where the employee has breached the implied term of trust and confidence, for example through gross misconduct or a factor unconnected with their employment that makes their position untenable. The relevant test is whether it can be considered reasonable for the employer to continue to employ the individual in any post within the organisation.

**Fixed-term employees:** The law is designed to ensure that fixed-term employees are not treated less favourably than permanent employees in their employment conditions. The expiry or non-renewal of an employee's fixed term contract is a dismissal and fixed-term employees with one year or more of continuous employment should be given access to this procedure.

**Equalities legislation:** Employers must not discriminate, either directly or indirectly, against people on the basis of any of the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation, unless this can be objectively justified. This applies to all dismissal processes including the stage of considering alternative employment.

## **Roles and responsibilities**

**Board of directors:** The board of directors should monitor the status of individual employees who are "at risk" within the scope of this procedure, as well as the school's overall compliance with the requirements of this policy and procedure.

**Head teacher:** The headteacher has responsibility for implementing this policy and procedure. This involves supporting any employee in their Academy to be successful in gaining suitable alternative employment and therefore minimising the number of dismissals. This will include acting as, or identifying, an appropriate contact officer. It also involves being proactive in implementing the policy and ensuring "at risk" employees from the other Academies within the Trust are considered for suitable vacancies in their Academy in accordance with the policy set by the board of directors.

**Contact officer:** The contact officer, usually the headteacher or another senior leader, will proactively work with "at risk" employees to identify their skills, review vacancies on a weekly basis and draw those that may be suitable alternative employment to their attention and support them with application and interview preparation. In all cases where the contact officer is not the headteacher, feedback should be provided to the headteacher on a regular basis.

**Employees:** Employees within scope of this procedure must make genuine and serious efforts to find suitable alternative employment. This includes highlighting vacancies that they consider may be suitable to their contact officer and preparing for interviews to which they are invited. In addition, where an employee "at risk" of redundancy unreasonably refuses an offer of suitable alternative employment or refuses re-engagement on their original terms and conditions they will not be entitled to receive a redundancy payment.

## **General principles**

The following general principles will apply whenever employees are identified as being "at risk":

- there is a legal duty on headteachers to consult with an employee at all stages of the process where dismissal may be an outcome
- efforts to secure alternative employment under this policy will start as soon as an employee or a group of employees is confirmed "at risk", based on the criteria in the Scope section above and considering the advice in the Identifying "at risk" employees' section below
- seeking alternative employment should start early and be managed in a positive manner with a view to minimising dismissals and retaining and developing valuable employees
- "at risk" employees will be encouraged to explore employment opportunities beyond the scope of their current post and consider career change and retraining
- Academies with "at risk" employees are responsible for ensuring that all relevant vacancies are brought to the attention of the employees concerned
- the academy must not fill a potentially suitable vacancy through open competition until "at risk" employees within the academy have been properly considered, as set out in the Learning Trust's Recruitment Policy, using criteria that are fair and do not unlawfully discriminate
- where the board of directors has agreed to do so in the Policy statement section above, the academy will not fill a potentially suitable vacancy through open competition until "at risk" employees from other academies within the Learning Trust have been given priority consideration
- the Academy must be able to show that it has actively followed this policy and procedure in order to defend itself against any potential employment tribunal claims for unfair dismissal and/or unlawful discrimination.

## **Identifying "at risk" employees**

### **As a result of a dismissal procedure relating to individual circumstances**

Individual cases will cover all situations where seeking alternative employment is due to reasons other than those connected with redundancy or restructure. Examples include capability cases due to ill health or disability.

In sickness absence cases, an employee may be considered "at risk" at the point when it is considered likely that the next stage in managing the absence would be to consider dismissal. It will be appropriate to seek advice from Occupational Health as to whether a return to the existing job may be likely in the foreseeable future. If a return is not foreseeable then it is likely that at that point the employee will be deemed to be "at risk". The situation should be discussed with the employee at a meeting under the Managing Sickness Absence Procedure. Alternative employment will normally be considered before notice is issued.

In all cases where the employee is considered disabled under the provisions of the Equality Act 2010, the academy must ensure that it has met its positive and proactive duty to make reasonable adjustments that take steps to remove or reduce obstacles that would otherwise prevent the employee fully participating in the workplace. This may mean making changes to the way they do their job, to the academy's premises or providing extra or adapted equipment or support. It may also mean making changes

to the way this procedure is applied to ensure that disabled people are not adversely affected because of their disability.

### **As a result of a redundancy process in the academy**

In cases where there are proposed redundancies, for example as a result of a structure review, a decline in pupil numbers or budget pressures, headteachers should take action at an early stage before any individual has been identified for redundancy. Although there are no hard and fast rules as to when "at risk" status will be confirmed, consideration of the issues should begin as soon as reasonably practicable and each case considered on its merits. For example, it would not be reasonable to consider an employee with a fixed-term contract for a specific task to be "at risk" at day one of their employment, nor would it be reasonable to wait until notice has been issued.

In redundancy situations involving a number of employees it may be appropriate to grant "at risk" status to employees within the selection pool at a point where it is reasonable to conclude that there may be an overstaffing situation: for example, at the start of the formal consultation process. Early identification of "at risk" status will increase the opportunities available for alternative employment. Discussions should take place with the relevant employees and the trade unions to ascertain and confirm if employment may be "at risk" as defined in this procedure. This discussion may form an early part of the informal consultation process but will not be a substitute for the formal consultation required at a later stage, at which point decisions about "at risk" status should be revisited.

Where there is potentially a whole group of employees "at risk" within an academy, for example due to overstaffing in one particular curriculum area, all of the group will be granted "at risk" status until such time as the overstaffing situation is resolved. That group of employees will be eligible to apply for posts as "at risk" employees on a voluntary basis ahead of the application of selection criteria by the hearing body at the proposal meeting and by doing so will be assured that they are not increasing the possibility of being selected for redundancy should there be a need to eventually apply selection criteria.

At the point when there is no longer a risk to that group of employees, "at risk" status will be revoked for the whole group. This may be as a result of an individual securing alternative employment in another Academy or externally.

### **Appointing a contact officer**

- The contact officer will establish and maintain close individual contact with all "at risk" employees to explain the procedure, discuss the types of jobs that may be suitable, and support the employee to complete applications and prepare for interviews
- The contact officer will complete a Personal Log for "At Risk" Employees in consultation with the employee showing alternative positions sought, minimum and maximum hours and any other considerations to be taken into account including, for example, any barriers that may need to be overcome through reasonable adjustments in the case of a disabled employee
- Contact officers and other people having a role in the alternative employment process (especially in the assessment of an employee's suitability for employment) must ensure that detailed notes are kept in the employee's file.

These notes must cover discussions with the employee concerning actual or proposed alternative employment and any decisions taken by the academy or the employee. This is particularly important if the employee does not wish to be considered for suitable alternative employment or if no mutually acceptable alternative employment can be found.

### **Identifying suitable vacancies**

- Whether a vacancy is suitable will depend on what is reasonable given all the circumstances of the particular case. This will involve comparing the employee's current contract of employment with the post in question with regard to a number of factors: salary (including the availability of pay protection/safeguarding where relevant and where the employee is eligible), terms and conditions (including working hours and location), duties, skills/knowledge and status
- A discussion should take place between the employee and the Contact Officer regarding the suitability of vacancies, at which the employee may be accompanied by their trade union representative
- Although schools are strongly advised to consider fully the advice of their HR provider with regard to suitability, it is ultimately for the board of directors to decide what is suitable, having taken into account the legal framework
- An "at risk" employee applying for an unsuitable vacancy will not be considered under this policy and procedure. Instead, they will be in competition with other internal and external applicants and will not be eligible for any form of pay protection or excess travel expenses.

### **Seeking alternative employment for employees**

#### **Alternative employment within the academy (and Learning Trust)**

In the first instance, "at risk" employees must be offered suitable alternative employment within the academy (and other academies within the Learning Trust, where appropriate) where such a vacancy exists.

Where the vacancy may be suitable alternative employment for more than one employee "at risk" within the academy (or Learning Trust), the board of directors must ensure that these are offered using criteria which do not unlawfully discriminate. The situation is different in a redundancy situation if any of the "at risk" employees is a woman on maternity leave as she does not have to go through selection against the criteria for filling a vacant post but must be offered any suitable available job ahead of all other "at risk" employees. Failure to comply with this requirement would result in a finding of automatically unfair dismissal by an employment tribunal.

## **Giving priority consideration to “at risk” employees for suitable vacancies**

Where the appointing officer in the academy identifies that the employee meets the essential criteria stated in the person specification, or is uncertain whether this is the case, they should arrange to interview the employee to explore any relevant areas (and carry out any of the other pre- appointment checks required under the Learning Trust’s Recruitment and Selection Policy) as soon as possible.

When assessing whether an employee should be appointed to the vacancy, the appointing officer in the academy should:

- Make a decision about whether the employee meets the essential criteria in the person specification based on evidence from their application form, interview and any other assessment method used; and undertake relevant pre-appointment checks, including taking up references and, where appropriate, a DBS check as described in the relevant Recruitment and Selection policy.
- Where it is felt that the employee does not, at the time of assessment, satisfy the essential requirements for the post but may do so after a reasonable period of training or experience, they should be deemed to satisfy the requirements. In such circumstances, an extended trial period should be considered (as described below)
- Other than in very limited circumstances the law prevents employers from asking questions about an applicant’s health, disability or sickness absence record until they have been conditionally offered the job. The employee should be asked to complete a health declaration form only when they have been offered the alternative employment on a conditional basis. Occupational Health may require the employee to attend for further assessment
- If the “at risk” employee is disabled, the assessment against the person specification – and the assessment process itself - should take account of any reasonable adjustments that would remove or reduce obstacles that would otherwise prevent them fully participating in the workplace. This may mean making changes to the way they would do the job, to the academy’s premises or providing extra or adapted equipment or support
- If the academy considers that the employee does not satisfy the essential requirements for the post, they should write to let the employee and their contact officer know the outcome of the application, including the reasons for not appointing them
- In cases where alternative employment is found at an early stage before the “at risk” employee’s current employment is due to end; it may be appropriate for the academy to consider releasing the employee early. Alternatively, it may be agreed that the “at risk” employee remains in their current post and the vacant post is filled on a temporary basis until such time as the alternative employment can take effect. The reason for the appointment being temporary should be made clear at the outset so that the fixed-term contract can be ended fairly and legally when the “at risk” employee subsequently takes up the post.

## **Trial periods**

Alternative employment offered under this procedure in a redundancy situation will be subject to a trial period of four weeks if any term of the new contract differs from the corresponding term in the old contract: for example, place of employment or terms and conditions.

The trial period can start before notice of dismissal from the original post has been

issued, however, there is a statutory right to a trial period of four weeks following the date that the dismissal would have taken place.

Headteachers will ensure that the appointed employee is provided with induction complying with best practice and suitable skill and knowledge training for the new job during the trial period. The contact officer from the employee's previous academy will monitor the trial period and may seek advice from the Learning Trust's HR provider.

During the trial period it is open to either the appointing officer or the employee to terminate the contract on the grounds that the employee or post is unsuitable. Where the employee considers that a post is unsuitable, they are strongly advised to take advice from their trade union representative before making a decision to terminate the contract. In the event that the trial period is not successful, the academy where the employee was originally "at risk" will be responsible for undertaking the necessary procedures leading to dismissal. The grounds of any such termination will be redundancy and will take effect from the original intended date of the redundancy before the trial period commenced.

Trial periods can be extended by agreement for the purpose of retraining. The agreement must:

- be in writing and be made before the start of the new contract
- set out the date on which the period of retraining will end
- set out the terms and conditions that will apply to the employee at the end of the retraining period.

In situations other than redundancy there is no statutory right to a trial period however it may be possible to second an employee to another academy for a period of time in order to determine whether the alternative employment is considered suitable by all parties before a permanent appointment is made.

### **Pay protection and safeguarding**

Subject to the alternative employment being deemed suitable support staff who secure alternative employment under this procedure will be eligible for pay protection for a period of up to three years (including excess travel payments) and assistance with relocation expenses where applicable.

Safeguarding of pay is mandatory for a period of up to three years for teachers in some circumstances, as set out within the School Teachers' Pay and Conditions Document. There is no discretion to offer safeguarding unless it is provided for within the School Teachers' Pay and Conditions Document.

Headteachers and contact officers should encourage employees who are members of a pension scheme to contact the relevant scheme for advice in relation to the possible pension implications of alternative employment.