



MODEL STAFFING REVIEW & REDUNDANCY PROCEDURE

Background

1. Scope

This procedure shall apply to all employees employed by the Governing Body ofCatholic Voluntary Aided School.

1. Definition of Redundancy

Section 139 of the Employment Rights Act 1996 defines redundancy as follows:

“For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to:

- a) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed, or*
- b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees 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 diminish.”*

Any dismissal must therefore be *wholly* or *mainly* attributable to the above defined situations and no other situation. The three main situations, in a school context, are:

- a) closure (actual or intended) or reduction in size of the school as a whole;
- b) closure (actual or intended) or reduction in size of part of the school (eg closure of nursery or sixth form provision or department or a special unit);
- c) diminished requirement for employees to carry out work of a particular kind (eg learning support).

2. Statutory Rights and Duties

A redundant employee will be entitled to claim a statutory redundancy payment (if he satisfied the relevant criteria) which would be calculated according to age¹ and length of service. The employee must have been dismissed by reason of redundancy

¹ This complies with age discrimination legislation.

and have two years qualifying continuous employment at the effective date of termination.

The statutory redundancy payment is calculated as follows:

- (i) one and a half weeks' pay for each complete year of service after reaching the age of 41;
- (ii) one week's pay for each complete year of service between the ages of 22 and 40 inclusive; and
- (iii) half a week's pay for each complete year of service after reaching the age of 18 but not having reached the age of 22.

An employee with one year's qualifying service may also be able to claim unfair dismissal if he has been dismissed. A potentially fair reason for dismissal will include redundancy. However, the Governing Body must further show in these circumstances that it acted reasonably when carrying out the redundancy (see below). This means showing that the employee was warned as soon as possible about the impending redundancy, that he was consulted and that he was selected fairly. He should also have been offered suitable alternative employment if this was available.

All employees have the right to consult their union or professional association. The Governing Body will also work with union and professional association representatives throughout the process.

3. Contractual Rights

A dismissed employee is entitled to receive notice of his dismissal. A redundancy situation is no different from any other dismissal in this respect. Notice will either be contractual or statutory (ie it will be statutory where the contractual notice is less than the statutory minima or where no notice is specified).

If the Governing Body fails to give the correct period of notice, the employee will be entitled to a payment in lieu of notice comprising salary and other contractual benefits.

2. Policy

The Governing Body recognises that all the employees at the school can only perform their duties efficiently and effectively within a framework of confidence. The Governing Body will undertake at all times to use its best endeavours through forward planning and sound financial management to maintain security of employment. However, the Governing Body also has other duties and objectives with which they must comply and in particular they must conduct the school within its budget as far as practicable and recognises that budgetary changes with significant implications may be outside their control. The Governing Body will seek to identify any budgetary shortfalls at the earliest possible opportunity. If the Governing Body anticipates problems, it will seek prompt advice from the local authority and the Diocesan Schools' Commission.

The Governing Body recognises the length of time needed to complete the redundancy process. In a normal school planning cycle, the Governing Body will start the process at the beginning of the Spring Term to enable notices for teachers to be given by 31 May to take effect on 31 August (ie the normal contractual date for departure). The termination dates for support staff are not restricted to the ends of terms.

This Policy and Procedure is designed to:

- a) ensure fairness and equity at all stages;
- b) maintain relationships through consultation and communication;
- c) avoid compulsory redundancies;
- d) avoid prejudicing the future employment prospects of employees nominated as redundant.

3. Procedure

3.1. Strategies for Avoiding Compulsory Redundancies

The Governing Body will consider the following options in determining whether compulsory redundancies may be necessary. Failure to consider these may result in a finding of unfair dismissal.

- a) Are there any volunteers for redundancy?
- b) Can casual labour, contract staff or supply staff be eliminated or reduced?
- c) Can employees who are near retirement age be retired when they reach national retirement age?
- d) Are there any opportunities to redeploy staff?
- e) Can staff be retrained to perform other roles in the school?
- f) Is the position likely to change through 'natural wastage' of other kinds, eg staff resigning to take up posts at other schools?
- g) Is there potential for and possibility of 'Job Sharing'?

Staff will be notified as soon as it appears that a potential redundancy situation may exist. Consultation will take place as soon as is practicable and a senior member of the management team, usually the Headteacher, will be assigned to deal with queries and concerns.

The Governing Body will endeavour to adopt an overall management approach which recognises the genuine fears and concerns of staff and responds accordingly.

3.2. Identification that a Potential Redundancy Situation Exists

The Headteacher will gather all the relevant information to determine whether a redundancy situation exists. This will include but is not limited to:

- the budget statement;
- pupil forecasts;
- costs of current resources;
- staffing structures;
- curriculum plans;
- a report on other school needs;

- the applicability of strategies to avoid compulsory redundancies.

The Headteacher will discuss these with the relevant local authority advisers (eg Human Resources, Finance and the Advisory Service, as appropriate) and the Diocesan Schools' Commission as necessary.

The Headteacher will submit a report on the data and his findings to a meeting of the whole Governing Body.

3.3. Preliminary Action on Determination of a Potential Redundancy Situation

Where the Governing Body believes that a potential redundancy situation exists, it will instruct the Headteacher to commence early consultation with staff and recognised trade unions and professional associations.

The Governing Body will also establish a Staff Dismissal Committee and a Staff Dismissal Appeals Committee, each with a minimum of three governors. The same governors may not serve on both committees. The Governing Body will appoint chairs of each committee. Membership of each committee will be in accordance with the relevant School Governance Regulations. The Headteacher will not serve as a member of either committee but will act as an adviser to the Staff Dismissal Committee.

There is no reason for teacher and staff governors to be *generally* excluded from discussion and decisions on these issues although the Governing Body must be mindful of potential conflicts of interest.

The Diocesan Schools' Commission and the local authority will each be afforded advisory rights.

The Governing Body will agree a date for the first meeting of the Staff Dismissal Committee. It is to be expected that this will be arranged at a time when both local authority and diocesan advisers can be present.

The Governing Body will also authorise the Headteacher to:

- inform staff and seek voluntary solutions to overstaffing
- inform local union branch representatives
- inform the chief education officer of the local authority.

3.4. Announcing the Redundancy Situation

The Headteacher should tell staff why there is a redundancy situation and what efforts have been made to prevent it. As soon as it becomes clear, they should also be told the number of staff who will be made redundant and the selection procedure that will be applied. Staff should also be advised of the redundancy timetable.

The Staff Dismissal Committee must consider representations made by staff with regard to the proposed redundancies and genuinely consider these. The Committee should be careful to minute all such discussions and if it does not accept any objections, should be put in writing why these are not accepted.

3.5. Selecting the Staff

Where there are not enough volunteers for redundancy, the Staff Dismissal Committee will select individual members of staff strictly in accordance with previously identified selection criteria.

The criteria must be objective and should be reasonably and fairly applied. The Governing Body must be careful to ensure that the pool of employees to whom the criteria are applied is fairly defined. This will normally be the whole school unless the Governing Body can justify a smaller unit or particular staff group within the school.

The chosen selection criteria must be capable of objective substantiation and of being backed up with evidence and data, for example, performance and attendance records. The Governing Body should be careful to investigate fully and not apply selection criteria arbitrarily. The Governing Body will also ensure that all staff are treated fairly and that the procedure is not unlawfully discriminatory.

The Governing Body should, in consultation with the recognised trade unions, apply the following selection criteria:

- (a) Curriculum, pastoral and organisational needs of the school will be clearly identified;
- (b) Qualifications and relevant experience of staff together with skills will be clearly identified, eg, qualifications; particular subject expertise; flexibility across subject areas as demonstrated either by current actual teaching and/or qualifications and/or past actual teaching; qualifications or experience in relevant subject areas; qualifications or experience to teach certain levels and additional relevant qualifications/training. This list is not conclusive but shows examples of factual matters capable of verification that may be applied in assessing the current staffing resources.
- (c) The needs of the school will be matched with the staff that are available using criteria under (b) above.
- (d) If all else is equal, then 'last in first out' shall be applied based on continuous service with the Governing Body or with other relevant employers including the governing bodies of other voluntary aided and foundation schools and local authorities.

Proposals based on the above criteria should be made by the Staff Dismissal Committee for consultation with the recognised trade union(s).

The trade unions and professional associations must be given a reasonable time in which to respond (usually three working weeks). The Staff Dismissal Committee must consider any representations made by the trade unions/professional associations and respond formally in writing, giving a reason for any representation not accepted.

The Staff Dismissal Committee should then ask the Headteacher to issue 'at risk' letters to all staff in the school (or, where the redundancies have been limited to a particular department/service/function within the school, to those staff who are

potentially affected), together with a staff audit form and a copy of the selection criteria for completion and return within one week. The letter to staff should also set out the next steps in the timetable of the redundancy procedure, including the date and time of the meeting at which staff preliminarily selected for redundancy will be able to make representations and be accompanied/represented by representatives of their trade unions or professional associations. The unions/associations should also be notified of the time and date of this meeting at this stage.

The staff audit forms should be returned to the Headteacher, who should check and confirm the details of each completed staff audit form.

The Headteacher should also anonymise the audit forms before passing them to the Staff Dismissal Committee.

The Staff Dismissal Committee must then meet and select staff for redundancy against the agreed criteria.

The Staff Dismissal Committee should inform each employee selected for redundancy in writing, giving them notice that they have been selected, setting out the reasons for the decision and giving them the opportunity to make representations against the decision.

The time and date of the meeting at which representations may be made should have been notified to employees at risk of redundancy and relevant unions/professional association representatives

The letter confirming that the employee has been selected for redundancy should give clear details about the termination date and terms of redundancy, including entitlement to statutory redundancy pay and contractual redundancy pay, together with any payments in lieu of notice; any payments due for holiday entitlements not given, not taken; any accrued pay up to the date of termination and any ex gratia payments. The letter should also set out their rights with regard to reasonable time off to attend interviews and to be given assistance in finding a new job, if this is possible. If the local authority has a policy of assisting staff who have been made redundant from a voluntary aided school to be redeployed, this should be made clear. Similarly, if the diocese offers help with redeployment into the Catholic sector that should be communicated.

The letter should also advise the employee that he may appeal to the Staff Dismissal Appeals Committee if he has an objection to having been selected for redundancy or if he feels that the redundancy is not appropriate. The procedure for appeals is set out in Appendix 1.

If there is no suitable alternative employment available in the school, the Headteacher must advise the employee of this on behalf of the Governing Body. If there is suitable alternative employment, the Staff Dismissal Committee should write separately to the employee setting out the details and a firm offer should be made to him. Any vacancy which could be offered to the redundant employee should be offered to him for consideration, even if it appears to be of lesser status and salary.

If an employee accepts an offer of alternative work within the School he is entitled to a trial period of four weeks to assess suitability. He must be told of this right in

writing. If, during this period, he decides to leave he retains his rights to severance payments (unless his refusal to accept the work is unreasonable and the job is deemed to be suitable). If the employee is to be retrained, the trial period may be extended by agreement. If there is a dispute as to reasonableness or suitability, this may be settled by an Employment Tribunal.

The redundancy notice period is the time between the date when an employee received his formal notice of termination and the date on which his employment is to be terminated. All teachers shall be under a minimum of two months' notice, and in the Summer term, three months', terminating at the end of a school term as defined in the Conditions of Service for School Teachers in England and Wales, ie 31 August, 31 December and 30 April. Where a teacher has been continuously employed for more than eight years he shall be entitled to receive additional notice, as specified in the Employment Rights Act 1996. All headteachers shall be under a minimum of three months' notice and in the Summer term four months', terminating at the end of a school term as defined above.

Employees with one year's qualifying service have the right to raise claims of unfair dismissal as a result of unfair selection for redundancy with an Employment Tribunal. A claim may be made by employees and/or their trade unions/professional associations.

A finding of unfair dismissal by the Employment Tribunal could result in the employee's reinstatement or re-engagement or an order to pay financial compensation.

Appendix 1: Appeals Procedure

An employee who believes that he has been selected for compulsory redundancy unlawfully or unfairly has the right of Appeal to the Staff Dismissal Appeals Committee.

The employee must provide written grounds of his appeal within five working days of receipt of the letter from the Staff Dismissal Committee confirming that he had been selected for redundancy. The grounds must set out the reasons for the appeal, which must relate to the application of the selection criteria or redundancy procedure. The notice of appeal should be addressed to the Chair of the Staff Dismissal Appeals Committee and sent to the Clerk to the Committee.

The appeal hearing should be held within 10 working days of receipt of the employee's appeal, other than in exceptional circumstances when the parties may agree a later date.

The Clerk to the Staff Dismissal Appeals Committee shall write to the employee confirming the date, place and time for the appeal hearing and advising him that he has the right to be represented/accompanied by a trade union representative or work colleague.

The Staff Dismissal Appeals Committee shall comprise three governors and shall hear the appeal. It shall be advised by local authority and diocesan advisers who have not previously been involved in the procedure. The Chair of the Staff Dismissal Committee which reached the decision shall be entitled to attend to present the Committee's case.

At the hearing, the Chair of the Staff Dismissal Appeals Committee shall first ask the Chair of the Staff Dismissal Committee to put his case and the employee (or his representative) may ask questions about his evidence. Members of the Staff Dismissal Appeals Committee shall also be entitled to ask the Chair of the Staff Dismissal Committee questions.

When the Committee is satisfied that it has no more questions at this stage, the Chair of the Staff Dismissal Appeals Committee shall ask the employee (or his representative) to put his case. The Chair of the Staff Dismissal Committee may then ask questions about his evidence. Members of the Staff Dismissal Appeals Committee shall then also be entitled to ask the employee (or his representative) questions.

The Committee shall retire to consider the evidence, attended only by the Clerk and their local authority and diocesan advisers, and reach a decision. They may recall either the Chair of the Staff Dismissal Committee or the employee (and his representative) for further questions if necessary. Further questions must be in the presence of all parties.

The employee shall be informed in writing not later than two working days after the hearing of the Committee's decision and the reasons for it by the Chair of the Staff Dismissal Appeals Committee. A copy of the decision letter should also be sent to his representative and to the Chair of the Staff Dismissal Committee. The Staff Dismissal Appeals Committee's decision shall be final.

Where the Staff Dismissal Appeals Committee upholds the employee's appeal, the Chair of the Committee shall write to the employee and withdraw notice of termination.

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