

REDUNDANCY CHECKLIST

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

Cuts in school funding from 2010 onwards, together with structural school and system change, increase the risks of redundancy for teachers. However, it is crucial that, when handling cases of potential or actual redundancy, NASUWT Representatives do 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 an acceptance that any potential or actual redundancy situation, **when declared by an employer**, is justified. The checklist details elements of a redundancy policy and procedure which NASUWT Representatives should seek to ensure are present in the policy and procedure. However, NASUWT Representatives should ensure that it is always made clear that negotiating over the content of a policy should not be used as consenting to redundancies taking place.

An increase in members' workloads because of redundancy also gives grounds for industrial action.

Support will be provided to local officials on redundancy from National Executive Members and Regional Centre staff.

Criteria for redundancy

An employee is dismissed for redundancy if the dismissal is wholly or mainly because:

- o the employer has ceased, or intends to cease, to carry on the business for which the employee was employed, or to carry on that business in the place where the employee was employed; or
- o the requirements of the business for employees to carry out work of a particular kind, or to carry it out in the place where they are employed, have ceased or diminished or are expected to cease or diminish.

If either of these conditions is met, there will be a genuine redundancy situation.

A job change resulting from reorganisation, restructuring or a change of duties will only be a redundancy if the criteria for redundancy are met.

The NASUWT is opposed to staffing restructuring being linked to redundancy and advice should be sought from the NASUWT if this is proposed.

The requirement to consult and timescales for redundancy

An employer has a legal obligation to consult over collective redundancies if it is proposed to dismiss as redundant 20 or more employees at one establishment for a 'reason not related to the individual concerned.'

This definition requires consultation over the instruction of changes to terms and conditions, even if there is no intention to reduce staff numbers.

Appendix 1 of the Burgundy Book, which is a contractual document for teachers in local authority-maintained schools, establishes a requirement to consult collectively on 'any redundancy'. This is also the case in many school and local authority redundancy policies.

Whatever the length of the consultation, it must be meaningful. Simply meeting the minimum timescales does not mean that consultation is necessarily meaningful. For example, presenting the redundancies as a 'done deal' to the workforce and the NASUWT, whatever the length of the redundancy consultation, is not meaningful consultation. There should be a willingness to engage genuinely to seek an alternative.

Redundancy Policy and Procedure Checklist

The procedure must include the following statutory elements:

- o a proposal for one or more redundancies;
- o consultation on the proposals (both collective or individual);
- o selection of one or more employees to be made redundant;
- o an employee's right of appeal.

The policy must state that:

An employee can only be dismissed for redundancy if the dismissal is wholly or mainly because:

- o the employer has ceased, or intends to cease, to carry on the business for which the employee was employed, or to carry on that business in the place where the employee was employed; or
- o the requirements of the business for employees to carry out work of a particular kind, or to carry it out in the place where they are employed, have ceased or diminished or are expected to cease or diminish.
- o a job change resulting from reorganisation, restructuring or a change of duties will not necessarily be a redundancy. The criteria for redundancy need to be met.
- o redundancy should not be linked to staffing restructuring.
- o the non-renewal of a temporary contract may amount to a redundancy.
- o the employer will only implement compulsory redundancies as a last resort.

Consultation

The policy must state that:

The employer will meet its clear legal obligation to consult over collective redundancies if it is proposed to dismiss as redundant 20 or more employees at one establishment for a 'reason not related to the individual concerned'.

The aim of consultation is to avoid, reduce or mitigate the impact of redundancy, and consultation will always be meaningful.

If 20 to 99 employees are to be made redundant in one establishment over a period of 90 days or fewer, consultation must begin at least 30 days before the first dismissal takes effect.

If over 100 employees are to be made redundant in one establishment over a period of 90 days or fewer, consultation must begin at least 45 days before the first dismissal takes effect.

The employer will meet its clear legal obligation to consult over dismissal and re-engagement on new terms and conditions, even if there is no intention to reduce staff numbers.

In schools which employ teachers in accordance with the Burgundy Book, the Employer will consult collectively on 'any redundancy' and will follow the consultation procedure in Appendix 1 of the Burgundy Book.

During any collective consultation, the employer will provide the following specific information under Section 188 (4) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA):

- o reason(s) for the redundancies;
- o number and descriptions of employees proposed to be made redundant;
- o total number of employees of any description;
- o proposed selection procedure;
- o proposed method for carrying out redundancy dismissals including timescale; and
- o proposals for calculating redundancy pay, if it is to exceed the statutory minimum.

When providing the reasons for redundancies, the employer will provide:

- o current and forecasted school budgets;
- o current and proposed staffing structures, with confirmation of staffing costs;
- o other relevant financial information on request.

When arranging individual consultation meetings and appeals, the employer will facilitate employees' ability to be represented by a trade union representative, including by scheduling meetings to allow trade union representatives to attend.

Redundancy Pay

The procedure must state that:

As a minimum, redundancy pay is calculated on the basis of actual salaries, not the statutory redundancy pay cap.

Redundancy pay can be multiplied beyond a payment based on actual salaries, following consultation with trade unions.

Voluntary Redundancy

The policy or procedure must state that:

An employer should ask for volunteers for redundancy first and would not need to apply the redundancy selection procedure to them.

Voluntary redundancies are subject to discrimination law and the school will monitor its redundancy processes to ensure that they do not unlawfully discriminate in respect of offers of voluntary redundancy.

Enhanced Severance and Voluntary Early Retirement

The policy must state that:

The employer will make use of enhanced severance to avoid or reduce the number of redundancies and that 104 weeks' pay is the maximum enhanced severance payment payable.

The employer will make use of voluntary early retirement to avoid or reduce the number of redundancies, but that the use of this precludes the awarding of the maximum enhanced severance payment.

Notice Periods

The policy and procedure must state that:

Notice periods for teachers being made redundant are those which are set out in the Burgundy Book.

In addition, all members with more than 12 years' service will be entitled to 12 weeks' notice.

Selection Criteria

The policy and procedure must state that:

Criteria for selection for redundancy will not unlawfully discriminate.

Criteria for selection for redundancy must be objective.

The following redundancy selection criteria will be avoided:

- o pupil outcomes;
- o performance management outcomes;
- o disciplinary or capability procedure outcomes;
- o being subject to a disciplinary or capability procedure;
- o sickness absence.

Trade unions will be consulted fully on the criteria for selection for redundancy.

Last in, first out will be one of the selection criteria for redundancy provided that this does not conflict with the employer's due regard to its equality duties as set out in the Equality Act 2010.

Suitable Alternative Work

The policy must state that:

The employer has a duty to consider suitable alternative work, which must be made before the old contract ends and must begin within four weeks of the date of the end of the original employment.

Women who are pregnant or on maternity leave are in a special position if selected for redundancy, because the employer's obligation to look for alternative employment is much stricter for women made redundant when pregnant or on maternity leave.

Equality Impact Assessment

The policy and procedure must state that:

The employer will discharge its Public Sector Equality Duty (PSED) in the event of any redundancies and will ensure that every aspect of the redundancy process is monitored and controlled to comply with this. The PSED is implemented to:

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

Protected characteristics are set out in Section 4 of the Equality Act 2010 and are:

age;

race;

disability;

religion or belief;

gender reassignment;

gender;

marriage and civil partnership;

sexual orientation.

pregnancy (including maternity leave);