Working in the independent sector

Your guide from ATL - the education union

Legal advice series
ATL is the union for education professionals. Active in the maintained, independent and post-16 sectors, we use our members’ experiences to influence education policy, and we work with government and employers to defend your pay, conditions and career development. From early years to HE, teachers to support staff, lecturers to leaders, we support and represent our members throughout their career.

Not yet a member?
To be part of the union that puts education first, join ATL today. As a member you will have peace of mind knowing ATL offers first-class support, insurance protection, professional advice and representation, plus unrivalled publications, resources and CPD for your personal and professional development.

Join today and receive a 50% discount on your first year of membership.*

To join or check our competitive rates, including special offers for students and newly qualified members, visit www.atl.org.uk/joinonline or call 0845 057 7000.**

*ATL reserves the right to withdraw this offer at any point.
** Terms and conditions available online. Local rates apply.

Already a member? You’ve joined us, now join in and get on Getting involved with your union is the best way to achieve effective change, both in working conditions and in education. And it can enhance your professional development too.

There are many ways to get involved, from giving your views on education policy to attending one of our training courses or becoming the ATL rep for your workplace. Look up www.atl.org.uk/getinvolved for more.
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This handbook is a guide for ATL members working in the independent sector and a resource for ATL school reps, branch secretaries and regional officials. The guide addresses the main issues and difficulties encountered by ATL members working in the independent sector. It is written to provide general guidance and is not a complete or authoritative statement of the law. For all individual employment issues, you should seek advice from ATL.

The law stated in this handbook is as it relates to England and Wales, although there are frequent parallel arrangements in Scotland and Northern Ireland. Further guidance can be obtained from ATL’s London, Cardiff and Belfast offices.

Unlike the state sector, there are no national pay or conditions of employment for teachers. There is no standard book of rules for teachers or support staff. Sometimes there isn’t even a written contract of employment. Pay and conditions vary enormously from school to school, to the extent that it is a tale of two cities; it can be the best of worlds and the worst of worlds.

ATL advises members to seek to resolve an issue in the best way that a situation may allow. While knowledge of the law is obviously invaluable, it is important to remember that the law is only one part of the equation. Negotiation and dispute resolution is dependent on a whole host of things, some of which may not be readily apparent.

One general question you need to address is whether the issue is a personal problem or a collective issue. Most problems are experienced as individual issues but often it is through collective action that they are resolved.

As the aim of this handbook is to provide information to help assist ATL members resolve employment difficulties at school, it inevitably concentrates on some of the negative aspects of working in the independent sector. But there can of course be advantages, including smaller class sizes, more motivated and better behaved pupils, longer holidays, freedom from the national curriculum and better facilities. There may also be benefits such as subsidised accommodation, free meals and the use of sports facilities.

General disadvantages of working in an independent school often include a longer working day, the expectation of running after-school clubs and carrying out lunch duties, pressure from higher parental expectation, greater pressure from the market force of competition between schools for pupils, lack of consultation and involvement of staff in decisions and lack of transparency in awarding pay and other benefits.
Chapter overview

Chapter 2 looks at ATL’s principles and how we support and represent our members. It also looks at why ATL is the number one choice in the independent sector. Strength in numbers always helps. ATL is by far and away the largest union in the sector with over 20,000 teaching and support staff members. Focusing on the specific needs of members in the sector is key to our approach. ATL is the only union with independent sector officials, an elected independent member advisory group, an annual independent schools’ conference, a termly independent sector newsletter, training courses for independent school reps, and of course, publications for members in the sector!

Achieving and maintaining a harmonious working environment is reliant on effective staff organisation. Chapter 3 looks at members working together in schools. It examines the role that all members, not just the ATL rep, can play in building a strong and healthy workplace union. Acting collectively gives strength and confidence to teachers and support staff. It is important for everyone to build a strong union by recruiting new members. Ultimately, it gives ATL, your union, more influence in your school, in the independent sector and education generally. We also provide top tips for recruiting, negotiating and making meetings work.

Not surprisingly, a lot of the advice that ATL gives centres on contracts of employment. A common question from members is: “My school has instructed me to do something which I consider unreasonable. Do I have to do it?” The contract of employment is the starting point to answer this question.

Many people would be surprised to learn that ATL receives at least one call a week from a member working in an independent school without a written contract of employment. Chapter 4 addresses the points you should look out for in a contract of employment and provides advice on questions to ask before taking a new job. The chapter details the information you are entitled to receive by law. It also covers terms that are not usually spelt out in a contract of employment but which the law considers to be central to any employer-employee relationship, for example, the implied duty on an employer to provide a safe environment in which to work.

We also provide an ATL model contract for full-time teachers with an accompanying commentary. It does not seek to provide a gold standard of employment rights but it does aim to provide a reasonable standard of protection that a fair employer can live with. The model for full-time teachers also provides a basic model for part-time teachers, but there are some important areas of difference. The guiding principle for part-time contracts is that rights and responsibilities should be the same as for full-time staff but on a pro-rata basis.

There is a law to ensure that part-time staff should not be treated less favourably in comparison with full-time staff.
We also look at a special consideration in independent schools – the provision of accommodation.

Good employment policies and procedures can prevent problems from occurring or escalating. They also enable problems to be dealt with in a fair, consistent and timely manner. That is why ATL encourages members and their schools to adopt and develop best practice and policy.

**Chapter 5** provides ATL’s model policies for three key areas - discipline, grievance and capability. These policies are designed to be simple and easy to use. It may be that your school has a more comprehensive policy. ATL’s model policies are intended to cover only the main points of good practice and to provide a fair and consistent framework for both employee and employer.

We also give practical advice on what to do should you find yourself in a disciplinary situation at school where the proper procedure has not been followed. Following on from the key policies discussed above, there are a whole host of other policies that should be part of your general terms and conditions and your contract of employment.

**Chapter 6** addresses appraisal and performance management systems. ATL believes that critical reflection in a supportive environment is fundamental to improving performance achievement. However, some systems can prove counter-productive and unhelpful.

**Chapter 7** concentrates on family rights and sickness entitlement, including maternity and paternity rights, adoption rights, flexible working and time off for dependents. Sickness entitlement covers the right to paid leave. We also look at pregnancy and health and safety. Many of these are statutory entitlements, regardless of the provision of the employer.

A good employer will enhance these benefits. We therefore look at the minimum statutory rights enjoyed by all employees and the enhanced conditions of service offered in the state sector. You should always check your contract of employment. The maintained sector provides enhanced terms, including those for teachers in England and Wales as set out in the annual, statutory School Teachers’ Pay and Conditions Document (STPCD). Many good independent schools mirror the provision of the state sector.

One of the key terms of employment is pay. **Chapter 8** addresses pay and its key issues. What is your starting salary? What is the school’s pay scale and how do you progress up it? What provision is there for an annual cost of living increase? The vast majority of independent schools have pay scales. Many are linked to the state sector ensuring pay will be not less than the state sector levels.

Unfortunately, some independent schools operate on spot salaries, which are normally inconsistent, not awarded on merit and non-transparent.
We set out ATL’s recommendations for the content of a pay policy. The chapter also considers collective bargaining and individual negotiation.

**Chapter 9** covers the difficult subject of redundancy. Although the majority of independent schools have charitable status, they are businesses. If they do not attract enough fee-paying pupils they will become economically unviable and redundancies will result.

This chapter looks at the legal definition of redundancy and addresses what an employer must do by law and the procedures they must follow. We also provide an ATL model redundancy procedure. As with all our model policies, it is intended to cover only the main points of good practice and to provide a fair and consistent framework for both employee and employer. We also give practical advice on what might be done to prevent redundancy. If all else fails then you will need to know about your entitlement to redundancy pay, notice pay, and where to turn if your employer is insolvent.

Employment in an independent school is unfortunately often characterised by long daily hours. **Chapter 10** examines the legislation relating to the Working Time Directive and its application to independent schools. What are your rights to a break during the day, over a 24-hour period, or over a week?

**Chapter 11** looks at staff consultation and trade union recognition. It is established practice in industrial relations in the maintained sector that staff and their professional reps will be consulted on issues that affect their working lives. Employees have the legal right to collectively negotiate pay, hours and holidays if their trade union is recognised.

The rep of a recognised trade union has the right to reasonable paid time off to carry out their duties. There is also the right of disclosure of relevant information in order to have meaningful negotiations, such as collective bargaining over pay. There are also many advantages to employers of involving staff in decision-making and providing a clear and efficient forum where consultation can take place.

Finally, **chapter 12** provides other sources of information, including contacts for all ATL’s offices.

For the purposes of simplicity, *Working in the Independent Sector* refers to ‘schools’, but the term should be read to include independent colleges, to whom the advice and information in these pages also apply.

The information provided in this book on policy and guidance is correct at the time of going to print, but may be subject to change.
Who is ATL?

ATL is a respected trade union and professional association, representing more than 160,000 members across the UK. We are run by our members for our members.

ATL is a modern, member-led union active in the maintained, academy, independent and post-16 sectors. We are not politically aligned and will work with any government for the benefit of our members and education in general. We combine the benefits of being a trade union and professional association.

If you have an individual problem ATL will advise and represent you. ATL works with employers and government to protect your pay, conditions and career development.

But it is not just about pay and conditions. We are also a professional association interested in you as a professional and developing and supporting your career. High on our agenda is continuing professional development (CPD) and we provide extensive training opportunities for our members.

We are interested in what is right for pupils and we seek to promote the best standards in education. ATL presents evidence-based, articulate, argument to make our members’ case.

Why join a trade union?

For many, joining a trade union is a form of insurance – to know that if there is a problem you will have someone to protect you and fight your corner. Working with children is a particularly sensitive area and accusations can unjustly mean that you are guilty until proven innocent.

A bad reference could blight your career. It could be that you fall out with your line manager, through no fault of your own, and decide to move on. A poor or indifferent reference could damage your career. ATL can help prevent such situations occurring.

Operating in a commercial world, employment security in an independent school can be more precarious than in the state sector. Parent complaints can be acted upon with haste, through the fear of loss of revenue. Competition between schools can lead to closure and redundancy. You need the backing of a union to protect you in such circumstances.

As an individual, you have little power or influence over the decisions that are made about your job. However, as a union member, you have a strong voice when negotiating improvements to your pay and conditions of employment.

Some of the most important decisions that can affect your working life are made not at the individual or even school level but at a political level. This is why you need a collective voice.
Why join ATL in the independent sector?

Our service to members working in the independent sector is second to none. We are the only professional association and trade union with staff, an advisory group, newsletters, publications, conferences and training solely dedicated to the independent sector. That is why ATL is the largest single union in the sector with over 20,000 members in 1,700 independent schools, from teachers to technicians, headteachers to teaching assistants, librarians to ancillary staff.

How do we work?

ATL is a democratic organisation run by the members for the members. The fundamental building block of ATL is the membership in the workplace, your school or college. Here the first point of contact will be the ATL school representative or contact, who is elected or appointed by the members in the school. They may be supported by a health and safety rep (HSR) and/or union learning rep (ULR). A well organised workplace may have reps or contacts for different parts of the school, for instance in the case of split sites, or where staff groups may have distinct interests, such as support staff.

ATL members come together with other members in their local branch to discuss issues that affect them in their area. The lead person in the branch is the branch secretary. Branches organise local training, network days and campaign on local issues. They play a part in making ATL national policy by submitting motions and sending delegates to ATL’s Annual Conference.

The Annual Conference determines ATL’s national policy. Decisions made at Conference are enacted by the national Executive Committee, which is made up of members elected on a two-year term.

The lead person on the Executive Committee is the president who is elected by the entire membership annually. The Executive Committee operates through a number of committees and they look at different aspects of our policies and services and enable members to focus on particular areas of expertise.

We have a well-respected voice in the education debate because we provide considered analysis, alternatives and solutions for contentious issues, such as education funding, assessment, the curriculum, academies and free schools.

ATL’s Independent and Private Sector Advisory Group

Our Independent and Private Sector Advisory Group (IPSAG) is ATL’s elected member group that promotes the interests of members working in the independent sector. This role includes advising ATL’s Executive Committee on sectorial issues and promoting best employment practice.
Amongst other things, IPSAG assists with ATL’s annual independent schools conference, rep training and employer liaison and helps to support new school reps and contacts in their region.

IPSAG have been at the forefront of various ATL campaigns, such as calling for a ‘fit and proper persons’ test for all school owners to try to prevent schools closing overnight and lobbying for the Living Wage.

**Training**

At ATL we are committed to helping you develop throughout your career. As a member you can access learning and development via our national one-day events or via shorter local events. The national one-day courses are on topics including leadership skills, behaviour and creativity in the classroom and are provided by high-quality providers. The local learning events are held across branches and regions and are on a variety of topics, including stress management, outstanding teaching and dyslexia.

Members can also access an MA Education at a reduced rate through our unique partnership with Edge Hill University.

Details on all learning provision can be found in the ‘learning zone’ section of ATL’s website at [www.atl.org.uk](http://www.atl.org.uk).

**Core reps’ training**

ATL provides a solid grounding for school and college reps and contacts, both for those just starting out in the role and for those wanting a refresher course. Reps can attend a one-day induction course followed a further three one-day courses. The courses cover all the skills, information and knowledge that are needed to be a rep. These include communicating with members, meeting managers, recruiting members and casework skills.

**Rep and active member training**

ATL also provides other opportunities for our reps and active members to learn and share experiences. Regional reps’ network events and briefings are held on topics such as inspection, differentiation, capability, appraisal and dealing with disciplinary issues.

Information about these courses is available from the ‘learning zone’ on ATL’s website.

**ATL online**

There is a wealth of support available at [www.atl.org.uk](http://www.atl.org.uk). You can also access legal advice and support, keep up-to-date with the latest news in the profession, research a range of issues – from health and safety to pay and pensions – and help shape ATL’s policy by taking part in surveys and discussion groups.
ATL’s job finder service

We’ve teamed up with Hays Recruitment, one of the UK’s leading recruitment agencies, to take the pain out of finding that perfect position. If you want to search the hundreds of vacancies, or speak to a consultant, visit www.hays.co.uk/jobs/atl.

Free publications

ATL has a wide selection of top-quality publications designed to assist you in every aspect of your professional life. We’re unrivalled in the range and quality of free guides, factsheets and publications that we provide to help you throughout your career.

Our topics include pay and pensions, bullying in the workplace and teaching pupils with special educational needs (SEN). You can download and order hard copies of our publications and resources for free from ATL’s website at www.atl.org.uk/publications.

What’s on offer? Some of our publications include:

- **Taking Students Off Site** – essential reading for planning a safe and successful off-site school trip, even for those whose off-site contact is limited to seeing pupils onto a bus outside the school gates.
- **Work-life Balance Toolkit** – for teachers working in the independent sector.
- **Charter for Education** – a charter of education professionals setting out the fundamental principles for education fit for the 21st century.
- **Bullying at Work** – this accessible guide examines the causes of bullying and suggests the best ways to respond.
- **A Guide to Tax** – invaluable advice on tax and employment, including how to reclaim a tax rebate on your ATL membership subscription!
- **Guide to Mentoring** – providing guidance to both mentors and mentees alike on ways to improve the experience of this key relationship.

Ten benefits of membership

The 10 principle benefits of ATL membership are:

1. Expert legal advice, support and representation, plus insurance cover.
2. Excellent training and CPD; we offer a comprehensive range of learning and development opportunities.
3. Collective strength. ATL members defeated government plans to remove eligibility of independent school teachers for the Teachers’ Pension Scheme (TPS).
4. Unrivalled publications and resources, such as ATL’s guide to *Working in the Independent Sector*.
5. An influential voice on national education policy.
6. Award-winning *Report* magazine and newsletters, including one dedicated to the independent sector entitled, *Independent Schools*.
7. Wealth of online support, plus access to the ATL job-finder service, at www.atl.org.uk.
8. Specialist member representation via ATL’s IPSAG, a group formed to represent independent sector members.
9. A genuine opportunity to get involved and help improve education for pupils, staff and schools.
10. Benefits of ATL Plus, a member discount scheme offering discounts and rewards on great products from recognised brands.

Free legal advice and support

ATL knows that not everything in your career runs smoothly. We’ve got a team of experienced advisers, advocates and solicitors offering advice, support and representation. You’ve got the peace of mind that our first-class caseworkers and specialist advisers can help you with any legal problem arising from your employment, including unfair dismissals, false allegations, assaults and accidents at work, disciplinary hearings and contract and salary disputes.

Speak to your rep first and, if needed, call our London office on 020 7930 6441 for assistance, or our offices in Northern Ireland, or Wales - see chapter 12 for details of who to contact. And for financial assistance in times of illness or hardship, most ATL members can apply to the ATL Trust Fund; visit www.atl.org.uk/trustfund for further information.

ATL has a team of solicitors who provide legal back-up in all employment issues. Should the problem involve other aspects of the law, ATL also has a network of over 50 associate solicitors located throughout England, Wales, Scotland and Northern Ireland.

They can provide on-the-spot advice to ATL members, primarily in criminal matters. For advice on a legal matter, members should contact ATL’s legal and member services department on 020 7930 6441.

Answers to many of your queries are also available via our online help and advice pages and publications by visiting www.atl.org.uk.

Please note that ATL reserves the right to decide upon member requests for legal assistance. The cost of legal assistance must always be approved in advance and members should not instruct a solicitor to deal with a professional or legal matter before contacting ATL.

ATL is unable to offer representation or assistance (including legal advice) to members with problems that arose before they joined ATL. This service is only for employment matters. For full details, please see ATL’s legal advice and members’ charter, which is available to download from the ‘advice and support’ page of ATL’s website.
Not yet a member? Join ATL today!

Get peace of mind knowing ATL stands behind you should anything go wrong. ATL offers first-class support, insurance protection, professional advice and representation, plus unrivalled publications, resources and CPD for your personal and professional development.

To join or check our competitive rates, including a 50% discount for all new members in their first year, visit www.atl.org.uk/joinonline or call 0845 057 7000.*

* Terms and conditions available online. Local rates apply.

Colleagues - not members?
Do your colleagues a favour and make sure that they have the protection of a union. Ask them whether they are in a union and, if not, ask them if they would like to join ATL. The main reason that people give for not being in a union is that they have never been asked!

You’ve joined us, now join in!
ATL is your union. Run by the members for the members. We really want you to get involved. You will learn new skills, face new challenges, help make policy and improve education for the better and make new friends too. Our continued success is dependent on our members. So, whether you get involved in your branch, at Annual Conference, are elected to ATL’s IPSAG, become a school rep or attend one of the ATL events in your region, there’s lots to do. Tell your colleagues about us, share materials and posters, ask friends to join ATL. For more info, visit www.atl.org.uk/getinvolved.
Acting collectively gives strength and confidence to teachers and support staff and is the strategy most likely to have an impact. The more people in ATL who speak with one united voice, the more influence you will have with headteachers and governors. Members will have a greater confidence in their ability to influence positive change. It is therefore vital to strengthen our position by recruiting new members.

The views of staff collectively carry much weight. Collaborating, sharing experience, and reflecting on current practice are the basis of developing good practice and practical solutions to the issues that you face at work. Involving as many people as possible widens the pool of expertise and shares the load when addressing difficulties. As a group of union members you can think about this in advance and think about how you might build and work as an ATL team.

For instance, if your rep is a teacher it might be appropriate to consider having a contact for the support staff as well. Many schools have different sites or sections such as junior and senior. Again, if the rep is in the senior school, it might be beneficial to have a contact in the junior school too.

ATL welcome members deciding to share the representative role and forming a supportive team.

In addition to the ATL school rep or contact, there are two other official roles that members can take on: HSR and ULR. If you think that you might be interested in either of these roles you can find further information on ATL’s website.

Just as there is a collective responsibility to address issues, there is a collective responsibility to ensure that ATL stays strong in your workplace and you are central to this.

Our surveys show that the main reason people do not join ATL is that they have never been asked! We need ATL members to get involved by asking their colleagues to join ATL. The more membership grows in your school, the more power you will have to influence decision-making through recognition, as well as enhanced opportunities by having ULRs, and safer working conditions due to the presence of HSRs. Ultimately, it gives your union, ATL, more influence in the sector and in education generally.

**ATL meetings**

On occasion, it will be necessary to hold a meeting of ATL members in your school or college to discuss school issues. It is an opportunity for members to express their views and collectively decide what they want to do. Think carefully about the best time and location in order to maximise attendance.

**Top tips for meetings:**

- Only hold meetings when necessary, unless members request that they are held on a regular basis.
- Consider the number of members involved and the time available.
- Give members advance notice of the time, location and details of the main issues. Having established a start and finish time, stick to it!
- Ask a colleague to make notes and circulate these to all present as soon as possible after the meeting.
- Report back to members the result of any action you have taken following the meeting. Keep members informed of all further developments and resolutions.
- Always be aware of the possibilities of recruiting new members. You may wish to hold an ‘open’ meeting (with members’ agreement) for all staff to attend, but do remember to follow this up with those who are not currently ATL members.

**Negotiation**

Most reps or active members will find themselves undertaking some level of negotiation, either on an individual issue or on behalf of all members in the establishment. It is important to understand the differences between negotiation and consultation. In negotiation, both parties need to reach an agreement, whereas a consultation is a commitment to exchange views.

**Quantify and evaluate the issue**

Once an issue has arisen, it is important to evaluate how significant it is. How many people does it affect? How strongly do members feel about it? What do they want? What are they prepared to do about it? You might find it useful to survey the members, such as those contained in our *Work Life Balance Toolkit*.

**Identify the desired outcome/solution**

Having established the problem, if possible, it helps if you can identify the solution. You are more likely to be successful when you present management with a solution, as well as a problem. Always bear in mind that an individual issue may have collective implications and solutions.

For example, in a situation where the member who feels bullied but doesn’t want to challenge the person concerned directly, a solution may be instituting a bullying and harassment policy or requesting staff awareness training on the subject.

If we are unlikely to achieve a successful outcome on a specific issue, is there another way of looking at it? Could we achieve a compensatory result elsewhere? A new demand on your time may need to be met but could something else be dropped? If your pay is being reduced as certain duties are no longer required, are there other things that you could take on to maintain your earnings?

**Advance preparation**

Make a note of what you want to say. Do you have the relevant procedure or policy? Keep a log of unacceptable behaviour eg a manager shouting.
Importance of relationships

Successful resolution is built on good relationships. Regular meetings with the line manager, headteacher and consultative forums help to build good relationships. As and where appropriate, it is always best to resolve issues informally and to maintain good working relations.

Your headteacher will appreciate that regular discussions and well-organised channels of communication can prevent disagreements. Together you can ensure that there is a proper procedure for dealing with members’ difficulties.

Top tips on recruiting members to ATL:

- Face-to-face recruitment has proved to be the most successful way of encouraging new members to join. If colleagues are too busy to talk, leave them with a recruitment brochure and arrange to see them another time. Always follow up this initial contact after a period of ‘thinking time.’
- Talk to new and existing members of staff about the benefits of joining ATL and explain why ATL is different from the other unions.
- Tell potential members about ATL’s strengths and successes. Mention the benefits of choosing ATL, and draw on your own experiences.
- Keep the noticeboard up-to-date with the latest posters and information from ATL, and have a selection of recruitment materials at your fingertips.
- Keep up-to-date with the latest developments in education and issues in your school or college. Know who to contact and where to find out information quickly, in case potential members have any problems or queries.
- Listen to your members’ views and make sure they are heard at your local branch meeting or by ATL. Hold meetings of ATL members, when appropriate.
- Introduce yourself to all new staff, especially newly qualified teachers, and talk to them about the benefits of membership. Ask them to join ATL.

Other colleagues:

- Liaise with other union reps in your establishment, working together on issues affecting all staff in your school or college.
- Liaise with the HSR at your establishment to ensure that all health and safety inspections are carried out and that members are kept informed.
The role of the ATL school representative

The rep is critical to the effective functioning of the union. The role is varied but, in summary, includes:

- providing information to other members in your school or college
- recruiting new members to ATL
- acting as a conduit between ATL and the members in your school or college
- ‘signposting’ members in your school or college to sources of advice and information within ATL
- providing support as a ‘friend’ in difficult discussions or meetings with managers.

Representing members in the more serious disciplinary, or grievance, hearings is usually undertaken by the local ATL regional official, who can also provide you with advice and support when raising school-wide issues.

ATL is always on hand to offer support, advice and information. Simply contact your branch secretary, or call ATL’s London, Wales, or Northern Ireland offices.

Things to do on becoming a rep:

- Let ATL’s membership department know that you have been elected or appointed by the members at your school. They will add you to the database as the rep for your establishment. At the same time, you can ask for a list of all the ATL members at your school or college by calling 020 7782 1602 or emailing us at membership@atl.org.uk.

- Get in touch with your branch secretary and regional official to introduce yourself. ATL’s London office (telephone 020 7930 6441) can give you the appropriate contact details if you don’t have them already.

- Contact ATL’s learning and development department and book yourself on the next course for ATL independent reps, by telephoning 020 7782 1582 or email them at learning@atl.org.uk.

- Order all the recruitment materials and publications you need from ATL’s publications despatch department, by telephoning 0845 4500 009 or emailing them at despatch@atl.org.uk, quoting the product code wherever possible. Alternatively, you can download PDFs of most of our publications or place your order online at www.atl.org.uk/publications.

It may be that at first you undertake some but not all of these tasks. As you become more experienced and confident, you will develop and grow into a role that you will find both personally and professionally rewarding.
Your rights as a trade union rep

All employees have a democratic right to be members of a trade union. The law also protects trade union reps and officials from discrimination on the basis of their trade union activities.

Your rights where ATL is recognised are as follows:

- to take reasonable paid time off for union duties and training
- to display union information somewhere in the school/college, such as a noticeboard in the staffroom
- to make reasonable use of school/college facilities
- use of a room to hold meetings
- access to documents concerned with pay and conditions of service.

Further information and resources to help you in your role can be found in the ‘reps in the independent sector’ page of the ‘reps’ toolbox’ section of ATL’s website.

The role of the ATL school contact

If no one is willing to take on the role of rep then it is still important to have a school contact. This is a more limited role and the contact usually just acts as a conduit distributing ATL information in and out of the workplace and putting ATL materials in the staffroom.
A contract of employment covers the main terms and conditions of employment. It can be a very lengthy document or a short summary, often supplemented by additional policies, which may be contained in an appendix to the contract, or in a staff handbook. If something is contractual then it is binding on both parties and cannot be altered without the agreement of both parties.

The use of an appendix usually indicates that the accompanying documents are contractual; however, this is not always the case with all policies that may be contained in the employee handbook.

As such, the employer may be able to revise these provisions without recourse to the employees. Therefore, it is important to know the status of all policies and procedures. In general, it is in the interests of the employee to put things on a contractual basis, as it helps put both parties to the contract on a more equal footing.

It is quite common for members to not be given written contracts of employment. They may only have a letter of appointment, or a statement of the main terms and conditions. In some cases, there is only a verbal agreement. However, it is important to remember that a verbal contract enjoys the same status in law as a written contract. What was agreed at interview or confirmed in a letter of appointment can be contractually binding. Of course, it is always preferable to have a written contract to avoid unnecessary disputes and to ensure that both parties are clear how certain situations should be managed.

While there is no legal requirement for an employer to provide a written contract, all employees have the legal right to a written statement of particulars of their employment. The statement must contain certain prescribed information, such as the names of the employer and employee, the scale and rate of remuneration and the conditions relating to hours of work and holiday. More details on these legal requirements are in the following section, entitled *Written statement of particulars of employment*.

The statement must be given to the employee no later than two months after their employment begins and should cover most of the main features of the employment relationship.

Many independent school contracts contain a clause which seeks to gain the employee’s acknowledgement that the statement, sometimes together with the written offer letter, forms the contract of employment, ie to the exclusion of anything else that may have been said and written down as agreed by you and your employer. This does not stop us arguing that terms are implied through custom and practice, or from seeking to enforce a contractual arrangement made through correspondence between the school and the teacher. As you will appreciate, such issues can be complicated and where there is disagreement we recommend that you seek advice from ATL.

Of course, regardless of what your contract says, you have certain rights enshrined in statute that override your contract.
This chapter provides an ATL model contract for full-time teachers with an accompanying commentary. It does not seek to provide a gold standard of employment rights but to provide a reasonable standard of protection that we consider a fair employer should accept and implement.

The model contract for full-time teachers also provides the format of a contract for part-time teachers, but there are some important areas of difference. The guiding principles for part-time contracts are that rights and responsibilities should be on a pro-rata basis and part-time staff should not be treated less favourably in comparison with full-time staff. Part-time staff have historically been vulnerable to exploitation and treated less favourably than full-time staff. Trade unions have long campaigned against such discrimination, which resulted in the Part-Time Workers’ (Prevention of Less Favourable Treatment) Regulations 2000.

Further information is provided in the section on part-time working. As indicated in the introduction, there may be national differences, which you will need to check. For instance, the parallel legislation in Northern Ireland is the Part-time Workers’ (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000.

There are often particular problems with the contracts of support staff, who are usually employed on term-time only contracts. Your pay should include holiday pay. All employees are entitled to a minimum 28 days’ paid annual leave (with a pro-rata entitlement for part-time staff). Another issue for support staff is that their roles often evolve and they may be asked to take on extra responsibilities. This is all the more so as independent schools begin to address workload issues and some of the teachers’ administrative work is passed over to support staff. It is therefore even more important that your job description or role profile adequately reflects the tasks and responsibilities expected of you. If you have concerns that this is not the case then the matter should be raised with your employer.

This can be done through the appraisal system (if you have one), or by a collective approach, perhaps through a job evaluation scheme. It is obviously important to address such issues at the earliest possible stage. For instance, if you are taking on more duties and responsibilities, say in May, which are not acknowledged in your pay or grade, then you would not want to wait until September, if that is when you have your annual appraisal.

In 2013, ATL successfully negotiated with a leading independent school employer a job evaluation scheme for 1,700 support staff in 26 schools. All support staff now enjoy the peace of mind knowing that their job has been evaluated as far as possible in a fair, consistent and transparent manner. If they wish to challenge a grading then they have the tools to do so.

One area where questions arise on contracts is when members are thinking of taking different employment.
This chapter will also examine the important contractual issues that you need to consider when offered a new job, including obtaining written confirmation of a job offer, which sets out the full terms and conditions of employment, the job description and job profile.

**Written statement of particulars of employment**

Under the Employment Rights Act 1996 (ERA), employees have the right to a written statement of particulars of their employment. The statement must be given to the employee no later than two months after their employment begins, and must include:

- the names of the employer and the employee
- the date on which employment began and the date on which the period of continuous employment began
- the scale and rate of remuneration, pay intervals and the method of calculating pay
- terms and conditions relating to hours of work and holiday entitlement (including public holidays)
- the job title or description
- the employee’s place of work.

These must all be detailed in a single document. However, provided that they are given within the two-month deadline, other employment particulars can be documented by instalments. These are:

- whether employment is permanent or for a fixed term
- details of sickness, pensions and notice
- details of the employer’s disciplinary and grievance procedures
- details of collective agreements affecting employment
- details of any requirements regarding work outside the UK.

The written statement can refer the employee to another document (provided there are opportunities for reading it at work) for employment particulars relating to sick leave and pay and pension schemes.

The ERA requirements make no specific mention of overtime. However, case law has ruled that if overtime is an essential element of the contractual relationship, so that employees should normally do it if requested, a reference to it must be included in the written statement. In another case it was held that just putting the job title without any further description is not sufficient. It is also good practice (but not a legal requirement) to have a job description.

As far as notice requirements are concerned, it is sufficient for the statement to refer the employee to the law on the matter or to a collective agreement, providing there are opportunities to see it at work. If there are no terms relating to any of the above items, this has to be stated.

If the employer does not provide a written statement, the employee can refer the matter to an employment tribunal at any time while they are working for the employer, or within three months of the employment ending (or later, if a tribunal
decides it was not reasonably practicable for them to do so within the three months). A tribunal can determine what terms and conditions have been agreed, based on whatever evidence is available, but it cannot change terms that have been agreed.

The right to a written statement does not apply only to new employees; existing employees can ask for a statement of their particulars if they do not already have one. If you are considering requesting a statement of your main terms and conditions from your employer, then we would recommend that you first seek advice from ATL. This may be an issue that affects all your colleagues.

**Implied terms: the unwritten rules of a contract**

There are terms that are not usually spelt out in a contract of employment but which the law considers to be central to any employer-employee relationship. These are called implied terms, and are separate duties that are placed on both employer and employee. The duties of employers are:
- To take reasonable care of the safety of employees by providing a safe system of work, as well as a healthy and safe workplace. In so doing, the employer must take reasonable precautionary measures to safeguard both the physical and mental health of employees.
- To provide a suitable working environment. Employers should take reasonable steps to ensure that employees are able to carry out their work in tolerable conditions. In the case of *Waltons and Morse v. Dorrington* (1997), the employer was deemed to be in breach of this term by requiring a non-smoking secretary to work in a smoke-filled environment. The employment appeal tribunal ruled that she had been constructively dismissed.
- Not to act in a manner calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence which should exist between employer and employee. This can take many forms, for example, subjecting an employee to persistent undermining and humiliating treatment. Where this occurs, an employee who has worked for the employer for at least two years is entitled to resign and present a claim to an employment tribunal for constructive dismissal on the grounds that the employer’s actions or lack of them amount to a fundamental breach of contract.
- To provide reasonable support. An employer should take appropriate steps to ensure that an employee is able to work without harassment or disruption from colleagues.
- To provide a procedure to deal with employees’ grievances reasonably and promptly, which must also take proper account of Acas code of practice on discipline and grievances at work.
- To pay agreed wages and provide work. The payment of wages is usually provided for in the written contract. As regards the provision of work, an employee who is given insufficient work to do is unlikely to be able to complain if she/he is being paid in full.
However, where earnings depend on the provision of work by the employer, there may well be an implied obligation to provide work.

The duties of employees are:
- **Fidelity**: employees should serve their employers faithfully and not act against the interests of their employers. The setting up of a rival business during the period of employment is likely to breach this duty. Some employers view criticism of them to be in breach of this duty and might even include an explicit provision in the contract to cover this.
- **To obey lawful and reasonable instructions**: the engaging of an employee to work under the direction of the employer is the essence of an employer-employee relationship. However, the instructions should be lawful and consistent with the employee’s contractual duties. The employee is not obliged to obey an instruction to do something which is either unlawful or would put his or her safety in danger.
- **To exercise reasonable care and skill**. This duty governs the quality of the employee’s work. Someone who is employed in a skilled job is expected to have the necessary skills ably to undertake that work.

Employees are also expected to perform their duties with reasonable care. Though often unwritten, these implied terms are as much a part of the contractual relationship between employer and employee as express, written terms. Consequently, it is incumbent on both parties to have regard to their respective duties if a harmonious and productive working relationship is to be maintained.

**To claim constructive dismissal you must leave your job. You should not take this step without advice from ATL.**

### Working part-time

Part-time teachers and support staff make an important contribution to independent schools. Working part-time has advantages for the school and for the employee, and ATL supports this flexibility and the possibility of choice. Unfortunately, part-time workers can be vulnerable to exploitation. Employers can view part-time staff as a flexible resource for the benefit of the school without recognising that they have the same rights and security of employment as full-time employees.

Part-time contracts often give schools a wide-ranging power to vary unilaterally the number of hours a part-time employee works. The school may seek to justify the practice in giving them the freedom to adjust capacity promptly when, say, demands for a subject change. However, this leaves many part-time employees in a difficult financial position and with fewer rights than their full-time colleagues. ATL considers that a contract containing a variable hours clause, enabling an employer unilaterally to change the number of hours that a part-time employee works, may be discriminatory and unlawful.

ATL is not against flexibility but strongly believes that the variation of an employee’s working hours should be by the agreement of both parties.
We are not alone in advocating a balanced approach. For instance, the Association of Governing Bodies of Independent Schools amended its model contract for teachers to remove the variable hours clause.

Instead, it has been replaced by the following clause: ‘The proportion of full time service may be varied from time to time by agreement with the teacher...’ ATL, together with other trade unions, has long campaigned for equal rights for part-time workers, which successfully resulted in legislation that outlawed such discrimination.

**Preventing less favourable treatment**
The Part-time Workers’ (Prevention of Less Favourable Treatment) Regulations 2000, referred to as ‘the regulations’, state that part-time workers have the right not to be treated less favourably by an employer when compared to full-time workers, as regards the terms of their contracts of employment, unless that treatment can be objectively justified. ‘Terms’ includes salary, holiday entitlement, rate of sick pay or maternity pay, access to pension schemes or training schemes, and the criteria used to select jobs for redundancy.

If you are starting part-time at a new school, or if you are full-time considering a change to part-time, then try to put yourself on a better contractual footing, for example by agreement on specified hours of work.

Ideally, a part-time contract should have set, specified hours of work. For example, a teacher contracted to work 20 hours per week may have 16 hours contact teaching time and four hours for planning, preparation and assessment. Next best is to have your working hours expressed as a percentage of full-time, eg 50% (often referred to as 0.5) of a full-time post. This is a slightly looser, less specific arrangement as it leaves open the possibility that your hours could be varied if the hours for the full-time post vary. The management may seek to increase the hours worked by a full-time member of staff and consequently your hours as a part-time worker.

Where a part-time worker is required to attend for additional duties such as training days, staff meetings or parents’ evenings, this should be on a pro-rata basis to full-time. Where it is not practical to pro-rata the duty or activity then provision should be made for the member of staff to be paid for the additional time worked beyond normal hours.

Many contracts in the independent sector acknowledge this principle. Having set hours does not rule out the flexibility of varying your hours, providing both parties are in agreement. What it does rule out is your employer unilaterally changing your hours without such agreement.

**If you think you are being unfavourably treated**
If you think that you are being unfavourably treated because you work part-time, we recommend that you discuss the matter with ATL.
The regulations provide that a part-time worker can request a written statement from the employer if they believe that they are being treated less favourably than a comparable full-time employee. The employer must respond within 21 days.

An employee must then attempt to resolve the matter with the school informally or by invoking a grievance. Having exhausted the school’s grievance procedure, a worker may make a complaint to an employment tribunal that their employer has infringed the regulations.

The complaint must be lodged within three months of the date on which the less favourable treatment occurs. As always, we suggest that you seek advice from ATL at the earliest possible stage.

**Model part-time contract**

ATL’s model contract for full-time teachers also provides the basis for the part-time contract, although some important differences must be taken into account. We have discussed above the main principles that rights and responsibilities should be on a pro-rata basis to full-time staff and that part-time workers should not be treated less favourably.

There are some other specific clauses that are different. For example, while it is common for a contract for a full-time teacher to prohibit or put limitations on other employment, it is clearly different if you work part-time. If you are a part-time teacher, it is unreasonable for the contract to stipulate that you are required to obtain permission from the headteacher to engage in any outside activity, especially if it is to take place on days when you are not contracted to work for the school.

For clarity’s sake, ATL would recommend the following should be added to the model contract: “For the avoidance of doubt the teacher shall not be required to abstain from any outside activity which does not prevent the teacher from fulfilling his/her duties.” A part-time teacher might want to include this provision in particular where there is a variable hours clause in his/her contract of employment, as the teacher might in the future need to seek additional employment elsewhere to make up his/her hours.

Similarly, ATL would consider it unreasonable for part-time support staff to have a prohibition against taking other employment, unless there was an apparent conflict of interest with their main employment.
Working hours for support staff

Your working hours will be defined in your contract of employment and will usually be set. By way of comparison, the standard working week for full-time support staff in the state sector is usually 37 hours, although it is 35 or 36 in some London boroughs.

In the state sector there is no requirement to work above these hours and if you are asked to work overtime then you should be paid for it. The rate of overtime should depend on whether you are working on weekdays, Saturdays, Sundays, public holidays or overnight. Similar principles should apply in the independent sector.

Questions to ask when considering a job offer

Independent schools are free to offer a wide range of terms and conditions to new staff. Although there are often similarities with maintained sector terms and conditions, take nothing for granted when you accept a new job at an independent school.

General tips

So how can you make sure you know what you are signing up to before you say yes? Ask for a copy of the contract of employment and all relevant supplementary documents (such as the employee handbook or licence to occupy school accommodation) before you formally accept the post. Don’t be afraid of appearing pushy by asking questions.

Taking a new job is a major commitment. However, a common-sense approach should be taken, as asking a string of questions about benefits may create the wrong impression.

The ability to provide you with a contract on request, and to answer your questions openly, says a lot about a school and its management. Read the contract carefully. If there is anything not covered or which you do not understand, raise it with your school. Ask ATL to check a new contract if you have any concerns about it. If you are asked to accept a job without sight of the contract, then one option is to accept the post conditionally, upon agreeing the terms and conditions, or to accept subject to contract. However, if you accept a post conditionally, the school in turn might be able to withdraw the offer without being in breach of contract.

Keep a note of what was said at interview and in conversations afterwards and keep offer letters and relevant documents (including the advertisement for the post). They could be significant in any subsequent dispute. Never assume that the school offers a particular term or condition. If something is important to you, make sure you ask about it. If you do start a job and have received nothing more than a letter of appointment, you are entitled to receive a statement of your main terms and conditions within eight weeks of starting.

Ask ATL for advice if things are not quite as you expected, always raise your concerns promptly with your headteacher, bursar or manager.
Specific issues
Job title – make sure you are clear about your job title and major responsibilities (especially those that attract extra pay).

Job description – the devil is in the detail. For example, most schools offer extracurricular activities (and school trips) and expect teachers to do their bit.

Pay – don’t be satisfied with general statements about pay. Ask for a copy of the salary and allowances scales and establish how you will progress up it, when pay is reviewed, and how.

Hours of work – establish at interview your normal working day (and week, if you are expected to work at weekends). This might be helpful later on if you are raising issues about the school’s expectations of you.

Holidays – how many days can you be asked to work outside the school term? If you are employed on a term-time only contract, check how your statutory holiday entitlement has been incorporated into your pay.

Probationary periods – trial periods of one term are normally sufficient. Ensure you understand how long your probation will last, what the review arrangements are and the support and induction you can expect from managers and colleagues.

Notice periods – check how much notice you are entitled to receive and obliged to give, especially in your first year. For teachers, one term’s notice from either party is normal but it can vary from school to school. For support staff, notice periods vary but commonly it is one month. In some independent schools the notice period is the same as for teachers. It is important to note that contractual notice may be supplemented by your statutory entitlements.

If your employer wishes to dismiss you after one month’s service, then by law they must give you a minimum of one week’s notice for every year worked, to a maximum of 12 years. For example, if you have worked for your employer for 15 years and your contract of employment gives a notice period of one month, then by law, your employer would have to give you 12 weeks’ notice if they were seeking to dismiss you.

Maternity pay and leave – the key question is whether the school will pay statutory maternity pay only, or higher rates under a more beneficial scheme.

Sick pay entitlement – this is worth checking, especially the entitlement in the first few years of employment. Many independent schools provide teachers full pay for 25 working days in the first year, with an extra 50 working days on half pay after four months. Again, sick pay provision for support staff varies enormously. In some schools the provision will be on the same terms as for teachers, in others it may be worse.

There are a few independent schools that align their policy with the provisions of the state sector, which in England and Wales is contained in the Green Book.
Pension – most schools in England and Wales are members of the TPS. Some offer group personal pensions or stakeholder provision. If in doubt contact ATL’s pensions department. For support staff, pension provision varies. There are numerous schemes, such as one provided by The Pensions Trust. There are separate, although often very similar, provisions for Scotland and Northern Ireland. Further information is contained in chapter 8, on pay.

School accommodation – if you are required to live in school property make sure you know what this will involve. Are there charges or rents to be paid? Are you responsible for bills and maintenance? Can the school ask you to move into different accommodation? Can the school give you notice to quit even though your employment will not end? Who can live or stay with you? Ask for a copy of the licence to occupy school accommodation.

Time off – if you are taking a post with a substantial boarding responsibility then you ought to agree your rest periods. A day and half free of duties (with at least one continuous break of 24 hours) per week is reasonable.

Here is a checklist of issues to consider about a new job:

- Is there a job description and am I content with it?
- What is the job profile?
- What is the starting pay?
- Is there a pay scale and how do I progress up it?
- When is my pay reviewed?
- What are my normal working hours?
- What extra-curricular activities are expected of me?
- What are the pension arrangements?
- What is the sickness policy and my sick pay entitlement?
- What is the maternity policy?
- Is there a redundancy policy?
- Have I been given a copy of the employee handbook?

Research the school
Researching an employer is important in applying for any job. In addition to obtaining the school prospectus, it is advisable to research the school’s website. Most independent schools are members of a relevant professional association and will also appear on their association’s website. Useful sites for further information include the Independent Schools’ Yearbook (www.isyb.co.uk), the Independent Schools’ Inspectorate (www.isi.net), the Independent Schools’ Council (www.isc.co.uk) and the Scottish Council for Independent Schools (www.scis.org.uk). Although there are often similarities with maintained sector terms and conditions, take nothing for granted when you accept a new job at an independent school.
Model contract of employment for full-time teachers in the independent sector

ATL’s model contract for teachers is intended to be a contract which is fair to both employee and employer. It is not ‘gold plated’ (ie it is not excessively generous); many members will enjoy more generous contracts of employment. We believe that it is a practical model that a reasonable employer will feel comfortable with.

1 Employer
[The name of the employer]

2 Employee
[Your name]

3 Place of work
[The school’s name and address]

4 Job title
[Your job title]

5 Duties
Your job description and details of any other responsibilities are attached to this contract as Annex A.

6 Date employment commences
[The date on which this contract comes into effect]

7 Date of continuous service
[The date in 6 or the date on which your previous service with the employer began if this is earlier]

Your job description and details of any other responsibilities are attached to this contract as Annex A.

8 Salary
(i) Your starting salary is point $x$ of the employer’s salary scale for teachers (currently £$y$ pa). The employer’s pay scale is attached to this contract as Annex B.

(ii) Your salary will be increased each year to meet inflation at a rate which matches, or exceeds, that agreed by the Secretary of State for teachers in the maintained sector. Such increases are payable annually from 1 September.

(iii) In addition, your salary will be reviewed annually. Progression up to point $z$ on the employer’s pay scale is subject to satisfactory service and such increases are payable from 1 September. Satisfactory service will be measured according to the criteria set out in the school’s pay policy which is attached as in Annex C to this contract.

(iv) Progression beyond point [insert relevant point] on the employer’s pay scale will be payable in accordance with performance criteria which is set out in Annex C to this contract.

(v) The pay scale contained in Annex B and the policy contained in Annex C may be reviewed from time to time by the employer in consultation with the staff [You may wish to make a detailed reference to, for example, staff trade union reps under a collective agreement, joint consultative committee, staff working party, etc]. Any proposed amendments will be agreed between the employer and employee. [Or between management and staff reps if the contract is subject to a collective agreement under a trade union recognition agreement.]

(vi) Your salary will be paid on the [insert day, eg 15th] day of each month. Your salary is paid in 12 monthly payments, regardless of whether it is term-time or school holiday.

9 Other allowances
[delete as required]
(i) In accordance with Annexes B and C, a management allowance of £ [s] pa is payable in recognition of additional responsibilities as [insert job/role title].

(ii) Management allowances will be increased each year to meet inflation at a rate which matches or exceeds that agreed by the Secretary of State for teachers in the maintained sector. Such increases are payable annually from 1 September.

10 Working hours

(i) A full-time teacher is required to attend for work during the hours of the normal school day, from [t]am to [u]pm.

(ii) The teacher shall be entitled to receive a break of at least 40 minutes between 12 noon and 2pm on each school day.

(iii) On occasions, the full-time teacher may be required to work such reasonable additional hours as may be needed to enable him/her to discharge effectively his/her professional duties. An example is parents’ evenings.

(iv) A full-time teacher must be available for work on all the days of the normal academic year, a total of [w] days.

(v) A full-time teacher is required to work additional days in order to be able to fulfil his/her duties. This will be no more than [three] days in an academic year, such days to be taken immediately before the start of, or after the end of term. Reasonable notice of the requirement to work additional days will be given.

(vi) The teacher is entitled to reasonable periods of non-directed time to allow for PPA. Such non-directed time will be not less than [insert percentage] percent of timetabled teaching time. (ATL recommends that PPA time should be not less than 20% of the teacher’s timetabled teaching time in a senior school or 10% in a junior school). In Scotland, there is statutory provision for one third of a state-maintained teacher’s timetable to be set aside for ‘preparation and correction’.

(vii) If the teacher is required to undertake work to cover for an absent colleague, this cover will not normally extend beyond a commitment of one hour per week on average over the whole academic year. The employer will plan outside cover for absence known in advance or long-term absence, in accordance with the workload agreement contained in the employee handbook.

11 Staff development and review

You will have an annual appraisal with your line manager. The appraisal system seeks to support and develop the employee. It is an opportunity to raise issues and look at ways of enhancing performance. Full details of the appraisal system are contained in the employee handbook. You are expected to participate in any in-service training which may be organised for the staff as a whole or for you individually.

12 Holidays

You are not required to attend work during the usual school holidays, other than as specified in clause 10 (v), nor on bank or public holidays, and full salary will be paid during these periods.

13 Ill health

The current requirements for notification of absence and the provisions relating to sick pay are set out in Annex D to this contract.

14 Pensions

[delete as necessary]

Either:

You will automatically become a member of the TPS, administered by Teachers’ Pensions, details of which are available from the school office and in
the employee handbook, unless you exercise your right to opt out of the scheme. For the purposes of the State Second Pension Scheme, a contracting out certificate is in force.

Or:

You will automatically become a member of the employer’s pension scheme. Full details of the scheme are available in the employee handbook.

15 Notice period
(i) During your first 12 months’ service, your employment may be terminated, either by you or the employer, giving at least two calendar months’ notice in writing. After completion of 12 months’ service, your employment may be terminated by either you or the employer by giving at least one term’s notice in writing, to expire only on 31 December, 30 April or 31 August and to be given on or before the first day of term on which you are required to attend for work.

(ii) The employer will give you any longer period of notice required under the Employment Rights Act 1996 or any amending legislation.

16 Disciplinary procedure
The employer’s current disciplinary procedure is set out in Annex E to this contract. The person authorised to take action in your case is [insert job title of relevant line manager].

17 Capability procedure
The employer’s current capability procedure is set out in Annex F to this contract. The person authorised to take action in your case is [insert job title of relevant line manager].

18 Grievance procedure
The employer’s grievance procedure is set out in Annex G to this contract. For the purposes of the grievance procedure your head of department is the person with whom you should raise your grievance, unless the grievance involves that person, in which case the grievance should be made to [insert job title of relevant line manager].

19 Maternity/paternity/adoption leave and pay
Either:

The employer provides maternity/paternity/adoption leave and pay at an enhanced rate above the statutory minimums. Full details are contained in Annex G to this contract.

Or:

The employer provides maternity/paternity/adoption leave and pay in accordance with the statutory minimums. Full details are contained in Annex G to this contract.

20 Other employment
(i) You may be required to abstain from any other work or occupation, paid or unpaid, which in the reasonable opinion of the headteacher interferes with the proper performance of your duties.

(ii) You may not, without the written approval of the headteacher, receive any additional remuneration for work with any pupil of the school during either school term or holidays.

21 Right to belong to a trade union
You have the right to be a member of a trade union or not to be a member of a trade union, as you choose. If you are a member of a trade union recognised by the employer you are entitled to reasonable paid time off during working hours to take part in any trade union activity.
If you are an official of a trade union recognised by the employer you are entitled to reasonable paid time off during working hours to carry out certain union duties. You may take part in its activities or undertake trade union duties at such times within working hours as may be agreed in writing by the headteacher.

22 Collective agreement
Either:
There is no collective agreement in force in respect of this employment.
Or:
This contract is subject to a collective agreement between the employer and ATL [or other trade union/s]. Agreements made at the joint consultative committee between employer and staff reps will be incorporated into this contract.

23 Changes to the contract
Any change to this contract of employment must be notified in writing to the employee within one month of the change, and the employee’s written agreement to the change will be sought by the employer.

24 Definitions
The expression ‘school term’ used in this document means that part of the periods below during which the pupils are in attendance in the school:

- Spring term
  1 January to 30 April
- Summer term
  1 May to 31 August
- Autumn term
  1 September to 31 December.

Date:
Signed:
(Headteacher)
(Teacher)
Commentary on the model contract

ATL's model contract for full-time teachers is designed to cover the most important areas of employment. It does not seek to provide a ‘gold standard’ of employment rights but rather to provide a reasonable standard of protection that a fair employer should be in a position to accept. Indeed, we know that many ATL members already enjoy better contractual rights in certain areas. Not every clause will be suitable or relevant for every teacher or every school. There are likely to be things that you or your school will wish to add or delete. It is, however, a workable, practical model based upon contracts that already exist at independent schools. We would encourage schools to take on board at least the spirit, if not the letter, of these provisions, particularly in the important areas of pay and working hours.

It is also in the interests of the employer to have clear rules and guidance as to rights and responsibilities of both parties. This model contract can also be downloaded from ATL’s website or can be provided by ATL’s legal and member services department.

**Employer** (clause 1)
The name of your employer should be inserted here. This may well be ‘the governors’ of your school or some other body (eg ‘the Trustees’ or a company) rather than the name of the school itself.

**Employee** (clause 2)
Your name, and possibly your address, should be included in this clause.

**Place of work** (clause 3)
Schools sometimes try to make this clause as broad as possible. To protect yourself we would encourage you to include, after the address of the school, a geographical limit on the locations to which the school could relocate, for example, ‘or any other location within the City of Gloucester’. There may also be a clause stating that the teacher may be required to work abroad. You should make sure that you are happy with this, or, if you are not, seek to insert ‘only by agreement with the teacher’. Finally, there should be a sentence that states that if the teacher is required to work abroad, then the reasonable expenses incurred in complying with this request will be reimbursed by the employer.

**Job title** (clause 4)
This should be as specific as possible to your duties and responsibilities.

**Duties** (clause 5)
It is very important that there should be a detailed job description annexed to the contract of employment. It is to the benefit of both parties to be absolutely clear about a teacher’s role and responsibilities, reducing the potential for misunderstanding at a later date.

**Commencement of employment/continuous service** (clauses 6 and 7)
Clause 6 should be the date that the particular contract came into effect, for example, 1 September 2015. Clause 7 should be the date on which your continuous service at the school began. ‘Continuous service’ is a legal term, and is the method by which your entitlement to redundancy and unfair dismissal rights, among other things, is ascertained.
It is the length of unbroken time for which you have worked for the school; normal breaks such as maternity leave and summer holidays do not break your continuity of employment, but if you cease to be in paid employment by the school for more than one week during term-time then your continuity of employment could be broken. You may have changed roles and a new contract might be provided. Provided the employment is continuous, the commencement date of the first contract should be included here.

**Salary** (clause 8)

(i) ATL’s model contract envisages that the school’s pay scale and pay policy will be incorporated into the contract, thereby having contractual force. This means that if a school does not increase the teacher’s pay in accordance with the pay scale and as provided for in the pay policy, then the school may be in breach of contract. The aim of this is to encourage schools to adopt a more transparent pay policy so that teachers have trust and confidence in the decisions that are being made in relation to their pay.

(ii) Clause 8 would enable the teacher to enjoy the same cost of living rise on an annual basis as teachers in the maintained sector, or better.

(iii) and (iv) bind the school’s pay scale into the contract.

**Working hours** (clause 10)

(i) ATL recommends that the school day be specifically defined so that the teacher knows how much time he/she is working above and beyond this. It also means that the school should consult with teachers before making changes to school hours.

(v) As members of staff are often expected to work at the school during school holidays, this clause aims to minimise the incursion into the teacher’s holiday to the beginning and end of the holiday, and with a suggested range from three to a maximum of five days.

(vi) Under the Workload Agreement 2003, teachers (whether full- or part-time) in the maintained sector have various guarantees to protect them from excessive workloads. Among other things, there are limits on working hours, cover and designated time for PPA. Increasingly, independent schools are recognising that excessive workload is a major issue with health and safety implications that need to be addressed. There are many different ways to manage workload more efficiently. Most schools recognise the value of timetabling specific blocks of time (although never less than 30 minutes) for teachers within the school day to enable them to spend time on important teaching duties.

(vii) This clause seeks to limit the amount of cover a teacher can be asked to do in any one academic year. This provision would enable the teacher to know, as far as possible, the maximum number of hours over an academic year that he/she could be expected to cover for an absent colleague.

**Holidays** (clause 12)

There is no automatic legal right not to work on bank/public holidays, so some contracts may include some bank holidays as working days.
Pensions (clause 14)
In Northern Ireland, the main teachers' pension scheme is the Northern Ireland Teachers' Pension Scheme. In Scotland the main teachers' pension scheme is the Scottish Teachers' Superannuation Scheme.

Disciplinary, capability and grievance procedures (clauses 16, 17 and 18)
Discipline and capability are important matters requiring different procedures. The purpose of a capability procedure is to assist the employee to achieve the required standard of performance through support, training and setting realistic goals. Similarly, disciplinary rules and procedures are not a means of imposing sanctions, but rather a way of encouraging improvement for those whose conduct is unsatisfactory. ATL's view is that schools must have separate procedures for dealing with issues of conduct and capability.

School accommodation
Some independent schools provide accommodation for staff. This is usually explicitly stated to be ‘for the better performance’ of your duties. For example, a school may provide accommodation on-site for a housemistress with responsibility for boarding, or for a school caretaker who looks after the school's facilities. However, some independent schools provide accommodation simply because they own and rent out property. Other schools provide accommodation as a subsidised benefit, for example to attract new staff to the school.

So what are your rights in occupying accommodation provided by your employer? Tenancy law is complex. Your rights depend not so much on what the agreement may be called, but on the reality of the arrangement and what was intended by the two parties. The following section is only a general summary and you should always take advice on your individual circumstances.

Where there is reference to the law and tenancy agreements, it is in relation to the law in England and Wales. If you live in Scotland or Northern Ireland, you should take advice locally from Shelter, your local advice centre or law centre.

Legal rights
Where accommodation is provided by your employer for ‘the better performance’ of your duties, your rights to the accommodation are directly linked to your rights as an employee. This is known as ‘tied’ accommodation and you have a 'licence' to occupy. In simple terms, if you are no longer doing the job then you no longer have rights to remain in occupation. In such circumstances, your contract may require you to surrender possession of the accommodation within one month of the termination of your employment.

However, if the accommodation is provided by the school and is not necessary for the performance of your job, then this is more likely to be a straightforward landlord and tenant relationship. If you have exclusive possession and pay rent, then it is likely that you will have an Assured Shorthold Tenancy.
Under an Assured Shorthold Tenancy, the tenant is protected under the contract for the length of the term of the agreement. Once the contract expires, the landlord must serve a proper legal notice and obtain a court order before he or she can regain possession. While you may have legal rights in respect of accommodation provided by your employer, you will obviously need to bear in mind any possible ramifications on your employment relationship.

**General rights and responsibilities**

If you are required to live in school property it is important to know what your rights and responsibilities are. Are there charges or rents to be paid, and if so, how are they increased? Are you responsible for bills and maintenance? Can the school ask you to move into different accommodation? Can the school give you notice to quit even when your employment will not end? Who can live or stay with you?

Some independent schools reserve the right to move the member of staff to another school property, but in so doing, often recognise the inconvenience by giving lengthy notice periods and paying disturbance payments. Any agreement should be set out in writing, so that these issues are clear. If you do not already have such an agreement, then ask for one. In most cases, you are likely to be provided with a licence to occupy the school accommodation. However, regardless of the existence of any agreement, or indeed its title, your rights will be determined by the circumstances of your occupation.

Some schools provide accommodation for a set period of time, say seven years, and thereafter expect staff to make their own arrangements. This can be a beneficial arrangement for NQTs, whose salary will rise over the years, enabling them to pay for the cost of their own accommodation in due course.

Custom and practice may also establish your rights to, say, having your partner live with you. As with any contractual term there is always an implied term of reasonableness. The accommodation should be of a reasonable standard and afford a reasonable right of privacy and right to family life. This is an argument ATL members have used when confronted with the school’s proposal to move someone else in to share their self-contained accommodation.

If you are moving to a new school and have been offered accommodation, you do need to check the detail of any agreement that you have been asked to sign. You may be moving a considerable distance, possibly with a family, and it is vital that you have a firm and proper understanding of you and your new employer’s rights and responsibilities.

**Paying for the accommodation**

One way or another, you will be paying for the accommodation, whether by paying rent, through a reduced salary, or by providing services. The arrangements for paying for the accommodation will usually be contractual and something agreed prior to accepting the job.
However, on other occasions, it may be a matter for negotiation. ATL receives regular enquiries about their accommodation from members whose school wishes to appoint them to a new position, alter individual arrangements or revisit an existing established policy.

Some independent schools operate separate salary scales for accommodated and non-accommodated staff. For example, a member of staff may be paid 10% less due to the provision of accommodation. Whether the direct charge or salary reduction for the accommodation is financially in your favour will be determined by your personal and local circumstances.

A key factor will be the amount of the equivalent cost compared to local rents. One thing to be aware of in the case of salary reduction is that final salary pension scheme contributions and benefits are calculated on actual salary paid. One way to avoid this pitfall is for the school to make the rental deduction from your post-tax salary.

Some schools operate a sliding scale for payment, with an initial large subsidy on the market rent given on joining, being reduced year on year. If you have any queries over your rights in respect of accommodation provided by your employer, then you should seek advice from ATL. Free housing advice can also be obtained from Shelter, the housing and homelessness charity at www.shelter.org.uk.
A contract of employment may cover all the terms and conditions in one lengthy document. However, more likely than not, your contract will be a relatively short statement of the main terms and conditions of employment that is supplemented by additional policies, such as an annex or number of annexes, or contained in an employee handbook.

In this chapter we look at three of the principle policies: discipline, grievance and capability. This chapter also contains ATL’s model policies, which are designed to be straightforward. They are not ‘gold plated’ (excessively generous) and are intended to cover only the main points of good practice and to provide a fair and consistent framework for both employee and employer. Should you wish to provide your headteacher with a copy, ATL’s model policies can also be downloaded from ATL’s website or can be provided by ATL’s legal and member services department.

A well run independent school will have fair and consistent policies and procedures that deal with problems in a timely manner. Most problems are experienced as individual concerns but often it is through collective action that issues can be resolved. That is why it is so important to ensure that your school has policies that can prevent problems from escalating, or at least allow for them to be dealt with in an efficient and fair manner.

For instance, what do you do if you feel that you are being bullied by your manager? Of course, it is never going to be easy, but having a bullying and harassment policy shows that the school takes the issue seriously and has put in place a procedure to address the issue.

Let us take another example: lesson observation. When is it reasonable for the headteacher to observe you teaching a lesson unannounced? Should the headteacher be expected to inform you of the purpose of the observation in advance? Can a teacher expect to have constructive feedback? Should this feedback be in writing and within a specified time limit? These are legitimate questions that should be addressed in a policy that serves the school’s needs while treating the individual staff member fairly. There are strict legal time limits in which to bring a claim for unfair or constructive dismissal. In respect of a claim at the employment tribunal, a claim must be brought within three months of the incident.

Further information is available on ATL’s website and from our national offices - see chapter 12 for contact details. Acas is also a very useful source of information and guidance.

Acas is a publicly funded, independent, impartial and confidential service providing employment relations advice for employers and employees. For members in Northern Ireland, information is also available from the Labour Relations Agency.
Model disciplinary procedure

(i) Purpose
These rules and procedures are intended to ensure that all employees are treated fairly and are aware of the procedures that will be followed in the event that they fail to achieve and maintain the standards of conduct and performance expected by the school. Nothing in this procedure shall inhibit the headteacher from discussing concerns or advising employees as to their conduct or performance informally and without recourse to disciplinary procedures.

(ii) Principles
No disciplinary penalty will be imposed against an employee until the matter has been fully investigated and until the employee has been advised of the nature and details of the complaint against her/him and given the opportunity to state her/his case in person at a disciplinary meeting or hearing, before a decision is reached (with the assistance of a friend or trade union rep if she/he so wishes). At least 10 working days’ notice of the nature and details of the complaint and of the disciplinary meeting or hearing shall be given in writing to the employee, together with copies of all relevant documents. This notice shall inform the employee of the stage of the procedure under which the meeting or hearing is being convened and of her/his right to attend with the assistance of a friend or trade union rep if she/he so wishes. An employee will not normally be dismissed for a first breach of discipline except in cases of gross misconduct (when the penalty may be dismissal without notice in accordance with paragraph (iv)).

An employee shall have the right to appeal against any disciplinary warning to the Appeals Committee (established in accordance with the school’s instrument of government). Any such appeal must be requested in writing to the chair of governors within 10 working days of the notification of the disciplinary penalty and will be heard in accordance with paragraph (v). Where a complaint is raised against an accredited trade union rep, the disciplinary meeting or hearing shall not be convened until the complaint has been discussed with the branch secretary or a full-time official of that trade union. Warnings given to an employee and placed in their files shall be disregarded after the following periods have elapsed without further misconduct or unsatisfactory performance taking place:

- oral warning: six months
- written warning: one year
- final written warning: two years.

Where the complaints against an employee relate to her/his competence, the stages of the procedure will be preceded by appropriate advice, guidance, assessment, review and consideration of training needs.

(iii) Procedure
Stage 1: Oral warning
In cases of complaints of unsatisfactory performance or alleged minor misconduct, the headteacher may consider the matter in accordance with paragraph (ii) and may then give the employee an oral warning. This warning shall inform the employee of the complaint and of any improvement or action required, and advise her/him that this constitutes the first stage of the disciplinary procedure. It shall also inform her/him of the possible consequences of any further misconduct or unsatisfactory
performance and of her/his right of appeal. A note of the oral warning shall be placed in the employee’s file in accordance with paragraph (ii).

**Stage 2: Written warning**
If further complaints about the employee’s performance arise, or in cases of more serious alleged misconduct, the headteacher may consider the matter in accordance with paragraph (ii) above and may then give the teacher a written warning. This warning shall inform the employee of the complaint and of any improvement or action required and advise her/him that this constitutes the second stage of the disciplinary procedure. It shall also inform her/him of the possible consequences of any further misconduct or unsatisfactory performance and of her/his right of appeal. A copy of the warning shall be placed in the employee’s file in accordance with paragraph (ii).

**Stage 3: Final written warning**
If further complaints about the employee’s performance arise, or in cases of very serious alleged misconduct, the headteacher may consider the matter in accordance with paragraph (ii) and may then give the employee a final written warning. This warning shall inform the employee of the complaint and of any improvement or action required and advise her/him that this constitutes the third stage of the disciplinary procedure. It shall also inform her/him of the possible consequences of any further misconduct or unsatisfactory performance and of her/his right of appeal. A copy of the final written warning shall be placed in the employee’s file in accordance with paragraph (ii).

**Stage 4: Dismissal**
If further complaints about the employee’s performance or conduct arise, the headteacher may, after investigation, refer the matter to the staff committee of the governing body. This committee shall convene a hearing to consider the complaint in accordance with paragraph (iv) and shall inform the employee that her/his dismissal is to be considered. The governing body may then give the employee notice of dismissal in writing. This notice shall inform the employee of the reasons for the dismissal and shall advise her/him of the right to appeal to the Appeals Committee for a hearing in accordance with paragraph (v).

A notice of dismissal shall not have effect until either any appeal has been determined or the period for making an appeal has expired. Any such appeal must be requested in writing, setting out the grounds for the appeal within 10 working days of the receipt of the notification of dismissal.

**Stage 5: Gross misconduct**
Gross misconduct is misconduct so serious that it would justify dismissal without previous warnings and without notice. Where gross misconduct has been alleged, the headteacher or the staff committee shall have power to suspend the employee from her/his duties pending investigation.

Suspension itself is not a disciplinary penalty and the employee shall not suffer any loss of salary while she/he is suspended. The period of suspension shall be as short as is reasonably practicable for the consideration of the issue. The headteacher shall at once report the suspension to the governing body.
She/he shall inform the employee in writing of the suspension and the nature of the complaint and inform her/him that the matter will be considered at a hearing of the staff committee of the governing body, convened in accordance with paragraph (iv).

The governing body may then give the employee notice of dismissal in writing. This notice shall inform the employee of the reasons for the dismissal and shall advise her/him of the right to appeal to the Appeals Committee for a hearing in accordance with paragraph (v) below. A notice of dismissal shall not have effect until either any appeal has been determined or the period for making an appeal has expired. Any appeal must be requested in writing, setting out the grounds for the appeal within 10 working days of the receipt of the notice of dismissal.

(iv) Governors’ staff committee hearing
For disciplinary hearings, the staff committee shall comprise at least three members of the governing body. The headteacher, and any member of the governing body who has been previously involved, shall not be a member of this committee.

The employee shall be given at least 10 working days’ notice, in writing, of the hearing and of the nature and details of the complaint(s) against her/him. The notice shall inform the employee of the stage in the disciplinary procedure under which the complaint is to be considered and of her/his right to be represented, and shall enclose copies of any documents to be considered at the hearing.

The employee shall be entitled to a personal hearing, with the assistance of a friend or trade union rep if she/he so wishes, and to call witnesses in her/his defence and to question any witnesses bringing evidence against her/him. The headteacher shall be entitled to attend the hearing and give advice.

In the case of a hearing under stage 4, the staff committee may:
- dismiss the complaint and impose no disciplinary penalty
- give the employee a warning which may be an oral, written or final written warning
- give the employee notice of dismissal.

In the case of a hearing under stage 5, the staff committee may:
- dismiss the complaint and reinstate the employee with no disciplinary penalty
- reinstate the employee with a warning that may be an oral, written or final written warning
- dismiss the employee with or without notice.

(v) Governors’ appeals committee hearing
For appeal hearings, the Appeals Committee shall comprise at least five members of the governing body. The headteacher and any member of the governing body who has been previously involved shall not be a member of the Appeals Committee.

The employee shall be given at least 10 working days’ notice in writing of the appeal hearing. The employee shall be entitled to a personal hearing, with the assistance of a friend or trade union rep if she/he so wishes, to call witnesses in her/his defence and to question any
witnesses bringing evidence against her/him. The headteacher shall be entitled to submit written and/or oral representations to the appeals committee.

The appeals committee may:

- accept the appeal and remove the penalty imposed
- accept the appeal and impose a lesser penalty
- reject the appeal and confirm the penalty imposed.

The outcome of the hearing shall be notified to the employee in writing without delay.
Model grievance procedure

(i) Purpose
Grievances can arise from a variety of sources. They can arise among members of staff, with the headteacher or with the governors. They can be of a relatively simple nature or of fundamental importance. This procedure is designed to enable the school governors, headteacher and staff to foster good relations by:

- discouraging the harbouring of grievances
- assisting the resolution of individual grievances in an atmosphere of trust and confidentiality
- enabling grievances to be settled as near as possible to their point of origin
- ensuring that grievances are dealt with fully, promptly and fairly.

The procedure sets out:

- an informal process through which most grievances may be resolved without recourse to any subsequent stage
- a formal procedure to be invoked when the first stage has failed, or is inappropriate.

(ii) Representation
At all stages, the staff involved are entitled to be accompanied and/or represented by a friend (who may be a colleague, professional association/trade union rep or other adviser). During the formal procedure, witnesses may be called and questioned by either side.

(iii) Procedure
Informal stage
Where a member of staff has a grievance that involves another member (or members) of staff, she/he should first of all endeavour to resolve it by direct approach to the person(s) concerned. If considered necessary, the employee should then request a personal interview with the head of department, a senior manager or the headteacher, as appropriate.

The interview should take place within five working days of the request. The manager should seek to resolve the problem personally in consultation with any other member(s) of staff involved and may, by mutual agreement, seek consultation with the headteacher, the chair of governors or reps of professional associations/trade unions, as appropriate. Where an employee has a grievance with the headteacher or the governing body which does not involve any other member of staff, she/he should advise or consult with the headteacher before making an approach to the chair of governors.

Formal stage
Where the matter has not been resolved informally as above, the employee should submit a formal written notice of the grievance to the chair of governors, with a copy to the headteacher and any other person(s) concerned.

The written notice should:

- include full details of the grievance, together with any supporting documents
- set out the steps already taken to resolve the issue
- state the resolution now requested.

Any other person(s) concerned in the grievance may make a formal written response (together with any supporting documents) to the chair of governors,
with a copy to the headteacher and the employee raising the grievance. This response should normally be submitted within 10 working days of receipt of the written notice of grievance.

The headteacher (where she/he is not otherwise concerned) may submit a written report to the chair of governors, with a copy to the parties concerned, within 10 working days of receipt of the written notice of grievance. A hearing will then be arranged before the appropriate committee of the governing body to consider the grievance. The documents submitted shall be made available to the committee in advance.

This hearing shall take place after receipt of any written response(s) and/or report, normally within 20 working days of receipt of the formal notice of grievance. At least five working days’ notice of the hearing will be given to the parties concerned, who may attend in person and be accompanied and/or represented by a friend as in paragraph (ii).

The above time limits may be altered by agreement of the parties concerned. The committee, in seeking to resolve the grievance, may adjourn the meeting or defer its decision if this is considered appropriate to promote conciliation or obtain further information on relevant factors. The decision of the committee, and its reasons, will be confirmed to the parties concerned, in writing, within five working days.

(iv) Appeals
Any party to the grievance may appeal in writing to the chair of governors within 10 working days of receiving the committee’s written decision. The notice of appeal should set out the reasons, with a copy to any other person(s) concerned and to the headteacher. The appeal shall be heard by the governors’ Appeals Committee, comprising only members who have not previously been involved.

All documents already submitted shall be available to the committee. This hearing shall normally take place within 15 working days of receipt of the notice of appeal. At least five working days’ notice of the appeal hearing will be given to the parties concerned, who may attend in person and be accompanied and/or represented by a friend as in paragraph (ii).

The Appeals Committee’s decision will be confirmed to the parties in writing within five working days. This decision will be final.
Model capability procedure

(i) Purpose
This procedure sets out the steps to be followed in responding to problems arising from a lack of capability on the part of the employee. ‘Lack of capability’ is defined as a situation where an employee fails consistently to perform his/her duties to a professionally acceptable standard.

This procedure is not intended to deal with lack of capability due to ill-health, nor with cases of misconduct. It applies to all school staff except the headteacher, for whom separate arrangements are made.

The aim of this procedure is to ensure that an employee who is the subject of concerns about his/her competence is made aware of these at the earliest possible stage, and that the school endeavours positively to assist the employee to achieve a satisfactory level of performance.

(ii) Principles
No employee will be dismissed on grounds of incapability without account being taken of each stage of this procedure, save where the education of pupils is in serious jeopardy. The employee will have the right to be accompanied by a person of his/her choice at any meeting called formally within this procedure to consider their performance.

For any formal meeting called to discuss issues related to performance, at least five working days’ notice will be given, and all reasonable efforts will be made to ensure that it takes place at a time when it is possible for the person whom the employee has chosen to accompany him/her to be present. Consideration shall be given, wherever appropriate, to any latent or external reasons for the teacher’s under performance (such as health problems, the working environment or personal difficulties).

In the application of this procedure, the emphasis will be on helping the employee to achieve a satisfactory level of work performance through training, coaching/mentoring, target-setting and monitoring, as appropriate. It is therefore essential that the employee receives appropriate support and guidance on both a personal and a work-based level.

Nothing in these procedures is intended to prevent the headteacher from discussing issues arising from the employee’s day-to-day performance of their duties as they arise, as such early informal discussions are vital in preventing problems from developing.

(iii) Procedure
Informal stage 1
Where the headteacher (or line manager as appropriate) has formed the view that there may be legitimate concerns about an employee’s performance, she/he shall implement the informal procedure by convening a meeting with the employee, giving them at least five working days’ notice in writing of the causes for concern, the time and date of the meeting and of their right to be accompanied by a person of their choice. It will be made clear that the status of this meeting is informal.

At the meeting, they should:

- establish with the employee that she/he is aware of the expected standards of performance
• provide all available information as to the causes of concern
• discuss the concerns and any reasons/circumstances underlying them
• identify any necessary changes/improvements in performance or practice
• discuss and, where possible, agree a plan of support to assist the employee in achieving the required level of performance.

The measures that need to be considered to support the employee could include:

• a change in working practices within the terms of reference of the employee’s responsibilities
• observation of good practice, within or outside the school
• counselling, which could lead to reference for medical advice
• training, for which the school will meet the costs
• mentoring, advice and/or support from within the school and, if appropriate, from external expert advisers
• closer, but supportive, supervision for a limited period.

Where improvement is considered to be necessary, a timescale for improvement shall be established, normally lasting not less than eight school weeks, during which the employee should be monitored by a senior colleague.

The monitoring should include periodic structured meetings to give supportive advice and feedback. The outcome of the meeting, including the plan of support, will be confirmed in writing to the employee within five working days, with an opportunity to submit written comments.

**Formal stage 2**
Where, following a review of progress after the period of monitoring and support as above, the headteacher (or the line manager, as appropriate) considers that significant concerns continue as to the employee’s performance, they will write to the employee inviting him/her to a formal meeting and giving at least five working days’ notice.

The notice of the meeting shall include:

• the date, time and place of the meeting
• details of the concerns, relating to performance, to be discussed
• copies of any documents to be considered at the meeting
• the names of any witnesses or other persons to be present at the meeting
• a copy of this procedure
• notification of his/her right to be accompanied at the meeting by a person of the employee’s choice.

If the employee has documents which she/he wishes to be considered, she/he should provide copies to the headteacher (or line manager, as appropriate) normally at least 24 hours before the meeting. At the meeting, the headteacher (or line manager as appropriate) should outline the concerns notified and invite the employee and/or his/her rep to respond, having had time to consider the issues, and, if appropriate, to ask questions.

At the meeting, discussion should take place to establish the validity of the grounds for concern and the best means of alleviating these concerns. In particular, there should be discussion of appropriate means of support (as outlined in paragraph (iii)).
A (further) plan of appropriate support for the employee and a timescale (normally lasting not less than eight school weeks) for improvement will be established, where practicable by agreement with the employee, during which the employee will be (further) monitored.

The monitoring shall include periodic structured meetings to give supportive advice and feedback. If the headteacher (or line manager as appropriate) considers that the concerns as to the employee’s performance are justified, she/he will give the employee a written warning, which will be confirmed in writing within five working days of the meeting. The warning letter will set out:

- the concerns as to the employee’s performance
- the outcome of the discussion at the meeting, including the action plan and timetable for improvement
- the employee’s opportunity to submit written comments in response
- a warning of the consequences of the employee not being able to improve his/her capability to a satisfactory level during the review period
- his/her right to appeal (see paragraph (iv)).

Formal stage 3
Where, following a review of progress after the period of (further) monitoring as above, the headteacher considers that significant concerns continue as to the employee’s performance, the headteacher will write to the employee inviting him/her to a further formal meeting and giving at least five working days’ notice. The notice of the meeting shall include:

- the date, time and place of the meeting
- details of the concerns relating to performance to be discussed
- copies of any documents to be considered at the meeting
- the names of any witnesses or other persons to be present at the meeting
- a copy of this procedure
- notification of his/her right to be accompanied at the meeting by a person of the employee’s choice.

If the employee has documents which she/he wishes to be considered, she/he should provide copies to the headteacher normally at least 24 hours before the meeting.

If the employee has documents which she/he wishes to be considered, she/he should provide copies to the headteacher normally at least 24 hours before the meeting. At the meeting, the headteacher should outline the concerns notified and invite the employee and/or his/her rep to respond, having had time to consider the issues, and, if appropriate, to ask questions.

At the meeting, discussion should take place to establish the validity of the grounds for concern and the best means of alleviating these concerns. In particular, there should be discussion of appropriate means of support (as outlined in paragraph (iii)).

A (further) plan of appropriate support for the employee and a timescale (normally lasting not less than eight school weeks) for improvement will be established, where practicable by agreement with the employee, during which the employee will be (further) monitored. The monitoring shall include periodic structured meetings to give supportive advice and feedback.
If the headteacher considers that the concerns as to the employee's performance are justified, she/he will either extend the period of monitoring and support under formal stage 2 or give the employee a final written warning. The outcome of the meeting will be confirmed to the employee in writing within five working days of the meeting.

The letter will set out:
- the concerns as to the employee’s performance
- the outcome of the discussion at the meeting, including the action plan and timetable for improvement
- the employee’s opportunity to submit written comments in response
- where so decided, a warning that if the employee is not able to improve his/her capability to a satisfactory level during the review period, consideration may be given to his/her dismissal
- his/her right to appeal (see paragraph (iv)).

**Formal stage 4**
Where, following a review of progress after the period of (further) monitoring as above, the headteacher considers that significant concerns continue as to the employee’s performance, she/he will write to the employee, inviting him/her to a hearing before a committee of the governors of the school, giving at least 10 working days’ notice.

The notice of the meeting shall include:
- the date, time and place of the hearing
- details of the concerns relating to performance to be discussed
- copies of any documents to be considered at the hearing relating to these issues
- the names of any witnesses or other persons to be present at the hearing
- notification that the result of the hearing could be the employee’s dismissal
- a copy of this procedure
- notification of his/her right to be accompanied at the hearing by a person of the employee’s choice.

If the employee has documents which she/he wishes to be considered, she/he should provide copies to the headteacher (or to the clerk to the governors, as appropriate) normally at least 24 hours before the meeting.

At the meeting, the headteacher should outline the concerns notified and the steps taken under this procedure to assist the employee to reach a satisfactory level of capability.

If the headteacher has witnesses to give evidence to the committee, the employee (or his/her rep) and the members of the committee will have the opportunity to ask them questions.

The employee and/or his/her rep will then be invited to respond, and, if appropriate, to ask questions of the headteacher. If the employee has witnesses to give evidence to the committee, the headteacher and the members of the committee will have the opportunity to ask them questions.

Having heard the evidence from the headteacher and the employee, the committee shall then deliberate in private and decide which of the following outcomes is appropriate:
the exoneration of the employee on the basis that his/her capability is now satisfactory
the imposition of a (further) warning under this procedure
the extension of the period of monitoring and support under formal stage 2 or 3
consideration of a change of responsibilities or working arrangements, by agreement with the employee
dismissal of the employee under notice in accordance with his/her contract.

The outcome of the meeting will be confirmed to the employee in writing within five working days of the meeting.

The letter will set out:
• the concerns as to the employee's performance and the outcome of the committee's deliberations
• where so decided, the action plan and timetable for improvement
• where so decided, a warning under this procedure
• where so decided, notification of dismissal, with notice in accordance with the employee’s contract
• his/her right to appeal (see paragraph (iv)).

(iv) Appeals
The employee may appeal against any warning given under any formal stage of this procedure, or against dismissal. Any appeal must be notified in writing to the headteacher, setting out the grounds for the appeal, within 10 working days of the receipt of notification of the sanction concerned.

Any appeal will be heard by an Appeals Committee of the governing body, comprising at least three governors, and shall be conducted as a rehearing of the case. The employee will be given at least five working days’ written notice of the appeal hearing. The notice of the hearing shall include:
• the date, time and place of the hearing
• copies of any documents to be considered at the hearing
• the names of any witnesses or other persons to be present at the hearing
• notification of the employee’s right to be accompanied by a person of their choice.

The decision of the Appeals Committee shall be final and may be:
• the exoneration of the employee on the basis that his/her capability is now satisfactory
• the imposition of a warning at a lower level under this procedure
• in the case of an appeal against a warning at formal stage 2 or 3, the extension of the period of monitoring and support
• in the case of an appeal against a decision to dismiss, consideration of a change of responsibilities or working arrangements, by agreement with the teacher
• confirmation of the existing decision.

The outcome of the appeal will be confirmed in writing to the teacher within five working days.
Your rights when facing disciplinary action

If you are threatened with any kind of disciplinary action, you should immediately check your contract of employment or any free standing document to ensure that the school is following the correct disciplinary procedure. Unfortunately, it is all too common for independent schools not to follow their own procedures or the guidance set out in the Acas Code of Practice, *Disciplinary and Grievance Procedures* (see the following section ‘The Acas Code of Practice’).

See me after school!

Not all managers in independent schools get it right when they handle problems with an employee’s work or conduct. Minor concerns about work or conduct should be tackled through informal discussion between the headteacher, or line manager, and the employee. A third party is seldom needed and, indeed, their presence may not help, introducing formality and ‘raising the stakes’, therefore making it harder for the senior manager or headteacher to give prompt feedback. However, ATL often has to help members who have been confronted with serious allegations at meetings, of which they had no or inadequate prior warning, or which were ostensibly called for some other purpose.

Unsurprisingly, members sometimes panic and, in some extreme cases, agree to resign there and then. Proper notice must be given of a meeting which has, or might have, a disciplinary dimension, with detailed information provided in advance about the possible concern. This gives you time to prepare a response and, above all, seek advice and support from ATL. In the letter convening the meeting, you should be told of your right to be accompanied by a trade union representative.

The Employment Rights Act 1999 gives you the legal right to have a colleague or trade union official present if the meeting could end with the issue of a formal warning or award of some other disciplinary penalty, like demotion or dismissal. You should request this right if it is not offered. If your companion cannot attend the meeting, the Act also allows you to rearrange the meeting to a time within five days of the original date. ATL does not have to be recognised by your employer for you to claim your right to have a colleague or trade union official present. ATL strongly recommends that you are represented by an ATL official. However, things do not always go to plan. If you find yourself caught in a meeting about which you think you should have had notice or advice and support, stay calm.

The following options are open to you:

1. Continue with the meeting and ‘take it on the chin’ in the hope that the headteacher will feel that the matter has been dealt with. The risk is that something detrimental may be placed on your file, without your being able to consider or answer any charge properly. Make sure the conclusion of the discussion is clear.
2. Continue and give a guarded response, but state that you will need to think about the matter and take advice, and that you will want another chance to put your case. You could do this in a letter, which you could ask to be placed on your file, together with anything the headteacher writes, or at a second meeting. As serious allegations may have been made, you should normally ask for any second meeting to be held under the school’s disciplinary procedure. This might seem odd, but even badly drafted procedures may be better than none. Confirm your wish to be accompanied to this second meeting, which, depending on the nature of the meeting, may either be a statutory right or an entitlement under the school’s procedure.

3. Say that the matter now being discussed is unexpected and may have serious implications for you. You will listen to what the headteacher has to say but will not comment until you have had the time to reflect and seek advice. A second meeting would then be needed (see option 2).

4. Say that you did not expect the matter now being discussed to be raised at the meeting, and that you believe you have the right to prior notice of the issues and to be accompanied. Ask the headteacher to adjourn the meeting and reconvene it under the proper procedures. If this is denied, state that you are staying under protest and will not comment until you have been able to reflect on the matter and seek advice.

5. Leave the meeting.

6. If you can, make notes at the meeting of any points made. This can form a valuable record later.

In all situations, you must immediately:
- contact your ATL rep, or ATL’s London, Wales, or Northern Ireland office directly as appropriate
- write a note of how the meeting came about, what the headteacher said, how you responded and how the matter was left.
- only copy this note to the headteacher after taking advice from ATL.

A disciplinary procedure should enhance the basic principles of natural justice, including the right to a hearing, the right to trade union representation, the right to adequate notice of hearings, and the right to an appeal hearing.

**The Acas Code of Practice**

The April 2009 Code of Practice, *Disciplinary and Grievance Procedures*, makes clear the expected standards that all employers should observe, which Acas describes as the ‘basic requirements of fairness.’ Employers often fail to recognise why it is important to have disciplinary procedures. The Code is helpful on this issue: ‘Fairness and transparency are promoted by developing and using rules and procedures for handling disciplinary and grievance situations.'
These should be set down in writing, be specific and clear.

Employees and, where appropriate, their reps should be involved in the development of rules and procedures. It is also important to help employees and managers understand what the rules and procedures are, where they can be found and how they are to be used.’ (Page 3, paragraph 2).

The Code sets out five stages for a fair disciplinary process:

1. Investigation: investigations should be carried out without unnecessary delay – and may require the holding of a preliminary, investigatory meeting. Where practicable, different people should carry out the investigation and the subsequent disciplinary hearing. If suspension from work is considered necessary, this should be as brief as possible and should be kept under review.

2. Notification: if it is decided that there is a case to answer, the employee should be notified in writing. The notification should contain sufficient information of the allegations/complaints to enable the individual to prepare their response. The employee should be given copies of any documentary evidence (such as witness statements).

3. Disciplinary hearing: the individual should be invited (in writing) to a disciplinary hearing, at which they are entitled to be accompanied by a fellow employee or a trade union representative. They should be given enough notice to have reasonable time to prepare their case.

4. Decision: after the meeting, the manager/employer should decide on any appropriate penalty and notify the employee of the outcome in writing. Any warning should specify how long it will remain current.

5. Appeal: employees should have a right of appeal against any disciplinary penalty, which should be heard by a manager/body that has not previously been involved.

The consequence for the employer of failing to act in accordance with these principles is that (provided the employee has the necessary two years’ qualifying service) the employee is likely to succeed in pursuing a claim for unfair dismissal at an employment tribunal. Although a failure to follow a particular part of the code will not, in itself, lead automatically to a finding of unfair dismissal, the guidance from Acas is effectively the ‘Highway Code’ of employment relations – and a tribunal will take it strongly into account when deciding whether an individual has been treated fairly or not.

The Code can be accessed from the Acas website at www.acas.org.uk. The Code is also supplemented by guidance which provides more detailed advice. If you are subject to any disciplinary action, you should contact ATL immediately. ATL recommends that you are represented at any hearing by an ATL representative. We have a network of experienced regional officials should you find yourself in this unfortunate circumstance. If there are accusations of assault or criminally inappropriate behaviour then it may be necessary for ATL to arrange a local solicitor for you.
ATL recommends that all independent schools have an appraisal or performance management (PM) policy. We believe that striving to improve should be at the heart of what we do. Reflection is beneficial to our members’ personal development and, importantly, pupil’s education.

Reviewing performance should be at the core of your working life. If you do something well, you should be praised. We learn from practice and improve by identifying what, how, and when something can be done better. Any system for assessing performance should be objective, clear and transparent. The appraisee should be clear about the objectives they are expected to meet and by when. Such objectives should be agreed by the appraiser and the appraisee. They should be based on the reasonable expectations in the context of the role, responsibilities and experience of the appraisee. And, as with any targets, they should be SMART: specific, measurable, achievable, realistic and time-bound.

An important detail not to overlook is that the appraiser should be suitably trained. It is also important that there should be some sort of moderation system to ensure that there is consistency of assessment across the school.

PM is a shared enterprise. In assessing what you might do better, consideration should also be given to what the school can do better to support you. For example, excessive workload might be negatively impacting on your performance. Lack of input in decisions that directly affect your working lives can be a de-motivating factor. How about some training to help you complete the task more efficiently? And what about the supreme motivating factor of being praised when you do something well? Other ideas that might inspire performance might be participating in subject-specialist forums or conferences. Observing how other colleagues do things could spark ideas. Mentoring could be something to consider – the relationship has benefits both ways. Collaborative working with colleagues from another school could also invigorate performance.

Having access to high quality training is fundamental to performance. Employers should set aside a healthy budget for all school staff, not just teachers, to enable learning related to the individual’s job and their general professional development. As a trade union and professional association, ATL puts great store on our members’ professional development and we provide an extensive training programme for the benefit of our members.

If you and your colleagues, or the school, are thinking of reviewing current arrangements, then a good starting point for any discussion on PM is the model policy ATL has developed in conjunction with the NUT and the NAHT. The policy is available from ATL’s website at www.atl.org.uk.

Pay and progression

Changes in the state sector mean that a number of independent schools are re-examining their appraisal or performance management systems and policies. Some independent schools are also considering whether to link the outcome of annual appraisals more directly to pay progression.
From September 2014 all pay progression for teachers in maintained schools in England and Wales will be linked to their performance. Outcomes of teachers’ annual appraisal reviews will determine whether a teacher progresses on the pay scale or is refused progression. There is no provision for moving teachers down the pay scale.

**Appraisal and performance management in independent schools**

Your school should have an appraisal or PM policy – this isn’t a legal obligation but it is good employment practice. A good appraisal system will have the following features:

- annual confidential appraisal review meeting facilitated by a trained appraiser who is familiar with your work
- a supportive and developmental process which encourages peer review, honesty and self-reflection
- access to high quality training and development opportunities.

**Make it work for you**

ATL believes your school’s appraisal system should give you the opportunity once a year to have an open, honest and detailed discussion about your strengths and achievements over the past 12 months, any learning and development needs you may have, your objectives over the coming year and any personal goals and ambitions.

It is important to make the system work for you, and to prepare in advance for your review meeting:

- Think about how you have performed against any objectives agreed 12 months ago. You may wish to make a note of examples of how you think that you have met particular objectives and consider what evidence you have to show that you have met your objectives.
- Review the feedback given to you following any classroom observation either by your appraiser or any other member of the management team.
- List your successes throughout the year even if these do not directly relate to your objectives. This could include training you have received or given or projects you have participated in.
- Consider what you wish to achieve during the upcoming year and what support, if any, you need to achieve your goals or aspirations. You should feel confident that you can raise areas where you believe that you need to improve and consider how your school can help. Think about what you would like your objectives to be for the next 12 months; having ideas may avoid objectives being imposed on you. But do go into your appraisal review meeting also willing to listen and take advice from your appraiser.
Objectives

The number of objectives your school expects to be set should be outlined in your school’s appraisal policy.

ATL recommends that there should be no more than three annual objectives as more than this may increase your workload unreasonably.

It is possible for an objective to be set with the aim of it being achieved over more than one cycle. Where this is the case it is a good idea to have milestones set within the objective and agreement that any progression will not be delayed until the whole objective is met.

Objective setting should be related to the objectives set out in your school’s strategic plan. This means that you should be familiar with these objectives and with any departmental/team plans and their objectives. It may also be helpful to familiarise yourself with your school’s most recent inspection report – especially if it specifically mentions your key stage, subject or pastoral responsibility.

You should remember that every objective set should be consistent with your job description and be appropriate to your job responsibilities. And they should be SMART: specific, measurable, achievable, realistic and time-bound.

Lesson observations

Members often raise concerns about the frequency and nature of lesson observations (also sometimes referred to as drop-ins or learning walks). It is good practice for schools to have a policy on lesson observations so that teachers are aware of how often they are likely to be observed, how this links to appraisal and the timescales for receipt of written feedback.

Observation should be supportive and developmental. It is helpful if schools recognise that observation in itself does not improve teaching standards; indeed excessive observation can be disruptive, demoralising and stressful for teachers.

Learning walks can also be a helpful developmental tool, especially when conducted on a peer-to-peer basis. Though, implemented unthoughtfully they can become an unnecessary additional burden.

Link to pay?

There is no evidence that performance-related pay for teachers improves outcomes for pupils. ATL remains entirely unconvinced about the wisdom of basing pay purely on performance assessment.

ATL believes that adopting pure performance-related pay (PRP) from other industries is inappropriate and potentially counter-productive. Such systems are extremely rare in the sector and for good reason. ATL rejects any mechanist assumptions that educational staff are primarily motivated by pay and that pure PRP is the way forward.

Teachers and support staff are not rivet makers motivated by additional pay if they produce an extra rivet. Staff in schools are, as a rule, highly motivated to provide the best education for the pupils in their charge. Education is a team performance. It is a collegiate activity.
Of course, there are exceptional performers and they should be justly rewarded. But over-emphasis on PRP is likely to be counter-productive.

For one thing, PRP changes behaviour. For example, the choice of syllabi may be influenced by the need to achieve the requisite value added scores. Financial incentivising of targets may compromise the breadth and creativity within a subject. Ultimately, emphasising targets could encourage the corrosive ‘league table mentality.’ One such example was Ofsted changing ‘satisfactory’ to ‘requires improvement.’

One of the difficult areas of PM is how to assess the many factors that are outside the control of the individual. For example, how do you compare the number of pupils doing your subject or, perhaps more significantly, the calibre of pupils, with other subjects?

ATL also believes that PM should be kept entirely separate from capability procedures. Staff should be able to view the process as supportive which is undermined by inclusion of punitive sanctions. If there are any serious concerns about a member of staff’s capability then they should be addressed under a separate policy.

If proposals are made that mark a radical departure from existing practice, such as PRP, there are a number of probing questions you can ask. Why are these changes being proposed? What do we hope to achieve? What is wrong with current practice?

Beyond the discussion of the common good, remember you may have individual contractual rights in the matter.

As with all such discussions, you would be well advised to ensure that staff have sufficiently robust consultation and negotiation mechanisms in place to ensure timely and meaningful staff involvement in any decision-making.

If your school wishes to introduce more performance elements to your pay system, there are a number of things ATL would look for:

- There should be a transparent pay policy, subject to full consultation with ATL, which sets out the pay scale(s) and the criteria for pay progression on and between those scales. The pay policy should include details on starting salaries and all allowances and responsibility payments.
- The pay policy will only be robust and effective if it is clearly linked to the school’s appraisal or PM system and to the provision of high quality CPD.
- There should be no direct link between appraisal and pay policies and formal capability procedures.

For further information on capability procedures see chapter 5.

Your school’s legal obligations

Your school has a number of legal obligations under employment law and equality law to ensure that they have fair employment practices which do not discriminate against staff. If you have any concerns that your school is treating you unfairly, or failing to follow proper procedures, speak to your ATL rep or contact ATL’s London office (020 7830 6441).
An important element of your working conditions is how your employer treats you when you are having or adopting children or need to take time off due to illness. This chapter looks at your statutory rights in these events and how your employer can improve on them.

The minimum statutory rights enjoyed by all employees
This section covers the statutory entitlements for employees in England and Wales for maternity, adoption, paternity and sickness. Scotland and Northern Ireland broadly mirror these entitlements but further details on statutory entitlements can be found at [www.adviceguide.org.uk](http://www.adviceguide.org.uk) for Scotland and [www.nidirect.gov.uk](http://www.nidirect.gov.uk) for Northern Ireland.

It is often useful to compare the enhanced conditions of teachers in the state sector with those offered by your independent school. In England and Wales, these are set out in the Conditions of Service for School Teachers (normally referred to as the ‘Burgundy Book’).

In Scotland, salaries and terms and conditions of service for teachers in education authority schools are outlined in the document, *A Teaching Profession for the 21st Century*, available at [www.snct.org.uk](http://www.snct.org.uk).

For Northern Ireland, information on teachers’ pay and conditions of service in the state sector can be found on the Department of Education Northern Ireland (DENI) website at [www.deni.gov.uk](http://www.deni.gov.uk).

Family rights
All employees have minimum statutory rights when having or adopting children, as well as rights to request flexible working (which since June 2014 exists regardless of the reason for wanting to work flexibly).

A good employer will enhance these benefits and you should always check your contract of employment to see whether you enjoy more generous terms than the minimum statutory rights.

The state-maintained sector provides enhanced statutory terms and many good independent schools mirror this provision or even better it.

Further general information, including a series of factsheets on maternity, adoption and other family benefits, is obtainable from the ‘help and advice’ section of ATL’s website. If you have a specific individual query, you should ring ATL’s legal and member services department – see chapter 12 for contact details.

General rights relating to pregnancy
Women are protected by law against detrimental treatment arising from pregnancy or having a baby, including redundancy or dismissal. The law enshrines the continuation of the contract of employment for the period of maternity leave. During your ordinary maternity leave (the first 26 weeks), all of your normal contractual rights apply, other than pay, and you have the right to return to the same employment, if possible.
After additional maternity leave (the second 26 weeks) you have the right to return to the same or similar employment. Other entitlements include the right to 13 weeks’ unpaid parental leave until the child’s fifth birthday, or, if the child is in receipt of a disability living allowance, 18 weeks’ unpaid leave until the child’s 18th birthday.

**Notifying your employer**
You must tell your employer that you are expecting a baby by 15 weeks before the Expected Week of Childbirth (EWC). Your doctor will confirm this date on your MATB1 certificate. You may want to tell your employer earlier. The earlier you tell your employer the sooner they will be able to undertake a health and safety risk assessment and put into place any provisions to protect you and your child.

**Pregnancy and health and safety**
Any pregnant employee should inform her line manager immediately so that a risk assessment of her work activities can be conducted and controls implemented as necessary. A record of the assessment should be made and risks should be monitored throughout the pregnancy until six months after the birth.

If risks are considered to be significant, the employer should make arrangements to adjust the duties or working hours of the employee in order to eliminate or reduce the risks. If this cannot be achieved, the employee should be asked not to attend work for as long as is necessary to protect her health and safety and that of her unborn child.

Throughout this period she must receive full pay.

Significant risks to be considered in schools and colleges may include carrying heavy loads, physical assaults, prolonged standing or sitting, temperatures that are too high or too low and infections. If you work with a computer, your work station must also be risk assessed.

Further information is available from the Health and Safety Executive at [www.hse.gov.uk](http://www.hse.gov.uk).

**Time off work for antenatal care**
All pregnant employees, regardless of length of service, or hours of work, are entitled to reasonable paid time off for antenatal care. Part-time employees should not be expected to arrange their antenatal classes when they are not at work.

**Maternity leave**
All pregnant employees are entitled to 52 weeks’ maternity leave, regardless of length of service or number of hours worked. This is made up of 26 weeks’ ordinary maternity leave and 26 weeks’ additional maternity leave.

You may start your maternity leave at any time from the beginning of the 11th week before your EWC. Your employer must provide you with written confirmation of the start date for your maternity leave and the date they are expecting you to return if you take the full 52 weeks maternity leave. If you wish to change the start date of your maternity leave then you need to give eight weeks’ notice of the change.
Your school may be willing to accept a shorter period of notice depending upon the circumstances.

Should you wish to return before the end of your 52 weeks maternity leave you must give your school at least eight weeks’ notice in writing. You must also give eight weeks’ notice if you subsequently wish to amend this date.

Support staff will continue to accrue annual leave while on maternity leave, in accordance with their contract. Teaching staff will usually be expected to take any accrued statutory holiday during school closures when they return from maternity leave in accordance with their contract. If you are in the TPS you will continue to be in pensionable service while you are on maternity leave and receiving at least Statutory Maternity Pay (SMP). For support staff in the Independent Schools’ Pension Scheme, while you continue to receive full pay during paid maternity leave you will pay your normal contributions in the usual way. If your pay is reduced then you will pay your pension contributions at this reduced rate and your employer will make up the difference. You should check with your employer for details of other schemes.

**Not returning after maternity leave**

If you decide not to return to work after maternity leave then you should give your school the required period of notice. You should check your contract to see if some of your maternity pay is repayable in the event of you not returning to work (this may be the case if you have been paid over the statutory amounts).

If you do not return to work at the end of your maternity leave and have not taken your statutory 28 days annual leave prior to your maternity leave then you may be entitled to be paid in lieu for this.

If you plan to take a break of more than five years before returning to work then this may have an impact on your pension. For members of the TPS a break of more than five years will reduce the index linking on the benefits you have accrued in the scheme.

**Maternity pay**

All pregnant employees, who have worked with the same employer for 26 weeks by the 15th week before their baby is due, are entitled to SMP. If you do not qualify for SMP then you may qualify for maternity allowance.

The first six weeks of SMP are paid at 90% of average weekly earnings, with the subsequent 33 weeks at the nationally agreed rate, or 90% of your average weekly earnings if lower.

Maternity allowance is claimed from your local Department for Work and Pensions office and it is paid for 33 weeks at the nationally agreed rate, or 90% of your average weekly earnings if lower.

You should check your contract to see if your employer offers better maternity leave or pay.

In England and Wales, state sector teachers receive enhanced maternity pay of four weeks at full pay, two weeks at 90% of salary, 12 weeks at 50% plus SMP, and 21 weeks at SMP.
Adoption
Employees adopting a child are entitled to broadly similar benefits as for maternity. Full details can be found in ATL’s factsheet entitled, Adoption Leave and Pay.

‘Keeping in touch’ days
Mothers or adopters are able to go into work for up to 10 mutually agreed ‘keeping in touch’ days during their maternity/adooption leave without losing maternity or adoption pay. Employees should be paid for attendance of keeping in touch days.

Employers are entitled to make ‘reasonable contact’ with an employee during maternity or adoption leave. A good employer should discuss with you, ahead of your leave, what contact will be made between you.

Paternity leave and pay
Partners of new mothers or adopters, who have worked for the same employer for 26 weeks before the expected week of childbirth or notification of placement, are entitled to two weeks’ paid paternity leave. The leave must be taken within 56 days of the baby being born.

Paternity leave is paid at the national rate of statutory paternity pay or 90% of your average weekly earnings if lower. You should check your contract to see if your employer offers better leave or pay for paternity leave. Full details of entitlements can be found in ATL’s factsheet entitled, Paternity Leave.

Additional paternity leave
Mothers who return to work before the end of their maternity leave may be able to pass their untaken maternity leave and pay to their partner. Full details can be found in ATL’s factsheet entitled, Additional Paternity Leave and Pay.

Shared parental leave
From April 2015, under a new system of flexible parental leave, parents will be able to choose how they share care of their child in the first year after birth. Employed mothers will still be entitled to 52 weeks of maternity leave; however, working parents will be able to opt to share the leave.

Mothers will have to take at least the initial two weeks of leave following the birth as a recovery period. Following that they can choose to end the maternity leave and the parents can opt to share the remaining leave as flexible parental leave.

Statutory time off for dependents
All employees have the right to take time off to care for dependents. There is no minimum period to employment required to be entitled to this benefit. You are entitled to take a reasonable amount of time off to deal with unexpected or sudden emergencies and to make any necessary arrangements.
A dependent is a spouse, child or parent or someone who lives at your address who is dependent on you. It can also include someone who is reliant on you for assistance. In most cases, reasonable time off would not be more than one or two days. There is no legal right to pay, but good employers do give paid time off in such circumstances.

**Right to request flexible working**

After 26 weeks’ service, all employees have the legal right to request to work flexibly. Your employer can only reject your request for specific business reasons. Please see ATL’s factsheet entitled, *Flexible Working*, which contains a model letter of application and what steps you can take if your request is refused.

While this is an important right, it must be noted that there is no automatic right to reduce hours or to work part-time or flexibly.

In general, employers are becoming more sympathetic to requests for flexible working, as they can see the benefits of having a more flexible workforce. As educational establishments have long recognised this, many of their employees work part-time for a variety of reasons.

You should check your contract or your employee handbook and talk to ATL, who, where appropriate, can make representations on your behalf.

**Returning to work part time after maternity leave**

While the flexible working regulations apply to all employees, ATL has produced a separate factsheet providing guidance for women employed on full-time contracts who wish to return to work part time after maternity leave.

It is generally accepted by employment tribunals and courts that women have greater childcare responsibilities than men. Therefore, employers who insist on resumption of full-time work after maternity leave may indirectly discriminate against women since fewer of them are able to work full time.

An unjustifiable refusal of a request to go part time or job share may amount to indirect sex discrimination under the Equality Act 2010 and the Sex Discrimination (Northern Ireland) Order 1976.

The ATL factsheet contains a sample letter that female members should use to make their application to return to work part time and is entitled, *Working Part After Maternity Leave*.

**Sick pay and sick leave**

If you are unable to attend work due to illness you are entitled to time off. If you are sick for seven days or fewer (including weekends) your employer can ask you to confirm that you have been ill by filling in a self-certification form. The form usually includes details about your sickness as well as the dates on which it started and ended, which may be days that you do not normally work.
Your employer will require you to provide evidence if you are sick for more than seven days. This is usually a ‘fit note’, the informal name for the statement of fitness for work from your doctor.

**Statutory sick pay**

You are entitled to receive statutory sick pay (SSP) for a maximum of 28 weeks in any spell of sickness absence. Absences close together (usually within eight weeks) may be linked for SSP purposes.

You are entitled to SSP if you have been ill for at least four or more days in a row (including weekends, bank holidays and days that you do not normally work) and have average earnings of at least £111 per week (April 2014). SSP is not paid for the first three days of an illness.

At the end of the 28 weeks you may be entitled to claim Employment and Support Allowance. You will need to contact your local Job Centre Plus to claim this and should do so before your entitlement to SSP runs out if you believe that you will remain on sick leave for longer than 28 weeks.

**Occupational sick pay**

Many employers offer an enhanced sick pay scheme to employees. You should check your contract to see if your employer offers an enhanced scheme. For teachers in maintained schools in England and Wales, sickness benefits are based on a sliding scale according to length of service as follows.

During the first year of service:
- full pay for 25 working days and, after completing four calendar months’ service, half pay for 50 working days.

During the second year of service:
- full pay for 50 working days and half pay for 50 working days.

During the third year of service:
- full pay for 75 working days and half pay for 75 working days.

During the fourth and subsequent years:
- full pay for 100 working days and half pay for 100 working days.

Teachers in maintained schools receive SSP on top of any half pay they are entitled to subject to the 28 week limit on paying SSP. For sick pay, working days are defined as days when the school is open. The sick leave year starts on 1 April and a teacher’s entitlement begins afresh on their first day back at work after 1 April.

Support staff in maintained schools in England and Wales receive similar levels of sick pay as follows.

During the first year of service:
- one month full pay and, after completing four calendar months’ service, two months’ half pay.

During the second year of service:
- two months’ full pay and two months’ half pay.

During the third year of service:
- four months full pay and four months half pay.

During the fourth and fifth years:
- five months’ full pay and five months’ half pay.

After five years service:
- six months’ full pay and six months’ half pay.

Similar provisions apply in Scotland and Northern Ireland but you should check ATL’s website for differences.
As private businesses outside the national collective bargaining structure in the maintained sector, independent schools have greater freedom to set their own terms and conditions of employment. This means that pay and other remuneration can vary widely from school to school and indeed, in some cases, from employee to employee in the same school. Some independent schools provide financial rewards for teachers that are far higher than in the state maintained sector; others offer poor pay and conditions of employment. While support staff pay varies, it tends to be more uniform than the range seen for teachers.

However, the majority of independent schools look to match or better the pay for teachers in the state-maintained sector. Support staff working in independent schools are employed on a range of terms and conditions determined by their individual contracts. Some schools employ support staff on a term-time only basis whereby they are paid for the weeks they work, usually 38 or 39, and then have a leave entitlement added on (see page 64). Some schools use the local government pay scale (the scale used throughout the maintained sector) as the basis for paying support staff and also increase salaries by the local government pay award each year. However, the incremental annual salary rise, is not always incorporated into contracts, and if this is the case you will not have an express contractual entitlement to the pay rise. Other schools have their own salary rates. As with teachers, the details of support staff pay should be included in a written pay policy.

An integral part of pay and remuneration is the employer’s pension provision, which is addressed at the end of this section.

The contract

There are three basic things that you need to know about salary:
- What salary will you start on?
- What is the school’s pay scale and how do you progress up it?
- Is there an annual cost of living increase?

Your level of pay will usually be agreed on appointment but how does it increase after that? This will usually be determined by your individual contract of employment and any supplementary documents, such as a pay policy. The level of your current salary is obviously important, but just as important is a pay scale and knowing how you will progress up that scale.

While the vast majority of independent schools do have pay scales, a small minority, unfortunately, do not. If your school operates a system of spot salaries, then you would be advised to consider a joint approach with your ATL colleagues to the management of the school, to seek to negotiate over the adoption of a salary policy with a salary scale, in which salary awards are transparent and reward hard work and achievement.

Similarly, it cannot always be taken for granted that your salary will be increased each year to take account of inflation. Again, this provision needs to be in the contract. For example, the school may give contractual guarantees that pay will rise each year by no less than the
national state-maintained percentage pay award, or the Retail Prices Index (RPI).

Many schools adopt a standard pay clause which gives the governing body discretion to set pay rates as it sees fit. ATL is strongly against such clauses as they are one-sided, do not provide for fair and reasonable pay awards, nor give staff any binding guarantees.

Some independent schools in England and Wales simply ‘incorporate’ the STPCD, the annual statutory pay document applicable in the maintained sector, into the contract. These schools will need to have a pay policy which shows how the school will exercise the discretions allowed for in the STPCD.

Most teachers are salaried, with pay received in 12 monthly instalments, although some are paid hourly. Some support staff are paid on term-time only contracts. Schools tend to use broadly similar formulas to calculate salaries which take into account the proportion of full-time hours worked as well as the term-time only aspect. The salary is usually divided by 12 and paid in equal monthly instalments throughout the year to ensure that the employee receives regular payments.

In essence, a term-time only contract means that an employee is only employed when the school is open, in most cases, for 38 or 39 weeks a year. Employees on term-time only contracts are entitled to paid leave, and this entitlement is usually added on to the weeks worked to establish the overall salary. For example, a school which is open for 39 weeks and provides a leave entitlement of five weeks would employ you for a total of 44 weeks in a year. This would be worked out in salary terms as a proportion of the number of weeks in the year. The annual salary would therefore be 44/52ths of the full-time salary for the post.

By law, full-time employees are entitled to a minimum of 28 days of paid annual leave per year, inclusive of bank holidays. Part-time staff are entitled to the same minimum of paid leave, but on a pro-rata basis. One of the problems with term time only posts is that the salary is often advertised at the full 52-week rate. The successful applicant then has a nasty surprise when the actual salary is revealed. This emphasises the importance of looking carefully at the details of a post, at all stages of the process, when applying for a position. Term-time only contracts create a disparity in schools. ATL’s view is that independent schools should provide full year contracts for all staff.

Written pay policy

ATL recommends that every independent school should have a written pay policy in place. It should be clear, comprehensive and applied fairly and consistently across the school workforce. Ideally, the policy should be a contractual document.

Among other things, it should include:
- the pay scales used by the school
- the annual pay review date
- the rules for increments
- the criteria for PRP (if used)
- the criteria for extra pay, such as responsibility allowances
- pro-rata part-time salaries
- pay and the threshold
- any procedure you need to follow before your pay is reviewed and an appeal process if you are not content with the outcome of the review.
**Collective bargaining**

Where ATL is recognised for the purpose of collective bargaining, pay awards are negotiated by the school and ATL reps.

The right to collective negotiation, under trade union recognition, puts staff in the strongest position to influence decisions affecting their terms and conditions. Negotiation is better than consultation, which in turn is better than just being informed.

Amongst other things, recognition gives the right of disclosure of relevant information, such as school income, salary costs and other relevant financial information. Without this information, staff will be negotiating in the dark. For instance, without key financial information how can you properly test your employer’s negotiating position if it argues that it cannot afford to increase wages due to lack of money?

Of course, financial difficulty is a reality for some schools and staff should take this into account when negotiating a pay rise. This is part and parcel of a proper process of collective bargaining. However, schools will always have competing priorities and increasing salaries may not be on top of their ‘wish list’. It may well be a new science lab, or sixth form block. This type of major project would make the school more marketable and attractive to prospective parents.

It is often said that salaries account for approximately 70% of running costs. An interesting exercise is to compare the salary budget against fees and other income. For instance, it is widely acknowledged that school fees in the sector have seen substantial increases over the last 10 years, so there is a strong argument that for many independent schools the money is there for good salary increases. Again, this can only be tested with rigour if you are provided with the key financial information referred to above. Schools which have not recognised ATL may have less formal arrangements but should still consult with reps of the staff common room association or staff consultative committee before making awards.

In any recognition with independent school employers, ATL reps must acknowledge the potential for financial information, disclosed as part of the process, to be highly sensitive. ATL respects this in its work with independent school employers.

In a good illustration of the benefits of recognition, ATL reps in one HMC school negotiated a cost of living increase that matched the rate of inflation as measured by the RPI and a significant enhancement of maternity provision from the statutory minimum to better than the maintained sector provision.

In many independent schools there is no collective agreement requiring an employer to negotiate with staff representatives. However, ATL members can and do still influence things. In one well known boarding school, ATL members had become frustrated by their employer freezing their salaries despite increasing pupil numbers. Guided by ATL’s briefing on Collective Bargaining, staff submitted their first ever pay claim. The symbolism of staff taking an active stance, rather than waiting passively for the governors’ decision paid dividends. After a pay freeze the previous year, staff were awarded a cost of living increase of three percent.
Further information
The following information sources may be helpful when engaging in pay negotiations:

- For information on pay, recognition and related issues visit ATL’s website at www.atl.org.uk.
- ATL’s briefing on Collective Bargaining and Starter for Ten: Collective Bargaining are free to members and can be viewed and downloaded from ATL’s website.
- Information on registered charities, including financial accounts can be found on the Charity Commission website at www.charitycommission.gov.uk.
- The Office for National Statistics records various economic statistics including RPI and the Consumer Prices Index at www.ons.gov.uk.
- The Living Wage Foundation can be located at www.livingwage.org.uk.

Individual pay negotiations
As with most things it is possible to negotiate pay within certain limits. It will depend on how much they want you and what finances they have available.

Knowing your worth and researching what salary you might expect in another school obviously helps.

For instance, with the current shortage, if you are a maths or science teacher, then you could be in a strong bargaining position. If you are thinking of moving to the state-maintained sector and have already passed the threshold, there are limited circumstances where the threshold achieved in an independent school is portable. For instance, a school in the state-maintained sector has the ability to award a recruitment allowance if they wish to attract a teacher. The amount of the payment is entirely at the school’s discretion but it can only be awarded for a maximum of three years.

Benchmarking against the state-maintained sector
It can be useful to benchmark salaries against those in the maintained sector.

The pay scales for teachers in England and Wales are published by the Department for Education at www.gov.uk and are contained in the STPCD. They are also available from ATL’s website.

In Scotland, salaries and terms and conditions of service for teachers in education authority schools are outlined in the document, A Teaching Profession for the 21st Century, available at www.scotland.gov.uk. Other relevant information is also available from this website.

Salary scales in the state sector in Scotland are different to England and Wales, for instance, there is a specific scale for music instructors. In addition to the main teaching scale, in Scotland there is also a Chartered Teacher Programme.

Terms and conditions are updated by the Scottish Negotiating Committee for Teachers (SNCT) and are contained in the SNCT Handbook of conditions of service, accessible in the ‘handbook’ section of

Other regulations relating to the employment of teachers in the education authority sector in Scotland are contained in Part IV of the Education (Scotland) Act 1980.

In Northern Ireland, agreement on teachers’ pay and conditions of service is reached through the Teachers’ Salaries and Conditions of Service Committee (Schools). Pay determinations/circulars give legal effect to salary changes. Further information can be obtained from the DENI website, at [www.deni.gov.uk](http://www.deni.gov.uk).

**England and Wales**

The government publishes an annual minimum and maximum salary for classroom teachers in state maintained schools in England and Wales. A six-point main scale and three-point upper pay scale is also produced but these are now for guidance only. Maintained schools have the freedom to determine their own pay scales within the prescribed limits.

Progression on the main and upper pay scale is linked to performance and schools are able to determine the salary of individual teachers.

Classroom teachers are eligible to receive:
- Teaching and learning responsibility (TLR) payments when they have a sustained additional responsibility for ensuring the continued delivery of high-quality teaching and learning and for which they are accountable.
- Headteachers, deputy headteachers and assistant headteachers are all members of the leadership group and are paid on a separate leadership group pay spine.
- In addition, teachers who hold a responsibility for a short-term project will be eligible for a TLR of between £500 and £2,500 per annum.
- Classroom teachers are eligible to receive:
  - SEN allowances when they have responsibility for teaching pupils with special needs in designated classes or hold a post that requires a mandatory SEN qualification.
  - Headteachers’ pay is normally related to the school group size, but governing bodies have the discretion to pay more where it is necessary to recruit and retain headteachers at the most challenging and largest schools. Deputies and assistant heads are paid on a five-point range below that of the headteacher and above the pay of the highest paid classroom teacher.
- Schools can make extra payments for teachers for recruitment and retention purposes for a fixed period, and to decide the amounts themselves.
- Teachers have lost the automatic permanence and portability of their pay points. Prior to September 2013 a teacher moving between maintained schools would retain the point on the main or upper pay scale when they started at a new school. Teachers now need to negotiate their starting salary when they move schools.
While the changes introduced to teachers pay in the state sector have undoubtedly made their mark, there has not been whole-scale revolution. Many maintained schools continue to operate the six-point main scale and three-point upper pay scale, which prior to September 2013, had been mandatory.

Support staff
Support staff in the state-maintained sector are paid along the lines of the National Joint Council's National Agreement on Pay and Conditions of Service.

Pension provision
In England and Wales, while there is no obligation for them to join, the substantial majority of independent schools are members of the TPS. By common consensus, the TPS provides the best pension for teachers and independent school employers would have difficulty recruiting and retaining good quality teachers if they failed to offer it. Other independent employers offer reasonable private pension schemes. Some preparatory schools in membership of the Independent Association of Prep Schools use the Association's own pension scheme.

The parallel scheme in Scotland is the Scottish Teachers’ Superannuation Scheme, provided under the Teachers’ Superannuation (Scotland) Regulations 2005 (as amended) and administered by the Scottish Public Pensions Agency.

In Northern Ireland, the main pension scheme is the Northern Ireland Teachers’ Pension Scheme.

Unfortunately, a small minority of employers do not provide adequate pension cover. Pension provision is clearly a very important remuneration factor to consider. If you are about to move schools, you need to scrutinise your contract very carefully to establish clearly what pension provision is on offer by the school.

The pension position may be a key indicator as to whether they are a ‘good employer’.

From the 1 October 2012, the government introduced auto-enrolment of employees who are not already in a pension scheme. This date was the commencement of a five-year phasing-in of the programme, starting with the larger employers.

When this applies to your employer, they will have to put you (if you’re not already in a scheme) into a qualifying pension scheme automatically and, if you do not wish to be part of it, you can opt-out. Auto-enrolment is likely to have particular impact on support staff, as membership of a pension scheme is far lower among support staff than it is among teachers.

If you are in any doubt, please contact ATL’s pensions team for individual advice on 020 7782 1600. It may also be possible to arrange for an ATL pension adviser to visit your school. Further information is available on ATL’s website at www.atl.org.uk.

Pension provision for support staff varies considerably but many independent schools are members of the Independent Schools’ Pension Scheme, administered by The Pensions Trust.
As a business, an independent school is reliant on attracting enough fee-paying pupils to be economically viable. Failure to do so is likely to result in individual redundancies, outright closure, or merger with another school. Redundancies can also arise from restructuring (perhaps following the appointment of a new headteacher) and from general reorganisation.

While many redundancies are genuine and cannot be avoided, there are cases where they are not, or where if proper consideration was given the redundancy could be averted. ATL has worked with many independent school employers to successfully avoid having to make staff compulsorily redundant. This is good for the individuals under threat, the morale of all staff, and the school in general. The law provides legal protection to ensure that a redundancy is:
- genuine
- non-discriminatory
- the final outcome following a proper process of notice and consultation
- avoided wherever possible
- concluded by the payment of a sum of money.

**What is redundancy?**

So, legally, what is ‘redundancy’? A redundancy arises where an employee is dismissed either because:
- the employer has ceased, or intends to cease, to carry on business
- the employer’s requirements for employees to carry out work of a particular kind in the place where she/he is employed have ceased or diminished, or are expected to do so.

Some examples of redundancy situations might be:
- a subject is dropped
- a department is overstaffed
- a school closes, two schools merge
- duties are reorganised so the same work can be done by fewer teachers
- a full-time post is cut to part-time
- tight finances require cuts in staff numbers.

**Redundancy procedure**

If you are unfortunate enough to be faced with a possible redundancy situation then the starting point is your contract of employment, school redundancy policy, or employee handbook.

The purpose of having a redundancy policy and procedure is to ensure that it is clear to everyone how this difficult situation will be dealt with. A good redundancy policy will allow for the process to be dealt with in a fair, consistent and timely manner.

If your school does not have a redundancy policy and procedure then you, and your colleague ATL members, should approach the school management to open discussions on the issue. The preferred time to agree the terms of such documents is before redundancies are threatened.

Even if your school does not have a redundancy policy, there are important principles that it must follow:
- warning staff of the possibility of redundancy consulting staff affected and recognised trade unions
● establishing objective criteria for selection and applying them fairly
● taking reasonable steps to find other work for displaced staff.

As a first step, schools need to identify the group of staff at risk. The ‘pool for selection’ depends on whether people are doing the same, or similar, work and whether jobs are interchangeable.

The redundancy pool in a preparatory school might be all teachers. In secondary schools the pool is often wider than first thought; for example, if a school cuts ICT from the curriculum, but the ICT teacher has a PGCE in maths and most maths teachers also teach ICT, then the pool might be teachers of both ICT and maths.

Consultation
Your headteacher or line manager must consult you personally about a redundancy in order, among other things, to find out about any factors that might be of bearing of which he or she is unaware, or about other jobs which it might have been assumed you would not do. Simply informing you by letter is not good enough. Consultation must always be meaningful.

An employer may also propose a temporary contractual arrangement to prevent staff leaving before the actual closure, or to cover a transitional phase, say in a merger. Enhanced conditions may include fewer hours of work while maintaining salary, bonuses, enhanced redundancy payments or other inducements.

Notice of redundancy
If you are made redundant, you are entitled to either contractual notice or, if longer, statutory notice. Statutory notice is one week for each completed year of service, up to a maximum of 12 weeks. This may be of significance to support staff who often have a contractual notice period of one month, as opposed to teachers whose contractual notice is usually one term.

Unfair selection criteria
Selection criteria must be reasonable and clearly defined from the start. Tribunals criticise imprecise criteria such as ‘flexibility’ or ‘balance of skills’ because there is no clear way of assessing them. Selection for redundancy on the grounds of trade union membership is not allowed, and criteria should not discriminate on grounds of sex, race, disability, religious belief, sexual orientation or age.

Some independent schools use attendance records as a criterion for selection, which ATL does not recommend. If there is an attendance issue then it should be dealt with in the appropriate way. Use of such grounds can be potentially discriminatory, eg using attendance records where a woman has recently been away on maternity leave.

In cases where there is the threat of 20 or more redundancies, special rules on consultation apply. Contact ATL in these circumstances.
The number of years of relevant experience, or length of service, has often been used as a ‘tie-break’ criterion. The latter may be referred to as ‘last-in first-out’. However, under The Employment Equality (Age) Regulations 2006 this may be deemed to be discriminatory, and should only be used subject to ensuring that it can be ‘objectively justified’ and is non-discriminatory.

Sadly, there are some instances of outright discrimination. Rebecca Raven, a teacher at an independent girls’ school, in Denbigh, North Wales, was made redundant after informing her employer she was pregnant.

ATL successfully took the employer to court winning compensation for this appalling treatment. The school was found guilty of unfair dismissal under Section 99 of the Employment Rights Act 1996 and discrimination under the Equality Act 2010.

Part-time employees must not be treated less favourably than full-time employees. It is not permissible for an employer to decide to make redundancies on the basis of letting the part-time employees go first.

Even with fair criteria, a redundancy can still be procedurally unfair if the school applies the criteria unreasonably or with the wrong group of teachers, or does not consult. A failure to follow its own redundancy policy and procedure will also leave a school open to challenge.

### Fixed-term contracts

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 make it unlawful for an employer to treat fixed-term contract staff less favourably than comparable permanent colleagues. This means, for example, that if there is a redundancy situation among support staff, a school cannot automatically select those who are on fixed-term contracts.

The regulations also stipulate that anyone on a series of fixed-term contracts will be entitled to a permanent contract after four years unless there is an objective reason to refuse this. Furthermore, the non-renewal of a fixed-term contract may also qualify for a redundancy payment after two years’ service (unless that contract is for a specific temporary need, such as covering for someone who is on maternity leave).

### Avoiding redundancy

The school must take reasonable steps to find alternative work for you. If it does not tell you about an appropriate vacancy, then your dismissal may be unfair. Similarly, you are obliged to consider offers of suitable alternative employment, and you may lose your redundancy pay if you unreasonably refuse a suitable job. Unfortunately, it is not unknown for independent schools to be recruiting staff on or around the time when making redundancies. This is not good practice and should be challenged.

On some occasions in smaller independent schools, the governors have kept staff informed of the precarious
nature of the school’s finances and staff have decided to forgo salary increases to avoid redundancies.

ATL recommends that when a redundancy is being considered, governors and senior management should take a ‘whole school’ approach, looking beyond the post nominated for deletion to review the entire school, to ascertain whether rationalisation is possible. A restructuring process might obviate the need for dismissals.

For example, let us say that the nursery attached to a school is not attracting enough pupils and someone will have to be made redundant. While the post would be deleted from the staff structure, it does not mean per se that the nursery school teacher’s employment at the school would cease.

**Legal obligation on employer to take all practicable steps to avoid redundancy**

An employer is legally obliged to take all practical measures to avoid making an employee redundant. There are various ways in which this could be achieved. It may be that the person in the post has training, experience and expertise extending, for example, beyond the nursery age group and it may be that he or she could be employed elsewhere in the school. It may be that teaching colleagues are planning to retire or to terminate their contract with the school on other grounds. A vacancy could arise which the employee facing redundancy could fill.

A common approach is to invite staff to volunteer for redundancy, as this could remove the need for a compulsory redundancy. If there are no volunteers, then a set of criteria for a skills and experience audit can be generated, which all staff complete and is then scored to establish who has the most to offer to the school, e.g. who can teach subjects other than those they are currently required to offer.

For example, when in 2014 two independent schools announced merger, staff were informed that there would be significant redundancies of over 70 jobs. Fortunately, for ATL members, they had already secured collective negotiation rights, via trade union recognition, so that ATL was negotiating for them right from the very start. Working with the employer, ATL were able to secure the offer of voluntary redundancy at enhanced rates for all staff, reducing the need for compulsory job losses by 95%.

It was also agreed that staff under the threat of redundancy would be given priority treatment for vacancies elsewhere. This positive outcome was a win-win: staff at risk of being made redundant weren’t forced to leave; staff who embraced the opportunity to try pastures new had a financial incentive; and the employer achieved the restructuring relatively painlessly with staff retaining good morale for the newly merged school.

In transferring to a new role, it is not unreasonable to expect a school to provide appropriate training if necessary, arranging a phased start and mentoring.
Help in finding another job

If the redundancy cannot be avoided, then your employer must provide reasonable paid time off for you to seek alternative work. A good employer will also offer appropriate training courses to enhance your employment prospects, but this is not an entitlement.

ATL also provides a job finder service in conjunction with Hays Recruitment, one of the UK’s leading recruitment agencies. If you want to search vacancies, or speak to a consultant, visit www.hays.co.uk/jobs/atl.

Challenging a redundancy decision

To challenge your selection for redundancy, you should follow your school’s redundancy procedure. The Acas Code does not apply to redundancy dismissals.

An employee facing the possibility of redundancy must be informed in writing that their employer is considering making their job redundant, sometimes known as an ‘at risk letter’. The employee should be informed of their right to a meeting with the employer to discuss the matter. If the outcome of the meeting is unsatisfactory then the employee has the right of appeal. An appeal will normally be to a panel of governors. They should conduct a full re-hearing rather than merely review the original decision, but this will depend on any written procedure. It is essential that you exhaust internal procedures before claiming unfair dismissal at an employment tribunal. However, you should also be aware that in order to bring such a claim you must apply to an employment tribunal within three months of the date of your dismissal.

Redundancy pay

If you are made redundant, you are entitled to a statutory redundancy pay, providing you have two years’ continuous employment with the same school or employer. This is a statutory entitlement, but your school may operate a more generous scheme which enhances the legally required minimum.

Statutory redundancy pay is calculated as follows:
- for each complete year of service up to the age of 21, 0.5 of a week’s statutory pay
- for each complete year between the ages of 22 and 40, one week’s statutory pay
- for each complete year from the age of 41 upwards 65, 1.5 weeks’ statutory pay.

A statutory week’s pay is a capped amount which is upgraded each year. As of April 2014, statutory redundancy pay is £464 per week. It is standard in the maintained sector to use the statutory calculation but ignore the capped amount, and use the gross weekly salary rather than the net sum, ie the amount paid after deduction of tax. No more than 20 years’ service can be used in the calculation of the statutory redundancy entitlement. Only actual service with the school is used.
There is no equivalent accumulation of service, as applied in the maintained sector, which is continuous if you move from one local authority to another during your employment.

Many employers, including independent schools, reward loyal service by offering enhanced redundancy payments, often using actual pay, rather than the capped statutory amount. Other employers use enhanced multiples of the statutory multipliers.

Although independent schools may be close to operating at a financial loss, they could still have considerable assets, such as land. ATL believes that in such circumstances the employer has, in addition to any contractual duty, a moral obligation to ensure that staff are looked after. Sadly, while rare, it is not unknown for independent schools to close in order to ‘cash in’ their assets, the most valuable of which are likely to be the school grounds and buildings.

**Notice pay**

When someone is made redundant, they are still entitled to receive their full contractual notice. If a school fails to comply with the notice period in your contract then, in addition to your entitlement to redundancy pay, the employee is also entitled to claim pay in lieu of notice. Similarly, you will be entitled to any outstanding holiday pay.

**Redundancy pay and new employment**

You will not lose your redundancy pay provided you do not start work at another school, without permission, before your last day of service. In the state sector, to secure your redundancy payment in circumstances where you have been offered further employment by a local authority or other type of maintained sector employer, there must be a break in service.

This is known as the four-week rule (effectively four weeks and one day). This rule does not apply in the independent sector. If the school is willing to pay a redundancy payment plus offer another job then the four-week rule does not apply.

**Insolvency of the employer**

So what happens if your school is insolvent and cannot pay you your redundancy entitlement? If your school is insolvent, then you will have to take your place in the queue of creditors, but unpaid salary is not considered a priority debt and it is unlikely you will get paid. However, some protection is provided by the National Insurance fund. Redundancy pay and some arrears of pay and holiday pay can be claimed from this fund.

Your employer must be formally insolvent and you must have first tried to retrieve the monies owing from your employer, or the legal entity that may have taken over their affairs such as the liquidator,
receiver or trustee. The rate at which redundancy pay is paid is at the statutory minimum level, which may be lower than contractual entitlements. Payment may be made for arrears of pay for a period of at least one week but not exceeding eight weeks in all, for holiday pay for up to six weeks, for compensation for the employer’s failure to give them proper statutory entitlement to notice, and any basic award of compensation for unfair dismissal. Further information can be obtained from the Insolvency Service website, at www.insolvency.gov.uk.

**ATL’s recommended redundancy policy**

Selection for redundancy will be based on objective, precisely defined and justifiable criteria, which are capable of being applied in an independent way to ensure that employees are fairly selected. Criteria relating to attendance/health, conduct or capability should not be used, as other procedures exist for addressing these issues.

ATL recommends that the criteria adopted in a particular situation should be chosen in light of the school’s curricular and organisational needs. These criteria should be:

- established after consultation with the recognised trade unions, or staff group where there is no recognised union
- explicit and published to staff as a whole
- objective, fair and precisely defined
- non-discriminatory (whether directly or indirectly) on grounds of gender, marital status, race, national or ethnic origins, religion, disability, age, sexual orientation or trade union activity – in accordance with the school’s development plan to ensure that curriculum and organisational needs are maintained
- based upon the outcomes of an audit of staff skills
- designed to avoid either constituting a judgement on the employee’s professional capability or prejudicing the employee’s future employment prospects.

Employees should be invited to complete a ‘skills audit’ to provide the necessary information or to verify relevant persona data held by the school.

The data sought by any skills audit should be limited to that which is necessary to apply the criteria.

The ATL model redundancy procedure is one which ATL believes all independent school employers should be able to feel comfortable with, and which is fair to both employee and employer. Many schools already have a redundancy procedure which is more generous than suggested here. This model redundancy procedure can also be downloaded from ATL’s website or can be provided by ATL’s legal and member services department.
(i) Introduction
In this procedure, the term ‘redundancy’ is used to refer to termination of employment by reason either of a formal redundancy or of a reorganisation. A redundancy situation arises when the requirements of the school for employees to carry out work of a particular kind and/or employees to carry out work of a particular kind in the place where they are employed - have ceased or diminished, or are expected to do so.

A reorganisation arises when it becomes necessary for the school to introduce changes to the terms of employment, roles, responsibilities, working practices or workplaces of its staff.

(ii) Policy
It is the school’s intention to provide reasonable security of employment for its employees. However, there may be occasions where for business requirements, organisational reasons or technological developments, it may be necessary to reorganise or to reduce the workforce, leading to redundancies. The school will always seek to avoid the need for compulsory redundancies. Should redundancies become inevitable, they will be handled in a fair, consistent, transparent and sympathetic manner. In order to minimise the impact of such reductions, the procedure set out below will be followed.

(iii) Consultations
Where it appears that redundancies may be necessary, the manager concerned will convene a meeting of the staff of the area(s) or, as appropriate, of the individuals(s) affected to explain the position.

The school, via the appropriate manager, will consult the individuals affected by the proposals at the earliest opportunity. Individual consultations with employees will take place regardless of the number of staff affected.

Where proposals for potential redundancies or a reorganisation affect 20 or more staff, the school will also undertake collective consultations with appropriate representatives. ‘Appropriate representatives’ for collective consultations are:

- where a trade union is recognised to represent the group of staff affected, reps of that trade union
- where there is no recognised union, representatives of the employees affected
- elected for this purpose.

The consultations will begin in good time and prior to any selection of individuals for redundancy. In any event, the consultation will begin at least 30 days before the first of any notices of dismissal for redundancy are issued.

The consultation will be undertaken with a view to reaching agreement and will include ways of:

- avoiding the redundancies
- reducing the number of employees to be dismissed
- mitigating the consequences of any dismissals.

At the outset of the consultations, the school will notify the individuals affected and the appropriate representatives in writing of:
the reason(s) why the need for redundancies has arisen
the numbers and descriptions of employees proposed for possible redundancy
the total number of employees of these descriptions
the proposed method of selection for redundancy
the procedure for carrying out any dismissals, including the timescale to be used
the proposed method of calculating any non-statutory redundancy payments.

The timescale will allow the appropriate representatives time to consider proposals, seek views and make representations, depending upon the particular constraints of the circumstances. Formal consultation will be deemed to have commenced from the date of this written notification.

The management will consider - and the consultations will include - alternatives to redundancy. These will, whenever appropriate, include the following:
- consideration of alternative cost saving measures
- the reduction of staff numbers by natural wastage and/or the restriction of recruitment or overtime
- voluntary reductions in hours or consideration of job sharing
- consideration of redeployment to suitable alternative posts (with re-training where appropriate). Where the employer operates other education establishments, these may be in its other workplaces
- consideration of individual requests for voluntary redundancy or early retirement.

(iv) Selection for redundancy

Following the consultations, the school will set the criteria for selection of staff to be proposed for redundancy and any weightings of factors to be applied. The criteria to be used will be reasonable, objectively measurable, transparent and non-discriminatory. Curriculum needs will normally be the main selection criterion, but the selection criteria may include, among other factors, relevant skills, qualifications, aptitudes, knowledge and experience.

Length of employment may be used as a supplementary factor alongside other criteria. Whenever appropriate, the staff in the affected area(s) will be invited to contribute to a ‘skills audit’ to ensure that information held about individuals for any application of the selection criteria – such as their skills, qualifications, aptitudes, knowledge, experience, and employment record - is up-to-date.

‘At risk’ staff will then be assessed against the selection criteria by the appropriate manager, to determine those who should be proposed for termination of employment. The school will then write to each employee concerned, setting out the reasons why they have been identified for proposed redundancy, and inviting them to a meeting with the headteacher to discuss the circumstances and make any personal representations before any decision is made. At least five working days’ notice of this meeting will be given, and the employee will be informed of their right to be accompanied and represented by a trade union rep or workplace colleague. Within five working days of this meeting, the affected employee(s) will be informed in writing of the outcome.
If the employee has been selected for redundancy, the letter will:
- inform them of the circumstances leading to the decision to make redundancies
- set out a summary of the action taken by the school and an account of the selection processes used
- explain why the employee has been selected for redundancy
- set out details of their entitlement to a redundancy payment and any other benefits
- notify them of their right to appeal in accordance with the appeals procedure.

(v) Appeals
Employees facing the proposed termination of their employment on grounds of redundancy are entitled to appeal. An employee wishing to appeal should inform the headteacher in writing, within 10 working days of receipt of written confirmation of redundancy as set out in the previous paragraph, stating their grounds of appeal.

The appeal will be heard by a committee of the governors (or, where necessary, by a panel of individuals who have not been involved in the selection or discussion process). At least five working days’ written notice of the time and place of the appeal will be given to the employee, who will be entitled to be accompanied and represented by a trade union rep or workplace colleague. Within five working days of the appeal, the employee will be given written notice of the outcome, with reasons for the decision.

(vi) Notice of termination
If the employee does not appeal in accordance with the appeals procedure as above, or if the outcome of the appeal is to confirm the proposed redundancy, the school will then give the employee formal written notice of termination on grounds of redundancy. The notice given to the employee will be either his/her contractual or statutory entitlement to notice, whichever is the longer.

(vii) Alternative employment
The school will take all reasonable efforts to redeploy staff facing potential redundancy, both during the process of consultation, hearings and appeals as above and during the employee’s period of notice. The school will take all reasonable steps to notify staff ‘at risk’ of redundancy of suitable alternative vacancies. Wherever practicable, staff who have expressed a preference for alternative work will be invited to apply for available vacancies.

The school will give prior consideration to applications from staff ‘at risk’ of redundancies for vacancies, before considering other applicants. Where appropriate, training will be provided to employees to enable them to undertake the full range of duties of the post involved. Where an offer of alternative employment involves a change in the type of work or the terms of employment, the employee is entitled to a trial period of four weeks in the new post to enable both the employee and the school to assess the individual’s suitability. This may be extended by agreement. Where an individual transfers to a different post, their continuity of service is maintained.

If, during the trial period, either the school or the employee gives notice that the new post is not considered suitable, the employee will be regarded as having been dismissed on grounds of redundancy at the date of termination of the original contract.
The school will enable an employee under notice of dismissal on grounds of redundancy to take reasonable paid time off to find alternative employment, including for attendance at interviews, or to arrange training.

(viii) Redundancy payments
Staff who have at least two years’ continuous employment with the school are entitled to a redundancy payment. The redundancy payment is a multiple of the employee’s final week’s actual (gross) pay. The payment is calculated according to the employee’s number of full years’ continuous service (up to a maximum of 20 years), and their age on the date of termination, as follows:
- for each complete year up to the age of 21, half of one week’s pay
- for each complete year between 22 and 40, one week’s pay
- for each complete year at age 41 and over, one and a half of one week’s pay.

Where an employee is eligible for a redundancy payment, the school will provide a written statement of how the proposed payment has been calculated.
What legal protection is there against working long hours?

One of the disadvantages of working in the independent sector is the long working day. In most jobs or occupations, the number of hours that the employee is expected to work is defined in the contract of employment. This is true of the state-maintained sector.

Unfortunately, for teachers working in the independent sector, hours of work are unspecified, vague, or there is a clause in the contract containing the catch-all phrase ‘whatever hours the head considers reasonable for carrying out your duties.’

To compound matters is the unwritten expectation that teaching staff in independent schools will undertake numerous extra-curricular activities and lunchtime duties. And of course then there are boarding schools! So if your contract of employment is silent on working hours, your rights and responsibilities may have been set by custom and practice and this may enable you to challenge the introduction of new duties.

If your contract of employment cannot help you and custom and practice does not apply, you are reliant on the legal limits to the number of hours that can be reasonably worked and specified rest breaks.

The 1998 Working Time Regulations

The primary purpose of the Working Time Regulations is to safeguard the health and safety of employees. There are some national differences in the legislation, for instance, in Northern Ireland the relevant law is contained in the Working Time Regulations (NI) Statutory Rule 386.

The regulations can make a significant positive contribution to reducing working hours and providing adequate rest breaks, although they do include some clauses for employers which reduce the benefit to teachers. The key features of the regulations are set out below.

Working time

The working week is limited to a maximum of 48 hours, averaged over 17 weeks. In residential institutions the averaging period is 26 weeks. The averaging period disregards periods away from work for sickness, maternity leave or the minimum statutory leave, but includes other periods of holiday, which tends to lower the average of hours worked.

However, only time spent ‘working at the employer’s disposal and carrying out one’s activities or duties’ counts towards ‘working time.’ The controversial element is whether time ‘on call’ or time spent working at home counts as ‘working time’. Recent case law has sought to define the difference. As this area of law is complex you are advised to contact ATL should you have any queries. The situation complicated by the fact that different definitions exist in the Working Time Regulations and the National Minimum Wage Act but you may be losing out in respect of both rights.

This has major significance for ATL members who, for instance, may be working as housemasters/housemistresses or houseparents, and are expected to respond to calls or emergencies at any time of day or night.
ATL's position is clear: if your time is not your own to do as you please, and your employer can call upon you to carry out work on their behalf at a moment’s notice, then you are working and the time should be counted under the Working Time Regulations.

However, we must recognise that the matter is currently being determined by case law and is far from settled, although some recent judgements have been encouraging.

The European Court of Justice (ECJ) has handed down a further judgement on working time when workers are ‘on call.’

The ECJ decided that working time includes time spent on call. All time spent at work has to be taken into account in deciding whether the working week exceeds the maximum laid down in the Working Time Directive.

Another case, *MacCartney v. Oversley House Management*, involved on-call time and the national minimum wage: a warden at a residential home worked four days a week, during which time she could not leave the premises (where she also lived). As well as her other duties, she was required to answer any emergency calls from residents. She claimed she was not allowed to take rest breaks or daily rest periods.

The Employment Appeals Tribunal overturned the decision of the employment tribunal and ruled that she was not given a daily rest period. They also held that she had not been given rest breaks (an employer must provide an uninterrupted period of rest, and workers are entitled to know when that starts and ends). Finally, the Employment Appeals Tribunal held that she had not received the national minimum wage because her pay, divided over all the hours worked by her per week, was less than the rate of the national minimum wage.

In a significant Employment Appeal Tribunal case in 2014, *Esparon t/a Middle West Residential Care Home v. Slavkovska*, it was determined that a care worker who was required to sleep in on a night shift was entitled to the national minimum wage for the hours that she was sleeping in ‘on call’. This case is relevant to houseparents in boarding schools who may be paid below the national minimum wage, once their pay is averaged out over all the hours that they are required to be at work.

But, the case is also relevant for all employees required to be on call as the judgement helped clarify working time, by addressing the reason why an employee is required to be at work. In a helpful explanation, His Honour Judge Serota QC ruled, “An important consideration in determining whether an employee is carrying out work by reason of presence at the Respondent’s premises ‘just in case’ must be why the employer requires the employee to be on the premises.

“If he requires the employee to be on the premises pursuant to a statutory requirement to have a suitable person on the premises ‘just in case’ that would be a powerful indicator that the employee is being paid simply to be there and is thus deemed to be working regardless of whether work is actually carried out.”
We know that some members in boarding schools are not receiving their statutory entitlement to a daily or weekly rest break. In addition, now, we can argue that they may not be receiving the correct salary for all the work that they do.

In the case of the weekly working hours’ limits, individual agreements are possible between worker and employer, excluding the standard 48-hour limit. These agreements have to be in writing and contain a notice clause. The employer in these cases is not obliged to keep records of hours actually worked by the individuals concerned. Further to this, no detriment can be imposed on employees who refuse to sign a working hours’ agreement.

**Rest breaks**
Most workers are entitled to an uninterrupted rest break of at least 20 minutes away from the workstation during the working day if it exceeds six hours. The break should be given roughly halfway through the period and not at the beginning or end. ATL recommends a minimum uninterrupted break of 40 minutes.

**Daily rest period**
Most workers have a right to a daily rest period of at least 11 consecutive hours in each 24.

**Weekly rest period**
Employers must provide a minimum weekly rest period of at least 24 hours in each seven-day period for most workers, although employers can opt for 14-day averaging. The rest period is not required to include Sunday.

**Annual leave**
Full-time employees are entitled to 28 days’ paid annual leave (bank and public holidays can be included in this).

**Night work**
Night workers’ hours are limited to eight hours in each 24-hour period, averaged over 17 weeks. A night worker is one who, as a normal course, works at least three hours of daily working time between 11pm and 6am.

**Record keeping**
Employers must keep ‘adequate’ records to show that the average weekly working time limits are being observed. Records must be kept for two years. Employers are required to make occasional checks of workers who do standard hours and who are unlikely to reach the average 48-hour limit. However, they should monitor the hours of workers who appear to be close to the working time limit, and make sure they do not work too many hours.

**Partial exclusions**
The legislation provides for some flexibility from the full rigour of the regulations, firstly to accommodate various sectors of employment and also to cover certain exceptional circumstances at work. The key ones are:
- residential institutions (such as boarding schools)
- foreseeable surges of activity
- unusual and unforeseeable circumstances beyond the control of the employer (including accidents).

In each of these cases, the worker is not entitled to the standard daily and weekly rest periods or to the daily rest break. However, she/he is ‘wherever possible’ to be allowed to take an ‘equivalent period of compensatory rest.’ Significantly, in these cases the limits on working time (see below) will still apply.
Enforcement
As the regulations are essentially a health and safety measure, the working time (and night work) limits are enforced by the Health and Safety Executive. Employers who fail to comply could be prosecuted for committing a criminal offence.

Practical implications
So what does it mean for employees working in educational institutions?

Working time
The restrictive definition of ‘working time’ and its averaging over 17 or 26 weeks (which will inevitably include some school or college holiday within the calculation) prevents most teachers and lecturers from benefiting. Indeed, the fact that the 48-hour limit is averaged in this way will mean that during term-time, teachers may work considerably longer than 48 hours per week, without this contravening the regulations. Nonetheless, some boarding schools where ‘on duty’ periods are especially onerous may be affected.

Note that boarding schools are not exempted from the normal 48-hours averaged limit.

Rest and breaks
Residential institutions, such as boarding schools, are excluded from the normal requirements on rest and breaks, but staff are ‘wherever possible’ entitled to claim ‘an equivalent period of compensatory rest.’ ATL members in some boarding schools have successfully negotiated compensatory rest to be taken in blocks of time.

Similarly, the flexibilities (see above) for ‘surges of activity’ and ‘unforeseeable circumstances’ are likely to apply to events such as school trips, where short periods of unusually long working hours are required. Again in these cases, compensatory rest should be given.

Long hours and low pay
There is a culture of working excessively long hours in the independent sector. Much emphasis is placed on extracurricular activities, with an expectation that teachers will give up evenings and even weekends. For some support staff, the combination of long hours and low pay can be particularly toxic.

ATL has taken a number of successful legal cases against boarding schools for breach of the national minimum wage, as well as failing to provide reasonable time off.

In one such case, on behalf of a member contracted to work 120 hours per week, ATL took a well-known boarding school in Worcester to court winning compensation for a breach of the national minimum wage and securing an additional evening off for all houseparents.

If you are concerned that you are working excessive hours or have insufficient breaks, please contact ATL and we can advise you on whether your employer is in breach of the law, and what options are available to you. In many instances, with the assistance of ATL, members have been able to negotiate more time off and, in some cases, financial recompense.
Consultation and recognition

The value of consultation
Consultation is the key to creating a good working environment allowing staff to feel listened to, valued and involved in influencing decision-making. While many schools do have meaningful consultation with staff, others, unfortunately, do not. Some employers confuse consultation with the conveying of information. Consultation should always be meaningful and a two-way process. An employer should:

- provide the necessary information for staff to make informed decisions
- allow a reasonable timescale for staff to consider the management’s proposals
- provide the necessary facilities, such as time for staff room or union meetings
- consider and respond to staff suggestions.

Establishing the structures for consultation is for the staff and management to decide, based on what works best for their school. ATL’s view is that, generally speaking, it is in the best interests of the staff and the school for ATL to be formally recognised for collective bargaining. And, if necessary, members may pursue their legal right to recognition of ATL (see next section).

Trade union recognition
All employees have the right to collective negotiation on the key elements of their employment under what is known as trade union recognition. Recognition, puts staff in the strongest position to influence decisions affecting their terms and conditions. Negotiation is better than consultation, which in turn is better than just being informed.

ATL recommends that members consider securing these collective rights in your school by reaching agreement with the employer to recognise ATL.

While recognition is a statutory right that, subject to prescribed requirements, can be enacted without the employer’s blessing, ATL strongly recommends coming to an amicable agreement with the school via a voluntary agreement. Of the 90 or so independent schools that recognise ATL for collective bargaining and consultation, only three resulted from our members in the school securing statutory recognition. There have been others where members have been forced to make an application before the governors have accepted the change and reached amicable agreement.

Voluntary recognition agreement
Under a voluntary recognition agreement, the two parties agree the areas to be covered for collective bargaining. ATL recommends that staff are consulted on their general terms and conditions of employment, and this includes:

- any changes to existing contracts, policies and procedures (eg the pay policy, or capability, discipline and grievance procedures)
- physical working conditions, including health and safety
- allocation of work or duties
trade union membership and facilities for accredited reps
arrangements for staff training and development, including mentoring and appraisal arrangements
workload, including any bureaucracy issues.

Recognition has many advantages for both employers and employees:
- improved communication
- team working
- improved policies and procedures
- shared responsibility for decisions
- improved staff morale.

Statutory recognition
If the voluntary recognition process does not work, we are entitled to seek statutory recognition for a group of workers where at least 10% of the group are members of ATL. A statutory body, the Central Arbitration Committee (CAC), considers the application from the union and representations from the employer.

Where the CAC believes that it is reasonable to assume that a majority support the claim for collective representation rights, then, the tribunal normally awards recognition automatically. Where the CAC believes that it is not clear if the claim has majority support or it is in the interests of good industrial relations, the tribunal may order a ballot of the group of workers. If a majority of the group votes in favour of recognition and that majority constitutes at least 40% of the group then recognition is awarded.

Under a recognition achieved through the statutory process, an employer must consult on pay, hours and holidays; these headings cover some of the most significant terms and conditions of teachers and/or support staff.

Practical considerations
There are some practical considerations when deciding whether to seek trade union recognition. Members need to gauge the strength of support among all staff and assess the relative strength of ATL membership for both teaching and support staff. ATL recommends that members seek trade union recognition on behalf of all staff. Currently, roughly half of ATL’s recognition agreements in the independent sector cover all staff and the other half cover teachers only.

While ATL represents all staff working in independent educational establishments, and our support staff membership is growing, the majority of our membership are teachers. Therefore, if the employer is likely to oppose recognition, then practical consideration needs to be given to where the strength of the membership lies.

For example, it may be felt that recognition for the teaching staff should be sought in the first instance, with a view to returning to the question of a whole-school workforce agreement at a later date, when ATL membership numbers among support staff have increased.
Further assistance and information

Further information on recognition can be found on ATL’s website, including the list of independent schools that recognise ATL for collective bargaining and consultation, a concise ATL briefing on recognition, and the model ATL recognition agreement.

If you are interested in exploring recognition further, then please contact ATL’s London office on 020 7930 6441 or email us at info@atl.org.uk. ATL can provide a model agreement, which can be modified for your school through negotiation to reflect its particular structure and ethos. ATL offers advice and support, as well as training and development, to teacher and/or support staff reps.
For the latest independent sector news follow ATL on Twitter at @ATLIndependent

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**ATL departments**

**Legal and member services**
For advice and support on any professional issue, contact the legal and member services department on 020 7930 6441. For enquiries about financial assistance in the case of hardship under the ATL Trust Fund, call 020 7782 1573. For all pension enquiries, call 020 7782 1600.

**Membership**
For information regarding member details, membership lists, membership categories, subscription rates and payment methods contact the membership department.
Tel: 020 7782 1602
Email: membership@atl.org.uk

**Recruitment and membership**
For support, advice and information on any aspect of your recruitment activity, email organise@atl.org.uk

**Learning and development**
Tel: 020 7782 1582
Email: learning@atl.org.uk

**ATL media relations**
Tel: 020 7782 6441
Email: info@atl.org.uk
How to join

New members can join ATL by telephoning 0845 057 7000, online via ATL’s website at www.atl.org.uk/joinonline, by post to ATL, FREEPOST 7363, 7 Northumberland Street, London, WC2N 5RD, or by fax to 020 7930 1359.

Further information, such as subscription rates, can be found in the ‘why join ATL?’ section of ATL’s website.

Out-of-hours helpline

For practical advice on any professional issue outside office hours, call 020 7782 1612 (line open Monday to Friday, 5pm to 8pm, during term time).

Other useful contacts

Advisory, Conciliation and Arbitration Service
Helpline: 0300 123 1100
Web: www.acas.org.uk

General Teaching Council Scotland
Tel: 0131 314 6000
Web: www.gtcs.org.uk

General Teaching Council Wales
Tel: 029 2046 0099
Web: www.gtcw.org.uk

Health and Safety Executive
Web: www.hse.gov.uk

Independent Schools’ Council
Tel: 020 7766 7070
Web: www.isc.co.uk

Independent Schools’ Inspectorate
Tel: 020 7600 0100
Web: www.isi.net

National College for Teaching and Leadership
Web: www.education.gov.uk/get-into-teaching

Scottish Council of Independent Schools
Tel: 0131 556 2316
Web: www.scis.org.uk

Teacher Support Network, England
Tel: 0800 562561
Web: www.teachersupport.info/england

Teacher Support Network, Wales
Tel: 0800 085 5088
Web: www.teachersupport.info/wales

Teacher Support Network, Scotland
Tel: 0800 562561
Web: www.teachersupport.info/scotland

Trades Union Congress
Tel: 020 7636 4030
Web: www.tuc.org.uk
Found this helpful? ATL has lots of other resources, all free to members, which you might be interested in. Visit ATL’s website at www.atl.org.uk to view the full range of legal advice publications and factsheets on offer from ATL, along with a full section of help and advice.

Further relevant publications from ATL include:

![Taking students off site](image1)
Product code: PED03

![Work-life balance toolkit for teachers in independent schools](image2)
Product code: TK001

Finished with your copy? Why not pass it on to other colleagues who might find it useful.

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