



## **Reviewing the School Establishment: Redundancy**

(Section 9 of the School Personnel Guidelines)

April 2009

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## **Redundancy Policy (School based employees)**

### **1. Introduction**

- 1.1 The Local Authority recognises that in providing the best service, changes in legislation, organisational change and technical developments may cause staff to be displaced. This policy is intended to cover the redundancy process to be followed for teaching staff arising out of school closures, annual budget setting or other circumstances where there is a need for staff reductions in schools where Calderdale Council is the employer.
- 1.2 This policy aims to mitigate so far as is possible the effects of any redundancy process and to provide a uniform and fair method of selection for redundancy when other methods to avoid compulsory redundancy have been exhausted.
- 1.3 It provides a standard process for dealing with potential redundancy situations to include: consultation, measures to minimise redundancy, selection of staff, periods of notice and issues relating to appeals. There is also guidance provided on supporting staff to find alternative employment, redundancy payments and early retirement.
- 1.4 This policy applies to Community, Voluntary Controlled and Community Special schools. Where school reorganisations are concerned, governing bodies of Voluntary Aided and Foundation schools, who are employers in these schools, are invited to co-operate with the Local Authority in their consideration and application of these procedures. It is recognised that Voluntary Aided and Foundation schools will apply their own policy.
- 1.5 It is the responsibility of school governing bodies to undertake the redundancy process. Governors should be aware that employment law specifies a minimum legal dismissal process applicable to all employers. The Employment Act 2002 allows for a three-step dismissal and disciplinary procedure, which applies when an employer is contemplating dismissing an employee. Statute specifies that this includes dismissal on grounds of capability or conduct, but guidance on the statutory procedure makes it clear that it also applies to dismissal on other grounds, such as redundancy and non-renewal of a fixed-term contract. The legal minimum three-step dismissal and disciplinary procedure is as follows:
  - i. The employer must set out in writing the circumstances that lead it to contemplate dismissing the employee. The employer must then send these to the employee and invite the employee to attend a meeting to discuss the matter and to give their response;

- ii. If the employee has been given a reasonable opportunity to consider the circumstances, the employer must hold the above meeting to hear and consider the employee's response. After the meeting, the employer must write to the employee informing him/her of its decision and of the employee's right to appeal against that decision if dissatisfied with it.
  - iii. If the employee decides to appeal, he or she must inform the employer accordingly. The employer must invite the employee to attend a further meeting, which the employee must take all reasonable steps to attend. After the appeal meeting, the employer must inform the employee of its final decision on the matter. The appeal meeting need not take place before the dismissal or disciplinary action takes effect.
- 1.6 There will normally be a school governor staffing committee, and an appeals committee. The staffing committee and appeals committee each need to have a membership of three; no governor can be a member of more than one of these committees. No employee, including the head teacher, should be a member of any of these committees. The head teacher may attend all such committees to offer advice.
- 1.7 School governing bodies initiating redundancy procedures should consult with the Local Authority from the start of and throughout the process. Failure to do so may result in a school having to meet any of the costs of the redundancy process or any subsequent costs arising at Employment Tribunal.
- 1.8 In all potential redundancy and redundancy situations the governing body has decision-making responsibility. The school governors should determine who should manage the process. The Local Authority recommends this is the head teacher.

## **2. Consultation**

- 2.1 In all potential redundancy and redundancy situations and in accordance with The Collective Redundancies and Transfer of Undertakings (Amendment) Regulations (SI 1999 No 1925) the school governing body should undertake consultation with a view to reaching an agreement about ways of:
- i. avoiding dismissals;
  - ii. reducing numbers of employees to be dismissed; and
  - iii. mitigating the consequences of dismissals.

- 2.2 Where a school has identified the need for a potential reduction in staffing the governing body should inform the Group Director, Children and Young People's Services in writing.
- 2.3 Consultation should precede any decision to terminate employment on the grounds of redundancy. It should be noted that there is no statutory requirement to consult trade unions where such proposals affect less than 20 staff, but the Local Authority recommends consultation with trade unions. In this context staff means all employees at the school.
- 2.4 Where there is a potential redundancy situation there should be a meeting, at the earliest opportunity, between the person managing the process and all staff. This meeting, which would involve trade union representatives, would discuss the issues and seek to agree possible options to avoid potential redundancies (specific references are made in paragraph 3.1). The outcomes of the meeting should be confirmed in writing to the trade unions.
- 2.5 At the meeting, or as soon as the information is established after the meeting, trades union representatives should be provided with the following information:
  - i. the reason for the redundancy proposals;
  - ii. the number and descriptions (post titles or designations) of employees it is proposed to dismiss as redundant;
  - iii. the total numbers of employees of each description employed at the establishment in question;
  - iv. the proposed method of selecting the employees who may be potentially redundant;
  - v. the proposed method of carrying out the dismissals, including the period over which the dismissals are to take effect (and hence the effective date of termination);
  - vi. the proposed method of calculating any redundancy payments to be made;
  - vii. a draft timetable that sets out the events in the order that they will happen.
- 2.6 All employees potentially affected by the redundancy process must be consulted and made aware of the implications, regardless of whether they are represented by a recognised union or not. All staff affected will be included in the circulation of correspondence, information and notice of meetings.

- 2.7 The timetable agreed by the governing body, following consultation with the trade unions, will be distributed to trade union representatives and all staff. During the course of the redundancy process, progress will be reported frequently.
- 2.8 Whilst the responsibility for undertaking the redundancy process lies with the school governing body, there is an obligation to consult with the Local Authority as employer. The Local Authority will in turn keep members of the Council's Cabinet informed of any proposals to declare any Local Authority employees compulsorily redundant.

### **3. Measures to minimise redundancy**

- 3.1 Measures for avoiding compulsory redundancies should include:
- i. natural wastage;
  - ii. the termination of temporary or casual employment, where practical (consideration needs to be given to the Whiffen case);
  - iii. the restricting of recruitment;
  - iv. offers of part-time working or job share arrangements;
  - v. the redeployment of staff into appropriate vacancies in accordance with the Council's Redeployment Procedure;
  - vi. the retraining of staff in appropriate cases;
  - vii. volunteers for redundancy.
- 3.2 Whilst the Local Authority will be prepared to consider applications for voluntary redundancy, it reserves the right to consider all other options first, and to determine which applications are finally accepted based on the requirements of the service.
- 3.3 Where a school has identified a need to reduce staffing and a vacancy has occurred, first consideration will be given to existing staff before possible replacements from outside the school.

### **4. Selection for redundancy**

- 4.1 Where the measures in section 3 fail to provide the revised size and composition of workforce required, selection criteria will be used to identify staff for redundancy.
- 4.2 In the case of a school closure the person(s) identified for redundancy will either be automatically selected where no new school is opening, or determined by their non-appointment to suitable positions in any new school.

- 4.3 In the case of annual budget setting where a need to reduce staffing levels has been identified, the school governing body, assisted by the person managing the process, will set down in writing the criteria to be used.
- 4.4 The criteria will be objective, fair and explicit and will be provided to all staff. Governors will consult with staff and the relevant union representatives and seek to agree the selection criteria before the process commences. It should be noted at this point that anyone who is involved in the selection decision will not be eligible to hear any subsequent representation or appeal.
- 4.5 The selection criteria will be based on the necessity to maintain a balanced workforce (after the redundancies have taken place) that has the appropriate skills and commitment to ensure the continued success of the school. Skills will also need to reflect the different teaching and management requirements in the school.
- 4.6 The selection criteria will not discriminate against an individual on the grounds of age, gender, marital status, disability, race, faith, sexual orientation or trade union activities. Qualifications and skills should be taken into account where a revised structure requires such attributes.
- 4.7 Specifically, the following criteria will be used:
- i. the current and future curriculum needs of the school(s) or priorities determined by the school governing body in the school's improvement plan;
  - ii. management criteria.
- 4.8 The staffing committee of the school governing body, advised by the person managing the process, should match the audited skills of the staff against the objective criteria above.
- 4.9 If after the application of the above criteria, particularly that relating to the school improvement plan and any shadow staffing structure, a selection is not possible, the staffing committee of the school governing body may, subject to the avoidance of discrimination on grounds of gender, marital status, race, faith, disability, age, sexual orientation or trade union activity, consider a further criterion of length of service with Calderdale Council.
- 4.10 Following any selection it is important that this assessment is documented for each individual (showing the criteria used and the points awarded for differing performance). The documentation should then be used to support any decision.
- 4.11 Employees who can satisfy the Head of HR and Change that they have a disability (as defined by the Disability Discrimination Act 1995) will

receive further consideration if they are identified as potentially redundant.

- 4.12 Immediately after selection, the person managing the process will notify all employees in writing of their provisional selection for redundancy and that they have the right to make a representation to the staffing committee either in writing or in person (prior to any appeal process) with respect to their proposed dismissal.
- 4.13 The staffing committee of the school governing body shall make arrangements to receive representations. Staff will be informed of the time and location not less than five working days before the representation is to be heard. At a representation, an individual will have the right to be accompanied by or represented by a trade union representative or some other person of that person's choice.
- 4.14 All affected staff will be given written reasons for their proposed dismissal on the grounds of redundancy, together with the criteria used for selection.
- 4.15 After full consideration to any representations, the staffing committee of the school governing body will inform the member of staff of their decision in writing.

## **5. Appeals against redundancy**

- 5.1 All affected staff will be provided with a copy of this Redundancy Policy and informed of their right of appeal to an appeals committee of the school governing body. Appeals should be made in writing to the appeals committee within 10 working days of being notified of potential redundancy. Staff will have the right to be accompanied at appeal or represented by a trade union official or some other person of the employee's choice.
- 5.2 Appeals will be against potential redundancy prior to notices being issued. The grounds for any appeal may include:
  - i. the selection procedure used;
  - ii. the application of the procedure.
- 5.3 No member of the appeals committee can have participated in the earlier stage of the selection process.
- 5.4 The outcome of the appeal will be conveyed in writing to the person concerned within five working days of the hearing. The governing body will advise the Group Director, Children and Young People's Services, without delay, of its determination and the reasons for it.
- 5.5 If the issue of potential redundancy is upheld following any appeals, and the person(s) have not been redeployed or found alternative



employment during their period of notice they will then be made redundant.

## **6. Dismissal and notice periods**

- 6.1 Notices of dismissal will be provided in writing to all employees affected confirming the decision to terminate their employment and giving the notice to which they are entitled under their contracts of employment. Details will also be provided of the last working day and any redundancy payment due.
- 6.2 Notices of dismissal will be issued by the Local Authority on the instruction of staff committees in Community and Voluntary Controlled schools.
- 6.3 The actual period of notice to be provided to staff will be in accordance with their contractual and statutory entitlements.
- 6.4 If, following the issue of dismissal notices, the school is able to find appropriate ways of avoiding redundancy, the governing body will undertake to adopt such measures and instruct the Local Authority to withdraw dismissal notices.

## **7. Assistance in finding alternative employment**

- 7.1 Wherever possible any member of staff under the threat of potential redundancy will be encouraged and supported by governors to find alternative employment.
- 7.2 At an early stage where employees are faced with potential redundancy, assistance will be provided to support them into other positions. This may include identifying strengths for future employment and guidance with application forms or interviews. In the case of school closure or reorganisation the Group Director, Children and Young People's Services will lead this; in all other cases governors, assisted by the person managing the process and personnel adviser, will be required to do the same.
- 7.3 Where the need for redundancy has been identified, the Group Director Children and Young People's Services will ask schools which have vacancies to give consideration to any person(s) available to be redeployed who meet the essential criteria identified in the vacancy.
- 7.4 Where an individual is faced with potential redundancy and wishes to seek redeployment within the Council, their details will be forwarded to the Head of Human Resources and Change in accordance with the Council's Redeployment Policy. The Head of Human Resources and Change will decide if the individual is a suitable candidate for Council-wide redeployment.

- 7.5 Where a teacher, as a result of a school closure or reorganisation, accepts a post of lesser remuneration, salary protection will be in accordance with the Teachers' Pay and Conditions Document. Where the circumstances are other than school closure or reorganisation, the Local Authority has discretion on protection, but should not unreasonably refuse it.
- 7.6 The agreed protection element of salaries will be provided to schools in their delegated budget such that the employment of a person with a protected salary is cost neutral to the school.
- 7.7 In some cases employees who are faced with potential redeployment may, with appropriate retraining, prove suitable for new posts, either within the same school (if it continues to be maintained) or elsewhere.
- 7.8 Consideration should first be given to retraining from within the delegated budget, if it is believed that the member of staff can be redeployed within the school.
- 7.9 Reasonable time off work with pay will be granted by prior agreement with the head teacher to enable employees to find alternative work or undergo training for new employment.

## **8. Eligibility to redundancy payment**

- 8.1 In the course of individual consultation, redundant employees will be informed in writing of any entitlement to redundancy compensation.
- 8.2 The Employment Rights Act 1996 also makes provision for employers to make enhanced discretionary redundancy payments.
- 8.3 In the case of school closures, the Council's agreed redundancy terms will be applied for calculating redundancy payments, e.g. currently based on actual weekly pay, age and length of service.
- 8.4 In all other cases, the governing body will determine, in line with any adopted policy, what, if any, discretionary payments should be made in respect of staff to be made redundant.
- 8.5 The School Standards and Framework Act 1998 provides for the Local Authority to meet the cost of redundancy, unless there is good reason to charge the school's budget share. Good reason may include a lack of appropriate consultation by a school, specifically:
- i. not making the Local Authority aware of the need for a redundancy exercise;
  - ii. not agreeing with the Local Authority the reduction option to be followed;

- iii. where the Local Authority considers the amount of any discretionary payment to be excessive in relation to its own policy.

8.6 A redundancy payment will not be paid if, before the end of their employment, the employee has received an offer of a suitable comparable job to start within four weeks and one clear day of the end of the previous employment.

## **9. Eligibility to premature retirement**

9.1 If an employee volunteers for redundancy or is made compulsorily redundant, then in certain cases they may be eligible for premature retirement and receive the appropriate benefits.

9.2 In appropriate cases school governing bodies will determine whether added years should be given. This will have a cost that the school budget will need to meet. In the case of school closure, the Group Director, Children and Young People's Services will apply the Council's Redundancy Policy that applies at that time to determine any added years.