

Schools Organisational Change

Procedure

November 2020

**EVERY
CHANCE
for EVERY
CHILD**

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1 GENERAL SCOPE OF THE PROCEDURE

- 1.1 This procedure should be applied whenever there is a proposal to make reductions in permanent teaching/support staff and fixed term staff with more than one years' service, who are employed in schools under the control of Governing Bodies, (even though the right to receive a redundancy payment is not acquired until after 2 years continuous service). The procedure does not cover casual or supply staff.
- 1.2 This procedure has been agreed with our recognised Trade Unions and has been written to meet the requirements for consultation as set out in employment law and ACAS guidance.
- 1.3 Schools should note that this procedure cannot be implemented until approval for any potential redundancies has been given by the local authority School Restructuring Panel (SRP), separate advice on this is available.
- 1.4 Where employees are subject to the protections of TUPE, it should be noted that where assimilation or selection to a new post leads to a change in contractual terms and conditions it could result in the loss of TUPE protection. Where changes could affect terms protected under TUPE the consultation will include this specific element.
- 1.5 Governing bodies are strongly recommended to seek advice and assistance from their HR service provider on any occasion that it appears that staffing reductions may have to be made.

2 AIMS OF THE PROCEDURE

- 2.1 School requirements for staff are liable to vary from time to time and periodically, governing bodies may need to consider changes in their staffing complement. The need for change may arise as a result of, for example:
 - Cost and efficiency savings to be made
 - Curriculum requirements
 - The introduction of new legislation or government guidelines
 - Recommendations following reviews of the School Improvement Plan or Ofsted inspection
 - Development of partnership arrangements with other schools
 - New technology/new ways of working

- Contraction or expansion of the School due to rising/falling numbers on roll

2.2 Given the wide and varying nature of organisational reviews, this policy is intended to provide a flexible framework and guidance for schools to follow when dealing with differing organisational change situations, to ensure good practice in restructuring and re-organisation and facilitate re-organisations to be carried out as swiftly as possible to ensure continuity and quality of service to pupils.

2.3 The School is committed to the principle of avoiding or minimising compulsory redundancies wherever feasible and ensuring that alternative methods such as natural wastage and redeployment are used to manage reductions during the course of re-organisations. Re-skilling and re-training of staff will also be considered in appropriate circumstances.

2.4 Where there is likely to be a redundancy situation, the school should liaise with their financial and HR advisers at the earliest opportunity.

2.5 This policy provides guidance on restructuring exercises which may cover a team or a department, involve more than one department or cover the whole school.

2.6 Options which governing bodies will need to consider include

- reductions in the total number of staff;
- adjustments to staffing levels in different management and/or curriculum areas;
- adjustments to working and/or contract hours of staff;
- a combination of these measures.

2.7 This procedure is intended:

- To take account of the school's statutory duty to provide for the educational needs of all pupils in line with the National Curriculum;
- To minimise the impact of situations involving re-organisations and or staff reductions;
- To ensure that organisational change takes place as effectively as possible and avoids unnecessary disruption;
- To ensure staff reductions are reached fairly and in accordance with employment law and statutory entitlements; and
- To ensure that consultation with staff and the trade unions is commenced at the earliest possible opportunity.

3 EQUAL OPPORTUNITIES CONSIDERATIONS AND EQUALITY ANALYSIS

3.1 There are equalities implications involved when any employment procedure is applied. Application of the Schools Organisational Change Procedure may have particular implications for the multi-cultural and predominantly female workforce employed in schools in Tower Hamlets.

3.2 Headteachers should ensure that in order to establish whether any single person or group of staffs is being treated less favourably than others under this procedure, they assess the situation across the group of staffs likely to be affected, before they embark upon any action relating to staff reductions. This may be done by undertaking an Equality Analysis. No individuals should be identifiable on the Equality Analysis.

3.3 Absence due to Maternity, Adoption or Shared Parental leave

In establishing criteria which may lead to the compulsory displacement of staff, it is strongly recommended that HR advice is sought prior to finalising staffing proposals when an employee has notified the Headteacher that they will be absent on maternity/adoption/shared parental leave. Female staff on maternity leave have a priority right to be offered a suitable alternative vacancy without having to undergo a competitive selection process. This entitlement also extends to staff who are absent due to a period of Statutory Adoption Leave and Shared Parental Leave.

3.4 Colleagues with a disability

If colleagues with a disability are amongst the affected staff, HR advice should be sought at an early stage to help ensure compliance with the Equality Act. Reasonable adjustments will be considered for disabled colleagues in the event of a changed role.

3.5 Trade Union representatives

If the proposed structure indicates that there is a possibility that one or more school representatives may be displaced, the Headteacher should first consult the Branch / Regional Official of the union(s) concerned.

4 THE PROCEDURE (PRIOR TO CONSULTATION)

- 4.1 The Headteacher completes the School Development Plan, budgetary information and Equality Analysis, with proposals for change, including reduction in staffing costs and submits this to the school's governing body.
- 4.2 If the proposals are approved in principle, the governing body will agree an:
- Organisational Change Panel (usually consisting of the Headteacher and one governor)
 - Appeals Panel (comprising 3 previously uninvolved non-staff governors).
- 4.3 At this point, the lead member of the school's Organisational Change Panel (usually the Headteacher) is required to submit the Outline Business Case (Appendix A) with indicative financial implications in terms of savings and cost of redundancy/severance, to the local authority School's Restructuring Panel (SRP) for initial discussion, challenge and consideration. A decision in principle by the SRP must be received before consultation with staff and trade unions can commence. Wherever possible, the Headteacher should informally tell the trade unions of the proposed restructure before any written documentation is sent. This will avoid surprise and potentially could avoid industrial relations issues.
- 4.4 The local authority's School Restructuring Panel will consider business cases for reorganisations when the school has to reduce or reorganise its staffing establishment:
- for budgetary reasons; or
 - to respond to organisational or curricular changes.
- 4.5 It is the current practice of the local authority to meet the redundancy costs associated with the 'statutory' element of these costs providing that the school has obtained the approval of the local authority's School Restructuring Panel, has acted reasonably and has followed the School's Organisational Change procedure.
- 4.6 The School is expected to cover the full costs of any "enhanced" severance element of the redundancy payment.
- 4.7 If the costs are less than the salary savings generated by the reorganisation, the expectation would be that the school meets those costs in year (bearing

in mind that this is a one-off cost and the school would be in a position to obtain full advantage of the savings in the following year).

- 4.8 If the above is not the case, the local authority will introduce a facility to allow schools to obtain a free loan from the local authority to pay for the one-off costs over an agreed period (of a maximum of three years in line with the deficit recovery plan arrangements). This would usually be the case when the reorganisation is taking place for budgetary reasons.
- 4.9 Where there is a successful application for funding to support redundancy costs the following conditions will apply.
- a) Any surplus balances above the level of balances submitted in the schools budget plans, at the beginning of the redundancy process and within the financial year in which the redundancies take place, will be clawed back from the schools to contribute towards the redundancy costs.
 - b) The school will not recruit to any new posts within 1 year of going through the redundancy process without local authority approval. Any schools recruiting to a new post within 1 year of the redundancy process and without local authority consent will be subject to the clawback of the redundancy funding.
 - c) Any member of staff who has left a school by reason of redundancy or early retirement and received a severance payment is required to have a gap before re-employment at that school. The gap should be at least 1 year after the date of termination for staff who left due to compulsory redundancy, or a gap of at least 2 years after the date of termination, for staff who left due to voluntary redundancy, before they can return either as a directly employed member of staff, an agency worker or a consultant. This does not prevent them from working for a different school in Tower Hamlets or the local authority during this period. If a school seeks to recruit or engage an employee who received a severance payment within this period, and without local authority consent, they will be subject to the clawback of the redundancy funding.
- 4.10 Termination costs in respect of closing or merging schools will continue to be met centrally. In addition, the local authority will maintain discretion in respect of meeting the costs of any termination required as a consequence of local authority intervention for schools causing concern.

- 4.11 Reorganisations are not a substitute for performance management and where the School Restructuring Panel considers that the reorganisation has been proposed for that reason, the local authority will seek to recover the full costs it has incurred in relation to any statutory redundancy and/or severance payments.
- 4.12 In conjunction with governance arrangements, the local authority will implement closer monitoring of redundancies against advertised vacancies. Where a school makes redundancies and the local authority judges that subsequently the post has been filled within 24 months, the local authority will seek to recover the full cost of the redundancy from the schools' delegated budget.

5 TIMESCALES

- 5.1 The timescale for the restructure process will depend upon the number of affected staff and will be followed by a contractual notice period.
- It is recommended that whether or not a restructure involves redundancies, the consultation process will be 30 calendar days. This is to ensure that the consultation is meaningful, and sufficient time is given to consider and manage the proposed changes.
 - However, where less than 20 employees are affected, the consultation process may be closed earlier than 30 days by mutual agreement, in order to minimise disruption and enable the school to meet changing needs more rapidly.
 - Where more than 99 employees are affected, a minimum consultation period of 45 calendar days applies.
 - Where 20 or more employees are involved and there is a possibility of redundancies, a s.188 formal notification must also be issued.

However, Governing Bodies are urged to begin consultation as soon as it is identified that there exists the possibility of a redundancy situation.

6 PROPOSALS AND CONSULTATION

6.1 Informal Consultation

- 6.1.1 Trade unions and staff must be informed as early as possible that a re-organisation is being considered and informal consultation initiated.

6.1.2 Before staff are informed of any proposals, the school will write to recognised trade unions inviting them to attend a meeting to discuss the proposals. The invitation will include details of the proposals.

6.1.3 Following the meeting with trade unions, there will be a meeting with staff and their representatives to explain the proposals (this can be immediately after the first meeting with trade unions).

6.1.4 Depending on circumstances, the Headteacher may choose to brief colleagues who are directly affected by the proposals first (this is advisable if only a small number of people are directly impacted), and then hold a full staff meeting after this. Or they may decide that it is appropriate just to hold a full staff meeting.

6.2 Formal Consultation - Initial Proposals

6.2.1 Provided that a decision in principle has been given by the School Restructuring Panel (as per paragraph 4.3), the school's Organisational Change Panel will start formal consultation with staff and trade unions. Following the initial meeting with the trade unions, formal proposals should be put to the staff and trade unions, by writing to every member of staff that is affected, either directly or indirectly and inviting them to a group consultation meeting to discuss these. A consultation pack should be provided at the meeting. The consultation should involve all affected staff and therefore it is important to make arrangements for consulting staff who are away from the workplace e.g. on maternity/paternity leave, long term sickness or secondments.

6.2.2 The consultation documentation should include:

- the reasons for the reorganisation
- the broad principles upon which the new structure or new work processes will be based
- the number and description of staffs at risk
- the total numbers at the establishment (current and proposed structure)
- steps that will be taken as a means of trying to avoid compulsory redundancies, e.g. voluntary redundancy/early retirement, bumped redundancies, natural wastage, alternative internal redeployment, reductions in hours, agency staff
- how redundancy pay will be calculated

- the proposed method for selecting for compulsory redundancies, in the event that this is necessary
- current and proposed job descriptions, with indicative grades
- timetable
- draft assimilation list
- the Schools Organisational Change Procedure;
- equality analysis (no individuals should be identifiable)
- any other relevant information.

6.2.3 In the case of a whole-school restructuring, if some parts of the structure remain unchanged this should be indicated at the earliest possible stage and this part of the structure excluded from the reorganisation. Consideration will need to be given as to how the reorganisation will be phased, managed and implemented, whilst ensuring the appropriate input of all those concerned and a consistency of outcomes.

6.2.4 The school's Organisational Change Panel will be responsible for consulting with staff and trade unions on methods for making reductions, and for selecting posts for redundancy following full consultation. In the event of a disagreement between members of the school's Organisational Change Panel the Headteacher will have the casting vote.

6.2.5 This written document should be sent to the trade unions and relevant staff as soon as is reasonably practical and where possible at least 3 months before the first dismissal is envisaged to take place. It is expected that more complex reorganisation proposals may need a longer timescale. Voluntary redundancies may still take place prior to this, providing all parties agree.

6.2.6 Invitations may be sought at this point for volunteers for redundancy. The school's Organisational Change Panel will consider curriculum requirements when deciding whether to accept an application for voluntary redundancy.

6.2.7 Headteachers will be aware that employees may seek employment elsewhere during the consultation process and should update proposals to take account of posts which may become vacant as a result of employee resignations.

6.2.8 Where sufficient staffing reductions cannot be met through the above methods, the school's Organisational Change Panel will be responsible for identifying the numbers and types of posts for compulsory redundancy.

6.2.9 The school's Organisational Change Panel will continue to consult with staff and trade unions regarding the proposals and on the proposed selection criteria for making compulsory redundancies.

6.2.10 The proposed selection criteria must be objective, transparent, measurable, relevant, fair and non-discriminatory and should be consistently applied. It is expected that the criteria will relate to the skills, qualifications or experience required for the new role(s) and with reference to the School Development Plan.

6.3 Assimilation and ring fencing

6.3.1 In determining the relevant pool of staff for assimilation purposes, staff acting up or seconded will be treated on the basis of their **substantive** post. Temporary staff or permanent staff covering posts temporarily will normally be excluded.

6.3.2 The consultation paper for a restructure should, where appropriate, contain a proposed assimilation list, which will be consulted on as part of the formal consultation process. This list will detail all staff affected by the restructure and what rights they have to any posts in the new structure. The possible rights they could have are:

- Direct assimilation rights
- Competitive assimilation rights
- No assimilation rights

6.3.3 Direct assimilation

This means that there is no substantial difference between the member of staff's current job description and the new job description in the new structure AND there are either more posts than staff or an equal number of posts and staff in the proposed structure. At the date at which the new structure comes into force, the member of staff is assimilated into the new job description and duties.

6.3.4 Competitive assimilation

This means that there is no substantial difference between the member of staff's current job description and the new job description in the new structure BUT there are more staff than posts in the new structure. For these posts, if voluntary measures do not reduce numbers sufficiently, then there will be a

competitive selection process in line with normal school recruitment procedures to determine who is appointed.

6.3.5 Ring-fencing

Where there are new posts or vacancies in the structure to which no staff have assimilation rights, it may be agreed that these are ring fenced to staff affected by the restructure. Where there are staff who at risk of redundancy, they will normally be considered for such posts first as an offer of suitable alternative employment. Where there are no staff at risk of redundancy or where a wider ring fencing will potentially free up other roles as suitable alternative employment ringfencing may, on agreement, be opened to all staff regardless of whether they have a post or not and this will not be limited to two grades up or down.

6.3.6 The order in which interviews take place, i.e. assimilation interviews and ring fence interviews, should be discussed and agreed as part of the consultation process based on the specific circumstances of the restructure.

6.3.7 To apply for a post in the ring-fence, staff will be asked to complete and submit an expression of interest form. Staff are not limited to only one application. The interview will be based on a normal recruitment process.

6.3.8 After the ring-fence, any remaining posts may be recruited to following discussion with the local authority (see paragraph 4.9), however consideration should be given to council wide redeployees in the first instance.

7 CONSEQUENCES OF FAILURE TO CONSULT

7.1 The requirements of consultation will NOT be met if the trade unions are merely presented with a complete package where the relevant decisions have already been taken.

7.2 Inadequate or insufficient consultation can lead to the trade unions obtaining a protective award from an Employment Tribunal against the employer. This would require the employer to make a payment for a protected and specified period to staff who have been dismissed or are likely to be dismissed. This payment would be additional to any redundancy payment to which the staff would be entitled.

7.3 Employees who consider that they have been unfairly treated in the process may pursue an unfair dismissal complaint through an Employment Tribunal.

Such complaints can include questions relating to the statutory definition of redundancy, the criteria and/or methods for selection, inadequacy of consultation or attempts at redeployment.

8 IDENTIFYING STAFF AS REDUNDANT

- 8.1 Following the close of consultation and if sufficient volunteers for voluntary redundancy have not been found the school's Organisational Change Panel will apply the agreed selection criteria and identify which staff are provisionally redundant.
- 8.2 The school's Organisational Change Panel will write to those staff whose posts have been identified and offer to meet with them in a one to one meeting in order that they may make individual representations, a HR officer may also be present. Employees will be entitled to be accompanied by their trade union representative, or a colleague, should they wish. The purpose of this meeting is for the school's Organisational Change Panel to explain the reasons for the employee's selection and for the employee to ask any questions relating to this. The employee may also wish to present reasons why they should not have been selected to the Panel. However, it should be noted that the meeting is not an opportunity for the employee to add to information already provided during the selection process or comment on the performance of other employees in the pool. At the end of the meeting the employee may wish to ask the Panel to reconsider its provisional selection decision.
- 8.3 Following this meeting, the Panel, if applicable, will write to the relevant individuals confirming their decision to make a determination to dismiss on the grounds of redundancy, they will be advised that they may appeal in writing, against the decision to terminate their current contract by reason of redundancy, this must be in writing within 5 working days of receipt of the letter.
- 8.4 The school will write to the local authority to advise them of the determination to dismiss and the local authority will issue the requisite notice of dismissal, on grounds of redundancy, or if appropriate the notice of dismissal letter will be issued by the governing body.
- 8.5 The schools' Organisational Panel must submit the Final Business Case (appendix A) to the local authority's Schools Reorganisation Panel for final approval for the funding of the redundancy costs.

8.6 At this point suitable alternative employment will be sought for those individuals selected for redundancy. Where this search for alternative employment is unsuccessful, the determination to dismiss will proceed. The search for redeployment will be coordinated by the Local Authority. Where staff are redeployed into a post and the salary is lower, they shall be entitled to salary protection in accordance with the Schoolteachers Pay and Conditions document and for support staff any salary protection will be in accordance with the Council’s redeployment policy, that is protection of total pay of up to two grades difference for a period of two years

9 APPEALS

9.1 A member of staff may appeal against their selection for redundancy to an appeals committee of the governing body. Upon receipt of appeals, the Appeals Panel will meet with the appellant and their representative to consider the grounds for appeal.

9.2 A representative of the local authority has the right to attend and give advice to committees of the governing bodies of Community Schools, Voluntary Controlled Schools and Pupil Referral Units.

9.3 The Appeals Panel will write to the individual concerned informing them of their decision, which will be final.

10 INDICATIVE TIMETABLE

ACTION	INDICATIVE TIMESCALE
Notify local authority of intention to reorganise by submission of Outline Business Case (OBC)	Week 1
Schools Reorganisation Panel - Consideration of OBC	Week 1
Submission of Revised OBC (if required)	Week 3
Panel makes decision in principle to support the consultation	Week 4
Commencement of Consultation	Week 5/6
Meeting with staff (& Human Resources)	Week 5/6

ACTION	INDICATIVE TIMESCALE
Meeting with TU (& Human Resources) (Consultation papers to be issued at this meeting if it hasn't already been issued)	
Surgeries one to one meetings with staff	Weeks 7/8
Meeting midway through consultation period Meeting with staff (& Human Resources) Meeting with TU (& Human Resources)	Week 9
Consultation period ends	Week 10
Responses to consultation process and final structure determined	Week 11
Applications for staff who have volunteered for redundancy or early retirement to be considered against selection criteria and staff notified of the decision, assimilation list updated	Week 11
Job Descriptions to be determined and verified (if any)	Week 11
Apply Selection Criteria	Week 12
Individual representations may be made to the school's Organisational Change panel	Week 13
Notice(s) of dismissal to be issued	Week 13
Appeals to be heard by governor Appeals Panel	Week 14
Submission of Final Business Case (FBC)	Week 15
Schools Reorganisation Panel - Approval of funding	Week16

11 SUGGESTED REPORT FORMAT TO THE SCHOOL RESTRUCTURING PANEL

11.1 Executive Summary

This should include the reasons for the proposal, i.e. is the proposal due to financial constraints or restructuring. Also include action taken to mitigate redundancies.

11.2 Restructuring Proposals

This section should give details of number and the posts that will be at risk. The current and proposed structures should also be included as appendices.

11.3 Financial Implications

The financial situation should be outlined in this section, including the savings made, if any, as a consequence of the proposed reorganisation, indicative costs of redundancy and budgetary information included as appendices.

11.4 Outline Timetable

Relevant dates should be shown in table format.

11.5 Any Additional Notes

Any information that you feel may be useful for the School Restructuring Panel can be included in this section of the report.

11.6 Appendices

- The current structure
- The proposed structure

12 FURTHER INFORMATION

For further information please contact your HR provider.

APPENDIX A

Outline / Final Business Case

(please indicate whether it an Outline or Final Business Case)

Once completed please return to:

Christine McInnes

Divisional Director Education and Partnerships
Children and Culture Directorate
Mulberry Place

LBTH School Reorganisation Panel

Name of School

Date of submission to Local Authority

Proposed date of Redundancies

Summary of proposal - including number and type of posts likely to be redundant and any estimated redundancy/early retirement costs.
Please attach additional documentation that may be appropriate, including structure charts, JDs etc.

School's Finance Committee comments

Signed:

Date:

Approved: Yes / No

School's HR Committee comments

Signed:

Date:

Approved: Yes / No

Local Authority School Improvement Officer comments

Signed:

Date:

Approved: Yes / No

Local Authority School Finance Team comments

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Signed:

Date:

Approved: Yes / No

Local Authority School's HR Team comments

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Signed:

Date:

Approved: Yes / No

Recommendation to the Panel (to be completed by LA Schools' HR Officer)

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Signed:

Date:

Approved: Yes / No

Panel Decision

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Signed:

Date:

Approved: Yes / No

(Divisional Director Education and Partnerships)