



# Parting ways

Redundancies are never an easy topic to discuss, but with funds stretched ever further, it is something schools should have the skills to address. **VICKY BENNETT** outlines all you need to know to ensure they are implemented fairly, effectively and legally

**D**espite reassurance from the government that funding for schools will increase, there is concern that, in real terms, significant cuts to school budgets will lead to job losses. It has been estimated that as many as 40,000 teachers will lose their jobs so inevitably, business managers within schools will now need to consider whether they should reduce their numbers through redundancies.

Redundancies are a daunting prospect: failure to follow the correct procedures could lead to a flurry of unfair dismissal claims, but repercussions can be minimised through careful planning and by following the procedures outlined below.

The first step is to ensure the proposed dismissal falls within the statutory definition of 'redundancy' for fair dismissal purposes. Providing the dismissals are 'wholly or mainly attributable to' the school's reduced requirement for teachers, then this definition should be satisfied.

The next step is to adopt a fair procedure. This should involve four key actions.

## 1. PLAN THE REDUNDANCY PROCESS

A detailed record should be kept of the business reasons for the proposed reduction in staffing levels clearly showing why the redundancies are necessary at all, such

as budgetary requirements. Careful planning can help to ensure the process runs smoothly from the outset and identifies what action is needed in advance. Consideration should be given to:

- how many redundancies are anticipated
- the timescale for the proposed redundancies
- how and when employees and/or their representatives are to be notified
- whether there are any alternatives to redundancy, such as voluntary redundancies or alternative positions.

## 2. COLLECTIVE CONSULTATION

The planning process will identify whether there is a requirement to carry out collective consultation. This is necessary if the school plans to make 20 or more employees redundant at any one school over a period of 90 days or less, in which case there is a duty to inform and consult appropriate employee representatives of affected employees (likely to be an independent trade union recognised by the school, i.e. the NUT) at the earliest opportunity and in any event 30 days before the first of the dismissals takes effect (90 days if more than 100). The school should also notify the secretary of state on form HR1. A copy of this form must also be given to the employee representatives.

## 3. INDIVIDUAL CONSULTATION

This must be carried out with each employee at risk of redundancy, even where there is a legal obligation to consult collectively as the two processes will often run in parallel and may sometimes overlap.

## 4. ADOPT A FAIR PROCEDURE

Case law gives guidance on what constitutes a fair procedure, which includes:

- providing as much warning as possible of the potential redundancies to the employees who may

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be affected and to their relevant union/employee representatives. This enables them to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and look for alternative employment within the employer or elsewhere

- complying with internal procedures
- consulting with trade union/existing employee forum representatives as to ways of avoiding redundancies
- consulting with the union to agree the appropriate redundancy pool and selection criteria
- establishing the pool of employees from which those who are to be made redundant will be selected along with the selection criteria
- applying the selection criteria fairly and in a non-discriminatory fashion
- notifying the affected employees at the earliest opportunity of their provisional selection for redundancy and giving them an opportunity to contest their selection
- undertaking meaningful individual consultation with each employee to consider ways of avoiding his/her redundancy, such as redeployment to a suitable alternative post
- where a decision is subsequently taken to make the employee redundant, confirming this in writing and allowing each employee the opportunity to appeal against the decision to make them redundant
- giving the employees time off to seek employment
- paying the redundant employees the monies due to them, including their statutory or (if greater) contractual redundancy payment, and all other sums due on the termination of their employment
- maintain full written records of all of the above steps.

#### COMMON PROBLEM AREAS

In identifying the correct redundancy pool, the employer should consider whether it should include other groups of employees who are doing similar work to the group from which selections are to be made. It should also consider whether employees' jobs are interchangeable, in which case a wider pool might be appropriate.

Employers must devise and apply fair selection criteria in choosing employees who are to be made redundant. Such criteria must be drawn up so they:

- are relevant to the positions that are available
- help ensure the best teachers, in terms of skills and expertise, are retained to meet the future needs of the business. Factors to look for include qualifications, training, statutory requirement for a curriculum delivery, teacher's contribution to a curriculum, specialist roles undertaken in school which cannot be easily replaced, total teaching experience in current school
- are as objective as possible and are capable of justification, using performance appraisals and other personnel records.

The school should also consider whether to give added weight to any of the more important criteria, for example, to reflect the importance of specific skills to the remaining available roles.

Having devised the selection criteria, the school must apply them fairly and consistently, guarding against claims for unfair dismissal. If including attendance as a criterion, care should be taken to ensure that absences related to pregnancy-related illness, maternity, other family-friendly leave or disability are discounted.

#### FAILURE TO CONSULT

Fair consultation should commence when the proposals are still at a formative stage with adequate time in which to respond. This consultation should involve:

- discussion about the business reasons for the proposed redundancy
- an explanation of the basis for the employee's selection. The employee should be given an opportunity to comment on this
- ways of avoiding dismissals, such as alternative employment
- any other matters of concern to the employee.

There are no prescribed timescales on how long consultation should last but the shorter the consultation, the more likely it is that the quality of the consultation will be called into question.

Employers should remember to include employees on long term sick leave or maternity leave in the redundancy consultation process. They should be kept informed of the position, receiving the same information, and consultation opportunities as other employees. ■

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#### AT A GLANCE

- ▶ Plan the redundancy process carefully
- ▶ Identify whether a collective consultation is necessary
- ▶ Hold individual consultations
- ▶ Be careful to identify the right people to make redundant