

Advice to Members

**Dismissal and  
Re-engagement**

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# Dismissal and Re-engagement

As private employers, independent schools have a choice of pension vehicles and are entitled to change pension scheme as long as employees are transferred to an alternative scheme which fits the minimum requirements of auto-enrolment.

Notwithstanding the above, our priority is at all times to resist any adverse changes to members' terms and conditions of service, including the pension rights of members. Therefore, the Union will also endeavour to support members in seeking to defend their pension rights.

### What do I need to know?

1. What is being proposed by some employers is likely to represent a fundamental change to the terms and conditions of members' employment. It may also be indirectly discriminatory towards some members.
2. Once you are informed of the proposed changes to your pension arrangements, you must immediately contact your NASUWT Representative.
3. The NASUWT Representative will advise you on the essential steps an employer must follow when considering dismissal and re-engagement as a method of implementing its proposals. For example, your employer must:
  - a) properly investigate the situation and consider the rationale for making any change to contractual terms;
  - b) consider the impact of the changes on the employees;
  - c) assess the impact of the changes on employees;
  - d) consider alternatives to any proposed changes;
  - e) examine the potential discriminatory impact of its proposed changes to terms and conditions;
  - f) balance its needs with those of the employees;
  - g) consult appropriately and fully with each individual employee;
  - h) afford employees the opportunity to state their case;
  - i) advise employees of the risk of dismissal and re-engagement;
  - j) consider and explore alternatives to dismissal; and
  - k) conduct a dismissal meeting and afford employees the right to be accompanied by their trade union representative.
4. The decision on whether or not to agree to the proposed variation/change must always be that of each member. NASUWT cannot make a decision for you and nor is the Union indemnified to provide financial advice (including personal pension advice).

*Therefore, members should seek independent financial advice to ensure they understand fully the financial implications that any changes will have for them.*

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5. The legal position regarding the proposed changes will depend on the financial circumstances of the school, members' terms and conditions of employment and whether there is any unjustified disparity between members with protected characteristics and the precise proposals. Therefore, it is vitally important that you seek advice from your NASUWT Representative on your legal rights and the options available to you.
6. Members seeking legal advice will be required to provide the Union with the following information to assist with legal opinion and options available:
  - length of service in your role;
  - length of membership in the TPS;
  - age member would be able to retire under TPS compared with new scheme;
  - whether the threat of dismissal was put in writing;
  - whether /when the employer has advertised their job;
  - whether the member has signed to agree the contract variation; and
  - whether the member can provide evidence that they would be worse off under the new scheme – having taken independent financial advice.

The above list is not intended to be mandatorily completed; it merely indicates the type of evidence that may help to identify potential claims.

7. NASUWT will do its utmost to assist with any Employment Tribunal claim a member may wish to pursue against their employer. It should, however, be noted from the outset that there is always litigation risk in legal proceedings, and a successful outcome cannot be guaranteed.
8. It is commonly understood in employment law that an employer can dismiss any employee and re-engage them on a new contract to secure variations to their contractual terms, as long as contractual notice is given and the proper procedure is followed.

*The Government has presented an updated draft statutory Code of Practice on Dismissal and Re-engagement, along with an explanatory memorandum, to Parliament for approval. The Code sets out how employers should act when seeking to change employment terms and conditions if the employer envisages dismissal and re-engagement. It is likely to be brought into force before the end of summer 2024.*