



Introduction

We hope you had a restful summer break. We start this new academic term approaching normality following the difficulties of Covid-19 since March 2020. We hope that the approaching winter months do not return to the challenges of increased infections and staff absence. However, we remain prepared as always!

The new academic year starts with a degree of uncertainty with a new prime minister, significant energy price increases anticipated which will inevitably have an impact on already stretched school budgets.

There are several new developments in relation to teachers and support staff pay and we await these to be finalised in due course.

In relation to pension indexation following the partial pay freeze for teachers in 2021, the DfE and Teachers Pensions have provided guidance to manage this issue for those teachers within 10 years of retirement age.

Keeping Children Safe in Education came into effect from 1st September 2022 and a key change is the recommendation to conduct online searches for prospective candidates.

There has been a Supreme Court judgment issued at the end of July for the Brazel v Harpur Trust case. This has significant implications for casual staff

In this newsletter we have included a reminder of the new arrangements for Fit Notes and the publication of Family Friendly Leave Policies and Forms on the Octavo website.

We also have included articles on long covid and menopause. The impact of both is becoming more prevalent for schools in some cases may constitute a disability under the Equality Act 2010.

We are looking forward to working with you over the coming term to support you with managing your workforce. Please do not hesitate to contact your HR Consultant if you have any issues to discuss.

The Schools HR team

Pay

i. Teachers

The draft version of the School Teachers Pay and Conditions Document (STPCD) was issued on 19th July 2022 following the publication of the School Teachers' Review Body's (STRB's) 32nd Annual Report alongside a communication from the Secretary of State accepting the STRB's recommendations for the academic year 2022/23.

Consultation with statutory consultees is now underway and will run until early September. The final version of the STPCD is due to be laid before Parliament on 14th October 2022 and come into force on 4th November 2022. The pay award will therefore need to be backdated to 1st September 2022.

The September 2022 pay award of a 5% increase on all pay and allowance ranges and advisory points, with higher increases to some parts of the Main Pay Range (of between 5.5% and 8.9%) as a step towards achieving a minimum starting salary of £30,000 by September 2023.

As is our practice we will be consulting with the unions about the Payscale in appendix 5 of our Pay Policy once the final version of STPCD is available.

ii. Support Staff

The National Employers have agreed to make a one-year final offer to the unions representing the main local government NJC workforce.

Unite will be consulting its members with a recommendation that the offer should be rejected and its consultation will run from the end of August to 14 October.

Unison's consultation will run from 15 August to 19 September, and it will be neutral on whether the offer should be accepted or rejected.

GMB will remain neutral on whether the offer should be accepted or rejected, and its consultation will start on 22 August and run to 21 October.

We will keep you updated as the consultations progress.

Pay Policy

The Model Pay Policy document will be published with the updated pay scales as soon as the STPCD 2022 comes into force.

Pay Statements for teachers need to be issued by 31 October. We have prepared draft ones, pending the final version of STPCD and these will be finalized once STPCD is agreed.

Teacher Pensions: indexation for 2021/22

There have been national discussions about the impact of the decision not to make a cost of living pay award to teachers with effect from 1 September 2021 and the potential detrimental impact this could have on pensions.

The issue has now been discussed at the TP Scheme Advisory Board (SAB) meetings. At the SAB meeting on 16 June 2022, the DfE confirmed that the TP regulations have been working as intended when the average salary calculation was introduced to the TPS in 2007. However, as some members with final salary service have been affected by the recent pay freeze, the DfE is considering changing the policy to increase the average salary rate each April in line with the Treasury Order that is used for the TPS career average scheme re-valuation.

Any proposed change to the TP regulations will be subject to public consultation and unlikely to be completed before 2023. The DfE also confirmed that there would not be a retrospective change to the regulations; this change will not affect those teachers who retire from the final salary section of the TPS before the regulations come into force.

This means that those who

- Joined the teachers' pension scheme before April 2015 and who
 - Are less than 10 years from retirement* and who
 - Have not received a form of pay increase this in 2021/22 (increment or promotion or other)
- will potentially be disadvantaged by the pay freeze last year.

As a reminder, under the TPS administration processes, it is possible to report a change of salary retrospectively to trigger the indexation for 2021/22, as long as the teacher has not applied for their retirement benefits before the change is made. Any retrospective change of this nature would need to be consistent with the teacher's contract of employment and the employer's pay policy.

Your HR Provider will be able to advise you about how you may be able to implement this. The costs are minimal and need only be £1 per teacher.

Keeping Children Safe in Education (KCSIE) 2022

The 2022 version of '[Keeping children safe in education](#)' is now in force and replaces previous versions. Since the '2022 for information' version published in May the DfE has made further changes and, annex F shows all the substantive changes that apply from September 2022.

The DfE have also replaced 'Keeping children safe in education: for school and college staff (part 1)' with an updated 2022 version.

Key changes related to HR matters

Some of the updates have particular relevance to HR matters, and we would draw your attention to the following:

- A reminder that low level concerns should be included in the staff code of conduct.
- Further information about low level concerns has been included. This stresses the importance of sharing low level concerns, including in situations where staff self-refer, for example, if they have found themselves in a situation which could be misinterpreted, might appear compromising to others, and/or on reflection they believe they have behaved in such a way that they consider falls below the expected professional standards.
- A reminder that CVs should only be accepted alongside an application form as a CV on its own will not provide adequate information.

- A new requirement that as part of the shortlisting process schools and colleges should consider carrying out an online search as part of their due diligence on the shortlisted candidates. This may help identify any incidents or issues that have happened, and are publicly available online, which the school or college might want to explore with the applicant at interview (See below for further information).
- Clarification that Schools and colleges must obtain written notification from any agency, or third party organisation, that they have carried out the same checks as the school or college would otherwise perform on any individual who will be working at the school or college (or who will be providing education on the school or college's behalf, including through online delivery). In respect of the enhanced DBS check, schools and colleges must ensure that written notification confirms the certificate has been obtained by either the employment business or another such business.

Undertaking an online search as part of recruitment safeguarding checks

The requirement to undertake an online search as part of recruitment processes is new this year and is inevitably raising questions.

In addition as part of the shortlisting process, schools and colleges should consider carrying out an online search as part of their due diligence on the shortlisted candidates. This may help identify any incidents or issues that have happened, and are publicly available online, which the school or college might want to explore with the applicant at interview.

The context is that some years ago there was a teaching assistant from abroad who was employed by a school in the UK. The school had completed the necessary criminal records checks. However, the law in the specific country stated that if a person under the age of 18 commits an offence, the offence is removed from their criminal record after 10 years. This individual had committed a very serious offence involving a small child, but because they were under 18 and applied for the job in the UK after 10 years their criminal record was clear, and the school was not made aware of this issue. While the school did not do anything wrong, an internet search would have revealed this information.

Bearing in mind this is part of a safeguarding check, the search is purely about whether the individual is suitable to work with children. Care must be taken to avoid unconscious bias and any risk of discrimination. In line with that approach, it may be sensible to have someone not on the appointment panel to conduct the search, only sharing information that is relevant and of concern.

It is important to note that 'online search' is not the same as a search of candidates' social media activity. It is true that the consultation draft of KCSIE 2022 included reference to social media searches, but the DfE withdrew this from the final version, based on consultation responses regarding employment law and the potential for discrimination and bias. The reason for making the change is that the DfE felt that a full social media search would open up the potential for discrimination and bias and that an online search would be provide sufficient safeguarding intervention.

The communication of the outcomes of the search should be factual, fair and free from bias.

The LGA have heard from the that some organisations are already offering to support schools by conducting these searches at cost, and that some legal and safeguarding experts have shared their interpretation of the DfE guidance which the LGA believes goes further than the DfE policy

intention, which is more simply an online search to check suitability of working with children. Schools need to be wary of organisations who may be offering to carry out very full checks as this may not be compatible with data protection legislation.

As part of an Ofsted inspection, a school's single central record will be checked to ensure pre-appointment checks have been carried out. Part of the due diligence checks will be an internet search, however, the LGA is aware schools are concerned that the guidance is not prescriptive on how far to go back and are worried this will be identified as a failure by Ofsted. The LGA has put this question to the DfE and understand that Ofsted have said their inspectors would not normally go into that level of detail when looking at due diligence checks.

Low Level Concerns and London Safeguarding Procedures

KCSIE states that schools need to operate in the context of local safeguarding procedures, and with regard to Low Level Concerns, the London Procedures have been updated, with Chapter 7 para 2.13 stating:

“The evaluation of low level concerns should always be undertaken in consultation with the LADO.” The consultation process allows for concerns to be evaluated objectively and to ascertain whether or not similar concerns may have been raised by a previous employer but not met the threshold for investigation. Whilst the LADO will only record the details of those allegations which appear to meet the threshold for consideration set out above, the employer should record the details of any low level concern that arises in respect of a member of their staff. The LADO should keep a record of the number of consultations that are determined to be low level by employer and include that information in their annual report to the LSCP.”

This is in line with the Croydon approach that was adopted when Low Level Concerns were first added to KCSIE last year and is reflected in the Model Code of Conduct.

Fit Notes

You will be aware that in April, changes were made to the format of Fit Notes.

The first change was that a new format for a Fit Note was introduced which allowed for Fit Notes to be issued digitally without a requirement for them to be signed.

The second change was that the new format referred to the “issuer” rather than to the doctor. We had anticipated that more guidance about this would be issued, and from 1 July, the following professionals may also issue Fit Notes:

- nurses;
- occupational therapists;
- pharmacists;
- physiotherapists.

These healthcare professionals are only able to issue fit notes if they have conducted an assessment of an individual's fitness for work. This means that it is not permissible for them to issue fit notes on request or via over-the-counter services without an assessment.

The profession of the issuer must be stated on the Fit Note and you will need to check that it is a doctor, nurse, occupational therapist, pharmacist or physiotherapist.

The issuer must also state their name, address and the date that the Fit Note is issued.

The changes make no difference to the period of self-certification which continues to be seven days (i.e. a Fit Note must be obtained for from the 8th day of absence), nor to the fact that recommendations about adjustments to assist a member of staff to return to work can be made.

It also continues to be the case that where a healthcare professional advises on the fit note that the employee may be fit for some work, they should give advice about what the employee can and cannot do at work. It is for schools to then discuss with the employee what changes could be made to help them return to work, and input from occupational health should also inform this discussion. In some cases, it may also be helpful to ask the employee to return to the healthcare professional for more advice on adjustments.

The advice provided on a fit is not binding on an employer. Ultimately it is the school's decision about how to implement the advice from healthcare professionals and how this can be made to work within their context which can differ between schools. The wider legal obligations on all employers, including the duty not to discriminate against those with protected characteristics, must be taken into account when reaching a decision.

If, following discussions with the employee and having sought appropriate healthcare advice, the school is unable to implement the suggestions on the fit note, this should be explained to the employee and followed up in writing. The fit note will then be treated as having advised that the employee is "not fit to work".

Family Friendly Leave

We have made minor amendments for clarification to our Family Friendly Leave Policies which have been added to our website. We have refreshed the Maternity Leave and Pay Claim Form, Request for Paternity Leave/Pay Forms for births and adoptions and the Request for Adoption Leave Form. These are available for you to use and can be found on the Octavo Website under Maternity & Paternity Forms in the Resources section.

Brazel v Harpur Trust – implications for casual staff

The long awaiting Supreme Court judgment in Brazel vs Harpur Trust was issued towards the end of July.

This has confirmed that the Working Time Regulations require all casual staff to receive a minimum of 5.6 weeks paid leave per annum calculated on the basis of average pay in the past 52 weeks where work has been carried out. This is a more favorable method than the previous one of adding 12.07% to the hourly rate of pay.

We are working with the Council's HR department on the implications of this.

If you engage casual staff, we encourage you to contact your HR Provider to discuss the issue of their holiday pay.

Flexible Working

The government is continuing to promote flexible working in schools and has added further information to its pages on this topic.

The full set of resources can be found at <https://www.gov.uk/government/publications/flexible-working-in-schools/flexible-working-in-schools--2>

ACAS Guidance: Asking and Answering Questions on Discrimination

All schools take the issue of discrimination in the workplace very seriously and will want to address any issues as they arise.

It is important that there is a culture where employees feel able to express concerns, and it can often be difficult to raise issues. To assist this ACAS has published guidance for workers on asking questions about discrimination at work, as well as guidance for employers on responding to such questions - <https://www.acas.org.uk/asking-and-answering-questions-about-discrimination>

The guidance on asking questions provides that the worker should set out a statement explaining what has happened and what led the worker to believe they have been discriminated against. As part of the statement, the worker should ask their employer if they agree with the statement or, if not, why. The worker should also raise any other appropriate questions that they feel need to be answered. The guidance on answering questions stresses that employers should reply as soon as is possible.

This approach should allow matters of discrimination to be addressed at an early stage and without recourse to the formal grievance process. The guidance effectively provides practical advice for staff about how to raise discrimination questions at the informal stage of the grievance process.

ACAS note that there is no legal requirement for the employer to respond. However, it is likely that a failure to respond would be taken into account if the matter ever went to an ET.

Long Covid

For the majority of people, recovery from Covid is relatively quick, but there are still a significant number of people for whom this is unfortunately not the case.

Because it is a new condition, there is still uncertainty about how long it will last and how to treat it.

The question is arising as to whether it should be treated as a disability, and a recent tribunal found that an employee with long COVID was disabled under the Equality Act 2010.

Long Covid is not among the conditions listed in the Equality Act as ones which are automatically a disability, such as cancer, HIV and multiple sclerosis, and consequently it cannot be said that all cases of Long Covid will fall under the definition of disability in the Equality Act.

Instead, each case must be considered on an individual basis and with Long Covid this is particularly necessary as the impact varies so much between individuals.

The relevant issue is the extent of the impact on the individual, in particular in relation to the following three questions:

1. Does that impairment have an adverse effect on their ability to carry out normal day-to-day activities?
2. Is that effect substantial?
3. Is that effect long-term? (i.e. has it, or is it likely to, last longer than 12 months)

As it is not possible to know at the outset how long the symptoms will last, the safest approach is to assume that the Equality Act applies, and to look at how best to make reasonable adjustments to support the individual.

In practice, this is the approach schools will be taking anyway in order to support someone to return to work. By following the sickness management process, accessing Occupational Health advice and having meetings with the employee, schools will be able to put in place appropriate measures to help the person with Long Covid.

It is also worth noting that because Long Covid has been found to affect certain demographics more than others, including older people, women and ethnic minorities, employees could raise complaints of indirect discrimination if they are treated to their detriment because they have long Covid.

Safer Recruitment Courses

We are happy to announce that we are running two online Safer Recruitment training courses in October.

The first will be the full Safer Recruitment course which is the nationally recognised Safer Recruitment Consortium training and is delivered by an accredited trainer. It focuses on the “safeguarding” aspects of recruitment, rather than general selection techniques. This is designed for school staff with responsibility for safer recruitment. This training is a statutory requirement for one person on every recruitment panel for school staff to have completed safer recruitment training

The course is split into two parts. Part 1 will be held on **6th October 2022 for 4 hours (including a short break) followed by Part 2 on 13th October 2022.**

We will also run the Refresher Safer Recruitment training. It is designed to provide school staff with updates of recent changes. If you are interested, you **must** have attended the full course previously and provide your Safer Recruitment Training certificate to verify this.

The course will be held on **20th October for 4 hours** (including a short break).

For booking details for both courses, please refer to the Octavo website.

Thought piece - Menopause at Work

According to research commissioned by Channel 4 in 2022, 44% of women surveyed said that their ability to work had been affected by the menopause, and one woman in 10 has left work due to menopause symptoms. There are around 4.4 million women aged 50-64 in work, with the vast majority going through menopause in their working lives.

Menopause symptoms vary from person to person - some are mildly affected, some significantly and others not at all. The symptoms that have the greatest impact on work performance and sickness absence are hot flushes, anxiety, fatigue, brain fog and memory disturbances/word recall issues. As many of the symptoms are mental rather than physical, they will not always be "visible."

It is important for employers to recognise the impact that menopause may have on individuals and to be supportive. Having open conversations with the individual is a positive way to understand the impact of their symptoms and discussing how best to support them in the workplace. This may include signposting them to resources and organisations who can help. As menopausal symptoms (as opposed to the menopause) may constitute a disability under the Equality Act 2010, reasonable adjustments should be considered.

However, irrespective of whether the individual's symptoms in fact constitute a disability, employers should always consider making any adjustments for all employees with a long term health condition. Occupational Health advice can be obtained about appropriate reasonable adjustments.

Reasonable adjustments are often low cost such as providing a desk fan or allocating a desk near the air conditioning unit. The individual is best placed to advise management what adjustments are required. These may change over time as symptoms change.

Another area for employers to consider is mitigating the risk of discrimination. Employers have obligations in law under the Equality Act 2010 to ensure that employees are not discriminated against or disadvantaged because of a "protected characteristic".

While menopause is not itself a protected characteristic under the Act the characteristics of age, sex and disability are protected under the Act. This means that any unlawful conduct within the workplace may lead to claims of discrimination in an employment tribunal.

Key points to consider are:

- Acknowledge that everyone is unique and the impact of menopause is different for everyone.
- Be aware of your own (and other's) biases and assumptions towards the menopause and how an employee is affected by it.
- Treat menopause in the same way as you usually would for any other long-term condition.
- Be open minded when considering reasonable adjustments. These may include adjusting sickness absence trigger points or performance targets.
- Avoid using derogatory language and be quick to address inappropriate banter in your team.

For more information see the resources below:

Websites

- [The British Menopause Society](#)
- [NHS Menopause](#)
- [NICE guidelines for menopause](#)
- [The Daisy Network for women with premature menopause](#)

Apps

- [balance app](#)
- [Calm \(meditation and mindfulness\)](#)
- [Health and Her](#)

Contact Details

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Recruitment Queries:

Teach in Croydon website: www.croydoneducationjobs.org.

Adverts on Croydon Council website: 020 8667 8337; vacancies@croydon.gov.uk

DBS Queries: schoolsdb@croydon.gov.uk

Occupational Health: Ritika Singh - Ritika.Singh@croydon.gov.uk

Teachers Pensions: Vicki Langston – 020 8604 7190 (DDI); 020 8726 6000, extension 27014
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Addendum

19 September 2022 – Bank Holiday

You will be aware that an additional Bank Holiday has been granted for the funeral of Elizabeth II.

The LGA has issued a circular about the Bank Holiday with particular reference to members of staff who do not normally work on a Monday.

In essence, it is the same approach that was used for the Platinum Jubilee in June.

For teachers – there will be a reduction to their total number of days and hours of directed time. When issued, the STPCD will reflect this.

For support staff – where it is not possible to give an additional day in lieu, staff should be paid for an additional day. The formula in the LGA circular needs to be adapted according to the contractual annual leave entitlement. It is exactly the same formula that was used for the Platinum Jubilee, and an explanation of the methodology can be found in the HR Newsletter from the Spring Term of 2022 which is on the Octavo website. By way of summary, the table below shows the accrual rate of leave in days, which varies according to the days staff work per week/year and their contractual annual leave entitlement. The figures in bold give the entitlement for the additional bank holiday.

Days per week	1	2	3	4
Days per year	39	78	117	156
Calculation based on 28 days (full time equivalent) annual leave and bank holidays for Grades 1-12 for EBCR & non EBCR schools	0.20	0.40	0.61	0.81
Calculation based on 30 (full time equivalent) days annual leave and bank holidays for Grades 12 and above and those with more than 5 years' service for EBCR schools	0.21	0.41	0.62	0.82
Calculation based on 33 (full time equivalent) days annual leave and bank holidays for Grades 12 and above and those with more than 5 years' service for non EBCR schools	0.21	0.42	0.63	0.85

The circular does mention the situation where some staff may be entitled to an additional two days' pay, but we are anticipating that in most cases you will already have either made a payment or granted a day in lieu and will therefore only need to make arrangements for the new bank holiday. If you have questions about this please contact your HR Provider.

National Joint Council for local government services

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Naomi Cooke

Trade Union Secretaries
Rachel Harrison, GMB
Clare Keogh, Unite
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**To: Chief Executives in England, Wales and N Ireland
(additional copies for HR and Finance Directors)
Members of the National Joint Council**

12 September 2022

Dear Chief Executive,

State Funeral of Her late Majesty Queen Elizabeth II

The Government has announced that there will be an [additional bank holiday](#) on Monday 19 September to mark the occasion of the State Funeral of Her late Majesty Queen Elizabeth II.

In accordance with Part 2 Para 7.1 of the Green Book, all employees will be entitled to a holiday with a normal day's pay on the additional bank holiday (pro-rata for part-time employees).

In accordance with Green Book Part 3 Para 2.6 (unless a local agreement is in place), employees who are required to work on Monday 19 September should receive public holiday pay, plus time off with pay at a later date.

Term-Time Only employees

In relation to Term-Time only (TTO) employees, the Green Book Part 4.12 Para 13.2 provides: *"If the Government announces an additional public holiday(s), a TTO employee's pay should reflect the additional public holiday or an additional period of paid leave during term-time could be granted"*

DfE has confirmed it will shortly lay regulations to reduce the school year from 190 days to 189 days for the academic year 2022-23, as a result of the additional bank holiday. For many staff, this may result in a reduction in their working year.

The NJC recognises that because of the different remuneration arrangements in place in individual organisations, there is no one-size-fits-all approach to whether, and how, to adjust TTO pay and leave entitlement to take account of the additional bank holiday. However, all employers will need to ensure that part-time staff are provided with a pro-rata entitlement for the additional bank holiday.

First or second additional bank holiday?

For some TTO employees, this additional bank holiday will be the second to occur in their current leave year (the first having been for the late Queen's Platinum Jubilee in June 2022). Therefore, provided below are two example calculations to take account of the different circumstances.

Where there is a reduction in the working year of the TTO employee

The vast majority of TTO staff are contracted to work either 190 or 195 days per year. The NJC advises that in cases where the reduction in the school year means that employers will now require these staff to work either 189 days or 194 days (or 188 and 193) respectively in 2022-23, one approach to providing the additional bank holiday entitlement would be to make no adjustment in the remuneration arrangements for these TTO employees. This will provide these TTO employees with paid leave for the bank holiday as they will receive the same pay but work one (or two) day less.

However, for some TTO employees, whether they will receive leave due to the bank holiday will depend on their working pattern. Where a part-time employee would have been at work on the day of the bank holiday (or the day in the school year which is no longer one of the 190 days of directed time), they should continue to receive pay for this time (as above). This will give them paid leave for the additional bank holiday.

Where there is no reduction in the working year

However, where a part-time employee's working pattern means that they are still working for the full number of days / hours for which they are contracted to work annually, they will need to be given an additional pro-rata paid leave entitlement to reflect the additional bank holiday.

Example 1 – for TTO employees for whom this is the only additional bank holiday in their current leave year

A TTO employee works three days a week.

39 weeks x 3 days = 117 days per year.

If they have at least 5 years' service, their holiday entitlement in a normal year would be as follows:
117 days x 0.1551¹ daily leave entitlement = 18.1467 days.

In the year with the additional bank holiday, their working pattern is such that they are still required to work for 117 days in the year, the revised calculation of leave would therefore be: 117 days x 0.1602 = 18.7434 days.²

This is an increase in leave entitlement of 0.5967 of a day. This would be the correct pro-rata entitlement when compared to an all-year-round employee. The TTO employee should therefore receive additional pay for the extra leave that is accrued.

The NJC recommends that any additional payment should be made to those affected staff who are in post on Monday 19 September.

Example 2 – for TTO employees for whom this is the second additional bank holiday in their current leave year

A TTO employee works three days a week.

39 weeks x 3 days = 117 days per year.

If they have at least 5 years' service, their holiday entitlement in a normal year would be as follows:
117 days x 0.1551³ daily leave entitlement = 18.1467 days.

¹ To see how this 0.1551 figure is arrived at, please see Green Book Part 4.12 Para 6

² The increase in FTE total paid leave from 35 to 36 days produces an accrual rate of 0.1602 per working day

³ To see how this 0.1551 figure is arrived at, please see Green Book Part 4.12

In the year with two additional public holidays, their working pattern is such that they are still required to work for 117 days in the year, the revised calculation of leave would therefore be: 117 days x 0.1654 = 19.3518 days.⁴

This is an increase in leave entitlement of 1.2051 days. This would be the correct pro-rata entitlement when compared to an all-year-round employee. The TTO employee should therefore receive additional pay for the extra leave that is accrued. The NJC recommends that any additional payment should be made to those affected staff who are in post on Monday 19 September.

Yours sincerely,

*Naomi
Cooke*

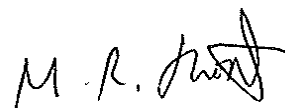
Naomi Cooke

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Rachel Harrison



Clare Keogh



Mike Short

⁴ The increase in FTE total paid leave from 35 to 37 days produces an accrual rate of 0.1654 per working day