

HIGH STREET PRIMARY SCHOOL

REDUNDANCY AND SELECTION POLICY



REVIEWED NOVEMBER 2015

CHANGES

February 2007	Policy Implemented
June 2010	Styling revised in line with corporate guidelines
March 2012	Policy revised
November 2012	Policy revised

If you have any questions regarding this policy please contact your HR Adviser (PLP).

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Governor/headteacher signature and review date

1 INTRODUCTION

Governors are responsible for deciding the number and most efficient use of staff. Effective planning of the workforce can help to determine existing and future staffing needs, which, in turn, can lead to the avoidance of short term solutions, which may be inconsistent with longer term needs. However even with effective planning it is likely, at some stage, a review of the range and number of staff employed will be required.

In situations where there may be the need to reduce staff numbers, good employment relations requires the establishment of a formal redundancy procedure, which is known and understood by all staff and their representatives. Failure to follow an appropriate and reasonable procedure can lead to claims of unfair dismissal even if there are potentially good grounds for redundancy.

Any redundancy procedure must seek to provide a fair approach and to avoid or minimise compulsory redundancies. It must endeavour to reduce both the likelihood of conflict and the possibility of misunderstanding and help to ensure fair treatment.

2 WHAT IS THE LEGAL FRAMEWORK?

The Employment Rights Act 1996 defines redundancy as:

“The fact that the employer has ceased or intends to cease to carry on the business for which the employee was employed or has ceased, or intends to cease, to carry on the business in the place where the employee was employed.”

Or

“The fact that the requirement of the business for an employee to carry out work of a particular kind, or for an employee to carry out work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or to diminish.”

In the school situation this could be interpreted as:

The fact that the school, for budget reasons, has to reduce its staffing establishment.

Or

The fact that staffing at a school needs to be reorganised to respond to organisational or curricular changes.

Under the Trade Union Reform and Employment Rights Act 1993 (TURERA) the definition of redundancy for consultation purposes is widened to include “any dismissals for reasons not related to the individual”, e.g. terminating a contract and re-engaging on different terms would now be the subject of consultation under the recognised redundancy procedure.

In all cases where redundancies are being considered, there is a legal requirement to consult employees, trade unions and the Local Authority (LA) (the body responsible for eventually

declaring the redundancy in maintained schools). Clear guidance on redundancy criteria and procedure are set out below.

Governors of Voluntary Aided (VA) Schools should, as part of the first stage in their procedure, advise the Diocesan Director of Education when redundancy is under consideration.

3 GENERAL INFORMATION

Given that the LA is the final employer (except for Foundation, Trust, Academy and VA Schools) and would be responsible for issuing any dismissal notices, it should be noted that if Governors decide to adopt their own policy and procedure, or modify the selection criteria, they will need to consult separately with trade unions. In addition they will need to discuss this with the LA to ensure that any amendments proposed are appropriate and comply with legal requirements. Similarly if a school is contemplating not acting in accordance with their agreed policy the reasons for so doing must be discussed in advance with both trade unions and the LA. Any decision not to act in accordance with the agreed policy is likely to mean the resulting selections for redundancy will be deemed unfair.

Should you have concerns about any matter relating to redundancy, or a potential redundancy situation, you must seek advice from a School HR Adviser.

4 SCHOOL REDUNDANCY AND SELECTION

General Principles

- This document has been adopted by the Governing Body, being the relevant body, as the redundancy procedure and selection criteria for [insert name of school].
- The Governing Body will seek to avoid redundancies wherever possible. Prior to reaching a decision on the need to consider potential redundancies, Governors will satisfy themselves that they have acted reasonably and that all other options have been considered.
- Redundancies may be considered where the School's budget share cannot sustain the actual costs of personnel presently employed, or where the skills of personnel presently employed do not match the school's future requirements.
- Where a reduction in staff working hours is being proposed these should, in all cases, be subjected to the school's formal redundancy procedures. Failure to consult on these matters could lead to a claim for unfair dismissal. Any proposals to reduce the hours of a member of staff should, in the first instance, be discussed with a School HR Adviser, even if the reduction is by mutual consent.
- As a matter of priority the Headteacher must discuss a potential redundancy situation with a School HR Adviser to ensure that the LA is involved at every stage and report the matter to the Governing Body.
- The Governing Body will abide the current criteria for LA funding of early retirement and redundancy cases before entering into any redundancy procedure.
- The full Governing Body will, after consultations with Officers and local representatives of trade unions, as appropriate, agree the criteria to be used when selecting staff for redundancy.

In the case of Voluntary Aided (VA) schools, the Diocese should also be consulted.

- The full Governing Body will refer the task of determining whether staffing reductions are necessary, including looking at other options, to the Governors' Staffing Panel. This Panel will consist of not less than three Governors and not more than one-half of the Governing Body. The remaining Governors will hold themselves in readiness as an Appeal Panel.
- The Education Reform Act 1988 requires that Governing Bodies establish procedures for handling staff redundancies. They must:
 - (a) Ensure that appropriate selection criteria have been agreed by the Governing Body;
 - (b) Organise themselves in such a way as to ensure that the requirements of natural justice are fulfilled.

In the case of *Staffordshire County Council and Governors of St John Fisher School v Raju* (1994) the Employment Appeal Tribunal, in confirming that the teacher had been unfairly dismissed, took the opportunity to give guidance on the proper procedure to be adopted when selecting school staff for redundancy, concluding that (a) the selection must be based on objective criteria and (b) the Headteacher has only an advisory role in the process.

It is recommended Governors determine the membership of their Governors' Staffing Panel after agreeing the selection criteria for redundancy. However, Governors may feel it beneficial to defer agreeing membership of the Governors' Appeal Panel until required and in so doing retain an element of flexibility to accommodate Governor availability.

Any Governor will be excluded from membership of these panels if they have any conflict of interest.

Where a Governor is a member of such a Panel and subsequently wishes to withdraw, the Governing Body will give every consideration to the request but must comply with school governance regulations.

If the Governors' Staffing Panel determines that redundancy is necessary, they will apply the Governing Body's agreed selection criteria to nominate staff that are selected for redundancy. The redundancy process should be conducted within a timeframe which takes into account affected employee's conditions of service, contractual and statutory obligations, and the need to give individual staff as much notice as possible.

- The Governors' Appeal Panel will hear any appeal from individual members of staff whose proposed nomination is confirmed by the Staffing Panel.

The Chairperson of each Panel must arrange for a record to be kept of the proceedings of that meeting. The record of the staffing panel meeting along with other relevant documentation taken into consideration may be required at any subsequent appeal panel hearing. Records from both the staffing and appeal panel hearings along with other relevant documentation taken into consideration may need to be produced as evidence to an Employment Tribunal. A copy of all records taken must be sent immediately to the School's HR Adviser.

5 PRIOR CONSIDERATION

Prior to looking at reducing staffing levels where the school's budget does not meet actual salary costs, the Governing Body will firstly give consideration to:

- Transferring any available funds from other budget headings.
- Utilising funds from the previous year's budget to meet any temporary shortfall.
- Long term pupil and budget expectations.
- Generation of cash into the budget from other sources.
- Agreeing a licensed deficit budget with the Local Authority
- Restriction on recruitment.
- Retraining of staff or transfer to suitable alternative work within the school.
- Natural wastage, e.g. resignations and retirements.
- Redeployment.
- Volunteers for job share or part-time working arrangements.

(Matters relating to the first five points of this list should be discussed fully with the School's Finance Officer.)

6 CONSULTATION

Consultation will begin as soon as possible after the potential need for redundancies has been identified. The consultation will include the provision of information on:

- the need for consideration of redundancy.
- the proposed procedure and criteria by which decisions will be reached.
- Number of roles affected

Under the Trade Union Reform and Employment Rights Act 1993 (TURERA) the definition of redundancy for consultation purposes is widened to include "any dismissals for reasons not related to the individual", e.g. terminating a contract and re-engaging on different terms would now be the subject of consultation under the recognised redundancy procedure.

The legal requirement is to consult with a view to reaching agreement but failure to achieve agreement with the trade unions will not prevent the Governing Body from deciding that redundancies are necessary.

The Governing Body will arrange a meeting with local trade union representatives, the Headteacher and the LA to discuss the situation and to consult on the options available, including any possible ways of avoiding redundancy.

When arranging meetings Governors should be prepared to consider any requests from trade union representatives for an alternative date.

Both trade unions and the LA (the LA being the body responsible for eventually declaring redundancy in maintained schools) must be consulted. Clear guidance on redundancy selection criteria is set out in Section 7 of this procedure. During the process of consultation the following information must be provided and discussed:

- What consideration has been given to possible ways of avoiding or reducing the need for redundancy.
- The circumstances that have led to the need to consider redundancies.
- The potential level of staff reductions (FTE).
- The total number and description of employees in the establishment.
- The proposed criteria and method of selection.
- The proposed procedure for carrying out the redundancy dismissals, including the period over which the dismissals will take effect.

Note:

- (A) Individual members of staff will not be named or consulted at this stage.
- (B) Governors should also have available full information on budgetary shortfall, curriculum and other statutory requirements and pupil number trends

In the event of representations being received from trade unions, Governors will respond formally to any alternative proposals made.

Whenever possible, the Governing Body will, at the conclusion of the meeting, agree with trade union representatives a timetable for any necessary meetings under Sections 6, 7 and 8 of this procedure.

Prior to the Governors' Staffing Panel meeting, the Headteacher will establish whether any opportunity for 'natural wastage' exists by enquiring whether any personnel wish to reduce their hours of work, job share, resign, retire or volunteer for redundancy.

Staff should be made aware of the availability of confidential advice relating to retirement/redundancy financial benefits through a School HR Adviser. Staff should also be advised to discuss such matters with their trade union representatives.

7 NOMINATIONS

The Headteacher will present the Governors' Staffing Panel with a statement of the likely budgetary shortfall, a description of future trends and a detailed analysis of likely curriculum adjustments for the following September, e.g. pupil numbers, subject areas by periods, staff lists, etc. If the Governors' Staffing Panel has agreed that a staffing reduction is necessary, the Headteacher will put forward a full staffing analysis and recommendations.

The Headteacher's staffing analysis, based on the curriculum plan, pastoral needs and other management requirements should be sufficiently detailed for the Panel to reach an independent view as to which staff, if any, should be selected for redundancy.

Having regard to the selection criteria, the Governors' Staffing Panel shall consider the Headteacher's recommendations and then determine who is to be selected for redundancy.

When considering nominations the Panel will have regard to:

(a) Guiding Principles

- (i) The selection criteria will be objective, fair and consistent, precisely defined and capable of being applied in an independent way.

For the criteria to satisfy the test of objectivity they must be applied fairly and with care. Governors must be able to demonstrate that they have recorded carefully and objectively the steps followed in support of decisions taken leading to nominations for redundancy.

- (ii) The panel must be clear as to the meaning of the criteria they have adopted and recognise that dismissal will be unfair if selection is:

- for a trade union related reason.
- contravenes legislation relating to discrimination on the grounds of race, ethnicity, sex, sexual orientation, marital status/civil partnership, disability, age, religion or belief, gender reassignment and pregnancy and maternity.
- if the agreed procedure and criteria are not adhered to or if circumstances apply

equally to other employees who have not been selected. e.g. if other employees are measured equally on the redundancy selection criteria who have not been selected

(b) Overriding Considerations

The Governors' Staffing Panel are required

- (i) To match staffing to the school's overall needs and responsibilities, in particular to maintaining the breadth and balance of the curriculum and to meet managerial, organisational and other legal requirements.
- (ii) To ensure that, wherever possible, reductions in personnel are achieved with minimum impact on the curriculum or support services.

(c) General Criteria

- (i) Wherever possible personnel reductions will be achieved by 'natural wastage'.
- (ii) Requests for job sharing or part-time working arrangements will be considered where this will enable existing post holders to be retained.
- (iii) First consideration will be given to volunteers when making staffing reductions.
- (iv) Where the hours of a post are to be reduced, the Staffing Panel will give first consideration to that postholder for such part-time replacement of that post as may be deemed necessary.
- (v) Where, in the case of a teacher, the recommendation is on general curriculum grounds and a 'responsibility' postholder is considered, the Staffing Panel will satisfy itself that a sufficiently able candidate is available internally to take on the duties for which the responsibility allowance is paid, or that there is no longer a requirement that those responsibilities be carried out.

- (vi) Where, in the case of a member of the support staff, the recommendations apply to a 'responsibility' postholder, the Panel will satisfy themselves that an appropriately qualified and/or experienced candidate would be available internally to take on the duties, or that there is no longer a requirement that those responsibilities be carried out.

(d) Specific Criteria

The Panel will have regard to the following priority order:

- (i) Where a member of staff is eligible for and willing to take retirement and/or voluntary redundancy and no replacement of either a full or part-time nature would be needed.
- (ii) Where a member of staff is eligible for and willing to take retirement and/or voluntary redundancy but some part-time replacement would be needed to maintain the curriculum and support services, priority to be given to nominations requiring the smallest number of hours of part-time replacement.

Where there are two or more volunteers for one redundancy it will be necessary to look at appropriate selection criteria listed at (v).

- (iii) Where, within the staffing structure, it is necessary to distinguish between individual members of staff beyond the above criteria, the Panel will determine its specific selection criteria:
 - Qualifications and specialist skills relevant to the current and known future needs of the school
 - Current and known future curriculum needs of the school
 - Current and known future management and organisational needs of the school
 - Maintaining current statutory requirements placed on the school
 - Previous experience of value to the current and known future needs of the school
 - Contribution to the current needs of the whole school

Once the selection criteria have been identified, a relevant scoring system will need to be adopted.

The Governors' Staffing Panel proposals will be recorded. The Headteacher will advise the appropriate trade union representative(s) verbally and inform the relevant staff of the proposal to select them for redundancy and, of their right to a written statement of the reasons and their right to an appeal hearing.

Written confirmation, including the reasons for selection for redundancy, will be provided to the employee within 5 working days of the decision.

8 APPEAL

A nominee wishing to exercise the right of appeal must notify the Clerk to Governors in writing within three working days of receipt of the Staffing Panels letter confirming their decision. Arrangements will be made for an appeal hearing to be held not normally less than five working days after receipt of a letter of appeal. A longer notice period of such a meeting is desirable if possible/practical.

The Governors' Appeal Panel must contain at least an equivalent number of Governors to the Staffing Panel none of who should have been involved in the original decision. The Director for People or a nominated representative has a right to attend.

The appeal is not a rehearing of the case but is an opportunity for the member of staff to challenge issues raised in their appeal letter. It also provides them with an opportunity to make representation to another panel in the school not involved in the original decision to select them for redundancy.

As the appeal is on grounds only it is not necessary to hear all the evidence but the Governors' Appeals Panel should satisfy itself that:

- Adequate information was available to enable the Staffing Panel to make an objective decision.
- Having regard to all the circumstances the decision to select the member of staff was reasonable.

9 SUITABLE ALTERNATIVE EMPLOYMENT

The Governing Body acknowledges that it shares responsibility with the LA for seeking alternative employment for staff under notice of redundancy.

If, after a member of staff has been given notice of redundancy, a post becomes available It will be reviewed to determine whether this is seen as suitable alternative employment.

A failure to offer available alternative work may give grounds for an unfair dismissal claim. Factors to consider when offering alternative work include pay status, location, working environment and hours of work.

The offer must be made for the job to start either immediately after the end of the old job or after an interval of not more than four weeks. Consult with a School HR Adviser about the wording of any alternative offer.

If alternative work is available in the school, employees will be given details to enable them to decide whether to accept or not.

If an offer of alternative work is refused by an employee under notice of redundancy, the Headteacher must discuss the case with the School's HR Advisers.

Any offer of alternative work will be made in writing. It will show how the new employment differs from the old and will be made before the employment under the previous contract ends.

An offer of alternative work will be subject to a trial period of four weeks.

An employee, who is offered alternative work and who is under notice of redundancy, has a statutory right to a trial period of four weeks, which begins when the previous contract has ended. However in exceptional cases, it may be mutually beneficial to extend the trial period beyond four weeks, by agreement.

If the Governing Body wishes to end the new contract within the four weeks for a reason connected with the job, the employee is entitled to a redundancy payment. If the dismissal is due to a reason unconnected with redundancy (e.g. a disciplinary matter) the employee may lose that entitlement.

If during the trial period the employee decides that the alternative work is not suitable and the LA is satisfied that the decision is a reasonable one, entitlement to a redundancy payment will not be lost. The four week period may be extended for retraining purposes by written agreement specifying the new end date of the trial period. An employee loses entitlement to any redundancy payment, which would have resulted from the loss of their previous job if they continue to work beyond the agreed trial period. Employees should be made aware of this when the alternative job offer is made. Before any employee is offered a trial period in an alternative job, Governing Bodies are advised to consult the School's HR Adviser.

Reasonable time off with pay will be allowed to enable employees to look for another post or to arrange training.

Employees under notice of redundancy, who qualify for a statutory redundancy payment, have a statutory entitlement to reasonable time off with pay to look for another job or to arrange training. This must be allowed before the notice period expires. Where possible, this assistance should be extended to all potentially redundant employees.

The Governing Body will, through the LA, seek to ensure that all employees are given the opportunity for individual counselling.

I can confirm that the governors of [insert school name] have adopted this policy as their own.

Chair of Governors	Headteacher
Sign.....	Sign.....
Print.....	Print.....
Date	Date

This policy will next be reviewed on.....