

PROCEDURE FOR THE DETERMINATION OF STAFF WHO CEASE TO WORK AT A SCHOOL/COLLEGE

R a i s i n g S t a n d a r d s T o g e t h e r



LEICESTER CITY COUNCIL
EDUCATION AND LIFE LONG LEARNING
DEPARTMENT

**Procedure for the determination of Staff who should cease to work at a
School or College with full delegation**

Introduction

This procedure supersedes all procedures previously circulated.

If a School or College is considering the necessity of reducing its establishment level it should contact Education Personnel Team as soon as possible so that arrangements can be made for the Director of Education or his representative to attend all proceedings of the Governing Body relating to the determination of staff who should cease to work at a School or College. The Director of Education or his representative is entitled to attend all meetings for the purpose of providing advice.

This procedure may lead to compulsory redundancy, which is defined by the Employment Rights Act 1996 as a dismissal attributable wholly or mainly to: -

- a) the employer ceasing, or intending to cease, to carry on the business for the purposes of which the employee was employed, or ceasing, or intending to cease, to carry on that business in the place where the employee was so employed,

or

- b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where they were so employed, have ceased or diminished or are expected to cease or diminish.

In (a) above, 'business' includes a trade or profession and includes any activity carried on by a body of persons, and cease/diminsh means cease/diminish either permanently or temporarily and from whatever cause.

Before moving to this procedure, full consideration should be given to other methods to reduce the staffing establishment level including: -

- i) Restricting external recruitment
- ii) Natural Wastage

- iii) Voluntary redeployment (this can only be effective if there is sufficient time for it to operate)
- iv) Consider offering the opportunity of job sharing
- v) Changes in contractual hours taking into account curriculum demands

In this document, working day means every day excluding Saturdays, Sundays, and Public Bank Holidays. However, in the interests of good industrial relations, every attempt should be made to ensure that the procedures are carried out during normal term time.

The stages in the procedure are such to enable meaningful consultation to take place between those responsible for employment, recognised Trade Unions and individual staff. For consultation to be meaningful, views of staff and Trade Unions and Professional Association representatives must be considered and reasons provided if they are rejected. If the report to the initial Governors' meeting identifies that a particular post(s) should be deleted, consultation must take place with individuals prior to the report being agreed.

Procedure

1. The Governing Body meet to identify action to be taken.
 - a) To agree the necessity of staff reduction having considered all alternative options: - e.g. other budget savings
 - b) To agree the categories and the maximum number of staff in each category for which a reduction is proposed
 - c) To agree a timetable from which an Action Plan can be formulated
 - d) To identify redundancy selection criteria
 - e) To delegate the Staffing Sub-Committee full responsibility to agree and apply the final criteria to effect staff reductions. Membership must be no less than 3 Governors.

N.B. The meetings are time consuming and all members must be present for the whole meeting. Members of staff who are also Governors will need to consider whether membership of either the Staffing Sub-Committee or appeals panel is appropriate.
 - f) To appoint an appeals panel, membership of which must not include Governors on the Staffing Sub-Committee and must not be less than the membership of the Staffing Sub-Committee.
 - g) To agree the procedure to be followed.

The voluntary options should include: -

- i) Seeking volunteers for premature retirement with enhancement, where this is available, to avoid recourse to compulsory redundancy. Consideration will be given to premature retirements with enhancement where it is in the interest of the efficient exercise of the Authority's function.
- ii) Calling for volunteers for redundancy. For those members of Staff over the age of 50 years and with qualifying Superannuable Service, this would include early release of pension.
- iii) Changes in contractual hours/job share arrangements.

In considering individual volunteers and/or compulsory redundancy, the following criteria may be appropriate: -

Cessation of temporary contracts.

Planned future curriculum and organisation of the School/College.

Management Structure of the School/College.

The time in which the members of staff have had continuous service with the Authority (normally last in, first out).

Degree of involvement of the staff concerned with areas of work which are declining or have declined.

Maximisation of Savings.

The curriculum needs can best be matched to individuals via a skills audit.

Following the Governors' meeting formal consultation with the Secretaries of the Teacher and/or Support Staff Associations/Unions under Section 188 of the Trade Union and Labour Relations Act 1992 will be undertaken by the Governors of the School/College.

2. Section 188 Notice (Section 188 of the Trade Union and Labour Reform Act 1992)

The 188 notice must be written and issued by the Head Teacher/Principal to all recognised Professional Association/ Trade Unions and must include the number of posts to be deleted, the period over which the contraction is to take place and the present establishment level.

A copy of the 188 Notice must be forwarded to the School/College's Personnel Officer in the Education Personnel Team. Examples of 188 Notices for Teaching and Support Staff are attached at Appendices 1a and 1b.

3a. Meeting with Professional Associations/Trade Unions

At least five working days notice of the meeting is required.

Head Teacher/Principal to arrange in writing to meet with the School/College Union Representatives, and/or Secretary or other representative of the recognised Professional Association/Trade Union to inform them of the proposed criteria, to invite comment and to inform them of the deadline for the end of the consultation period on the criteria. Information about the reason for contraction should be provided. It is advisable to provide as much information as possible for Professional Associations/Trade Unions.

3b. Meeting with Staff

At least five working days' notice of the meeting is required. This notice can run concurrently with the notice of meeting with School/College-based and/or Secretaries or other representatives of Teacher Associations/Trade Unions.

Head Teacher/Principal to meet with all staff involved and inform them of the proposed criteria for selection and to invite comment.

Head Teacher/Principal to inform staff of the deadline for the end of the consultation on the criteria under normal circumstances. A minimum of 10 working days should be given. In exceptional circumstances a shorter period can be agreed. It may be advisable to speak to the representative of the Director about any deviation from the 10 working day period. It would be useful to have a representative of the Education Personnel Team at the Staff Meeting.

4. Meeting of Governors' Staffing Sub-Committee

The purpose of the meeting is: -

- a) To consider comments from unions/staff
- b) To agree final criteria
- c) To consider voluntary requests
- d) If necessary, move to identify staff most likely to be nominated

The final criteria must be published to School/College staff and Teacher Association representatives/Trade Union representatives and Secretaries if they have been involved in consultation process.

5. Meeting of Head Teacher/Principal and member of staff whom it is proposed to determine should cease to work at the School or College.

Inform the member of staff concerned orally and in writing, how the application of the criteria relates to them.

Inform the member of staff whom the Staffing Sub-Committee proposed to determine should cease to work at the School /College, orally and in writing, that they have the right to make oral or written representation to a meeting of the Staffing Sub-Committee and that they may be accompanied by a representative/friend at the meeting. Copy of letter at Appendix 2.

Confirm that the meeting of the Staffing Sub-Committee will be held at least five working days from the date of the proposed determination.

The Director of Education should be informed and the member of staff concerned will be given redeployment status without prejudice to the outcome of any later hearing or appeal. The name and details of the member of staff given redeployment status placed at risk will be included in the appropriate redeployment procedure by the representative of the Education Personnel Team.

6. Meeting of Governors Staff Sub-Committee – Representation Meeting (1st Hearing)

The member of staff concerned will be able to make oral or written representation to the Staffing Sub-Committee and may be accompanied by a representative/friend.

At this meeting the committee needs to take account of any representations made by the member of staff concerned before reaching any decision. If determination is confirmed the member of staff must be notified immediately and informed orally and in writing of their right to appeal.

The most appropriate procedure to use at the hearing stage will involve: -

- i) Introductions
- ii) Written statement by Management circulated to the member of staff and members of the committee to arrive no later than 2 working days prior to the date of the hearing. All other relevant documents to be made available to members of the panel in advance of the hearing, e.g. Development Plan, Skills Audit, etc.
- iii) Questions of the Management Statement by member of staff/representative and members of the panel.
- iv) Oral representation by member of staff or representative.
- v) Questions by the Management representative and members of the panel of the member of staff/representative.
- vi) Final statement by Management side.
- vii) Both Management side and member of staff/representative withdraw.
- viii) Panel decision.
- ix) Both Management side and member of staff/representative return and are informed of the panel's decision.

7. Written Confirmation of Determination

- i) The Staffing Sub-Committee should arrange for the member of Staff concerned to receive written confirmation of the determination and their right of appeal. A draft letter is attached in Appendix 3.
- ii) The member of Staff concerned then has two working days from the receipt of the written confirmation to lodge notification of an appeal in writing with the Head Teacher/Principal.

8. Meeting of Appeals Panel

Where notification of appeal is received, the appeals panel will be called to meet at least five working days after the Staffing Sub-Committee decision was confirmed to the member of staff concerned in writing. The member of staff concerned may be accompanied by a representative/friend and has the right to appear and present reasons why the determination should be overturned.

The appeals panel will either confirm the committee's decision or uphold the appeal and ask the Staffing Sub-Committee to follow the procedures in 4 and 5 again and re-apply criteria and re-determine.

The member of staff concerned should be told of the outcome of the appeal at the conclusion of the hearing and this should be confirmed in writing. A draft letter is attached at Appendix 4. A member of the Staffing Sub-Committee preferably the Chair of the panel must be available to give evidence to the appeals panel.

All relevant documentation should be made available to the members of the appeals panel. The most appropriate procedure to use at the appeal stage will involve: -

- i) Introductions
- ii) Management presentation. This should include the reason for the contradiction and information about the procedure followed including a copy of the Skills Audit for the employee making the appeal.
- iii) Questions of Management representative by: -
 - a) The member of staff or representative
 - b) The panel
- iv) Presentation by member of staff or representative
- v) Question of the member of staff or representation by: -
 - a) Management representative
 - b) The panel
- vi) Final statement management (no new issues raised).
- vii) Final statement member of staff or representative (no new issued raised).

- viii) Both sides withdraw.
- ix) Appeals panel makes decision.
- x) Both management representative(s) and member of staff/representative return and are informed of the Appeals Panel's decision.

9. Confirmation of Appeals Panel Decision

This should be sent in writing to the employee immediately following the panel's decision being made known.

10. Notificaiton to the Director of Education

The Head Teacher/Principal should notify the LEA of the determination in writing within 3 working days of the appeal panel hearing the appeal.

11. Notice of Dismissal

The Director of Education will arrange for a notice of dismissal to be issued to the member of staff within 14 days after the notification is secured from the Governing Body. The period of notice will be in accordance with entitlement under either the Employment Protection Act or the Conditions of Service appropriate to the member of staff.

SECTION 188 NOTICE – DRAFT FOR TEACHING STAFF

Dear Colleague

I am writing in accordance with Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 to advise you that it is proposed to dismiss as redundant s number of Teachers employed by the Local Education Authority.

The reason for the proposal are that School/College has a budgetary problem which requires a reduction in the teaching staff establishment. The contraction will need to be completed by .

The School's/College's current teaching staff establishment is and this will need to be reduced by a maximum of full time equivalent posts.

The school has a delegated budget and staff will be selected by using the procedure discussed with Teacher Associations for Schools/Colleges with delegation. Initially, staff will be asked to consider voluntary option which will include: -

If it is not possible to reduce the surplus by the use of voluntary means the Governors have identified the following recommended criteria: -

Appendix 1a continued

As you will be aware this Authority tries to avoid the use of compulsory redundancies by actively pursuing redeployment opportunities and offering early retirement and voluntary redundancies. Therefore, while I shall be approaching the issue of compulsory redundancies as set out above, I shall continue to pursue these alternative options in the meantime. However, if redeployment does not prove to be possible, I anticipate the end result will be that your members will be made redundant with effect from . I will try to keep you informed of all developments and will of course be happy to consider any representations you may wish to make and will endeavour to respond to those representations during the consultation process.

I would like to invite you to a consultation meeting to take place at this School/College on at . I would be grateful if you could let me know as soon as practicable whether you will be attending this meeting.

If you are unable to make the date and/or time specified I will do my best to rearrange the meeting.

Yours Sincerely,

Headteacher/Principal

SECTION 188 NOTICE – DRAFT FOR SUPPORT STAFF

Dear Colleague

I am writing in accordance with Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 to advise you that it is proposed to dismiss as redundant a number of _____ employed by the Local Education Authority.

The reasons for the proposal are that _____ School/College has a budgetary problem which requires a reduction in the _____ staff establishment. The contraction will need to be completed by _____ .

The School's/College's current _____ staff establishment is _____ and this will need to be reduced by a maximum of _____ full time equivalent posts.

The school has a delegated budget and staff will be selected by using the procedure discussed with Support Staff Trade Unions for Schools/Colleges with delegation. Initially, staff will be asked to consider voluntary options that will include: -

If it is not possible to reduce the surplus by the use of voluntary means the Governors have identified the following recommended criteria: -

Appendix 1b continued

As you will be aware this Authority tries to avoid the use of compulsory redundancies by actively pursuing redeployment opportunities and offering early retirement and voluntary redundancies. Therefore, while I shall be approaching the issue of compulsory redundancies as set out above, I shall continue to pursue these alternative options in the meantime. However, if redeployment does not prove to be possible, I anticipate the end result will be that your members will be made redundant with effect from .
I will try to keep you informed of all developments and will of course be happy to consider any representaitons you may wish to make and will endeavour to respond to those representations during the consultation process.

I would like to invite you to a consultation meeting to take place at this
School/College on at . I would be grateful if you could let me know as soon as practicable whether you will be attending this meeting.

If you are unable to make the date and/or time specified I will do my best to rearrange the meeting.

Yours sincerely

Head Teacher/Principal

Appendix 2

To be issued by Head Teacher/Principal following Sub-Committee

DRAFT

Dear

I am sorry to have to write to inform you that the Staffing Sub-Committee at its meeting on identified you as the member of staff whom it is proposed to determine should cease to work at the School/College for the reason of redundancy.

The Sub-Committee also agreed the following criteria: -

-
-
-

In particular the Sub-Committee identified your determination under the following criteria: -

-
-
-

You have a right to make oral or written representation to a meeting of the Staffing Sub-Committee and have the right to be accompanied by a friend or representative.

The meeting will be held at _____ a.m./p.m., on _____
_____ in Room _____ at _____ the
School/College.

I shall be pleased if you will confirm your intention to make representation at the meeting by _____. It would also be helpful if you could provide me with the name of any person accompanying you to the meeting. A written Management Statement will be provided for you no later than 2 working days prior to the date of the hearing.

Yours Sincerely

Head Teacher/ Principal

Appendix 3

Issued by Head Teacher/Principal following Representation Meeting

DRAFT

Dear

Following the meeting of the Staffing Sub-Committee at which you made representation, I write to inform you that the Sub-Committee confirmed the decision to terminate your contract on grounds of redundancy.

The Sub-Committee confirmed that the following criteria applied in the determination: -

- bn
- nn
- nk
- io
- kkk

You have two working days from the receipt of this letter in which to lodge notification in writing of your wish to appeal against the determination.

I shall be pleased to receive any written appeal from you by _____ am/pm
 the appeals panel will be held at _____ . If you decide to appeal, the meeting of
 in Room _____ am/pm on
 at the School/College.

Yours Sincerely

Head Teacher/Principal

Appendix 4

To be issued by Head Teacher/Principal on behalf of Appeals Panel

DRAFT

Dear

Following the meeting of the Appeals Panel, I have written to confirm the Staffing Sub-Committee's decision in determining that you are the person identified as surplus at the School/College.

I am now notifying the Director of Education in writing so that the Director can forward a formal notice of dismissal to you.

I understand that you will, in the near future, be contracted by a Personnel Officer to discuss employment options. The Director will also continue to seek redeployment for you.

Yours Sincerely

Head Teacher/Principal