

ATL model redundancy procedure for the independent sector

(i) Introduction

In this procedure, the term 'redundancy' is used to refer to termination of employment by reason either of a formal redundancy or of a reorganisation.

A redundancy situation arises when the requirements of the school for employees to carry out work of a particular kind – and/or 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.

A reorganisation arises when it becomes necessary for the school to introduce changes to the terms of employment, roles, responsibilities, working practices or workplaces of its staff.

(ii) Policy

It is the school's intention to provide reasonable security of employment for its employees. However, there may be occasions where for business requirements, organisational reasons or technological developments, it may be necessary to reorganise or to reduce the workforce, leading to redundancies.

The school will always seek to avoid the need for compulsory redundancies.

Should redundancies become inevitable, they will be handled in a fair, consistent, transparent and sympathetic manner.

In order to minimise the impact of such reductions, the procedure set out below will be followed.

(iii) Consultations

Where it appears that redundancies may be necessary, the manager concerned will convene a meeting of the staff of the area(s) or, as appropriate, of the individual(s) affected to explain the position.

The school, via the appropriate manager, will consult the individuals affected by the proposals at the earliest opportunity. Individual consultations with employees will take place regardless of the number of staff affected.

Where proposals for potential redundancies or a reorganisation affect 20 or more staff, the school will also undertake collective consultations with appropriate representatives.

'Appropriate representatives' for collective consultations are:

- where a trade union is recognised to represent the group of staff affected, reps of that trade union
- where there is no recognised union, representatives of the employees affected – elected for this purpose.

The consultations will begin in good time and prior to any selection of individuals for redundancy. In any event, the consultation will begin at least 30 days before the first of any notices of dismissal for redundancy are issued.

The consultation will be undertaken with a view to reaching agreement and will include ways of:

- avoiding the redundancies
- reducing the number of employees to be dismissed
- mitigating the consequences of any dismissals.

At the outset of the consultations, the school will notify the individuals affected and the appropriate representatives in writing of:

- the reason(s) why the need for redundancies has arisen

- the numbers and descriptions of employees proposed for possible redundancy
- the total number of employees of these descriptions
- the proposed method of selection for redundancy
- the procedure for carrying out any dismissals, including the timescale to be used
- the proposed method of calculating any non-statutory redundancy payments.

The timescale will allow the appropriate representatives time to consider proposals, seek views and make representations, depending upon the particular constraints of the circumstances. Formal consultation will be deemed to have commenced from the date of this written notification.

The management will consider – and the consultations will include – alternatives to redundancy. These will, whenever appropriate, include the following:

- consideration of alternative cost-saving measures
- 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.

(iv) Selection for redundancy

Following the consultations, the school will set the criteria for selection of staff to be proposed for redundancy and any weightings of factors to be applied. The criteria to be used will be reasonable, objectively measurable, transparent and non-discriminatory. Curriculum needs will normally be the main selection criterion, but the selection criteria may include, among other factors, relevant skills, qualifications, aptitudes, knowledge and experience. Length of employment may be used as a supplementary factor alongside other criteria.

Whenever appropriate, the staff in the affected area(s) will be invited to contribute to a 'skills audit' to ensure that information held about individuals for any application of the selection criteria – such as their skills, qualifications, aptitudes, knowledge, experience, and employment record – is up-to-date.

'At risk' staff will then be assessed against the selection criteria by the appropriate manager, to determine those who should be proposed for termination of employment.

The school will then write to each employee concerned, setting out the reasons why they have been identified for proposed redundancy, and inviting them to a meeting with the headteacher to discuss the circumstances and make any personal representations before any decision is made. At least five working days' notice of this meeting will be given, and the employee will be informed of their right to be accompanied and represented by a trade union rep or workplace colleague.

Within five working days of this meeting, the affected employee(s) will be informed in writing of the outcome. If the employee has been selected for

redundancy, the letter will:

- inform them of the circumstances leading to the decision to make redundancies
- set out a summary of the action taken by the school and an account of the selection processes used
- explain why the employee has been selected for redundancy
- set out details of their entitlement to a redundancy payment and any other benefits
- notify them of their right to appeal in accordance with the appeals procedure as follows.

(v) Appeals

Employees facing the proposed termination of their employment on grounds of redundancy are entitled to appeal. An employee wishing to appeal should inform the headteacher in writing, within 10 working days of receipt of written confirmation of redundancy as set out in the previous paragraph, stating their grounds of appeal.

The appeal will be heard by a committee of the governors (or, where necessary, by a panel of individuals who have not been involved in the selection or discussion process). At least five working days' written notice of the time and place of the appeal will be given to the employee, who will be entitled to be accompanied and represented by a trade union rep or workplace colleague.

Within five working days of the appeal, the employee will be given written notice of the outcome, with reasons for the decision.

(vi) Notice of termination

If the employee does not appeal in accordance with the appeals procedure as above, or if the outcome of the appeal

is to confirm the proposed redundancy, the school will then give the employee formal written notice of termination on grounds of redundancy.

The notice given to the employee will be either his/her contractual or statutory entitlement to notice, whichever is the longer.

(vii) Alternative employment

The school will take all reasonable efforts to redeploy staff facing potential redundancy, both during the process of consultation, hearings and appeals as above and during the employee's period of notice.

The school will take all reasonable steps to notify staff 'at risk' of redundancy of suitable alternative vacancies. Wherever practicable, staff who have expressed a preference for alternative work will be invited to apply for available vacancies.

The school will give prior consideration to applications from staff 'at risk' of redundancies for vacancies, before considering other applicants. Where appropriate, training will be provided to employees to enable them to undertake the full range of duties of the post involved.

Where an offer of alternative employment involves a change in the type of work or the terms of employment, the employee is entitled to a trial period of four weeks in the new post to enable both the employee and the school to assess the individual's suitability. This may be extended by agreement. Where an individual transfers to a different post, their continuity of service is maintained.

If, during the trial period, either the school or the employee gives notice that the new post is not considered suitable, the employee will be regarded as having been dismissed on grounds of

redundancy at the date of termination of the original contract.

The school will enable an employee under notice of dismissal on grounds of redundancy to take reasonable paid time off to find alternative employment, including for attendance at interviews, or to arrange training.

(viii) Redundancy payments

Staff who have at least two years' continuous employment with the school are entitled to a redundancy payment. The redundancy payment is a multiple of the employee's final week's actual (gross) pay. The payment is calculated according

to the employee's number of full years' continuous service (up to a maximum of 20 years), and their age on the date of termination, as follows:

- for each complete year between 18 and 21: half of one week's pay
- for each complete year between 22 and 40: one week's pay
- for each complete year at age 41 and over: one and a half of one week's pay.

Where an employee is eligible for a redundancy payment, the school will provide a written statement of how the proposed payment has been calculated.

10 Working long hours and health and safety

What legal protection is there against working long hours?

One of the disadvantages of working in the independent sector is the long working day. In most jobs or occupations, the number of hours that the employee is expected to work is defined in the contract of employment. This is true of the state maintained sector.

Unfortunately, for teachers working in the independent sector, hours of work are unspecified, vague, or there is a clause in the contract containing the catch-all phrase “whatever hours the head considers reasonable for carrying out your duties”.

To compound matters is the unwritten expectation that teaching staff in independent schools will undertake numerous extra-curricular activities and lunchtime duties. And of course then there are boarding schools!

So if your contract of employment is silent on working hours, your rights and responsibilities may have been set by custom and practice and this may enable you to challenge the introduction of new duties.

If your contract of employment cannot help you and custom and practice does not apply, you are reliant on the legal limits to the number of hours that can be reasonably worked and specified rest breaks.

The 1998 Working Time Regulations

The primary purpose of the Working Time Regulations is to safeguard the health and safety of employees. There are some national differences in the legislation, for instance, in Northern Ireland the relevant law is contained in the Working Time Regulations (NI) Statutory Rule 386.

The regulations can make a significant positive contribution to reducing working hours and providing adequate rest breaks, although they do include some clauses for employers which reduce the benefit to teachers. The key features of the regulations are as follows.

Working time

The working week is limited to a maximum of 48 hours, averaged over 17 weeks. In residential institutions the averaging period is 26 weeks.

The averaging period disregards periods away from work for sickness, maternity leave or the minimum statutory leave, but includes other periods of holiday, which tends to lower the average of hours worked. However, only time spent ‘working at the employer’s disposal and carrying out one’s activities or duties’ counts towards ‘working time’.

The controversial element is whether time ‘on call’ or time spent working at home counts as ‘working time’, and this is currently being determined by case law. This has major significance for ATL members who, for instance, may be working as housemasters/ housemistresses or houseparents, and are expected to respond to calls or