

ATL ADVICE



Redundancy in the FE sector (for reps)

Redundancy has unfortunately become a fact of life for education staff in recent years. Understandably, those facing the prospect are often anxious and require support. This factsheet for ATL workplace reps provides information about redundancy and the consultation process that ATL's FE members whose posts are at risk should expect.

What is redundancy?

A redundancy situation arises when the requirements of the college for employees to carry out work of a particular kind, and/or for employees to carry out work of a particular kind in the place where they are employed, have ceased or diminished, or are expected to do so.

In practice, the main grounds for redundancy are:

- the employer decides to discontinue a certain subject or course (for example, because of changes to funding streams, unsatisfactory success rates or falling demand)
- the employer reorganises duties so that the work can be carried out by fewer staff
- there is a merger or other relationship with another provider, perhaps leading to a restructuring
- the employer has financial difficulties and needs to reduce costs.

The legal process

The law expects employers to observe five key principles:

- to warn the workforce of the prospect of redundancies as early as practicable
- to consult recognised unions in good time where 20 or more staff are affected.
- to establish objective criteria for any selection of staff for redundancy.
- to apply the criteria objectively, so that the selections made are broadly fair
- to take reasonable steps to find alternative employment within the institution for displaced staff.

See the pages about redundancy on the ATL website for further information about this at www.atl.org.uk/help-and-advice/other-issues/redundancy.asp.

Redundancy consultations

Where 20 or more staff are to be made redundant, the employer is legally obliged to consult the representatives of recognised unions. The consultations must include ways of:

- avoiding the dismissals
- reducing the numbers of employees to be dismissed
- mitigating the consequences of dismissal.

In practice, the consultations will normally focus on three key areas:

- whether there is a real necessity for redundancies and strategies to avoid them
- proposals to ease the burden on affected staff (such as voluntary severance schemes, enhanced redundancy pay, etc)
- the proposed method of selection of staff for redundancy.

The consultation process

The process begins with the employer issuing a written 'section 188 notice' to the representatives of recognised unions. This should set out:

- the reasons for the proposed redundancies
- the numbers and descriptions of staff proposed for redundancy
- the total number of staff of these descriptions employed

- the proposed method of selection
- the proposed method of carrying out the redundancies (including the time scale)
- the proposed method of calculating any non-statutory redundancy payments.

The consultations must begin ‘in good time’ to enable meaningful discussions to take place.

There are also legal minimums for the period of consultation, which should be:

- at least 30 days before the first dismissal takes effect, if 20 to 99 employees are to be made redundant at one establishment over a period of 90 days or less
- at least 90 days before the first dismissal takes effect if 100 or more employees are to be made redundant at one establishment over a period of 90 days or less.

Note that these periods of consultation must take place before the selection of individuals for redundancy and not after they have been given notice.

In practice, and particularly where complex organisational change is being proposed, representatives should press management for considerably longer than these legal minimums.

Issues for consultation

The need for redundancy

Management should provide a clear business case for the proposed changes, with stated figures and costs, which should be in plain English, so that the figures and statistics are clear to the reps.

At an early stage, consideration should be given to understanding the college’s rationale for the redundancies, the impact on the college generally (since staff tend to teach on a number of courses), and how this will affect the college’s capacity to develop.

It is crucial that ‘efficiency’ cuts that are financially orientated should be distinguished from ‘value for money’ considerations. According to Imperial College, quoted in *Delivering value for money through infrastructural change*, a KPMG report commissioned for the Learning and Skills Council in 2010, value for money considerations not only measure the cost of goods and services, but also take account of “the mix of quality, cost, resource use, fitness for purpose, timeliness and convenience to judge whether or not,

when taken together, they constitute good value”.

This is a crucial distinction to make during negotiations as management may consider that staff reduction is the only strategy they can adopt. From a financial point of view this is understandable, as staff costs can be around 60 per cent of the overall college budget. But this may not be the best approach – either for staff, the institution or potential learners in ‘value for money’ terms. The negotiations need to ensure that the college has a strategic vision that is sustainable and not a quick fix. A focus on the concept of value for money, as defined above, will help do that.

As the Imperial College quote suggests, these discussions may entail detailed knowledge of different areas of the college. Information may need to be sought from colleagues. There are often complex issues of staffing, course relations and learner/community needs that should be considered.

Local intelligence may provide an alternative to the management’s finance-driven analysis of what needs to change. Discussions that may have taken place between the senior management team (SMT) and department heads/programme area managers, which have probably informed the initial proposals, may not provide a comprehensive picture of the position on the ground.

For example, the data SMT provides may be open to question, even on basic issues such as attendance and retention. Similarly, assumptions as to the reasons for course underperformance may disregard issues such as the college’s own lack of support for, or an inadequate understanding of, course provision and learner need.

Reps should seek out and utilise information from those directly involved to counter management’s proposals where appropriate, while keeping their challenges and counter-proposals realistic.

In view of the complexity, the numbers of staff involved, and the detail of these consultations, the meetings may need to take place every week for the whole period of consultation, lasting up to a day each time.

Alternatives to redundancy

There are a wide range of possible measures to reduce or avoid the need for redundancies. Where appropriate, representatives should press for the consideration of some or all of the following:

- modification of the business case for redundancies in

terms of accuracy and relevance - figures are one thing, teaching and learning another

- consideration of alternative cost-saving measures
- freezing of non-essential vacancies to create redeployment opportunities
- a review of the ratio of permanent staff to sessional staff (on temporary contracts or working for an agency), linked to the issue of sustainability
- the reduction of staff numbers by natural wastage and/or the restriction of recruitment or overtime
- voluntary reductions in hours, or consideration of job sharing
- consideration of redeployment to suitable alternative posts (with re-training where appropriate); where the employer operates other education establishments, these may be in its other workplaces
- consideration of individual requests for voluntary redundancy or early retirement
- reviewing areas of the staff model (in consultation with staff) to best reflect new delivery challenges such as 'hard to reach' groups, 'employer need' and 'student need'
- exploration of retraining/development for current staff to fill new areas of provision or for new roles.

These initiatives may be able to provide alternative and effective ways of reducing costs and delivering services. Staff may also have views on college wastage, and if so, these should be discussed.

The ultimate goal is that, after adoption of appropriate alternative measures, voluntary redundancies and suitable redeployments, etc, no compulsory redundancies are necessary.

Other issues

There should be an audit of the current staffing model and an audit of staff skills in affected areas.

There should be equality and diversity benchmarking, as agreed with the Association of Colleges (AoC; see the AoC's *Equality impact assessments: a guide for colleges*).

This should include:

- current figures of staff and students
- projection of how the changes may affect staff and students.

- agreed review date of evaluating how staff and students have been affected by the changes.
- a follow-up action plan (as agreed) if the changes have produced issues around equality and diversity measures.

Reps should request and refer to the Health and Safety Executive's stress management standards to avoid increasing stress in the workforce where possible, see www.hse.gov.uk/stress/standards/index.htm.

Reps should have adequate facility time and teaching cover during the consultation period.

Selection for redundancy

The law does not oblige employers to adopt any particular criteria, provided the criteria used are broadly reasonable and applied objectively.

In the FE sector, the criteria most commonly used are curriculum need, relevant qualifications and the breadth and flexibility of staff skills. All of these are legitimate, providing they are based on objective evidence. It may be helpful for reps to call for a skills audit to be conducted to ensure that any decisions based on these criteria are founded on an accurate picture of the individual's skills, experience, qualifications and employment record.

Some potential criteria for selection are unwelcome, or even legally unwise. For example, they should not discriminate on grounds of sex, race, disability, religious belief, sexual orientation or age, and selection for redundancy on the grounds of trade union membership is not permitted.

ATL opposes the use of attendance records as a criterion. If an individual has an attendance issue, then it should be dealt with in the appropriate way. Furthermore, the use of such grounds can potentially be discriminatory, eg for female staff who have recently been away on maternity leave, or for individuals with a disability.

'Last-in-first-out' (LIFO) has a long-established history as a criterion for selection and can be favoured by both management and unions as being easy to operate and apparently objective. However, its use has been challenged under age discrimination regulations as being discriminatory against younger staff. Tribunal cases suggest LIFO should only be used as a 'tie-break' issue.

Part-time employees must not be treated less favourably than comparable full-time employees. For instance, an employer must not decide to make redundancies on the basis of 'letting the part-time employees go first'. They should be treated on equal terms with full-time colleagues.

Even with fair criteria, a redundancy can still be procedurally unfair if the college applies the criteria unreasonably or does not consult. A failure to follow its own redundancy policy and procedure will also leave a college open to challenge.

Ring fencing

To ensure staff facing redundancy have the best opportunity to obtain alternative employment, representatives should press management to adopt a ring-fencing policy. This provides that 'at-risk' individuals are given priority of consideration for vacancies for which they have the minimum requirements.

This can be done either by advertising posts internally only in the first instance, or by considering applications from displaced individuals before those from unaffected staff or external candidates.

Ring fencing may be arranged on a 'cascading' basis, so that tiers of staff compete for posts first (for example, senior managers compete for available posts at their level and, if unsuccessful, apply for suitable 'ring-fenced' posts further down on the salary scale). If these applicants are unsuccessful, then the posts are opened to other 'at-risk' staff from the next level down, before others - such as external candidates - are considered.

Whenever appropriate, the staff in the affected area(s) should be invited to contribute to a skills audit (see above) to ensure information held about individuals for any application is up to date.

Bumping

To ensure that as many staff are given the option of taking voluntary redundancy (VR) as possible, the idea of 'bumping' can be introduced. This refers to allowing staff to take voluntary redundancy from an unaffected

area, which thereby creates a vacancy that those threatened with redundancy can apply for.

This approach is widely used, but can have the negative effect on the college that staff it wants to keep may seek to leave. One option is for the college in the first instance to offer a minimal redundancy package to volunteers from unaffected areas, so these staff are not actively encouraged to leave.

On the positive side, the adoption of 'bumping' policies can mean that individuals who wish to depart can do so and those who wish to remain are able to stay. In any event, management will retain discretion as to which volunteers for voluntary redundancy are accepted.

VR packages

The legal requirements of voluntary redundancy (VR) packages are covered in the pages about redundancy on the ATL website at www.atl.org.uk/help-and-advice/other-issues/redundancy.asp.

Negotiators should not be shy of suggesting creative ways of enhancing the package, particularly as for some small cost and with goodwill, the college may be able to meet the level of the staff reductions it needs.

Such enhanced offers will give much-needed support to staff taking redundancy and demonstrate that an employer is being supportive. Examples of welcome enhancements might include:

- free training and courses for those taking VR
- use of college facilities (gym, hairdressing, car MOT services, etc)
- vouchers for training and courses
- payment for retraining (£3,000 towards an MA or other qualification for professional development)
- counselling services to help work through effects of life changes
- coaching sessions
- career advice from a third party, eg CV writing
- contact with local university for staff access to courses/training.



Need advice?

Your first point of contact is the ATL rep in your school/college. Your local ATL branch is also available to help, or you can contact ATL's member advisors on 020 7930 6441, email info@atl.org.uk. Don't forget there's lots more advice on ATL's website at www.atl.org.uk.

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