

Redundancy & Reorganisation

**A Step by Step Guide for Headteachers
and Governing Bodies**

Guidance Document

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1. **INTRODUCTION**

- 1.1 Through robust workforce planning processes, schools should, as far as reasonably possible, secure a stable working environment through the appropriate retention of its finest asset, its employees. Through positive planning, schools should endeavour to operate efficiently and effectively in order to safeguard the current and future employment of staff to the benefit of pupil learning.
- 1.2 It is recognised, however, that over time, circumstances may arise that will affect educational provision and the staffing levels needed to support its delivery.
- 1.3 The reorganisation of a school may result from a review of existing and required skills, budget constraints, organisational development and educational and legislative changes. Consequently, this may have an impact on staffing requirements and could lead to a redundancy situation.
- 1.4 In any school redundancy/reorganisation, the Headteacher and Governing Body must ensure that the situation is managed in a fair, consistent and sympathetic manner to minimise any negative impact and is in full consultation with the employees and appropriate recognised Trade Unions, particularly if redundancies may result.

2. **BACKGROUND**

- 2.1 This guide has been produced to assist schools with the application and understanding of the Redundancy & Reorganisation Policy.
- 2.2 This guide has been developed to reflect current legislation, the recommendations in a wide range of Government documents aimed at ensuring public service excellence and Local Authority policy, some of which are listed below:
 - Local Government Act 1999
 - Trade Union and Labour Relations (Consolidation) Act 1992
 - The Information and Consultation of Employees (ICE) Regulations 2004(as amended)
 - Collective Redundancies and Transfer of Undertakings (Protection of Employment)(Amendment) Regulations 1995 and 1999
 - DTI's Redundancy Consultation and Notification Guidance
 - The School's Redundancy and Redeployment policies
 - School Teacher Pay and Conditions
 - The Employment Rights Act 1996
 - The Employment Relations Act 1999
 - School Staffing Regulations 2009
 - Equality Act 2010
- 2.3 **Definition of Redundancy**

2.3.1 The Employment Rights Act 1996, defines a redundancy situation as one where :

The school has:

- A) Ceased, or intends to cease to carry on the business for the purposes of which the employee was employed, either generally or at the place where the employee was employed.
- B) The requirements of the business for employees to carry out work of a particular kind, either generally or at the place where the employee was employed, have ceased or diminished or are expected to cease or diminish.

2.3.2 Under Section 197 of the Employment Rights Act 1996, the non renewal of a fixed term contract is a dismissal in law. Employees with over 2 years continuous service whose fixed term contract is not renewed may be entitled to a redundancy payment.

3. CONSULTATION

3.1 Each stage of any school reorganisation/redundancy must involve appropriate trade union and collective/individual consultation and be explicit about the impact on, and implications for, employees.

3.2 The Legislation

3.2.1 It is important that Headteachers and Governing Bodies are aware of their legal obligations under the Information and Consultation of Employees Regulations 2004.

3.2.2 These Regulations give all employees the right to be informed and consulted about matters that affect their employment and the organisation they work for. These include reductions in staffing levels and substantial changes in work organisation or contractual changes.

3.2.3 The Court of Appeal ruled that 'fair consultation' means:

- Consultation when the proposals are still at a formative stage;
- Adequate information on which to respond;
- Adequate time in which to respond; and
- Conscientious consideration by an authority of a response to consultation

3.3 What is Consultation?

3.3.1 Consultation is not just about informing employees of the school's intentions. It must be a two-way process that identifies any anticipated measures to be taken by the school and the employee's right to respond.

- 3.3.2 Consultation can provide a channel through which employees can contribute their knowledge and experience to the School, and so lead to better decisions and an improved quality of education provision. It can also give employees confidence that their interests and point of view will not be overlooked when important decisions are taken about the school, particularly when this is likely to affect their future employment prospects.
- 3.3.3 Effective consultation does not compromise a Headteacher's or Governing Body's ability to manage or make challenging decisions. However, consultation means that they must consider the views of their employees before reaching any final decisions.
- 3.3.4 Employees and trade union representatives must have the right to respond to any consultation, with appropriate mechanisms in place for their concerns to be responded to.
- 3.3.5 The Local Authority is bound by collective bargaining facilities which means that decisions affecting employees' terms and conditions, whether or not in a trade union, are negotiated with trade unions on behalf of the group of employees affected. This does not mean that individual employees should not be involved in the process. In fact, it is vitally important that all employees have their views considered, including staff who are currently not in the workplace (i.e. on maternity/paternity leave, long term sick or on secondment).

3.4 Timing

- 3.4.1 One of the hardest aspects of establishing meaningful consultation is deciding when to consult. If employers consult too early they risk raising concerns unnecessarily and wasting time discussing potential developments that have little chance of becoming reality. However, trust in the process will be lost if employees and their representatives feel there has been a failure to consult early enough. Failure to consult at an early enough stage is also likely to damage employee relations.
- 3.4.2 Meaningful consultation takes place from the earliest appropriate opportunity and continues throughout every stage of the process.
- 3.5 Further advice and guidance on when and how to consult with employees can be obtained from the school's HR provider.

4. THE STEP BY STEP GUIDE TO REDUNDANCY & REORGANISATION

- 4.1 A school redundancy/reorganisation can vary in scale and impact but in all cases will create a period of change and uncertainty for the employees concerned. No two restructures will follow exactly the same process or timetable due to individual factors.

- Briefing Paper including rationale for change and staffing implications including the process for appointing to posts in the new structure
- Copy of old structure chart
- Copy of proposed structure chart
- Existing job descriptions and person specifications including grades
- Proposed job descriptions and person specifications including grades
- Budget breakdown
- If staff reductions/redundancy, the proposed selection process/criteria, agreed by the Selection Committee (see Selection Criteria below).
- All information as prescribed by Section 188 (satisfying the requirement to consult on specific information regarding the redundancy process).
- HR1 form issued by the authority, if required (a form for giving the Secretary of State advance notice of collective redundancies of 20 or more employees).
- Implementation timeline/flowchart (*please seek advice from your HR Provider to ensure that the time allowed between each stage is adequate*)
- Any other relevant information e.g. numbers on roll which has influenced the need for change

From 1st October 2011 the Agency Workers Regulations came in to force and gave Agency Workers rights after 12 weeks in post. The regulations stipulate that the information provided to Trade Union or Employee Representatives by an employer when embarking on a consultation exercise with regards to a collective redundancy process must now include details of;

- The total number of agency workers working temporarily in the school and under its supervision.
- Where in the school they work
- What type of work they do

This information must be included in the consultation Business Case. Failure to do so may result in a claim on the basis of failure to provide the necessary information for consultation.

STEP FOUR Present Proposals to Governors for Ratification of Draft Structure

Governors must agree the proposal before consultation commences with staff. Headteachers should refer to the Terms of Reference for their Governor Committees to ensure ratification by the appropriate group e.g. Personnel Committee. Discussion regarding the proposals should be fully minuted for audit purposes.

STEP FIVE Consultation with Staff and Trade Union Representatives

- Invite staff and appropriate Trade Unions colleagues [Branch Secretaries of recognised unions] to first formal consultation meeting. Adequate notice should be provided. If possible, offer two dates, and confirm that one date will be selected based upon maximum availability.

- Schools must ensure that any member of staff absent due to sickness, maternity, paternity, secondment or suspension is fully included in this process (for specific advice on communicating with staff under suspension contact your HR provider).
- Consultation will run for a period in line with paragraph 4.2 of the policy.
- During consultation, the Headteacher should offer 1-1 meetings with affected staff to discuss the proposals and allow appropriate representation and should also respond to any written feedback from staff or trade union colleagues. 1-1 meetings should be minuted and a copy provided to the employee.
- If the proposals include potential redundancies, expressions of interest for voluntary redundancy, early/flexible retirement and flexible working should also be requested at this stage.

STEP SIX Collate Feedback and Present to Governors for Ratification of Final Structure

Headteachers should refer to the Terms of Reference for their Governor Committees to ensure ratification by the appropriate group e.g. Personnel Committee, Redundancy Selection Committee. Full consideration and discussion of the feedback should be noted along with agreement to any changes to the proposals and ratification of final structure.

Dependant upon the nature and extent of any changes made to the proposal as a result of consultation feedback, it may be necessary to undertake a shorter period of further formal consultation on these revised elements.

STEP SEVEN Outcome of Consultation, New Structure and Next Steps confirming to Staff and Trade Unions.

Once the final structure is ratified by Governors, confirm in writing to trade unions and employees:

- That consultation has closed, what decisions were made and who was present at the meeting
- Any significant feedback to date (i.e. detailing the considerations given to proposals made during consultation, what has been accepted and what has been rejected and why)
- Any changes as a result of consultation
- What the final structure is
- Confirm the selection process/criteria (if appropriate)
- Ensure communications continue

It is also advisable for the Headteacher to meet with individuals directly affected by the outcomes to confirm the specific arrangements in relation to their role.

STEP EIGHT Implementation – 1st Governor Selection Committee

NB – this is not the first time the Selection Committee will have met, but is the first meeting at which they consider selection decisions.

- Consider any applications for Voluntary Redundancy, Flexible Working or Early Retirement on a case by case basis against an agreed framework e.g. skills, school needs, cost, etc. This will provide a business justification for any decisions reached. An agreement should be reached in principle as to whether the requests are to be agreed.
- In the event that the required staffing reductions cannot be achieved through voluntary applications, then the agreed selection criteria or method of selection will be applied.
- Assimilate (slot-in) employees into the revised structure where appropriate
- If appropriate, ring-fence specific posts for competitive selection process (For further information on assimilation and ring fencing, please refer to the guidance for Selection in section 5 below)
- If current posts no longer exist in the new structure, redeployment and redundancy must be considered and the full financial implications, including salary protection, where applicable.
- It is important that in the event of any proposed redundancies, consideration is given to the notice periods for dismissal as this may vary for each employee. It is advisable that any proposed timeline is developed with these dates in mind.
- All meetings relating to redundancy selection should be comprehensively minuted and the notes retained for audit purposes in the event of future challenge.

STEP NINE 2nd Governor Selection Committee

Meeting two of the selection committee is either :-

- In the event that a competitive interview process has been conducted, to seek ratification of the outcomes from Governors. This should be done through sharing specific feedback from the interview process. OR;
- To apply the agreed selection criteria. Any discussions around scoring and the award of points must be minuted and retained for audit purposes.

Upon conclusion of this meeting, the Governing Body and Headteacher will know which individuals have been placed at risk of redundancy due to their selection via either interview or criteria.

The Chair of the Governors Selection Committee and/or Headteacher should inform each individual face-to-face that they have been selected for redundancy, including an outline of the reasons for selection. Individuals should also be informed in writing of their dismissal by reason of selection for redundancy and of their right to appeal, refer to section 6.0.

5. SELECTION

- 5.1 The Committee making any selection for restructures or redundancy will need to provisionally agree draft selection criteria or the principles of an interview process for selection. Consideration needs to be given to the wider staff

group rather than those staff in a specific subject area or department. For example, Teaching Assistant staffing reductions from an English Department may include Teaching Assistants from across the whole school. However, when looking across a group of staff, the Selection Committee must be mindful of grading issues that would need to be addressed, possibly by 'pooling or ring-fencing'. Confirmation of the approved selection process, and agreement as to who will assume responsibility for selection decisions must be minuted.

- 5.2 Selection criteria should be non-discriminatory (either directly or indirectly), transparent, equitable and objective. It is advisable to undertake an equality impact assessment in relation to any criterion. It must be possible to measure all employees against the criteria proposed and evidence the outcomes. Each criterion should be awarded a point score and the chosen scoring system should also be consulted upon. Advice from the schools HR provider should be sought.
- 5.3 The selection process resulting from a restructure/redundancy should follow the policy and principles of the school's recruitment procedures, applying equity and fairness to all employees affected by the restructuring process.
- 5.4 Selection should be undertaken in a structured and systematic way, with individual letters being developed for all affected staff informing them of the details, this includes :-
 - Times and locations of interviews
 - Details of any other exercises to be undertaken e.g. presentation, in-tray exercise, test.
 - Details of the Governors selection panel.
- 5.5 Reasonable adjustments should be made to the process for employees on maternity leave, long term absence, secondment or who has a disability under the Equality Act 2010.

5.6 **Assimilation**

- 5.6.1 Assimilation is the 'slotting in' of employees who are currently undertaking a similar role (at the same grade) to the proposed new roles.
- 5.6.2 In order to determine whether a post holder should be 'slotted-in', the Headteacher [in their advisory role to Governors], in consultation with their designated HR provider, will consider the old and new job descriptions and person specifications, grades and come to a view on the proportion of similarities and differences and decide whether or not assimilation will take place. The Governor Selection Committee will agree assimilations.

5.7 **'Ring-fencing'**

- 5.7.1 Ring fencing is where applications for posts are limited to employees who are 'at risk', 'the pool'.

5.7.2 Ring fencing has two tiers, as follows:

- When there are fewer jobs than there are people i.e. a reduction in the number of Teaching Assistants leads to all existing postholders being ring fenced to the roles available in the new structure.
- Where an 'at risk' individual undertakes a similar but not identical role to that available in the structure.

5.7.3 Headteachers [in their advisory role to Governors] will need to consider what level of ring fencing is applicable to each post in consultation with their designated HR provider.

5.8 Redeployment

5.8.1 An employer has a legal responsibility to try and mitigate against an individual selection for compulsory redundancy. An employee of a school has the right to a maximum of 12 weeks on redeployment. This could be longer however should formal notice of redundancy be issued earlier. Please refer to the schools redeployment policy for the application of this process.

5.9 Appeals

An employee selected for redundancy has the right to appeal against their dismissal. The appeal should be submitted in writing to the clerk of the Governing Body [for the attention of the Chair of the Appeal Committee] within 10 days of written confirmation of notice of redundancy being received. The grounds for appeal must be stated. Arrangements for the Appeal Committee to hear the case must be made, and an employee should have at least 5 working days notice of the date. This meeting should be comprehensively minuted and the notes retained for audit purposes.

6.0 FINALISING THE DISMISSAL WITH SHARED SERVICES/PAYROLL

Please note: In the event that a school terminates the employment of a staff member on the grounds of redundancy, the following payroll termination processes will need to be undertaken.

These processes are;

- Termination/Leavers form – this should contain details of last day of service and confirmation of the value of any redundancy payment. (Please contact Pensions for these figures). It should also include any outstanding leave owed, if applicable and any pay in lieu of notice arrangements that may have been agreed.
- In order to ensure the redundancy payment is actioned a SRed form must be completed, authorised and submitted to Pension Services.
- If the member of staff is accessing their pension, the school will need to request the appropriate pension forms. These forms should be completed and returned to Shared Services. For individual pension's

advice, employees should contact their pension provider, ie Teachers Pensions or Staffordshire Pensions.

7.0 **Review**

7.1 Once the new structure is in place, set a review period to ensure that the business reasons for undertaking the changes are being achieved.

- Identify any non-achievement or under-achievement of objectives
- Decide upon any 'follow-on' actions
- Set a review date

Once the process is complete the management and monitoring will move to the school's internal management processes.

8.0 **Further Information**

8.1 For further information regarding redundancy and redeployment processes in schools please refer to your designated HR provider.