



SEFTON COUNCIL

Alternative Employment Protocol for Schools

**Produced by Personnel; Schools Team.
Version 3.0**

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School:

Date Adopted by the Governing Body:

Signed:

Chair:

Headteacher:

Alternative Employment Protocol for Schools

1. Scope

- 1.1 This protocol applies to all school employees (both teaching and support staff) for whom governing bodies have employment responsibilities and where either of the following circumstances apply:
- (i) employees are at risk of compulsory redundancy; or
 - (ii) employees at risk of ill health retirement (level 1 or 2) or termination of contract due to sickness capability; or
 - (iii) employees are covered by the provisions of the Disability Discrimination Act 1995 and the duty to consider "reasonable adjustments" to the workplace environment.
- 1.2 Support through the process is confined to permanent employees or fixed term employees where length of continuous service and ongoing renewal of fixed term contracts mean permanent status is judged to have been accrued. Personnel: Schools Team will advise school on the current legislation in and legal implications on the status of employees on a case by case basis.
- 1.3 Employees subject to performance capability proceedings will not be covered by the provision of this document.
- 1.4 Casual workers will not be covered by the provisions of this document.
- 1.5 The support for employees outlined in this document is in addition to any specific ring-fence arrangements relating to employees affected by particular school reorganisations or closures.

2. Purpose

2.1 This protocol offers considerable benefits to both Governing Bodies, Local Authorities and employees finding themselves in the circumstances outlined above.

2.2 For the Governing Body, the Protocol:

- covers the legal obligations of employers when managing a redundancy or disability situation with staff
- offers protection against unfair dismissal claims
- supports schools in managing staffing reductions or complex sickness absence cases by offering an alternative resolution to particular cases
- supports the aim of Sefton Metropolitan Borough Council and Schools to retain able and experienced staff
- assists positively in the recruitment procedures (eg saving on the cost of advertising and assisting where there are areas of localised/specific skill shortage) but does **not** take away from the school the decision to recruit the best person for the job
- is supported by the Personnel; Schools Team in accordance with the service level agreement
- reduces the cost of redundancy payments (and in specific instances, the cost of pension contributions) to Schools and Local Authorities
- strengthens partnership working and close collaboration between schools

2.3 For the Individual, the Protocol:

- helps to minimise the potential for compulsory redundancy and the anxiety and demoralisation this can cause
- provides potential alternatives to ill health retirement (level 1 and 2) or termination of contract in sickness capability cases
- supports the right to 'reasonable adjustment to the workplace' under the Disability Discrimination Act

3. The Legal Position

General

- 3.1 Employment protection legislation and Advisory, Conciliation and Arbitration Service (ACAS) good practice guides require and encourage employers to take reasonable steps to seek alternative employment for employees who are at risk of compulsory redundancy or are incapable of performing to required standards in their existing jobs as a result of ill health.
- 3.2 Employment Tribunal case law establishes that it is likely to be unfair to dismiss an employee in such circumstances without the employer first considering whether the employee can be offered another reasonable alternative job. The availability of alternative employment must not be confined to employment within a particular "company" (eg a school) but also within other "companies in the same group" (eg an LA).
- 3.3 Case law also establishes that Employment Tribunals are required to be critical of employers who put the full onus on an employee to apply for suitable alternative employment instead of the employer actively suggesting alternatives.

Redundancy

3.4 Additional statutory provisions also apply where an employee has been identified as redundant and is seeking alternative employment. In particular, an employee who is under notice of termination of contract on the grounds of redundancy has a statutory right to: a reasonable amount of paid time off to look for another job; and a trial period of four working weeks in an alternative job where the provisions of the new contract differ wholly or in part from the original contract.

Disability

3.5 The Disability Discrimination Act (1995) goes further in that it requires an employer to make reasonable adjustments to the workplace and to employment arrangements so that a disabled person is not at any substantial disadvantage compared to non-disabled people. Such reasonable adjustments will include consideration of alternative employment. An employee no longer has to be registered disabled to be afforded the protection of this legislation.

3.6 The DDA defines disability as "a physical or mental impairment which has a substantial long-term adverse effect on his / her ability to carry out normal day to day activities".

4. The Process

4.1 Employees eligible for support through this protocol and process will be identified by the school through the formal procedures for managing school closures, reorganisations, staffing reductions, disabilities or sickness absence. A member of the Schools Team will offer support in applying this process.

- 4.2 The Children's Services Human Resource Team (Schools) will maintain an 'At Risk' Register of such employees seeking alternative employment.
- 4.3 Prior to acceptance on the Register, the employee will meet with a member of the Schools Human Resource team and line manager to :
- clarify eligibility
 - clarify the operation of this Protocol
 - ascertain his/her future employment desires
 - undertake a 'skills analysis' to identify:
 - the potential suitability of the employee for particular types of post; and
 - areas where skills may require further development and reasonable training provided within available resources
- 4.4 All schools adopting this Protocol will notify the Personnel; Schools Team of each vacancy to be advertised and provide a copy of the job description and person specification for the post.
- 4.5 Prior to the School advertising the vacancy (either internally or externally), the Schools Team will assess whether any 'at risk' employee on the Register potentially meets the minimum criteria for the vacant post. This will be done by comparing the employee's completed skills analysis with the job description and person specification provided by the school.
- 4.6 Where the minimum criteria appear to have been met, Human Resources will contact the employee(s) to confirm interest in the vacant post or otherwise.
- 4.7 In large scale redundancy situations, The Personnel; Schools team will inform 'at risk' employees' of vacant posts. It will be the employees responsibility in this situation to assess their skills against the criteria for the post and inform the Schools Team of their interest.

- 4.8 Human Resources will then provide the Headteacher with the name(s) of interested employee(s) and copies of the skills analysis documentation, indicating the qualifications, experience, skills and attributes of the employee(s).
- 4.9 Human Resources will discuss the applicants with the Headteacher and ask him/her to confirm either that:
- the school will offer an interview for the potential redeployee(s) before any other candidates are identified through the advertising procedures; or
 - the candidate will be interviewed alongside other potentially suitable candidates identified through the advertising process; or
 - following further consideration, the redeployee does, in fact, not meet the minimum essential criteria for the post and an interview will not be offered.
- 4.10 Human Resources will feed back the school's decision to the employee and offer advice in relation to the interview procedure where appropriate.
- 4.11 All employees who are interviewed, but unsuccessful, will be offered a de-briefing to explain the reasons for the decision and to support the employee with future performance. Feedback will be given by the Headteacher or his/her representative directly within 5 working days.

5. Employment Transfers

- 5.1 Human Resources will also facilitate a process by which an employee from a school may be released on the basis of voluntary redundancy, efficiency savings, early retirement or where the school is not 'over-staffed'. The result of this would be to create a substantive post which can be filled on the basis of an agreed voluntary transfer of an employee who is at risk of compulsory redundancy. The benefits are that the trauma of compulsory redundancy is

avoided and that the receiving school is able to adjust its staffing profile to assist curriculum delivery or internal re-structuring.

5.2 **Only schools which have adopted this protocol will be able to participate in this process.** Human Resources will ask schools to identify nominees for voluntary redundancy, efficiency savings, early retirement at appropriate times throughout the year. These names will be added to a central register which will be maintained in order to provide potential matches for transfer.

5.3 Decisions relating to the transfer of 'at risk' employees will be subject to the agreement of all parties concerned, ie the redeployee, the voluntary applicant, the receiving school and the Human Resources Team (Schools). The Human Resources Team (Schools) and the School's Financial Management Team will take due consideration of financial costs in considering whether it is able to support such a transfer.

6. Review of decision

6.1 Employees are entitled to request that any decision taken regarding their redeployment is reviewed.

6.2 Any request for review should be made to the Chair of Governors within 2 working days of the notification of the decision.

6.3 The Chair of Governors or his/her representative will normally complete the review within a further 2 working days. The review will involve consideration of the documentation relating to the redeployment, the reasons for decision and will also involve where possible consultation with relevant trade union or teacher association.

6.4 The Chair of Governors decision is final and will be confirmed in writing to the employee concerned.

6.5 This fast track approach or two working days either side reflects the need to ensure that final redeployment decisions are conducted in a timely manner in order not to compromise the process.

7. Appeals.

7.1 The time limits for local appeals against termination of employment is no later than 10 working days from the effective date of termination.

7.2 Such appeals will be heard by the schools Dismissal Appeals Panel and will normally take place 28 days of receipt of the notification of appeal.

7.3 The panels decision will be final and confirmed in writing to the employee concerned.

7.4 Where employment is terminated employees also have the right to complain to an Employment Tribunal. The time limit for this is normally 3 months from the effective date of termination. Advice on making a complaint to an Employment Tribunal is available from the trade unions, teacher associations, solicitors, Citizens Advice Bureau and Government Offices.

8. Salary Protections

8.1 Where a post of lesser salary is obtained by an employee at risk of compulsory redundancy, the employee's existing salary will be protected as follows

a) Teaching Staff: 3 Years for Teachers as per paragraph 5.3 of School teachers' Pay and Conditions Document 2007 and Guidance on School teachers' Pay and Conditions.

b) Support staff : 1 Year for Support Staff as per Sefton MBC's current pay protection protocol.

- 8.2 The cost of the protection will normally be the responsibility of the 're-deploying' school, with appropriate funding being provided on a ring-fenced basis within the budget of the 'receiving' school unless and until the current salary equates with or surpasses the protected salary.

Protection of Pension

- 8.3 An employee who obtains a lower graded post through these processes may also be entitled to protection of pension through the Teachers' Pension or Local Government Pension Schemes. Detailed advice should be sought by the employee directly from the Teachers' Pension Agency/ Sefton MBC Pensions Section.

9. Training and Release Time

- 9.1 Where an employee secures an alternative post the need for any additional training and appropriate in-school induction will be identified by the employee and receiving school.
- 9.2 As per ACAS guidance, the existing school of the employee, where possible, will also release the employee for a reasonable amount of time to support the transfer process.

10. Monitoring and Review of protocol

- 10.1 The governing body and Headteacher will be responsible for ensuring that this protocol is implemented within their school.
- 10.2 Breaches of the protocol will be dealt with in accordance with normal disciplinary procedures.
- 10.3 Monitoring will take place under the existing monitoring arrangements and the effectiveness of the protocol will be reviewed on an annual basis by Personnel.

The review should take into consideration any relevant legislative changes and amended local agreements.

11. Further Information and Assistance

- 11.1 Further advice and guidance on this protocol or specific circumstances covered by this protocol can be obtained from your Personnel; Schools Team
- 11.2 This protocol is also available in alternative formats such Braille, large print, on audio tape or community languages upon request.