

Guidance and Procedure for Redundancy Handling for all School Staff in Maintained Schools (London Borough of Barnet, September 2018)

1. Introduction

All maintained schools are expected to comply with financial requirements and guidance and prepare a Budget Forecast for a three-year period. This should include an assessment of funding and other income but also staffing and other costs. This should enable the school to plan changes, including staff changes, and to avoid a deficit.

2. Avoiding redundancies

Forecasting and managing change is integral to successful medium and long-term planning. Headteachers and Governing Bodies should, as part of the workforce planning process, manage resources to avoid or minimise the effect of any foreseeable budget problems to reduce the risk of compulsory redundancies.

The following strategies may be considered as part of forward planning and resource management:

- restricting the recruitment of permanent staff (in certain circumstances - not as a matter of routine);
- managing vacancies by deleting vacant posts or holding vacancies for redeployment (e.g. following consultation on change of staffing structure);
- reducing the use of temporary staff (without infringing employment rights);
- reduction in hours - where agreed with the employee or allowed for in the contract of employment;
- filling vacancies from among existing employees;
- job share;
- training or re-training where applicable;
- release of staff before the contractual resignation date.

However, where circumstances are such that a redundancy situation is unavoidable in a school, the governors should ensure that the employees concerned will be treated in a fair and equitable way and the impact on staff minimised.

3. Definition of redundancy

An employee will have been dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to the fact that:

- (a) The 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 the business in the place where the employee was so employed; or
- (b) The requirements of the business for employees:
 - (i) to carry out work of a particular kind; or
 - (ii) 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 (s 139 (1) and (2) Employment Rights Act 1996 formerly s 81 (2) EP(C)A 1978).

Governors should be aware that the cessation of a temporary or fixed term contract constitutes a dismissal and redundancy consultation will apply where employees have continuous local government service of 2 years or more.

4. Funding Redundancy Costs

4a Legal position

Under Section 37 (5) of the Education Act 2002 the Council is required to fund the costs of redundancy payments for maintained schools except in so far as the authority has good reason for not doing so. Such reasons may include:

- if a school has decided to offer more generous terms than the authority's policy, then it would be reasonable to charge the excess to the school
- if a school is otherwise acting outside the local authority's policy
- where the school is making staffing reductions which the local authority does not believe are necessary to either set a balanced budget or meet the conditions of a licensed deficit
- where staffing reductions arise from a deficit caused by factors within the school's control
- where the school has excess surplus balances and no plan agreed with the council to use these
- where a school has refused to engage with the local authority's redeployment policy.

To satisfy itself as to whether any of these conditions apply, the council requires schools to provide it with all necessary budget information and actual financial information and a business case well in advance of any action being taken. This includes the current three-year plan and the school's three-year plans for the previous two years, along with details of staffing changes over the last three years.

In addition, there is a need for schools to follow guidance as set out in the Scheme for Financing Schools - paragraph 11.12. Further details are given in Annex B to the Scheme.

4b Conditions

In all circumstances, the Governing Body must have acted reasonably to avoid the redundancy. Governing Bodies must comply with the legal requirements in relation to the implementation of any redundancies and should take professional HR advice to ensure that this is the case.

Some or all of any redundancy costs may be charged to the school's budget where the council has decided that:

- a school has decided to offer more generous terms than the authority's policy (the authority may charge the excess to the school)
- a school is otherwise acting outside the local authority's policy
- the school is proposing/making staffing reductions which the local authority does not believe are necessary to either set a balanced budget or meet the conditions of a licensed deficit
- staffing reductions arise from a deficit caused by factors within the school's control
- the school has excess surplus balances and does not have a plan agreed with the local authority for using these
- a school has refused to engage with the local authority's redeployment policy.

Costs will include those arising, but not limited to, any redundancy payments, settlements of claims or any awards made by an Employment Tribunal arising out of or associated with the termination of employment and any legal costs incurred in defending or settling claims.

The Council will refuse to fund some or all the redundancy costs if the cost is in excess of that offered by the Council to other council employees and any other limits which may be applied by the Council.

Costs arising from early retirements, including pension strain costs, must be met from the school's delegated budget except where the Council exceptionally agrees with the Governing Body in writing to meet the costs centrally. If or where agreement is given, the council will only make a one-off payment and any ongoing costs will be borne by the school.

Notice payments, whether worked or paid in lieu, are the responsibility of the school and will not be paid by the Council.

A Governing Body may decide to follow a redundancy process without the approval of the council but in these circumstances the school may be liable for all costs associated with the redundancy.

5. Early Notification to the LA

5.1 Where a school wants the council to contribute towards any redundancy costs, it must notify and discuss any proposals to restructure and reduce staffing levels with the council's Schools Finance Manager at the earliest opportunity and in advance of embarking on consultation with staff or trade unions.

6. Making the Business Case

Following initial discussion with the council's Schools Finance Manager, the request for the Council to meet redundancy costs must be submitted in writing (and using the 'Redundancy Form for Maintained Schools – LBB – updated September 2018') to the council's Schools Finance Manager, by email (to Nick.Adams@barnet.gov.uk), together with a Business Case and the other information specified in this guidance and on the proforma.

The Business Case, which is also used for consultation purposes, must include the following:

- Why the redundancy is necessary
- Structure charts pre- and post- change
- Details of numbers/levels affected
- Detailed costs of both structures and evidence that savings will be achieved
- Explanation for the reason for the change and the risks of non-implementation
- If services are to be outsourced why it is considered that TUPE does not apply to staff allocated to those services
- Final or draft Role Profiles with indicative grades
- An indication of the actions taken to avoid compulsory redundancy e.g. freezing of vacancies; use of fixed term contracts to meet specific needs.
- The date on which the need for the work/post ceases and the date(s) of the proposed redundancy if different.
- Details of proposed timescales for consultation including details of proposed selection criteria
- Why redeployment of individual(s), within the school or more widely, is not an option
- What, if any, agency, fixed-term or other temporary workers are employed in the school and why these contracts cannot be ceased as an alternative to redundancy
- Impact on affected employees (e.g. the rest of a department etc)

- Where the redundancy relates to a diminished need to carry out work, it will also be necessary to show a clear rationale for the proposals, e.g. reference to school development plan, Ofsted action plan, examination results etc.

The Application must include the following:

- A 3-year financial plan without staff redundancies and details of financial effect of redundancies (incorporating pension strain and protection costs)
- The gross and net annual impact on the Schools budget and the estimated and maximum cost of redundancies
- The cost of any pay protection which will result from the restructure
- The costs of any pension strain the school will incur
- Confirmation that the school has taken professional HR advice on its proposals and procedures for redundancies

7. Process for Approval

Business Cases must receive written approval from the council before any promises or notices of redundancy are made. The council will not contribute towards redundancy costs unless it has agreed to do so in advance of a restructuring and subject to any limit set by the council.

Schools should obtain advice from their HR service provider prior to submission. In some cases the Head of School Improvement or the school's Learning Network Inspector may also be able to offer support and advice.

Schools should seek support and assistance from a professional HR Adviser at an early stage (and before consultation commences) to ensure that the people aspects of any change are being adequately considered and there are no obvious flaws to the proposal.

Applications for the funding of redundancies by the local authority should be made by completing the proforma, 'Redundancy Form for Maintained Schools – LBB – updated September 2018' and submitting this by email, together with a Business Case and the other information specified in this guidance and on the proforma to the authority's Schools Finance Manager:

Nick.Adams@barnet.gov.uk.

The council's Schools Finance Manager will assess submitted business cases/applications for financial support and make recommendations to the Education and Skills Director, who will decide whether the application should be rejected or forwarded to the council's Strategic Director for Children and Young People for approval (including agreement to the level of financial support to be given).

The council will only approve requests for funding where they are satisfied that

- a genuine redundancy exists
- savings are achievable
- the school would face a deficit budget or fail to meet the requirements of a licensed deficit without the redundancies.
- all avenues for avoiding the redundancy have been considered
- appropriate procedures have been followed.

Rejected cases will be provided with the reason for rejection and may be re-submitted (subject to the timescales below) if circumstances change.

8. School Closure, amalgamation and cessation of grant funding

Where redundancies arise as a result of school closure, amalgamation proposed by the council or the cessation of external or grant funding (including SEN funding) severance costs will generally be met from central funds. Schools will be required to comply with paragraph 5 above (Early Notification to the LA). Following that initial notification and discussion and depending on the scale of reductions, agreement may be given to proceed using a modified version of this procedure.

9. Timescales

Delay can be costly. In accordance with National Conditions of Service, Teachers can only be dismissed on the grounds of redundancy in accordance with their contract at three dates in the year (i.e. the end of each term - 31 August, 31 December and 30 April).

There is a statutory entitlement for all employees to receive notice of termination and the employee will be eligible for one weeks notice for each year of service up to a maximum of twelve weeks.

Business Cases involving teaching staff should therefore normally be submitted to the Council in accordance with the following timescales:

- by no later than spring half-term where a reduction is required by 31 August;
- by no later than 31st May where a reduction is required by 31 December;
- by no later than 31st October where a reduction is required by 30 April.

Business Cases for support staff must be submitted no less than 6 weeks before the anticipated date of issue of redundancy notices.

10. Summary

Schools are required to undertake appropriate budgetary control and financial planning and seek to avoid unnecessary redundancies.

Schools are also expected to observe and adhere to legal requirements in respect of redundancies.

The Council may offer financial support to schools under the terms of the Education Act 2002 and its Scheme for Financing Schools.

The council is likely to turn down requests for support or to fund only part of the costs where it does not agree that the redundancies are necessary to prevent the school going into deficit or to enable it to meet the conditions of a licensed deficit, or where it feels staffing reductions arise from a deficit caused by factors within the school's control (e.g. poor forward planning).