



Redundancy Procedure for Schools and Academies

Effective from 1 June 2013

1. Introduction

The biggest part of a school's expenditure is its employees, therefore when facing budget cuts it is almost inevitable that reductions will need to be made in staffing. When considering such a course of action, it is important that the school uses the following procedure and guidelines in order to treat employees fairly, consistently, adhere to equal opportunities and reduce the risk of claims to Employment Tribunals.

The Governing Body has overall responsibility for dismissing employees, with powers to delegate to the Head Teacher responsibilities up to and including determination that the member of staff should cease to work at the school. Under the Education Act 2002 and School Staffing (England) Regulations 2009, the Head Teacher should be given the delegated responsibility to make decisions up to the determination that the member of staff should cease to work at the school, (except in certain circumstances).

Where the Council is the employer, the head teacher must notify the HR Advisor, in writing, of the determination that the member(s) of staff should cease to work at the school, and the Council will carry out the formal dismissal, within 14 days giving appropriate notice where this applies. Following the dismissal there is an opportunity of appeal to a panel of Governors.

It is strongly recommended that the Head Teacher seeks professional advice from their HR Advisor at the earliest opportunity.

The Council has consulted on this document with the trade unions that represent employees in schools. As employers, all schools have a responsibility to ensure that their employees are treated in a fair and consistent manner. This procedure is therefore recommended for adoption by Governing Bodies. It must be made available to all affected employees.

Where a Governing Body wishes to deviate from this policy or adopt any other policy, it is the responsibility of the Governing Body to arrange consultation with the appropriate representatives from recognised trade unions or professional associations.

2. Scope

This policy applies to all teaching and support staff at Community, Voluntary Controlled, Foundation and Voluntary Aided schools and Academies where adopted by the Governing Body.

3. The Legal Background

Redundancy is a dismissal, caused by the employer requiring fewer people to undertake a particular kind of work at the place they are employed.

The legal background to handling redundancies is aimed at making sure that the employer does not press ahead with redundancy dismissals without thoroughly considering alternatives.

There are three areas of the law to consider:

- The requirement to treat each individual employee fairly. This means making sure all redundancies are bona fide and handled sensitively. This will ensure compliance with the right not to be unfairly dismissed.
- The need to consult the Council's recognised trade unions about the proposals. This is to try to avoid redundancies in the first place.
- The Council's powers to pay redundancy compensation. This ensures that the Council only pays out money when it is legally correct to do so. It is aimed at public probity, but reinforces good employment practice by encouraging the Council and the school to minimise redundancy and to redeploy employees wherever possible.

4. Definition of Redundancy

A redundancy may arise when:

- an employer has ceased or intends to cease
 - i. to carry on the business for the purposes of which the employee was employed; or
 - ii. to carry on that business in the place where the employee was so employed.

or

- the requirements of that business
 - i. for employees to carry out work of a particular kind; or
 - ii. for employees to carry out work of a particular kind in the place where the employee was employed, have ceased or diminished or are expected to cease or diminish.

5. Typical Redundancy Situations

Situations which may result in the need for redundancies include:

- school closure/amalgamation;
- falling rolls;
- amalgamation or closure of facilities/departments;
- budgetary problems;
- a change in the demand from certain subject areas or job requirements;
- reorganisation of management or departmental structures.

In such situations it is important to ensure that any new support staff jobs are evaluated **before** the school begins consultation.

6. Avoiding the need for redundancy

The school will receive its final budget annually and should be aware of any potential financial difficulties prior to this time as announcements regarding levels of funding and access to budget planning tools are provided by the Council/Government.

If a financial deficit is indicated, the Head Teacher and Governing Body will initially explore all possible methods of making savings to avoid redundancy, e.g. financial management to reduce

other costs; not filling vacancies (natural wastage); accepting requests to job share or reduce hours. However, where a reduction in employee numbers is unavoidable, the Governing Body must plan for potential redundancies.

7. Governing Body Responsibilities

Before being applied, this procedure should be formally adopted by the Governing Body and copies of the procedure should be made readily available within the school.

It is strongly recommended that Governing Bodies follow this procedure when faced with the possibility of making employees redundant. Failure to follow these procedures or failure to seek and follow appropriate advice could potentially render the school liable for costs of redundancy, early retirement and costs relating to Employment Tribunals.

All sub committees should be convened in September each year at the first full meeting of the Governing Body. At this meeting, the Governing Body will set up two panels - the Redundancy Committee and the Appeal Committee. These Committees will ideally consist of a minimum 3 Governors.

Any Appeal Committee should be made up of at least 3 governors who have not been involved in any previous action or decision connected with the dismissal. Where there are not enough such governors available, the appeal may be heard by 3 governors, but there should be no fewer than the number that made the initial decision.

Any action taken by the Governors must be fair and consistent and only carried out after close consultation with employees and the recognised trade unions.

At the earliest opportunity and before any formal procedures are started, the Governing Body must notify the Council of the possibility of reductions in staffing levels by asking the Head Teacher to submit to the HR Advisor the information detailed at Step 1 of The Procedure for the purpose of obtaining approval in principle from the appropriate Corporate Director that the Council will support the cost of any redundancy.

Before formal procedures commence the Governing Body must agree and minute the proposed redundancy(ies) at a meeting of the full Governing Body. It may be necessary to call an extraordinary meeting of the Governors in order to meet the timetable.

The Head Teacher should seek professional advice from the HR Advisor and where appropriate the Council Finance Officer. Where there is a potential impact on the standards of education, the appropriate school improvement contact should also be notified.

It is not appropriate for Staff Governors to be members of the Redundancy Committee or the Appeal Committee and no individual can serve on both panels. The Redundancy Committee has the responsibility for the process and would normally delegate the consultation exercise with employees and unions to the Head Teacher. The Head Teacher may be supported by a representative of the Redundancy Committee during the consultation process.

The Committees have fully delegated powers of decision in matters relating to formal meetings dealing with employee issues. All matters relating to any meetings are treated as strictly confidential to the members of the Committees. The school must provide a notetaker, not involved in the process, to take detailed notes at all Committee meetings.

If a Governing Body has difficulty in setting up panels, advice should be sought from the appropriate body.

8. Head Teacher Responsibilities

The Head Teacher is responsible for the management of the school and therefore has a key role to play throughout the redundancy process. In the absence of the Head Teacher this responsibility would be delegated to the most senior nominated person. In particular the Head Teacher should:

- provide the Council with the information required at **Step 1 of The Procedure**;
- provide information to the trade unions in good time;
- lead the consultation with employees and trade union representatives;
- lead in making recommendations relating to the selection method and any criteria to be used in the event of compulsory redundancy;
- ensure that information on any employee profile is accurate and complete;
- seek to redeploy employees at risk of redundancy;
- confirm and clarify information for the Redundancy and Appeals Committees regarding employees skills, abilities, experience and training;
- accompany the Chair of the Redundancy Committee to any meetings.

9. The Procedure

Before starting the procedure, it is important to note the timescale of the whole process. The school must draw up its own timetable.

Prior to beginning any step of the Redundancy Procedure, the school is required to submit information to the Council for its approval in principle (see A to H below). This will ensure that the Council is satisfied that the school's situation falls within the definition of redundancy and that there is a need for redundancy. The Council will write to the Head Teacher confirming Council approval in principle of the school's redundancy situation and that the cost of any redundancy payments will be funded by the Council, subject to the circumstances remaining the same. Schools are reminded that there is a requirement to notify the Trade Unions of the proposal to begin a redundancy process. This arrangement applies to Community, Voluntary Controlled, Foundation and Voluntary Aided schools.

It is recommended that the Head Teacher contact their HR Advisor at an early stage for advice and guidance on collating this information.

Minimising Compulsory Redundancy

If the Governing Body formally confirms that the school is in a redundancy situation, it may be possible consider the route of voluntary redundancy as a first stage to mitigate the need for compulsory redundancies if it is likely that the school may have an appropriate number and category of volunteers for redundancy at this point.

If the school is proposing to consider voluntary redundancies, all of the information contained in **A-D** at **STEP 1** below will need to be sent to the HR Advisor for the purpose of obtaining Council approval in principle before starting any further steps. However, it will not be necessary, at this stage, to include information on the selection method, or any criteria, other than to state that it is the school's intention to try to reduce staffing by voluntary redundancy in the first instance.

There will be a requirement to notify Trade Unions that the school is seeking expressions of interest in voluntary redundancy, (please refer to Section 9 – The Procedure).

Once the school has obtained agreement in principle from the Council, the Governing Body must meet at **STEP 2** to formally confirm a redundancy situation. In some circumstances, this meeting may have already taken place. Following the Governing Body meeting, the Head Teacher must meet with all affected employees to explain the need to reduce staffing numbers and to request expressions of interest by a specific date from any employees who wish to volunteer for redundancy. The expression of interest must be in writing but neither the employee nor the school is committed at this stage.

Whilst every effort would be made to accept volunteers to avoid compulsory redundancy, employees should be made aware that there is no automatic entitlement to redundancy/early retirement benefits. The schools need to meet the objectives of the School Development Plan will be given priority.

If suitable expressions of interest are received, the school should contact all the recognised trade unions stating that it has received expression(s) of interest from volunteer(s) for redundancy and intends to facilitate voluntary redundancy for the benefit of the school and the employee(s) concerned.

The Head Teacher must meet individually with the employee(s) to talk through the process, answer any queries, ensure that they are aware of the procedure being followed and the implications of volunteering. The employee(s) may be accompanied at this meeting by a work colleague or a trade union representative and it is recommended that the schools HR Advisor is also in attendance.

Following this meeting, the employee(s) may withdraw their request if they change their mind about volunteering. Should this happen, the school would then follow the compulsory process.

However, once this meeting has taken place and the employee(s) still wishes to continue, the Redundancy Committee must meet to confirm acceptance of the volunteer(s) and give the employee(s) the right of appeal. The Redundancy Committee's decision must be confirmed in writing to both the employee(s) and the Council (submitting the letter to the HR Advisor) Subject to any appeal, this will bring the redundancy situation to an end and contractual notice will be given by the Council (or Governing Body in the case of Academies, Foundation and Voluntary Aided schools) at an appropriate point.

Step 1 – Information for the Council

A. Business Case for Redundancy

This is likely to be the case that the Head Teacher will present to the Governing Body in Step 2. It must include:

- details of the reasons for the proposed redundancy(ies) e.g. falling role, budget deficit, restructuring;
- numbers of employees potentially at risk (i.e. reduction by X posts/hours);
- category/categories of employees potentially at risk;
- date of proposed redundancy(ies);
- timetable of proposed redundancy process (see Appendix A);

- evidence that consideration has been given to the avoidance of redundancy e.g. not filling job vacancies, using carry forward, delaying expenditure on non-employee related items, acceptance of requests for job share or reduced hours, redeployment.

B. Financial Information

If the reason for the proposed redundancy(ies) is related to a projected or actual budget deficit, financial information must be submitted to the Council at this point. This should show the school's financial projection over the next 3 years and how a reduction in staffing numbers at this time will resolve the forecast budget deficit. The school should obtain confirmation from the Council Finance Officer that the information being provided will reflect an accurate picture of the schools current or projected financial situation.

C. Whole School Staff List

A list giving the names and employment details of the schools whole current staffing establishment should also be included. This information will enable the HR Advisor to give advice on reducing employee numbers and guidance on the appropriate termination of employment within the legal context.

D. Structure Charts

Charts showing the school's current structure and proposed new structure following the proposed redundancy(ies) should be included with the above information. Charts should be included whatever the reason for redundancy but are particularly important if the proposed redundancy(ies) relates to a restructuring situation.

E. Proposed Method of Selection

Information must be included at this point on the proposed method of selection to be used in the event of compulsory redundancy,

F. Draft Criteria Identified Against the School Development Plan

Draft evidence-based criteria must be included at this point. Where appropriate, the criteria should be linked to the Schools Development Plan. The Head Teacher must discuss proposed selection criteria with the HR Advisor.

G. Job Descriptions/Person Specifications

If a proposed reduction in staffing involves creating new or significantly revised posts within the school. New/revised posts for support staff will need to go through the formal job evaluation process, advice on which should be sought from a HR Advisor. Job descriptions and person specifications for these new/revised posts must be included with the above information.

Due to contractual notice requirements, particularly for teachers, the Governing Body and Head Teacher must notify the HR Advisor of any potential redundancy situation at the earliest opportunity.

Step 2 – Governing Body Meeting

Following the Council's response, a quorate Governing Body meeting must be held prior to beginning any redundancy procedure. The Head Teacher will present the management case to the Governing Body on the need for the proposed redundancy(ies) and confirm Council approval in principle. As Staff Governors will be present at this meeting, the management case should only identify categories of employees at risk and must not include any details of individual employees.

The Governing Body will be required to pass a resolution at this meeting that the school is in a redundancy situation. **Staff Governors cannot vote on this resolution where there is a conflict of interest.** This resolution must be formally minuted and a copy of the minutes sent to the HR Advisor as soon as they are ratified.

If a subcommittee has not yet been set up by the school, this will also be done at this meeting by the Governing Body. A Redundancy Committee (a minimum of 2 Governors but ideally 3) and the Appeal Committee (at least 3 Governors) will be set up. It is not appropriate for Staff Governors to be members of these panels and no one can serve on both panels.

Any Appeal Committee should be made up of at least 3 governors who have not been involved in any previous action or decision connected with the dismissal. Where there are not enough such governors available, the appeal may be heard by 3 governors, but there should be no fewer than the number that made the initial decision.

Step 3 – Consultation

The Employment Rights Act provides trade unions and employees with the right to be consulted about proposed redundancies and provided with sufficient information to support the proposals to reduce the workforce. This information must be provided in writing and the Redundancy Committee will meet to agree the contents of the letter, the method of selection and any draft criteria to be used for selection. (Please refer to section 9.1.1).

The Employment Rights Act makes it clear that employers must undertake meaningful consultation with the recognised trade unions with a view to reaching agreement.

Consultation should be led by the Head Teacher with a representative of the Redundancy Panel as appropriate. The consultation period will commence from the date of formal notification to the trade unions and employees of the proposed redundancy situation and will provide for a minimum of 4 working weeks for consultation.

This period may be extended by mutual agreement. Consultation gives employees and trade unions the opportunity to make suggestions and proposals for avoiding the loss of posts or reducing the number of posts to be lost.

The consultation document will include the following information; some of which will already have been prepared for presentation to the Council.

- reasons for the proposals;
- current structure and proposed structure;
- numbers and descriptions of posts proposed to be made redundant;
- total number of employees in those posts at the school;
- proposed method of selecting the employees who may be dismissed including any draft selection criteria;
- date the dismissals are to take effect;
- proposed method of calculating the amount of any redundancy payments to be made;
- proposed redundancy timetable;
- job descriptions and persons specifications for new/revised jobs.

Once the Redundancy Committee has agreed the contents of the consultation document, an initial meeting must be held with employees to formally open consultation by stating the necessity to reduce staffing numbers. The consultation document must be sent to all recognised trade unions in advance of this meeting and a copy of the document given to all employees attending this meeting. A copy of the Redundancy Procedure must also be made available. It is essential that employees who are absent from work (e.g. on maternity or sick leave) or unable to attend the meeting are sent a copy of the document to their home address at the same time.

At the earliest opportunity during the 4 week consultation period, a formal consultation meeting will be held. All affected employees and their trade unions will be invited to attend to hear the proposals in detail and be given the opportunity to ask questions.

Wherever possible the method of selection and any criteria to be used will be agreed with trade unions during the process of consultation.

This meeting must be formally minuted and the Head Teacher should arrange for a notetaker to be present.

Voluntary Redundancy

Expressions of interest in voluntary redundancy may be requested at this meeting if this has not been done previously.

Employees should be made aware that there is no automatic entitlement to redundancy/early retirement benefits and whilst every effort would be made to accept volunteers to avoid compulsory redundancy, the needs of the school to meet the objectives of the School Development Plan will be given priority.

Expressions of interest should be put in writing and be submitted by a specific date taking into account the time required for potential volunteers to seek advice and information on their redundancy/early retirement benefits.

The Head Teacher should ensure that all relevant employees receive the Vacancy Bulletin by their preferred method, in an appropriate format and that it is regularly available on notice boards during the consultation period and any dismissal periods.

To assist in obtaining information on redeployment opportunities, employees should be encouraged to complete a Redeployment Proforma and return it to the Council. This will ensure that they regularly receive the Redeployment Bulletin.

It is essential that employees who are absent from the school have the same opportunities to access vacancy and redeployment bulletins.

Outcome of Consultation

At the end of the consultation period, the Redundancy Committee will meet to consider comments and suggestions from employees and the trade unions on the proposed redundancy situation.

Having considered any comments and made any revisions, the Redundancy Committee will adopt the selection method and any criteria.

The Committee will confirm to employees and trade unions the selection method and any criteria to be used in the case of compulsory redundancy.

Where employee profiles are being used, employees will be issued with a finalised profile for completion prior to the Redundancy Committee meeting at STEP 4.

The Redundancy Committee will also confirm acceptance, or rejection, of requests for voluntary redundancy at this point.

STEP 4 – Redundancy Committee

The Redundancy Committee will meet to undertake the selection for compulsory redundancy. How this takes place will depend on what method of selection is being used e.g. competitive interview, matching to employee profiles, etc. This meeting should take place as soon as possible following end of the consultation period.

The Head Teacher should be present to advise the Redundancy Committee, as appropriate, and a HR Advisor should also be in attendance in an advisory capacity.

Notification

Immediately following the selection process, the chair of the Redundancy Committee will write to each employee who has been proposed for dismissal by reason of redundancy. The letter should state:

- that the employee's post has been selected for redundancy;
- the reason for the selection i.e. the application of selection criteria, outcome of competitive interview;
- that the employee or his/her representative may make written and/or personal representations to the Redundancy Committee.

STEP 5 – Representations Meeting

Notice

Before final decisions are made, the employee must be given the opportunity to make written and personal representation to a meeting of the Redundancy Committee. The employee should be given at least 10 working days' written notice of this meeting. This date will be included in the letter informing the employee of their initial selection for redundancy.

People in Attendance

- The Governors appointed to serve on the Redundancy Committee. Ideally 3 but a minimum of 2;
- A HR Advisor may be invited to attend to advise the Redundancy Committee;
- The Head Teacher may be present to explain the reason for redundancy and to provide information and clarification;
- The employee making the representations who has the right to be accompanied to the meeting by a trade union representative or workplace colleague;

This meeting must be formally minuted and the Head Teacher should arrange for a notetaker to be present.

Documentation

The Head Teacher is responsible for arranging to send to all parties attending the meeting, copies of all papers relating to the redundancy (unless they have already received them - this should be confirmed with the relevant parties). The employee should be given adequate information to assist them in preparing representations.

These papers would include:

- The original information sent to employees and trade unions explaining the need for redundancies;
- Details of the method of selection and any criteria used by the Redundancy Committee to make its decision;
- Information relating to the employee's personal selection. The employee has no automatic right to see information relating to any other employee included in the selection process. The Data Protection Act 1998 and The Freedom of Information Act 2000 both apply;
- A copy of the letter sent to the employee recommending dismissal by reason of redundancy;

Any written representation submitted by the employee or their representative. Written representation should be sent to the Head Teacher at least five working days before the date of the meeting;

- The agenda for the meeting.

General guidance for the meeting

The chair of the Redundancy Committee is responsible for the conduct of the proceedings and for any variations considered appropriate. The chair of the Redundancy Committee:

- welcomes those present and makes introductions.
- Stresses that this is a private meeting and that all information brought to the Redundancy Committee is strictly confidential to the people present.
- outlines and agrees the procedure to be followed during the meeting.
- may request all attending the meeting to remain available to the Redundancy Committee for approximately one hour after they withdraw in case the Redundancy Committee needs to clarify any point.
- explains how the employee will be informed of the Redundancy Committee's decision.

Adjournment

The chair of the Redundancy Committee may decide to adjourn the meeting for a specified time, or to another date, if new evidence is brought to the meeting which all parties have not had time to consider, or for some other good reason. In such circumstances, the reconvened Redundancy Committee must comprise the same membership.

Several redundancies

Where more than one employee has been nominated for redundancy, the same Redundancy Committee must consider all the proposed redundancies. Each redundancy should be considered separately, unless they are represented by the same union representative and elect to have their cases heard together rather than separately. Each employee still has the right to make individual representations, even if in the presence of others.

Notification of outcome

At the end of the meeting, the Redundancy Committee will make its decision and notify all parties. This may be done in person by recalling all parties and following up in writing to the employee, or in writing only to the employee copied to all other parties. Written notification will include details of the right of appeal.

STEP 6 – Notice of Dismissal

Once the selection process and representation meetings with the Redundancy Committee have been completed, but before any appeal meeting takes place, notice will be served to the employee(s).

Where the Council is the employer, the Redundancy Committee must notify the HR Advisor, in writing, of the determination that the member of staff should cease to work at the school, and the Council will carry out the proper dismissal, with appropriate notice, within 14 days.

In the case of Voluntary Aided and Foundation Schools and Academies, notice will be served by the Governing Body.

Notice periods will be in line with contractual notice or statutory notice, whichever is the greater. Statutory notice is one week for each year of service up to a maximum of 12 weeks. Contractual notice is stated in the contract of employment. Should an appeal against dismissal be successful, the dismissal notice would be withdrawn.

STEP 7 – Appeal Meeting

Notice

If the employee wishes to appeal against the decision of the Redundancy Committee, an appeal in writing stating the grounds for appeal must be received by the Head Teacher within ten working days of the date of notification of dismissal. The Appeal Committee should meet within 10 working days of receipt of the employee's letter requesting an appeal.

People in Attendance

- The Governors appointed to serve on the Appeal Committee. Ideally 3 but a minimum of 2. No member of the Redundancy Committee may serve on the Appeal Committee;
- The Chair of the Redundancy Committee will present the reasons for the Appeal Committee's decision to select the employee for redundancy;
- The Head Teacher should be present to provide information and clarification;
- A HR Advisor should attend to advise the Appeal Committee;
- The employee making the appeal who has the right to be accompanied to the meeting by a Trade Union representative or workplace colleague;

- Notetaker (normally provided by the school).

Documentation

The Head Teacher is responsible for arranging to send copies of all papers relating to the redundancy to all parties, including representatives where the employee has given written permission for this to be sent direct; (unless they have already received them, this should be confirmed with the relevant parties). The employee should be given adequate information to assist them in preparing their appeal.

Each member of the Appeal Committee must read the documentation carefully before the meeting.

These papers would include:

- The original information sent to employees and trade union explaining the need for redundancies;
- Details of the method of selection and any criteria used by the Redundancy Committee to make its decision;
- Information relating to the employee's personal selection. The employee has no automatic right to see information relating to any other employee included in the selection process. The Data Protection Act 1998 and The Freedom of Information Act 2000 apply;
- A copy of the letter sent to the employee recommending dismissal by reason of redundancy;
- The minutes of the Redundancy Committee meetings giving the reasons for recommending dismissal by reason of redundancy;
- Any written representation submitted by the employee or their representative. Written representation should be sent to the Head Teacher at least five working days before the date of the meeting;
- The agenda for the meeting.

Outcome of Appeal

The possible outcomes of an appeal are:

- Appeal rejected and no change to the decision to dismiss on the grounds of redundancy;
- Appeal successful, in which case the governors may have to return to at least Step 4 of the Redundancy Procedure.

Notification of outcome

At the end of the meeting, the Appeal Committee will make its decision and notify all parties. This may be done in person by recalling all parties and following up in writing to the employee, or in writing only to the employee copied to all other parties.

At the end of the process, the Head Teacher must send the appropriate documents to the Council.

10. Redeployment

The Governing Body should always look for suitable alternative employment within the school for employees at risk of redundancy. The Council will also assist an employee with applications for employment at other schools or for jobs within the Council where the Council is the employer. Whilst the Council undertakes to redeploy employees wherever practicable, in the case of schools it is a matter for the Governing Body to decide whether it will accept a candidate who is at risk of redundancy at another school. However, the Council will encourage Governing Bodies to consider 'at risk' candidates and offer any financial incentives available at the time to any school offering employment which will avoid a redundancy and reduce costs to the authority for redundancy payments and pension benefits.

Special provisions with regard to redeployment apply for employees on maternity or adoption leave and whose posts are made redundant. Further guidance can be found at Section 13. Employees who are redeployed are entitled to a trial period of 4 weeks.

Employees who are under notice of redundancy will be entitled to reasonable time off with pay (as agreed with their Head Teacher) to look for alternative employment or to arrange training. If a suitable job offer in terms of pay, grade, job content, status etc., is made and the employee unreasonably refuses that offer, the employee may forfeit the right to a redundancy payment. If the employee wishes to apply for higher graded jobs, normally their 'at risk' status does not apply and they must compete alongside other applicants.

11. Resignations and withdrawal of notice

In the event that an employee is given notice of redundancy and then another employee undertaking the same or a similar job resigns during the first employee's notice period, the following legal position applies.

Once the notice of redundancy has been issued, it is binding and cannot be unilaterally withdrawn by the employer even if the employee is still working. If the employer seeks to withdraw the notice, the withdrawal will only become effective if the employee agrees to carry on working.

However there are provisions in the legislation that an employee may lose their right to statutory redundancy if they unreasonably refuse an offer of suitable alternative appointment. Such an offer needs to be made before the end of the employee's employment and must take effect immediately at the end of employment or within 4 weeks. Employment must be on same terms and conditions or be a suitable alternative.

The suitability is an objective matter for assessment and the issue of an employee's refusal is to be assessed on an individual basis. The employer would have to review all the circumstances to determine whether a refusal was reasonable. Whether there is any impact on the contractual redundancy payment will be a matter of contract with the employee. If the employee does not consent and a decision is taken by the employer to withdraw redundancy payments, there is a risk of a tribunal claim.

The Head Teacher must notify the HR Advisor immediately if they receive any letters of resignation during a redundancy process.

12. Entitlements of redundant employees

Where applications for voluntary redundancy have been accepted by the school's Governing Body and the Council, or where redeployment has been unsuccessful, redundant employees will be entitled where applicable to the following:

- written notice of termination of employment in line with their conditions of service or by mutual agreement;
- a statutory redundancy payment calculated in accordance with the

Employment Rights Act 1996, but based on actual gross pay rather than subject to the statutory maximum wage.

- entitlement to a redundancy payment depends on having at least two years' continuous service with organisations listed in the Redundancy Payments (Continuity of Employment in Local government, etc) (Modification Order). Further clarification on continuity of service can be obtained from the schools HR Advisor.
- premature retirement benefits for employees in the Teachers' Pension Scheme with at least 2 years' service, subject to arrangements under The Teachers' Pensions Scheme. The minimum pension age (MPA) at which premature retirement benefits may be awarded was increased to 55 for teachers from 6 April 2010.
- premature retirement benefits for employees in the Local Government Pension Scheme with at least 3 months' service and aged 55 or over.

Redundancy payments will be payable from the date of dismissal due to redundancy. All relevant documentation should be signed and returned by the redundant employee in sufficient time to process and in any event no later than 6 weeks after the effective date of dismissal.

13. Pregnancy, Maternity and Adoption related protocols

Maternity related protections

In accordance with the Employment Rights Act 1996, Maternity and Parental Leave etc. Regulations 1999 (SI 1999/3312) and the Equality Act 2010, when carrying out a redundancy exercise particular care is needed when dealing with employees who are on maternity leave. Such employees are afforded special protection; therefore incorrect management of the redundancy process may result in potential claims of unfair dismissal and/or pregnancy and maternity discrimination if the employee is treated unfavourably or less favourably.

It will be deemed automatically unfair if the School selects a woman for redundancy for reasons connected to pregnancy, childbirth or maternity. Furthermore, an employee is not required to have the usual one year of qualifying service to bring a complaint of unfair dismissal. A dismissal on such grounds will also amount to an act of unlawful discrimination under the Equality Act 2010.

Provided that there is a genuine redundancy situation and a fair procedure has been carried out, an employee can be included in the selection pool for redundancy irrespective of the fact that they are on maternity leave.

The School has a duty to take reasonable steps to identify suitable alternative employment for employees in this group, who would otherwise be dismissed by reason of redundancy. This includes identifying vacancies within the School or with any associated organisation. The duty to offer suitable alternative employment continues throughout the employee's notice period until the date of termination.

"Suitable alternative employment" in this context means work that is suitable in relation to the employee and appropriate for her to do, taking into account her level of seniority and skills, and one in which her terms and conditions of employment will not be substantially less favourable than those of her original position. A failure to offer a suitable alternative position where one is available would be likely to make an otherwise fair dismissal unfair.

If at any time during maternity leave an employee's position becomes redundant, the Maternity and Parental Leave etc. Regulations 1999 place an obligation on the School to offer any suitable alternative vacancy that exists. This duty is absolute. This means that any available job must be offered to an employee on maternity leave in preference to another employee who is not on maternity leave but whose job is also redundant. This is the case even if the other employee is better qualified for the position. A failure to offer an available suitable vacancy to an employee on maternity leave will make the employee's dismissal by reason of redundancy automatically unfair. The alternative job must be offered to the employee before her existing contract comes to an end, and the new contract must take effect immediately afterwards. The fact that the employee is not ready to return to work at the time her job is made redundant, must be disregarded when considering whether or not to offer her an alternative position.

In other words, the employee's absence on maternity leave must not be used as a factor in the determination of whether or not the alternative job is suitable and, if it is suitable, she must be offered it irrespective of the timing of her availability to take up the position.

An employee on maternity leave retains all her statutory rights in respect of redundancy, including the right to a notice period in accordance with statute and her contract of employment.

Once an employee has qualified for statutory maternity pay, she will be eligible to be paid for the full 39-week period even if she is made redundant during her maternity leave.

Adoption related protections

In accordance with the Employment Rights Act 1996 and the Paternity and Adoption Leave Regulation 2002, when carrying out a redundancy exercise particular care is needed when dealing with employees who are on adoption leave. Such employees are afforded special protection; therefore incorrect management of the redundancy process may result in potential claims for unfair dismissal. It will be automatically unfair for the School to select an employee for redundancy for adoption-related reasons. Furthermore, in these circumstances, an employee is not required to have the usual one year of qualifying service to bring a complaint of unfair dismissal.

Provided that there is a genuine redundancy situation and a fair procedure has been carried out, an employee can be included in the selection pool for redundancy irrespective of the fact that they are on adoption leave.

The School has a duty to take reasonable steps to identify suitable alternative employment for employees on adoption leave who would otherwise be dismissed by reason of redundancy. This includes vacancies within the School or with any associated organisation. The duty to offer suitable alternative employment continues throughout the employee's notice period until the date of termination.

"Suitable alternative employment" in this context means work that is suitable in relation to the employee and appropriate for the individual to do, taking into account their level of seniority and skills, and one in which the terms and conditions of employment will not be substantially less favourable than those of the original position. A failure to offer a suitable alternative position where one is available would be likely to make an otherwise fair dismissal unfair.

If at any time during adoption leave an employee's position becomes redundant, an obligation is placed on the School to offer any suitable alternative vacancy that exists. This duty is absolute. This means that any available job must be offered to an employee on adoption leave in preference to another employee who is not on adoption leave but whose job is also redundant. This is the case even if the other employee is better qualified for the position. The law says that any failure to offer an available suitable vacancy to an employee on adoption leave will make the employee's dismissal by reason of redundancy automatically unfair.

The alternative job must be offered to the employee before the existing contract comes to an end, and the new contract must take effect immediately afterwards. The fact that the employee is not ready to return to work at the time the job is made redundant, must be disregarded when considering whether or not to offer an alternative position. In other words, the employee's absence on adoption leave must not be used as a factor in the determination of whether or not the alternative job is suitable and, if it is suitable, it must be offered it irrespective of the timing of the employee's availability to take up the position.

An employee on adoption leave retains all statutory rights in respect of redundancy, including the right to a notice period in accordance with statute and the contract of employment. Once an employee has qualified for statutory adoption pay, eligibility to be paid for the full 39-week period remains even if made redundant during the adoption leave.

14. Support for employees

Redundancy can be a distressing experience for employees and the Governing Body should provide as much information, advice and help as possible. Further advice and support is available as follows:

- Trade Union representatives
- Employee Assist Tel: 01604 626787 Email:
- **employeeassist@relatenorthants.org.uk**
- Teacher Support Line. Tel: 08000 562561 Website: teachersupport.info