



# Redundancy Procedure

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Maintained schools are expected to follow this procedure, or a procedure deemed acceptable by HR Services for Schools, as a condition of assistance with approved redundancy costs. Schools should apply for assistance with redundancy costs using [the attached form](#), which is to be sent to the Head of HR Services for Schools. However, it is important for schools to know at the outset that they must also meet any additional pension costs for support staff who are made redundant, whether voluntarily or compulsorily (in line with the Education Act 2002). If a member of the support staff is made redundant between the ages of 55 and 60 that person must, under the rules of the Local Government Pension Scheme, take his or her pension without actuarial reduction. In maintained schools formal approval of these early retirements must be obtained from the City Council, which under the pension regulations acts as the employer for all maintained schools; information on how to obtain this permission is given on the pension pages of the Schools HR Portal. The cost of taking the pension early must be met by the school. It is capitalised, that is, the extra cost of paying the pension is calculated on an actuarial basis and the whole sum is charged to the school at the outset; this sum is often called the 'pension strain'.

In addition to requiring schools to follow an acceptable procedure as a condition of meeting redundancy costs from a central budget, the authority has the right in law to be represented at any proceedings leading to dismissal of any teacher in a community a school, voluntary or maintained nursery controlled school. Under its Service Level Agreement with maintained schools, the authority has the additional right to representation in proceedings leading to dismissal of any employee in any maintained school.

A question frequently asked during redundancy proceedings is the period after redundancy which must lapse before a person made redundant can be employed elsewhere. A period of at least four weeks must lapse before a person can take employment in other public services (including maintained schools and academies) covered by the redundancy modification order (this includes many public bodies which are, or were part of local government). This period may be extended by the Government in future legislation. The City

Council may impose additional conditions on re-employment by the City Council but, as school governing bodies control their recruitment, it cannot impose those conditions on schools.

## **1. Introduction**

1.1 The following procedure has been adopted by the Governing Body of Hodge Hill College School on 18 to comply with the requirements of employment law if redundancy appears to be a possibility and in pursuance of good personnel practice and employee relations.

1.2 It is the policy of this Governing Body by careful forward planning to ensure as far as possible security of employment for the employees at the school. However, it is recognised

that there may be changes in the numbers of pupils, organisational requirements or other factors which affect staffing needs and which cannot be accommodated by movement of staff. In such cases the Governing Body, in consultation with the recognised trade unions, will seek to minimise the effect of redundancies by endeavouring to find alternative employment and, if selection for redundancy seems inevitable, handling the procedure in a fair, consistent and sympathetic manner. The governing body will expect the head teacher to have sought advice on managing organisational change and redeployment before discussing with the governing body the possibility of starting redundancy procedures.

1.3 The procedures will be applied in accordance with the Instrument of Government of the School and statutory requirements relating to employment in general and the management of schools in particular.

1.4 In these procedures:-

The 'Local Authority' or the 'Authority' means Birmingham City Council acting in its capacity as a local authority for schools.

References to a representative of the authority include any officer designated by the Strategic Director for Children, Young People and Families.

'Employee' means a person employed to work at the school.

### **Right to be accompanied**

1.5 Although hearings held under this procedure are not disciplinary or grievance hearings and are therefore not subject to the provisions of the Employment Relations Act 1999 as amended, nonetheless, having regard to the rights of union or workplace representatives to be consulted about prospective redundancies, this procedure provides for an employee to be accompanied at a hearing if he or she notifies the person calling the hearing that he or she will be accompanied in accordance with this procedure. The entitlement under this procedure will be limited to one companion who is chosen by the employee and is either employed by a trade union as an official within the meaning of sections 1 and 119 of the Trade Union and Labour Relations (Consolidation) Act 1992 or is an official of a trade union whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings, or is another of the employer's workers. Under these procedures such a companion or representative may be present at each stage of the procedure. Where an employee chooses to be accompanied or otherwise assisted by a representative in accordance with the legislation, the head teacher, or the clerk to the Governing Body as the case may be, will seek to arrange hearings, etc, in consultation with the chosen trade union official or chosen employee.

### **Notes of meetings**

1.6 The governing body will require its clerk or an appropriate substitute to attend and make a full record of any meeting held by a committee under this procedure. Minutes of the meetings will be available to the employee or the employee's representative if requested

and should normally be provided within five working days of the meeting. No participant should make a sound or video recording of a meeting without the consent of all the participants, including witnesses. If the content of the minutes is questioned, the person who wrote the minutes should check his or her notes of the meeting in question and, if no reason is apparent for altering them, refer the question to the committee for verification. If a disagreement over the content remains, then the employee may append his or version of the disputed part to the original minutes, which shall remain unaltered.

### **Who does the procedure apply to?**

1.7 This procedure will apply to all employees at risk of redundancy regardless of length of service or type of contract, although the procedure makes special provisions for employees on temporary and fixed-term contracts.

### **Who is entitled to a redundancy payment?**

1.8 It should be noted, however, that only those employees with at least two years' continuous service and who have not obtained alternative employment covered by the Modification Order at the date of termination of their employment will be entitled to a redundancy payment. This service may be as a result of a number of consecutive fixed term contracts or may result from an employee's earlier, unbroken service with an associated employer e.g. another Local Authority.

## **2. Procedure for deciding whether redundancies are a possibility including preparing proposals as the basis for consultation**

2.1 In pursuance of its commitment to careful forward planning to ensure as far as possible security of employment for the employees at the school the governing body will authorise consultations under these procedures only after preliminary discussion with the head teacher and, where appropriate, with other relevant persons, including local authority representatives. These discussions, which may be initiated either by the head teacher or the governing body or a committee of the governing body, will take place before there is any consultation with unions or staff, because it is recognised that there is no point in starting consultation which might alarm employees unnecessarily.

2.2 The preliminary discussion should normally take place in a full governing body meeting, because the governing body will need to appoint or confirm the committee to deal with potential redundancy (to be described in this procedure as the redundancy committee). The preliminary discussion should fulfil the governing body's largely strategic role in the running of the school. It should cover the circumstances which have led the head teacher to consider the possibility of reducing the number of employees, for example, a fall in pupil numbers, an accumulated deficit in the budget, loss of external funding, or changes in the national curriculum. The head teacher should set down these reasons in a paper for the governing body. The changed circumstances described by the head teacher may lead the governing body to review the school's priorities in the school development plan. However, in order to ensure that subsequent redundancy proceedings are not compromised, the governing body should not enter into discussion on the ways in which the possible reduction

in the number of employees might be achieved, but instead appoint a committee (in this procedure called the redundancy committee) and authorise the head teacher to prepare proposals for that committee, which would include ways of avoiding redundancy or mitigating its effects. The governing body may appoint a committee specifically to manage the potential redundancy situation or may add the remit to an existing committee, such as the finance committee. Suggested terms of reference for a redundancy committee are given in Appendix 2. The governing body's existing appeals committee is likely to have terms of reference which will cover appeals against redundancy (which is a dismissal), but its membership may need to be reviewed to ensure that no member is also a member of the redundancy committee.

2.3 The head teacher should then prepare detailed proposals for the redundancy committee, starting with the reasons why redundancy is a possibility (as discussed with the governing body), setting out ways in which redundancy might be avoided or mitigated and the areas in which the head teacher is recommending a reduction in the number of employees. A suggested outline for the head teacher's proposals is given in appendix 3. The proposals should be discussed with the Employee Relations Team.

2.4 The head teacher should present the proposals to the redundancy committee for approval as a basis for statutory consultation. The committee may decide on one or more of the following:-

- (i) That there is no possibility of redundancy (for example, because savings can be made in other ways) and that no further action should be taken under these procedures;
- (ii) To halt permanent recruitment for the time being and/or leave certain vacancies unfilled even on a temporary basis;
- (iii) To authorise the head teacher to prepare proposals for a re-structuring and to start consultation with staff and representatives of the recognised unions and teachers' associations on such proposals (this re-structuring may include temporary re-allocation of duties whilst certain posts remain unfilled), with the school following the authority's guidance on re-structuring;
- (iv) To authorise the head teacher to open consultation with the recognised unions and teachers' associations at city level about the possibility of redundancy, based on the proposals approved by the committee;
- (v) To authorise such other action as may be appropriate
- (vi) To reserve provisional dates for future meetings as required, including a meeting at which the head teacher will report back on consultations with the unions and employees, and, in the event of issuing a section 188 notice, a subsequent meeting between the redundancy committee and the unions.

### **First consultation meeting with trade unions and professional associations**

2.5 If the head teacher has been authorised to open consultation with the recognised unions and teachers' associations at city level, the head teacher shall invite them to a meeting, giving them a choice of dates and times in normal working hours. All recognised unions are entitled to be present at such meetings if they so choose, even in those circumstances where it is not immediately apparent that their members are directly affected by the possibility of redundancy.

Consultation undertaken preparatory to internal re-structuring may reveal that the proposals for re-structuring are likely to involve potential redundancies. In such cases the consultation meeting with the unions about re-structuring may count as the first consultation meeting in this redundancy procedure.

2.6 The head teacher will send the recognised unions and teachers' associations the proposals which have been approved by the redundancy committee as a basis for consultation.

2.7 As soon as the governing body has referred the matter to a redundancy committee, the head teacher will tell all the staff of the school of the governing body's action and explain that they will be kept informed of the committee's decisions at each stage of the procedures. They must also be informed that the head teacher has been authorised to open statutory consultations with the recognised trade unions and teachers' associations and when that meeting will take place. The head teacher will also invite employees who may be at risk of redundancy to discuss their position either as a group or individually with the head teacher as soon as possible and assure them that there will be group and individual consultation as soon as the first consultation meeting has taken place with the unions and also subsequently in the event of the redundancy committee proceeding to issue a Section 188 notice. A copy of this redundancy procedure will be made available if employees have not seen it already.

2.8 Immediately before the announcement to staff that the governing body is considering the possibility of redundancy, it will be helpful for the head teacher to tell the school representatives of recognised trade unions and professional associations of the decision, so that they may alert the city representatives of their respective organisations.

2.9 On behalf of the governing body the head teacher will also inform the local authority (through the Employee Relations Team) of the actions taken to date, including the proposed date(s) for the first consultation meeting with the unions, the next meeting of the redundancy committee (at which the outcome of the first consultation meeting will be considered) and a consultation between the redundancy committee and the unions.

2.10 If at any time circumstances change, for example, there is an unexpected resignation from an employee or an employee is successful in obtaining a temporary placement at another school, for example, through voluntary redeployment, then these procedures can be terminated.

2.11 Employees who are absent from any consultation meetings (perhaps due to maternity leave, sickness, suspension, secondment or other commitments) must be included in the

consultation process at all stages. This is particularly important for employees who are on maternity leave as it is automatically unfair to select a woman for redundancy simply because she is on maternity leave. The head teacher shall ensure that all the points covered in the meeting are reported to missing employees as soon as possible, by written communication if necessary. In addition, absent employees should be offered the same opportunity to make representations and to appeal against the decision to end their contract as non-absent employees.

2.12 Whilst groups or individuals likely to be at risk of redundancy may express an interest in voluntary redundancy, flexible or phased retirement, or other opportunities for leaving the school temporarily or permanently and those expressions will be noted, an invitation to volunteer for such options cannot be issued by the redundancy committee unless and until it has decided, after its consultation meeting with the recognised unions and teachers' associations, that redundancy is unavoidable.

### **First consultation meeting**

2.13 The first consultation meeting will start the statutory period of consultation, which must begin in good time and include consultation about ways of avoiding dismissals, reducing the number of employees whom it is proposed to dismiss and mitigating the consequences of the dismissals, i.e. it must be meaningful. The outcome is likely to be one of the following:

- Despite the original concerns, there does not now seem to be an immediate problem that cannot be dealt with by normal management action, movement of staff or voluntary changes in contracts;
- In view of the nature of the changes, including the possibility of major changes to contractual arrangements for staff as an alternative to redundancies, the head teacher and unions may agree that the head teacher should seek the agreement of the redundancy committee to start consultations with staff about re-structuring rather than continue with the redundancy procedure;
- As redundancy remains a possibility, the head teacher should consult with directly affected staff about the proposals immediately
- In the event of the third option being followed, discussing a possible date for a meeting between the unions and the redundancy committee.

### **Avoidance/Minimisation of compulsory redundancies through consultation with affected staff**

2.14 If, following the consultations with the recognised unions and teachers' associations, the head teacher considers that redundancy remains a possibility, he or she shall consult with those groups of employees or individual employees likely to be directly affected and shall immediately make a copy of this redundancy procedure available, together with the proposals discussed with the unions, which will explain why there is a potential redundancy situation within the school, how staff are likely to be affected if the necessary savings or

reductions cannot be made and ways in which redundancy might be avoided or mitigated. The head should explain that he or she is at the start of the consultation process with staff and trade unions and encourage them to come forward during the consultation period with any suggestions that they may have as to how redundancies might be avoided, reduced or mitigated. A rough indication of timescales for completing the process should be given where possible and the head should undertake to keep staff informed on a regular basis as the process develops. To allow for individual consultation, the head teacher should invite staff to meet with him or her on an individual basis if they so wish.

### **Consultation with whole school staff**

2.15 Once the head teacher has commenced consultation with directly affected staff, the governing body expects the head teacher to provide an update to the whole school by way of a group meeting. The head teacher should outline the points made to directly affected staff as set out in 2.8 above and give the same assurances about keeping staff informed on a regular basis as the process develops.

### **3. Procedure for deciding whether redundancies are still likely and invoking the rest of the redundancy procedure, including the issue of a Section 188 notice**

3.1 After the consultation meeting with the recognised unions and teachers' associations and with those groups or individuals who may be directly affected by the possibility of redundancy, the head teacher shall report to the redundancy committee on the outcome of those consultations. A representative of the Employee Relations Team shall also be invited to the meeting. The head teacher should prepare an agenda for the meeting, including the various matters listed below, and, if the head teacher anticipates that the redundancy committee will decide to continue with the redundancy procedure, draft a section 188 notice in consultation with the Employee Relations Team.

3.2 The redundancy committee shall consider the outcome of the consultations undertaken by the head teacher. In particular it will:

- collect evidence, including action taken so far to avoid the need for redundancies, for example voluntary reduction in hours, steps taken to redeploy employees, job shares amongst existing employees, restricting recruitment and/or employee turnover and including any suggestions made at the consultation meeting with the unions in order to avoid compulsory redundancies and actions taken by the school in response to these suggestions;
- decide how many redundancies need to be made within the overall staffing establishment and which roles are potentially redundant;
- decide on the area(s) of work within which the redundancies would fall or whether subsequent internal re-organisation would permit a redundancy elsewhere within the school (which might be voluntary and therefore mitigate the effects of redundancy);
- determine the criteria for selection for redundancy (see Appendix 4 for guidance);

- determine the date, subject to contractual and statutory notice periods, on which the redundancy is likely to take effect;
- produce a written summary of the discussion and conclusions on these matters;
- determine, with advice from the head teacher and/or employee relations representative, who is best placed to undertake the scoring assessment if compulsory redundancy proves necessary and whether a skills matrix will be used to help apply the selection criteria;
- if redundancies are still a possibility, draft a notice in accordance with the requirements of Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 to consult with the recognised trade unions and professional associations about proposed redundancies, and instruct the clerk to the governing body or the head teacher (as the committee may decide) to issue the notice which the committee has drafted in consultation with the head teacher, ensuring that the statutory requirements for a section 188 notice are met by following the format given in the model letter in Appendix 11. The governing body notes that any employer proposing to dismiss as compulsorily redundant 20 or more employees must notify the Secretary of State for Business, Innovation & Skills (BIS) of the proposals. Failure to do so can render the employer liable to a criminal conviction and a fine. The governing body notes that advice on any such notice will be provided by the Employee Relations team at the same time as the section 188 Notice is issued to trade unions.

3.3 The notice shall be sent, by the clerk to the governing body or head teacher as the committee may decide, to the local officers of all recognised trade unions and teachers' associations (regardless of whether or not a particular union or association has members at the school), with a copy to the Employee Relations Team. It shall be sent as soon as possible after the redundancy committee has concluded that a notice is necessary, in fulfilment of the legal requirement to start consultation "in good time".

3.4 In addition, the committee shall meet the requirement to disclose to the recognised trade unions, including teachers' associations, information which would assist meaningful consultation by providing the information which has been used in reaching the decision to propose redundancies. This information shall normally include those matters specified in the model section 188 notice – see Appendix 11. If the required information has already been provided the notice should refer to that information rather than supply another copy.

3.5 The Section 188 notice shall be accompanied by an invitation to all the trade unions including teachers' associations to make comments in writing and also to meet the committee for the purpose of the required consultation meeting(s). Consultation must include discussions about ways of avoiding the dismissals, reducing the number of employees to be dismissed, and mitigating the consequences of the dismissals.

3.6 All the staff of the school shall be informed of the issue of the Section 188 notice and that there will be a consultation meeting with them, to follow the consultation meeting between the redundancy committee and the unions.

#### **4. Consultation meeting between the redundancy committee and the recognised trade unions and teachers' associations**

4.1 The consultation meeting between the redundancy committee and the recognised trade unions and teachers' associations will be held as soon as possible after the issue of the Section 188 notice, subject to consultation over a mutually convenient date and time. The purpose of the meeting will be for the redundancy committee to consult formally with the trade unions and teachers' associations on the contents of the Section 188 notice. The head teacher will provide an update on the consultation process with unions and staff since the informal consultation meeting and contribute to the discussions. A representative of the authority is also entitled to attend the meeting to advise the committee.

4.2 Before the redundancy committee meets the unions, its members shall read any written comments received from the unions or individual employees, to inform the formal consultations and enable them to make at least an initial response to the written comments during the formal consultation meeting. At the formal consultation meeting the committee will give the unions and teachers' associations the opportunity to present their issues and comments as a result of the consultation and respond to those points as far as they are able to do so at that time. The committee will consider its response to the questions and representations and decide, in the light of the comments received, the advice of the authority's representative and the advice of the head teacher:

- whether alternative options can be pursued which may avoid the need for compulsory redundancies or whether redundancies are necessary;
- if redundancies are still necessary - how many are needed, whether the criteria identified in the Section 188 notice should be modified in the light of the consultations and advice received;
- if redundancies are necessary, whether to invite expressions of interest in voluntary redundancy from those groups of employees at risk of redundancy or from other people across the school whose role might offer suitable alternative employment for those at risk of redundancy and, in the event of the number of expressions of interest not matching the number of employees to be made redundant, whether to authorise the head teacher to make arrangements for provisional selection of employees for redundancy in accordance with the committee's selection criteria and method of applying those criteria;
- if redundancies are necessary, authorise the head teacher to continue to seek opportunities for redeploying employees at risk of redundancy.

N.B – The committee may either communicate its decisions on next steps to the unions at the end of the meeting or may wish to have some additional time to deliberate before doing so.

4.3 Unless its decisions are communicated to the unions at the meeting and therefore recorded in the minutes, which are sent to the unions, the redundancy committee shall send a separate, written communication about its decisions to the recognised unions and

associations. It shall also ask the head teacher to inform all the staff of the school and, where appropriate, to invite expressions of interest in voluntary redundancy. The redundancy committee shall note that the minutes of its meetings are public documents and, if it deems any item as confidential, pass the necessary resolution to this effect but shall nonetheless make the minutes available to the parties involved, as distinct from the public.

The redundancy committee shall also indicate that it will hold further consultations with the trade unions and associations if necessary, having regard to the consultation with staff.

## **5. Consultations with staff**

5.1 The consultation with staff will take place as soon as possible after the consultation between the redundancy committee and the trade unions and teachers' associations. It will be led either by the head teacher or an appropriate governor as the redundancy committee shall decide. It will cover the contents of the Section 188 notice and the outcome of the consultation between the redundancy committee and the trade unions and teachers' associations. Copies of the Section 188 Notice and attachments should be provided to the employees identified as at risk of redundancy.

5.2 There will also be individual consultation as soon as reasonably practicable with those employees who are at risk of redundancy, with representation if requested.

5.3 During the consultation with staff expressions of interest in voluntary redundancy will be invited from those employees who have been identified as being at risk of redundancy, confirming this invitation in writing and including those currently absent from the school (for reasons such as sickness, maternity, secondment etc.).

## **6. Dealing with expressions of interest in voluntary redundancy**

6.1 Once the expressions of interest have been received, the head teacher should notify the local authority representative of those employees wishing to consider voluntary redundancy so that redundancy estimates can be prepared. Employees at risk of redundancy should be encouraged to seek information on the implications for their pension and, if they are 55 years of age or older, on the pension options available to them if made redundant.

6.2 Once the relevant employees have been provided with a redundancy estimate, the head teacher shall ask them to confirm whether or not they wish to proceed with their applications for voluntary redundancy.

6.3 The head teacher shall advise the chairperson of the redundancy committee of those employees who have confirmed their expressions of interest in voluntary redundancy. If the school receives more expressions of interest than the number of redundancies being proposed and the redundancy committee has authorised the head teacher in that event to arrange for the agreed selection criteria to be applied to those who have expressed an interest in voluntary redundancy, the head teacher should proceed to arrange this. If this authorisation has not been given, the head teacher should report back to the redundancy committee for further instructions. The local authority representative shall be entitled to

advise the committee and/or the nominated selection panel on how to conduct the selection process. The committee should ensure that it can justify a failure to accept a volunteer for voluntary redundancy i.e. a school may have a Phase Leader with a particular responsibility for literacy and numeracy and feel that it could not justify releasing him or her by reason of voluntary redundancy because there is no-one else suitably qualified and experienced to undertake this role.

6.4 Once the expressions of interest have been considered by the head teacher and the redundancy committee, the clerk or other appropriate person should write to the employees confirming whether or not their expressions of interest in voluntary redundancy have been accepted by the redundancy committee.

6.5 The head teacher will ensure that employees who have been accepted for voluntary redundancy will receive written confirmation of the decision. The letter should also include confirmation of when the termination date will be and whether or not the employee is required to work his or her notice period or be paid in lieu of it. As a voluntary redundancy is still a dismissal in law, employees accepted for voluntary redundancy should still be given a right of appeal before an impartial appeals committee.

## **7. Compulsory redundancies**

7.1 If there is not a sufficient number of expressions of interest in voluntary redundancy, the head teacher shall select a panel of scorers who will be responsible for provisional selection of employees for compulsory redundancy. The panel will score those employees in the selection pool against the chosen selection criteria, having regard to the guidance in Appendix 1. A recommended form for recording scores appears at Appendix 4. The head teacher may decide to undertake a skills audit (see Appendices 2 and 3 for model forms) of those employees in the relevant selection pool before proceeding with the selection process.

7.2 Once the scoring process has been undertaken, the panel shall meet with the head teacher and explain how they undertook the scoring process, what evidence they took into account and which employees have been provisionally selected for redundancy. The head teacher will then meet with the redundancy committee to discuss the scoring. The redundancy committee may ask members of the panel to attend this meeting. The committee shall decide whether to accept the recommendations of the panel and who shall be selected provisionally for redundancy.

### **Hearing with redundancy committee to discuss provisional selection for redundancy**

7.3 The head teacher shall write to all employees in the selection pool and confirm whether or not they have been provisionally selected for redundancy and what the next steps will be, including the right to a hearing before the redundancy committee to make representations about their selection. As part of the continuing consultation process with directly affected employees, the head teacher should disclose to each employee the score for that employee, explaining in each case how the score was reached. Employees may wish to call the chair of the scoring panel as a witness to this hearing. The hearing will usually cover the way in

which the redundancy process was undertaken, including the selection criteria chosen or the way in which they were applied, although this list is not exhaustive. The employee has the right to see a copy of the selection matrix setting out the scores of all employees in the selection pool, but the name of each employee must be redacted for data protection purposes.

7.4 Each employee provisionally selected for redundancy will be invited to a hearing before the redundancy committee. In order to ensure that the employee has enough time to prepare his or her response to the proposed dismissal on grounds of redundancy reasonable notice of the hearing should be given. This should be at least fifteen working days. It is helpful to agree a date with the employee's union/professional association if the employee wishes to be accompanied, before sending the formal notice to attend the hearing. The employee may suggest an alternative time and date as long as it is reasonable and is not more than five working days after the original date. The committee may reject this suggestion but will do so only if it is unreasonable, when they may proceed to hear the case in the absence of the employee or the employee's representative and will take advice from the Employee Relations Team on what is unreasonable. The committee has the discretion to defer the date of the hearing by a longer period in exceptional circumstances in order to reach mutual agreement on a convenient date, having particular regard to the availability of the employee's representative.

7.5 The letter should not only state the reason for the hearing but should also attach copies of any documents to be presented at the hearing, remind the employee of the right to be accompanied and/or represented, explain the procedures to be followed at the hearing and give the names of the committee. The employee should be asked to confirm that he/she will attend the hearing in person and to indicate whether he/she wishes to be accompanied by a representative (who must be either a trade union official or another of the employer's employees – see paragraph 1.4 of this procedure) and to call witnesses. He or she should be invited both to provide documentation and give the names of witnesses whom he or she has asked, or intends to ask, to appear on his or her behalf, at least seven working days before the hearing. There is no requirement on the employee to submit any documentation, other than a statement from any witness who may be called by the employee. However, if the employee does not intend to submit any documentation or call witnesses the employee should reply with a statement from the employee or the employee's representative to this effect. Should there be any witnesses from either side their names should be circulated in advance and any witness should be asked to provide a written statement for inclusion with the documents to be used at the hearing. A second set of papers should be enclosed for the employee's representative.

7.6 The clerk to the governing body is required to ensure that all parties to the hearing, including the local authority's representative where applicable, receive copies of all documents at least five working days before the hearing. Only evidence which could not be obtained at an earlier date may be provided after the times specified above, subject to agreement between the parties. Unless there are exceptional circumstances, neither side will be able to use at the hearing any evidence not previously provided.

#### **Role of head teacher at hearing before redundancy committee**

7.7 During the hearing, the head teacher shall present a statement of case setting out the following:

- the business reasons for invoking the redundancy procedure within the School at that time;
- A summary of the consultation process undertaken to date; and
- An explanation of the selection criteria applied and the reasons why the employee has been provisionally selected for redundancy

The head teacher may need to call as a witness the chair or other member of the selection panel to explain how the selection criteria were applied and why this employee has been provisionally selected for redundancy.

7.8 Under the service level agreement for schools, the head teacher and the local authority (through the Employee Relations Team) are entitled to attend, for the purpose of giving advice, all proceedings of the governing body (this includes committees of the governing body) which may relate to a determination that a person employed at the school should cease to work there. The governing body must consider any such advice. If a governing body fails to heed the advice of the local authority the authority may deem this failure to be a good reason to charge the school's budget with the costs of any redundancy. A head teacher wishing to give such advice should exercise this right only in the presence of the employee and the employee's representative, as giving advice in their absence could lead to a claim for unfair dismissal, or an appeal on the grounds of failure to follow the procedures. Head teachers and governors should minimise informal contact in the days preceding a hearing in order to prevent misconceptions about the purpose of such contact.

7.9 The hearing will follow the procedure set out in Appendix 5. The committee will have regard to any guidance issued from time to time by the local authority on conducting a hearing, including the current guidance on behaviour at meetings (see Appendix 7). On occasions, the parties may agree to adjourn the hearing to obtain further information on the application of the selection criteria to the employee in question.

### **Possible Outcomes**

7.10 The committee has the following options and shall decide on one of them:

- determine that the employee should cease to work at the school - or be dismissed from employment at the school in the case of a voluntary aided or foundation school – on grounds of redundancy; or
- accept the employee's representations that he or she has been unfairly selected for redundancy and decide that he or she may continue in employment at the school.

If, as a consequence of deciding that a particular employee should not be made redundant, another employee is provisionally selected for redundancy, the redundancy committee

should inform that employee in writing as soon as possible and give that person an opportunity to make representations before the redundancy committee as described above.

### **Announcing decision of redundancy committee to employee**

7.11 The committee shall communicate the decision to the parties in person or subsequently in writing as the committee shall determine. An oral communication shall be confirmed in writing within ten working days, including the right of appeal.

7.12 A notification of a determination to cease to work at a community, community special, voluntary controlled or maintained nursery school shall include a statement that the local authority will be advised of the determination to enable it to issue a notice of dismissal as required by law. It shall state whether the employee is required to serve contractual notice or will be paid in lieu of notice and also give details of the right of appeal (see below). A notice of dismissal from a voluntary aided or foundation school shall state whether contractual notice is to be served or whether there will be pay in lieu of notice and shall give details of the right of appeal. N.B – The redundancy committee should not recommend that an employee ceases to work at a school prior to the conclusion of the consultation process as, if challenged by an employment tribunal, this might be taken as an indication that the consultation process has been a sham.

### **Notice periods and timescales**

7.13 The governing body notes that the fair application of this procedure may take a variable amount of time to complete depending on the extent and the complexity of changes being proposed and will ensure that its procedures take into account the statutory and/or contractual notice periods for support staff and teachers alike. Employees are entitled to contractual notice (See Below\*) or statutory notice, whichever is the greater. Statutory notice periods depend on length of continuous service at the date of termination i.e. 1 week for each completed year of service between one month and 2 years, one week for each complete year of continuous service between 2 and 12 years and 12 weeks for 12 or more complete years of continuous service.

7.14 In accordance with the Conditions of Service for School Teachers in England and Wales (the 'Burgundy Book') teaching staff are under a minimum of two months' contractual notice, and in the summer term three months' notice, terminating at the end of the school term. If statutory notice is longer, it nonetheless must terminate at the end of a school term. In the case of head teachers, the notice period required is three months

and four months' in the summer term.

7.15 \*Contractual notice periods for support staff are the same as the notice which an employee would be required to give in the event of resigning, i.e.

Grades 1, 2 and 3 1 month's notice in writing

Grades 4 and 5 2 months' notice in writing

Grades 6 and 7 3 months' notice in writing

7.16 Providing that the timescales regarding appeals are adhered to, the committee in a community, voluntary controlled, community special or nursery school may delay notifying the local authority of its decision pending the outcome of any appeal. The committee of a voluntary aided or foundation school may delay the dismissal pending the outcome of any appeal. If the dismissal takes effect before the appeal (because of a short notice period) redundancy pay may be delayed until the appeal is heard.

#### **Time off to look for other employment**

7.17 An employee who has been issued with notice of dismissal for redundancy and has two years' continuous service by the expiry of the notice period has the right to take reasonable paid time off during working hours to look for new employment or to make arrangements for training for future employment. All requests for such time off must be agreed with the head teacher in advance. What is "reasonable" will depend on the individual circumstances of the case and relevant factors may include how difficult finding new employment is likely to be, the distance that the employee may have to travel in order to do so, and the needs of the school.

#### **Appeal to appeals committee**

7.18 An employee has the right of appeal against a determination to cease to work at the school, or a dismissal from the school as the case may be, on grounds of redundancy. An appeal shall be to the appeal committee established by the governing body.

7.19 An employee may appeal by giving written notice of the appeal and of all the grounds on which it is made to the clerk to the governing body within ten working days of receiving written confirmation of the decision. The grounds for the appeal should be accompanied by any additional evidence to be presented in support of the appeal. If the employee so wishes there is no requirement to submit any documentation, other than a statement from any witness who may be called by the employee. However, if the employee does not intend to submit any documentation there should be a positive statement from the employee or the employee's representative to this effect and the employee will not be able to use at the hearing any evidence not previously provided.

7.20 The clerk to the governing body will immediately notify the representative of the committee which took the decision of all the grounds of appeal and any additional evidence, with a request to submit any additional papers in response to the clerk within seven working days.

7.21 The clerk to the governing body will then arrange an appeal committee hearing as quickly as possible, to take place, other than in exceptional circumstances, within twenty working days of receiving the employee's notice of appeal. The clerk should make every effort to agree a date with the employee's union/professional association if they are already involved in the case, before sending the formal instruction to attend the hearing. The employee may suggest an alternative time and date as long as it is reasonable and is not

more than five working days after the original date. The committee may reject this suggestion if it is unreasonable and may proceed to hear the case in the absence of the employee or the employee's representative, but also has the discretion to defer the date of the hearing in order to reach mutual agreement on a convenient date, having particular regard to the availability of the employee's representative.

7.22 The clerk to the governing body will also seek advice from the Employee Relations Team on the procedure for the appeal hearing, having regard to the grounds for the appeal, and shall then advise the employee and the other parties to the hearing of the appropriate procedure according to whether the appellant is contesting particular aspects of the decision or asking for a re-hearing of the case on the grounds of additional evidence or other good reason. The formal notice of the hearing will include the procedure to be followed in the hearing, using Appendix 6 (unless there is to be a re-hearing at the appeal stage - see below).

7.23 The clerk to the committee shall give at least ten working days' formal notice of the hearing to all the participants, including the local authority's representative, and in the same letter shall set out the order of the proceedings, remind the employee of the employee's rights at the hearing, including the right to request to be accompanied by a representative of his or her choice who is either a union official or another of the employer's employees (see paragraph 1.4 above), list the members of the appeal committee, give the names of witnesses, and confirm the options for action which the appeal committee may take (see below). All documents relevant to an appeal hearing shall be enclosed with the letter.

7.24 The normal procedure for an appeal hearing is set out in Appendix 6. If there is to be a re-hearing at the appeal stage the procedure in Appendix 5 will be followed. The appeal committee will have regard to any guidance issued from time to time by the local authority on conducting an appeal hearing.

7.25 The head teacher and the local authority (through the Employee Relations Team) are entitled to attend, for the purpose of giving advice, all proceedings of the governing body (this includes committees of the governing body) which may relate to a determination that a person employed at the school should cease to work there. The governing body must consider any such advice. If a governing body fails to heed the advice of the local authority the authority may deem this failure to be a good reason to charge the school's budget with the costs of any redundancy. A head teacher wishing to give such advice should exercise this right only in the presence of the employee and the employee's representative, as giving advice in their absence could lead to a claim for unfair dismissal on the grounds of failure to follow the procedures. Head teachers and governors should minimise informal contact in the days preceding a hearing in order to prevent misconceptions about the purpose of such contact.

### **Possible outcomes of appeal hearing**

7.26 The appeal committee may

- dismiss the appeal; or

- uphold the appeal

7.27 The appellant may choose whether to hear the appeal committee's decision in person or receive it subsequently in writing, but this choice shall not prevent the committee from choosing to adjourn and reconvene before making a decision. An oral communication shall be confirmed in writing by the clerk to the governing body within ten working days of the hearing. If an appeal against a determination to cease to work at a community, community special, voluntary controlled or maintained nursery school is upheld, the letter of notification will state that the local authority will be notified immediately so that it can withdraw the letter of dismissal or re-instate the employee. If an appeal against dismissal from a voluntary aided or foundation school is upheld, the letter of notification will include a withdrawal of the dismissal or re-instatement of the employee.

#### **Notification of conclusion of proceedings**

7.28 At the end of the proceedings the head teacher will give Employee Relations and the unions a summary of the outcome of the proceedings, in the form of the number(s) of employees obtaining work elsewhere, accepting variations in contracts, accepting voluntary redundancy or made redundant compulsorily.