

REDUNDANCY EQUALITY IMPACT ASSESSMENT CHECKLIST

COMMENTARY FOR NASUWT REPRESENTATIVES

This commentary has been prepared for use by NASUWT Representatives as the basis for discussions with employers when considering how to equality proof redundancy policies within schools and colleges.

PURPOSE OF THE CHECKLIST

The NASUWT opposes compulsory redundancies of teachers. The Union is in a national trade dispute with the Government over job loss.

When handling cases of potential or actual redundancy, NASUWT Representatives should not accept that redundancies are inevitable. The NASUWT aims to fight compulsory redundancies in the schools' workforce, because of the impact on jobs and workload.

The publication of this NASUWT checklist does not constitute acceptance that a potential or actual redundancy situation, declared by an employer, is justified. The checklist details key questions that should be asked in order to ensure that a redundancy policy and procedure has been equality impact assessed.

A redundancy policy which has been the subject of an equality impact assessment (EIA) is necessary to ensure fairness and consistency in the treatment of all employees.

However, NASUWT Representatives should ensure that it is always made clear that negotiating over the content of a policy should not be viewed as consenting to redundancies taking place.

1. Does the redundancy policy comply with legislation?

When ensuring equality in restructuring and redundancy, it is important that the policy/procedure makes clear how the employer/public authority will discharge its duty in respect of S149 of the Equality Act 2010. For example, how does the policy/procedure do the following?:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Act;
- advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it; and
- foster good relations between people who share a relevant protected characteristic and people who do not share it.

Has the policy/practice/decision considered the impact on all of the protected characteristics?:

- age;
- disability;
- gender;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sexual orientation.

NASUWT Commentary:

NASUWT Representatives should seek confirmation that the employer will clearly evidence the fact that they have monitored every aspect of the redundancy process to comply with the Public Sector Equality Duty (PSED), and detail the methodology for doing so.

NASUWT Representatives should also seek confirmation of the mechanisms that have been put in place to collect data on different sections of the workforce to ensure that the policy can be effectively assessed in respect of protected characteristics.

2. Has the employer gathered and provided adequate evidence?

Employers will need to demonstrate that they have robust mechanisms in place to gather data in respect of equalities and those with protected characteristics. This will need to demonstrate that the employer has given effective consideration to the equality impact of the policy/practice/decision.

Representatives should ensure that any decisions taken clearly demonstrate how the employer has collected, collated and considered evidence. NASUWT Representatives should therefore request information on the following:

- school staffing list;
- statistical data on the number of teachers with protected characteristics by department;
- statistical data on the number of teachers with protected characteristics by subject; and
- statistical data on the number of teachers with protected characteristics by contract type (e.g. permanent, fixed term and flexible working).

NASUWT Commentary:

NASUWT Representatives should expect this information in a format which includes details on gender, ethnicity, disability, LGB/sexual orientation, gender reassignment/trans, marital status, civil partnership, religious belief, pregnancy/maternity, age.

Fixed-term contracts have been included in this list because it may be the case that a decision to not renew fixed-term contracts inadvertently discriminates against a specific group with a protected characteristic.

The employer should be asked for information about how it will demonstrate that its practice does not discriminate indirectly against teachers with protected characteristics who may be disproportionately represented amongst staff who are employed part time/full time and on fixed-term/permanent contracts. Such discrimination is unlawful.

3. How will the policy affect different groups of staff?

NASUWT Representatives should ensure that the employer is clear about what steps it will take if an adverse impact on a particular group has been identified.

For example, selection criteria should be scrutinised to ensure it does not unintentionally identify a disproportionate number of individuals with one or more protected characteristic.

Selection criteria must therefore be objective and it is expected that trade unions will be consulted fully on any proposed criteria. The NASUWT would want to examine and seek to agree any proposed selection criteria, before it is applied, to ensure that it meets the test of objectivity and fairness. It is unlawful to discriminate on the grounds of one or more of the protected characteristics as identified in the Equality Act 2010 (e.g. on grounds of sex, pregnancy and maternity/paternity leave).

For example, fair and objective criteria would avoid such things as:

- pupil outcomes;
- performance management outcomes;
- disciplinary or capability procedure outcomes;
- sickness absence, including reference to disability-related absence;

- last in, first out, where the employer is unable to demonstrate that such a criteria would not result in indirect discrimination against teachers with any protected characteristics.

This list is not exhaustive.

Scenario 1:

An employer issues notice of a redundancy situation in a secondary school which uses absence records as it believes they are fair and objective criteria.

The application of such criteria is potentially discriminatory and would be unacceptable to the NASUWT if the employer is unable to demonstrate that it has taken into account disability-related absence or other absences which affect particular protected groups.

Scenario 2:

An employer issues notice of a redundancy situation in an academy school which indicates that it is looking to reduce staffing by automatically dismissing those over the age of 65.

The application of this criterion would fall foul of age discrimination under the Equality Act 2010. As such, this would contravene the law and be subject to legal challenge.

Where the policy or procedure is found to have a negative impact on race, disability or gender equality, employers should identify alternative criteria and procedures and ensure that there are no other steps that can be taken to mitigate the impact. For example, where a department is facing closure which would result in a high proportion of women being made redundant, alternative restructuring plans should be considered which would have a less disproportionate impact.

4. How has the employer ensured the policy has been applied fairly?

When looking at redundancy policy, it should be implemented fairly so that teachers with protected characteristics do not experience greater barriers to participating in, and engaging with, the process.

For example, disabled staff or those on maternity leave may face particular practical barriers in engaging with aspects of the process. The redundancy policy should take into account such factors and identify ways in which such barriers will be addressed, including how such groups may be represented during the process.

NASUWT Commentary:

NASUWT Representatives should also ensure that the information provided on the redundancy process is made available in accessible formats to all those involved in the process.

NASUWT Representatives should ensure that employers can demonstrate that adequate information has been provided and a reasonable timescale has been produced which facilitates meaningful consultation on the whole process.

5. Has there been consultation?

NASUWT Representatives should request details of the employer's review of the EIA of the redundancy policy/process and insist that such a review be subject to consultation with the NASUWT.

The employer's action plan should outline the steps that will be taken to mitigate any adverse impact and state who is responsible for the implementation of the plan. For example, if disabled staff members are to be redeployed, the employer will need to ensure that existing reasonable adjustments are reviewed in relation to their new role.

6. Has there been further consultation?

Where policy revisions are proposed to mitigate the impact on a specific group or groups, NASUWT Representatives should ensure that there has been an appropriate period of further consultation and involvement with the relevant groups so that the policy and any new criteria can be checked to make sure it is fit for purpose.

For example, if the employer does not proceed with the original redundancy selection criteria, it will need to ensure that the application of the new criteria will not result in disabled staff or another group of staff being inadvertently discriminated against.

7. How have decision makers been informed?

NASUWT Representatives should request details of how decision makers (e.g. governors/academy trusts) have been fully advised of the outcome of the EIA before decisions are made about redundancy.

Representatives should also seek clarification on what training has been provided so that decision makers understand the requirements of the PSED, including the ability to be objective about the process and analyse both qualitative and quantitative data.

8. Are there further implications of a redundancy procedure?

NASUWT Representatives should note that the equality implications of a redundancy procedure can stretch far beyond just the employees concerned. In schools and colleges, such procedures can have significant learning and teaching implications which can impact upon the experience of the students.

For example, if staffing is reduced then this may adversely impact upon specific groups of students with specific needs such as disabled students. The employer should be asked to demonstrate that it has considered these broader implications.

9. Is the information clearly documented?

Employers will need to record any steps that they have taken to change the redundancy policy or mitigate its impact to ensure that any negative impact does not constitute unlawful discrimination and can be justified to a third party. The justification for decisions, as well as any actions that will be taken to mitigate impact, should be recorded.

An EIA should normally include:

- an analysis of the potential impact of the proposals from the perspective of all employees with protected characteristics using information gathered during involvement and consultation exercises, as well as available employee monitoring data;
- a statement of the steps that will be taken to change potentially discriminatory proposals, mitigate their impact or justify them in terms of the PSED and the Equality Act 2010;
- an action plan, setting out the actions that will be taken to minimise the risk of a negative impact on particular groups of people including: clear lead responsibilities for implementation; agreed timescales; and arrangements for ongoing monitoring and review of the action plan.

10. What if the employer does not undertake an EIA?

If the employer has considered that it is not required to undertake an EIA, ask how it intends to demonstrate that it has complied with the law by having due regard to equality in relation to all of its functions.



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