



# **SEATON PRIMARY SCHOOL REDUNDANCY PROCEDURE**

# EMPLOYEE RELATION SERVICES

## SCHOOLS MODEL REDUNDANCY PROCEDURE

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# Handling Redundancy

## 1.1 Introduction

Governors are responsible for deciding the number and the categories of staff working within the school.

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 careful this planning may be, schools are likely at some stage to have to review the range and number of staff employed.

In order to address situations properly where there may need to be staff reductions, good industrial relations practice 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 could lead to claims of unfair dismissal even if there are potentially good grounds for making a 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.

## 1.2 What Is The Legal Framework?

Employment Law 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 by him or her has ceased, or intends to cease, to carry on the business in the place where the employee was so employed."*

or

*"The fact that the requirement of the business for an employee to carry out work of a particular kind in the place where he was so employed, has 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 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.

Employees working under temporary/fixed term contracts are also protected under the Fixed Term Contract legislation. Temporary/Fixed Term Contract employees are to be treated equally with permanent staff and considered under the procedure detailed in this policy.

In all cases where redundancies are being considered, there is a legal requirement to consult and the need to advise and involve both County Officers of Trade Unions and the LA (the body responsible for eventually declaring the redundancy). Clear guidance on redundancy criteria and procedure are set out in this Model Procedure.

Governors of Voluntary Aided and Foundation Schools should, as part of the first stage in their procedure, advise the Diocesan Director of Education when redundancy is under consideration and seek advice from your Link Employee Relations Adviser.

### **1.3 General Information**

Given that the LA is the final employer (except in Voluntary Aided and Foundation Schools) and would be responsible for issuing any dismissal notices, it should be noted that if Governors decide to ignore advice obtained within this paper or indeed, decide to modify the selection criteria, they will need to consult with the 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 and consult with Trade Unions on any proposed changes.

Further information on the current Procedure for Reporting Potential Redundancies is attached.

**Should you have concerns about any matter relating to redundancy or a potential redundancy situation, you must seek advice from your link Employee Relations Adviser.**

## **Model School Redundancy Procedure And Selection Criteria**

- 2.1 This document has been adopted by the Governing Body, being the relevant body, as the procedure for Seaton Primary School.
- 2.2 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 avenues have been pursued. For example restrictions on recruitment, redeployment to other posts suited to the experience and the abilities of the staff concerned and retraining if appropriate. The redundancy process should only be considered when all other avenues have been explored.
- 2.3 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 projected 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 your link Employee Relations Adviser, even if the reduction is by mutual consent.*

*As a matter of priority the Head Teacher must discuss a potential redundancy situation with your Link Employee Relations Adviser to ensure that the LA is involved at every stage and report the matter to the Governing Body.*

- 2.4 The Governing Body will have due regard to the current policy of LA funding for redundancies.
- 2.5 The Governing Body will observe the current policy for LA funding of early retirement and redundancy cases before entering into any redundancy procedure.
- 2.6 The full Governing Body will, after consultations with the County Officers of the trade unions, agree the selection criteria (based on the recommendations in this document) to be used when selecting staff as surplus to their requirements.

*For practical reasons, the task of drafting selection criteria may be assigned to the Head Teacher and a Committee of Governors. However, after consultations with trade unions, the full Governing Body should be aware of and approve the school's finally agreed selection criteria.*

- 2.7 The full Governing Body will refer the task of determining whether staffing reductions are necessary, including looking at other options, to the Staff Dismissal Committee. This Committee will consist of not less than three Governors and not more than one-half of the Governing Body. For the purposes of this process the Staff Dismissal Committee will be known as the Nominations Committee. The remaining Governors will hold themselves in readiness as an Appeal Committee.

The Education Reform Act 1988 requires that Governing Bodies be responsible for establishing 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 Head Teacher has only an advisory role in the process.

In addition, the LA (Local Authority) takes the view that whilst staff governors must play no lesser or greater role than any other governor in the responsibilities of the Governing Body, it would be prudent for them not to sit on any committee concerned with the selection or nomination of individuals for early retirement or redundancy.

It would clearly be desirable for Governors to determine the membership of their Nomination Committee after having agreed their selection criteria for redundancy. However, Governors may feel that it would be beneficial to defer the determination of the membership of the Appeal Committee until required in order to retain an element of flexibility and to accommodate Governor availability.

**Any Governor will be excluded from membership of these committees if they have an identifiable pecuniary interest, close relationship with any employee or vested interest**

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

- 2.8** If the Nomination Committee determines that redundancy is necessary, they will apply the Governing Body's agreed selection criteria to nominate staff who are surplus to requirements.

The Chairperson of each committee must arrange for a record to be kept of the proceedings of that Committee (including notes made by committee members) given that there may be a need to produce the documentation used in arriving at decisions, both to subsequent committees held in the school and to an Employment Tribunal. However, minutes of the meetings, which will be held under Confidential Part 2 arrangements, will simply record the decision reached.

- 2.9** The Nomination Committee will hold a further meeting to enable staff proposed for nomination to make representations about their proposed selection.

*The LA recommends that the body hearing such representations should comprise at least three members of the Nomination Committee.*

**2.10** The Appeal Committee will hear any appeal from individual members of staff whose proposed nomination is confirmed by the body to whom they have made representation. The Appeal Committee must be of the same size as the Nominations Committee.

The process should be completed as early as possible, taking into account conditions of service, contractual and statutory obligations, and the need to give individual staff as much notice as possible.

### 3. Stage 1 - Prior Considerations

3.1 Prior to looking to staff reductions where the staffing budget does not meet actual salary requirements, the Governing Body will give consideration firstly to:

- Virement 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.
- Restriction on recruitment.
- Retraining of staff or transfer to suitable alternative work within the school. *(Advice on retraining opportunities is available from the LA.)*
- Retirement of employees who are beyond normal retirement age.
- Natural wastage, e.g. resignations and retirements.
- Consideration of redeployment. *(Seek advice from Link Employee Relations Adviser.)*
- Volunteers for reduction of working hours. *(Seek advice from Link Employee Relations Adviser.)*
- The balance of priorities between staffing levels and the other needs of the school with reference to the School Development Plan.

*Matters relating to the first four points on this list should be discussed fully with your Link Finance Officer, who is also able to provide details of the mechanism for seeking approval for the school to proceed into a redundancy situation.*

## 4. Stage 2 - Consultation

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

- (a) the need for consideration of redundancy;
- (b) the proposed procedure and criteria by which decisions will be reached.

*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.*

4.2 The Governing Body will arrange a meeting with staff representatives (County Officers of the Trade Unions), the Head Teacher 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 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) must be consulted. Clear guidance on redundancy criteria is set out in Stage 3 of this procedure. During the process of consultation the following information must be provided and discussed:

- The total number and description of employees in the establishment.
- The reason and circumstances that have led to the need to consider redundancies.
- The likely budgetary shortfall, curricular provision and pupil number trends.
- What consideration has been given to possible ways of avoiding or reducing the need for redundancy
- A report from the Headteacher giving options for staffing structures which will be considered by the governors' Nominations Committee identifying the potential level of staff reduction (FTE) required for each option. (Note: individuals will not be identified).
- 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.

- The proposed method of calculating the redundancy pay where this will be in excess of the statutory (or contractual) scheme.

**Individual members of staff will not be named or consulted at this stage.**

- 4.3** In the event of representations being made by the recognised Trade Unions/Professional Associations, Governors will respond formally to any alternative proposals.
- 4.4** Whenever possible, the Governing Body will, at the conclusion of the meeting, agree with Trade Union/Professional Association representatives, a timetable for any necessary meetings under Stages 3, 4 and 5 of this procedure.
- 4.5** The Headteacher will arrange a meeting with all staff to discuss the redundancy process and to enquire whether any staff wish to propose to alter their working arrangements. The Headteacher may issue a profile proforma to staff for completion and will forward the profile forms to the Chair of the Nominations Committee. The proforma should reflect the selection criteria within the agreed redundancy policy.
- 4.6** Prior to the Nomination Committee meeting, the Headteacher will consider proposals from any staff wishing to reduce their hours of work, job share or alter their working arrangements and will provide information to the Nominations Committee on the viability of the alternative working arrangement proposed.
- 4.7** Staff should be made aware of the availability of confidential advice relating to retirement/redundancy financial benefits through your link Employee Relations Adviser. Staff should also be advised to discuss such matters with their Trade Union representative.

## 5. Stage 3 - Nominations

- 5.1 The Head Teacher will present the Nomination Committee 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. When the Nomination Committee has agreed that a staffing reduction is necessary, the Head Teacher will put forward a full staffing analysis.

The Head Teacher's staffing analysis, based on the curriculum plan, school development plan, pastoral needs and other management requirements, should be sufficiently detailed for the Committee to reach an independent view as to which posts in the school, if any, should be nominated for redundancy.

- 5.2 Having regard to the selection criteria below, the Nomination Committee will determine which job holder is to be proposed for nomination.
- 5.3 The Nomination Committee will also be responsible for any meetings called to hear individual staff representations.

Staff nominated for redundancy have a right to a personal hearing before a Committee which shall comprise not less than three members of the Nominations Committee.

- 5.4 When considering nominations the Committee 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 in dealing with redundancy.

Governors must be clear as to the meaning of the criteria they have adopted.

- (ii) The Governors recognise that dismissal will be automatically unfair if selection is:

- For a Trade Union related reason.
- Discriminatory on the grounds of race or ethnicity, gender, marital status, gender identity, sexual orientation, religion or belief, disability or age.
- If part timers/fixed term workers are treated unfairly.
- If the agreed procedure is not followed or if circumstances apply equally to other employees who have not been selected.

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

(b) **Prior considerations by the Nominations Committee**

- (i) Requests for alternative working arrangements will be considered where this will enable existing postholders to be retained, e.g. requests for job share or reduction in hours., as long as 5.4. (iii) can be achieved.
- (ii) Vacant posts – consideration will be given to removing vacant posts from the establishment.
- (iii) Volunteers
  - The Nominations Panel will consider the possibility of voluntary redundancies to achieve the required reduction in the number of employees.
  - Acceptance of volunteers for redundancy will be restricted by the overriding need to retain relevant skills, knowledge and experience required by the school and the need to contain costs.
  - Any voluntary redundancy must be approved by the Local Authority "Schools In Balance" (Redundancy) Panel.
  - As the school and the Local Authority has the responsibility to mitigate potential redundancies, any employee who volunteers for redundancy and is accepted, will be referred to the Corporate Placement Unit to participate in the redeployment programme. Employees will be made aware of and must consider any suitable alternative employment that becomes available during their notice period.

(c) **Criteria for Compulsory Redundancies**

The Committee will have regard to the following:

Where, within the staffing structure, it is necessary to distinguish between individual members of staff beyond criteria a) and b) above, the Committee will use the following selection criteria:

- **Skills and qualifications - specific expertise, especially in conjunction with the School Development Plan, the provision of the National Curriculum or support services and other legal requirements.**
- **Breadth of experience.**
- **Flexibility and adaptability to changes in work patterns and methods**
- **Contribution to the whole school curriculum.**
- **Whether any reasonable level of training would be required.**

The above criteria are not in any order of priority.

When, having taken into consideration the above criteria, there is a choice between employees, fair selection evidence will include:

- performance/appraisal record
- attendance record
- disciplinary record

Each of the three criterion above will not be considered individually but Governors will assess employees against all three areas.

- 5.5** The Nominations Committee's decisions will be recorded. The Head Teacher will verbally advise the relevant staff member(s) of the proposal to nominate them, of their right to a written statement of reasons and their right to a representation hearing.

Written confirmation, including the reasons for nomination, will be provided to the employee within two working days of the decision.

## Stage 4 - Representation

6. A nominee wishing to exercise his/her right to make representation, must notify the Clerk to Governors within five days of receipt of the written notification of the nomination.

Arrangements will be made for the Nominations Committee to be reconvened as the Representations Committee. A Representation Hearing should be arranged to be held as soon as possible. To allow the nominee the opportunity to discuss his/her situation with a Trade Union representative and to prepare a submission, the meeting will not normally be held less than ten days after receipt of the written notification of nomination.

- 6.2 An LA representative will be invited to attend.

- 6.3 The format of the Representation Hearing will be as follows:

- (a) The Chairperson will introduce all the parties present and invite the nominee, and his/her representative, to make a written and/or oral submission as to why s/he should not be proposed. The nominee and his/her representative will also be given the opportunity to ask questions of the Headteacher and/or the Committee.

Where a request is received for additional information the Committee must give the matter due consideration. Agreement to provide such information is recommended where:

- \* it is seen to be reasonable and relevant to the nominee's case, e.g. a specific concern about the application of the selection criteria.
- \* it can be given in confidence to the meeting.

Any reasonable request from the nominee to withdraw for consultation with his/her representative should be allowed.

- (b) Members of the Committee may seek clarification from the nominee and Headteacher as necessary.
- (c) After the nominee and his/her representative have made representations, all parties (excepting the LA representative) will be asked to withdraw from the meeting whilst the Committee consider the information and the issues raised. All parties will be called back into the meeting to clear points of uncertainty relating to procedure or the information already provided.
- (d) The Chairperson will give an oral response to the submission(s), answering any outstanding questions, and conveying the decision of the Committee to all parties.
- (e) In the event that the proposed nomination is confirmed, the Chairperson will confirm the individual's right of appeal and indicate the provisional date for any such appeal.

- (f) The Committee's decision, a response to any unanswered questions and the right to lodge an appeal, will be confirmed in writing within seven days.

## **7. Stage 5 - Appeal**

- 7.1** A nominee wishing to exercise his/her right of appeal must notify the Clerk to Governors in writing within five days of the representations hearing. Arrangements will be made for an appeal hearing to be held as soon as possible but not normally less than ten days after the representation hearing.

An appeal is an opportunity for the member of staff to challenge issues raised at the previous hearing. It also provides them with an opportunity to make representation to another committee in the school not involved in the original decision to declare them surplus to requirements.

It is not necessary to hear all the evidence but an Appeal Committee should satisfy itself that:

- (a) Adequate information was available to enable the original Committee to make a measured decision.
  - (b) The individual was given the right to make representations and that those representations were weighed with the original information available.
  - (c) Having regard to all the circumstances the decision to select the member of staff was reasonable.
- 7.2** The Appeal Committee must contain at least an equivalent number of Governors to the First Committee (Nomination Committee) none of whom should have been involved in the original decision.
- 7.3** An LA representative will be invited to attend.
- 7.4** The format of the Appeal will be as follows:
- (a) The Headteacher and a representative of the Nomination Committee will be available to answer questions from the Appeal Committee, the appellant and his/her representative.
  - (b) The representative of the Nomination Committee will, in the presence of the appellant and his/her representative, make an oral submission outlining the reasons for the original proposal.
  - (c) The appellant and his/her representative will have the right of questioning after the statement, as will the Committee.
  - (d) The appellant and his/her representative will be given an opportunity to make an oral submission as to why s/he should not be proposed.
  - (e) The Headteacher, the representative of the Nomination Committee and members of the Committee, will have the right to question the statement after it is completed.
  - (f) The representative of the Nomination Committee will be given an opportunity to sum up their case.

- (g) The appellant and his/her representative will be given an opportunity to sum up their case.
- (h) All parties will withdraw whilst the Committee considers its decision.  
  
However, they will be recalled for clarification of points at issue, with all parties attending any such recall procedure.
- (i) The Committee will give its decision orally to all parties at the end of the meeting. This decision will be confirmed in writing within two working days. In the event of the Appeal being unsuccessful, this will be communicated to the LA as formal nomination that the member of staff is surplus to requirements.

## **8. Stage 6 - Looking For Suitable Alternative Work**

- 8.1** The Governing Body (except Voluntary Aided and Foundation Schools) acknowledges that it shares responsibility with the LA for seeking alternative employment for staff under notice of redundancy.
- 8.2** For Voluntary Aided and Foundation Schools, the onus for seeking redeployment opportunities lays solely with the Governing Body. However, your Link Employee Relations Adviser will normally assist in the process. The LA and Schools have always collaborated in this process and it has worked extremely well through “knock on” redundancies. It is intended that this process continues in order to minimise the need for compulsory redundancies.
- 8.3** If, after a member of staff has been given notice of redundancy, another member of staff resigns, it may create a vacancy within the school that may be considered as ‘suitable alternative employment’ for the employee under notice. Schools would be expected to carefully consider the option and consult with the employee under notice.

*A failure to offer available alternative work will be grounds for an unfair dismissal claim. Factors to consider when offering alternative work include pay, status, work-place, 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 your Link Employee Relations Adviser about the wording of any alternative offer.*

- 8.4** If alternative work is available in the school, the employee will be offered alternative work in writing. It will show how the new employment differs from the old and why it is considered to be suitable alternative employment.

*Employees who refuse unreasonably an offer of suitable alternative work may lose any entitlement to redundancy pay. Unreasonable refusal may arise when the difference between the new and old jobs is not considered significant or where the employee expresses no interest in either investigating or trying out alternatives. If an offer of alternative work is refused by a redundant employee, discuss the case with your Link Employee Relations Adviser.*

- 8.5** 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, 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 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 your Link Employee Relations Advisers.*

- 8.6** 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.*

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

*Counselling is a skilled task and it is sensible to use a trained counsellor to carry out interviews, ideally before redundancies take effect. Governing Bodies or individual employees may consult your Link Employee Relations Adviser if counselling is desired*