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# Redundancy and Restructuring Policy

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*April 2018*





Implementation date: 1 April 2018

Review date: Summer 2020

Responsibility of: MAC Board – Mission and Ethos

## **1. Purpose**

The purpose of this policy is to set out a fair and consistent process by which the organisation will conduct its workforce planning and the reduction of staffing levels, as required.

The organisation is committed to ensuring, as far as is reasonably possible, a secure and stable working environment through the retention of individuals who have the right motivation, skill and experience to make a positive contribution to the organisation's success and the delivery of high quality education. The organisation will endeavour to maintain the efficiency and effectiveness of service provision in order to safeguard the current and future employment of its employees.

The organisation is committed to achieving this through:

- giving careful consideration to the required skills, available finance, educational requirements and organisational development necessary to deliver consistently high standards of education
- the application of consistent and fair procedures in accordance with good practice and equal opportunities
- adhering to the employment legislation and guidance in relation to restructuring and redundancy
- having regard to the Catholic character of the MAC

## **2. Scope**

This procedure applies to all employees including temporary, fixed term staff, casual staff and apprentices regardless of length of service. This procedure does not form part of your contract of employment and may be varied from time to time.

## **3. Responsibilities**

Any reference to 'the organisation' refers to Holy Trinity Catholic MAC. The appropriate level of authority will be determined according to the organisation's scheme of delegation.

It is the responsibility of the MAC Board to determine the staffing structure of each school or establishment within the MAC and also to determine the appointment of the two most senior posts within each school.

It is for the MAC Board determine the dismissal of all posts within each school.

It is the responsibility of each ARC to determine appointments to the school except for the two most senior posts. The ARC may make recommendation only to the MAC board regarding the dismissal of all other posts.

The ARC for each school will set up appropriate committees to consider restructuring and where necessary, redundancies including the appointment of an ARC Appeal Committee for dismissals of postholders in all but the two most senior posts in school. Decisions relating to employees reporting directly to MAC Board will be the responsibility of a Selection

Committee and separate Appeal Committee appointed by the MAC Board.

As the employer, the MAC may appoint a representative of the MAC Board to be present at any stage of the process.

#### **4. Accountabilities**

The ARC and the Headteacher are accountable for ensuring that this process is carried out fairly and consistently and that any managers involved in any aspect of it have the appropriate training and skills to do so.

All employees have a responsibility to be aware of and conduct themselves in line with the organisation's policies, the law and maintain acceptable standards of conduct and behaviour. Where relevant, employees must adhere to codes of practice or standards associated with their profession, trade or occupation. Employees should engage positively in consultation processes, providing constructive feedback and be sensitive to employees whose employment may be at risk. Employees who are at risk of redundancy are reminded that they are bound by all organisational policies and procedures until their employment ends and should maintain professional standards of behaviour.

#### **5. Guiding Principles**

The following guiding principles will apply:

**Equitable and Fair** – We are committed to equality and diversity and will make reasonable adjustments to the application of this policy and procedure in line with our equal opportunities commitment.

**Consistent and Objective** – All managers have a duty to ensure that they and all of the employees they are responsible for are aware of, and comply with, the organisation's policies and procedures. Managers responsible for conducting processes under this policy should do so objectively, consistently and fairly with robust rationale for all decisions.

**Lawful** - The organisation will comply with the legislative framework relating to redundancy and ensure relevant parties are informed and consulted providing sufficient time for meaningful discussion and response.

#### **6. Link with Other Policies and Procedures**

**Grievance Policy** – Subject to Paragraph 1.2(a) and (b) of the MAC's Grievance Resolution Policy and Procedure, there may be occasions when an employee wishes to use the MAC's Grievance Resolution Policy and Procedure in connection with actions taken under this Redundancy Policy. This shall not lead to any automatic delay or pause in the conduct of any matters under this Redundancy Policy.

**Managing Attendance at Work Policy** - Where an employee is absent due to sickness whilst a redundancy matter is pending, the managing attendance at work procedure will apply as normal. The process will continue in your absence and as appropriate advice will be sought

from Occupational Health to assess an employee's fitness to participate in formal meetings. Being absent from work due to sickness will not stop the redundancy matter progressing.

## **7. Redundancy Definition**

Employees who have at least 2 years continuous service with any local authority or employer covered by the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999 (as amended) are entitled to a redundancy payment. If an employee unreasonably rejects an offer of suitable alternative employment they will forfeit their right to a redundancy payment. A redundancy payment will not be paid where, before the end of their employment, the redundant employee receives an offer of employment with the local authority or with a Modification Order employer and accepts and starts the new job within 4 weeks of the date of the redundancy.

The Employment Rights Act 1996 defines a redundancy situation as one where the Employer 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; or
- (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.

Under section 197 of the Employment Rights Act 1996, the non-renewal of a fixed term contract is a dismissal in law. Therefore, employees with over 2 years' service whose fixed-term contract is not renewed may be entitled to a redundancy payment.

Advice should also be sought in regard to any longstanding casual contracts.

## **8. Consultation**

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.

### **The Legislation**

The Information and Consultation of Employees Regulations 2004:

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.

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

Where the organisation is contemplating making changes to its employee establishment that may lead to a redundancy situation, there should be meaningful consultation on any proposals with individual employees affected by the proposal and with the appropriate recognised trade unions. Consultation will involve considering ways of:

- avoiding proposed redundancies
- reducing the numbers to be made redundant
- mitigating the consequences of any redundancies
- undertaking selection
- developing any ring-fencing arrangements

Consultation, must begin 'in good time' and in any event:

- a) Consultation will be meaningful regardless of the number of employees affected.
- b) Consultation must begin at least **30 calendar days**, before the first dismissal takes effect where the employer is proposing to make redundant 20 to 99 employees within a period of 90 days or less.
- c) Consultation must begin at least **45 calendar days**, before the first dismissal takes effect where the employer is proposing to make redundant 100 or more employees within a period of 90 days or less.

Consultation must be completed before issuing redundancy notices to employees. Effective consultation does not compromise the organisation's ability to manage or make challenging decisions. However, consultation means that the organisation must consider the views of the employees before reaching any final decisions. Employees and trade union representatives must have the right to respond to any consultation, with appropriate mechanisms in place for their concerns.

## **9. Process**

There are number of steps in consulting and implementing the change process. These are set out in the following sections:

### **9.1 Preparing the Business Case**

This document will form the basis of any consultation discussions and the document must contain all the relevant information to ensure the organisation meets the statutory requirements. The organisation has a statutory responsibility under Section 188 of the Trade Union and Labour Relations (Consultation) Act 1992 (known as TULCRA) to disclose prescribed information to appropriate representatives. The business case must include the following information:

- the reasons for the proposed redundancy - this should include the rationale for change and the staffing implications, together with relevant financial and curriculum information
- the total number of employees affected by the proposals, including a pre-and post-restructure organisation chart with names, grades and job titles
- the number and description of roles at risk and therefore employees who may be made redundant (either voluntary or compulsory)
- Job descriptions (old & new, where appropriate)
- proposed method of selection for redundancy
- proposed method of how the redundancies will be carried out including the period over which redundancies are to take effect. A timetable of activity should be included
- proposed method of calculating redundancy pay
- the number of agency workers working for the school and the type of work they are doing

TULCRA further requires the organisation to notify the Insolvency Service, within the Redundancy Payments Service (RPS), if it proposes to make 20 or more workers redundant at one establishment over a period of 90 days or less. The notification to the Secretary of State (via an HR1 form) must be received by RPS before redundancy notices are issued and at least 30 or 90 days before the first termination date. Timescales will depend upon the number of employees involved (Appendix 1 – Business Case and Timeline Template).

## **9.2 Appointing Committees**

The ARC will appoint two separate committees (including a Chair for each) in advance of the process as follows:

- a selection committee to consider a staffing structure and identify staff for displacement
- an appeals committee to consider any appeals

The Selection Committee must consist of at least three members of the ARC and the appeals committee must have at least as many members as the Selection Committee. No committee member may be a member of both committees and there should be no discussion between members of the two committees about any decisions under consideration. There should also be no discussion with any other individuals apart from other members of the selection or appeals committee.

The Headteacher or other nominated senior member of staff in school can provide evidence and information to each committee in an 'expert advisor' capacity. The Headteacher may be present at both committees and make a contribution to the process, but is not part of the decision making.

It could be unethical for staff representatives of an ARC to be appointed as a member of either committee. Committee members should also consider whether it is appropriate to

appoint parent representatives to either committee. The ARC may appoint a member of a committee from the ARC of another school in the MAC.

As the employer the MAC Board has an entitlement to send a representative to all proceedings relating to dismissals.

### **9.3 Present Proposal to the MAC Board for Ratification of Draft Structure**

Members of the MAC Board must agree the proposal before consultation commences. The appropriate selection committee (as appointed in 9.2) must seek ratification for the proposals. Full minutes should be made and retained of the discussion regarding the proposals.

Once the proposal is ratified by the Board, the ARC will request that the Headteacher commences consultation.

### **9.4 Consultation with Trade Union Representatives and Staff**

It is necessary to invite staff and appropriate Trade Unions colleagues to the first formal consultation meeting. Adequate notice should be provided and consideration given to alternative dates 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.

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.

### **9.5 Collate Feedback and Present to the MAC Board for Ratification of Final Structure**

The MAC Board should fully consider and discuss any feedback received during the consultation process. The discussion should be noted along with agreement to any changes to the proposals and ratification of final structure.

Dependent 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.

### **9.6 Outcome of Consultation, New Structure and Next Steps confirmed to Staff and Trade Unions**

Once the final structure is ratified by the MAC Board, the details should be confirmed in writing to trade unions and employees as follows:

- 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.

### **9.7 ARC Selection Committee – Selection Meeting 1**

Once the final structure has been ratified, it is for the Selection Committee to meet and undertake the necessary activities to implement the agreed changes. At the first meeting, the committee will:

- 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 (Appendix 2 – Voluntary Redundancy Application Form).
- 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
- 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.

### **9.8 Conduct competitive selection process**

If it has been determined that any of the posts within the structure are to be appointed to via a competitive selection process, that activity needs to be undertaken following Selection Committee Meeting 1 and before Selection Committee Meeting 2 (Appendix 3 – Short Application Form).

The ARC Selection Committee may delegate responsibility for the selection activities to the Headteacher/Senior Leaders, however members of the ARC's selection committee have the

right to be involved in any activity which measures the skills and attributes of vulnerable staff against the selection criteria and which may impact on the outcome of the selection process.

The ARC Selection Committee and Headteacher must ensure that the organisation's Recruitment and Selection Procedures and the fair and objective selection criteria agreed during consultation is applied. The criteria should ensure that the best employees are retained to meet the needs of the organisation.

## **9.9 Selection Committee – Selection Meeting 2**

Meeting two of the selection committee is either:

- In the event that a competitive interview process has been conducted, to receive feedback and recommendations from the interview process and to seek ratification of the outcomes from the Selection Committee (Appendix 4 – Redundancy Selection Scoring Matrix). OR;
- To apply the agreed selection criteria i.e. to complete a desktop selection exercise. Any discussions around scoring and the award of points must be minuted and retained for audit purposes.

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

## **9.10 Communicating the outcome**

The Chair of the 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.

## **9.11 Appeal**

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 ARC [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 ARC 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 minuted and the notes retained for audit purposes.

## **10. Redeployment**

Any employee who is "at risk" of redundancy will be subject to the provisions for redeployment in place across the MAC at the time. Legally there is an obligation and responsibility to consider suitable alternative employment for redeployees and conversely, redeployees should show reasonableness in rejecting or accepting any suitable alternative employment.

The organisation must consider any other redeployment opportunities within the employee's own school and other schools within the MAC which may be suitable for the 'at risk' employee. All applicants who meet the essential criteria for the post (as set out in the person specification) will be offered an interview. The organisation has a responsibility to consider suitable alternative employment across the MAC.

The organisation must also provide relevant retraining and redeployment of existing employees into appropriate vacancies where possible to maximise opportunities and minimise redundancies. In this event, the organisation will retain the right to determine the suitability of candidates for retraining and redeployment taking into account all skills possessed by the employees (Appendix 5 – Offer of Alternative Employment Form).

Where appropriate salary protection should be considered in line with the organisations policy.

Appropriate funding will be the responsibility of the employee's originating school, this includes any costs of retraining and any pay protection element of the employee's new pay.

### **11. Re-engagement Following Redundancy**

Former employees who wish to apply for future vacancies with the organisation will be considered in open competition with other applicants in line with normal recruitment practices.

If employees are re-engaged within 4 weeks, continuity of service will not be broken and employees would be required to return any redundancy pay received. If redundancy pay is not paid back and the employee is made redundant again at a later date, redundancy pay will only be for the remaining service period following re-engagement.

Employees who are made redundant from any post within the MAC must not be re-engaged in any post within 12 months of the redundancy taking effect.

### **12. Data Protection**

The organisation will comply with the provisions of the Data Protection Act 1998. Employee data will be processed by the organisation in accordance with the principles of that legislation, as necessary for the performance of the employee's contract of employment and/or the conduct of the organisation's business. The organisation will ensure that personal information about an employee, including information in personnel files, is securely retained.