

Organisational Change Policy

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November 2022	Significant update to the LBTH policy – The new LBTH policy has been used as the base template and adapted to meet needs of MST.

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1 GENERAL SCOPE OF THE PROCEDURE

- 1.1 This procedure should be applied whenever there is a proposal to make reductions in permanent teaching/support staff and fixed term staff with more than one years' service, who are employed by Mulberry Schools Trust , (even though the right to receive a redundancy payment is not acquired until after 2 years continuous service). The procedure does not cover casual or supply staff.
- 1.2 This procedure has been agreed with the recognised Trade Unions and has been written to meet the requirements for consultation as set out in employment law and ACAS guidance.
- 1.3 Where employees are subject to the protections of TUPE, it should be noted that where assimilation or selection to a new post leads to a change in contractual terms and conditions it could result in the loss of TUPE protection. Where changes could affect terms protected under TUPE the consultation will include this specific element.
- 1.4 All schools must seek advice and assistance from the HR Director on any occasion that it appears that staffing reductions may have to be made.

2 AIMS OF THE PROCEDURE

- 2.1 Trust requirements for staff are liable to vary from time to time and periodically, Trustees may need to consider changes in staffing. The need for change may arise as a result of, for example:
- Cost and efficiency savings to be made
 - Curriculum requirements
 - The introduction of new legislation or government guidelines
 - Recommendations following reviews of the School Improvement Plan or Ofsted inspection
 - Development of partnership arrangements with other schools
 - New technology/new ways of working

- Contraction or expansion of the School due to rising/falling numbers on roll
- 2.2 Given the wide and varying nature of organisational reviews, this policy is intended to provide a flexible framework and guidance for schools to follow when dealing with differing organisational change situations, to ensure good practice in restructuring and re-organisation and facilitate re-organisations to be carried out as swiftly as possible to ensure continuity and quality of service to pupils.
- 2.3 The Trust is committed to the principle of avoiding or minimising compulsory redundancies wherever feasible and ensuring that alternative methods such as natural wastage and redeployment are used to manage reductions during the course of re-organisations. Re-skilling and re-training of staff will also be considered in appropriate circumstances.
- 2.4 Where there is likely to be a redundancy situation, the school must liaise with the CEO and Director of HR at the earliest opportunity.
- 2.5 This policy provides guidance on restructuring exercises which may cover a team or a department, involve more than one department or cover the whole school.
- 2.6 Options which trustees and local governing bodies will need to consider include:
- reductions in the total number of staff;
 - adjustments to staffing levels in different management and/or curriculum areas;
 - adjustments to working and/or contract hours of staff;
 - a combination of these measures.
- 2.7 This procedure is intended:
- To take account of the Trust's statutory duty to provide for the educational needs of all pupils in line with the National Curriculum;
 - To minimise the impact of situations involving re-organisations and or staff reductions;
 - To ensure that organisational change takes place as effectively as possible and avoids unnecessary disruption;
 - To ensure staff reductions are reached fairly and in accordance with employment law and statutory entitlements; and
 - To ensure that consultation with staff and the trade unions is commenced at the earliest possible opportunity

3 EQUAL OPPORTUNITIES CONSIDERATIONS AND EQUALITY ANALYSIS

3.1 There are equalities implications involved when any employment procedure is applied. Application of the Trust Organisational Change Procedure may have particular implications for the multi-cultural and predominantly female workforce employed in schools in Tower Hamlets.

3.2 Headteachers should ensure that in order to establish whether any single person or group of staffs is being treated less favourably than others under this procedure, they assess the situation across the group of staffs likely to be affected, before they embark upon any action relating to staff reductions. This may be done by undertaking an Equality Analysis and will be supported by the HR team. No individuals should be identifiable on the Equality Analysis.

3.3 The Equality Analysis must be included in the business case submitted to the CEO and Trust board.

3.4 Absence due to Maternity, Adoption or Shared Parental leave

In establishing criteria which may lead to the compulsory displacement of staff, HR advice must be sought prior to finalising staffing proposals when an employee has notified the Headteacher that they will be absent on maternity/adoption/shared parental leave. Female staff on maternity leave have a priority right to be offered a suitable alternative vacancy without having to undergo a competitive selection process. This entitlement also extends to staff who are absent due to a period of Statutory Adoption Leave and Shared Parental Leave.

3.5 Colleagues with a disability

If colleagues with a disability are amongst the affected staff, HR advice should be sought at an early stage to help ensure compliance with the Equality Act. Reasonable adjustments will be considered for disabled colleagues in the event of a changed role.

3.6 Trade Union representatives

If the proposed structure indicates that there is a possibility that one or more school representatives may be displaced, the Headteacher should first consult the Branch / Regional Official of the union(s) concerned.

4 THE PROCEDURE (PRIOR TO CONSULTATION)

- The Headteacher completes the School Development Plan, budgetary information and Equality Analysis, with proposals for change, including reduction in staffing costs and submits this for discussion between the headteacher / principal with the CEO and the Director of HR and then the Trust Board for approval.

4.1 If the proposals are approved in principle, the Trust will agree an:

- Organisational Change Panel (usually consisting of the Headteacher/ Principal (who will chair the Panel) and one governor (usually the Chair of Governors) and a member of the Trust HR team) An Appeals Panel (comprising of CEO, Director of HR and two trustees, who have had no prior involvement.
-) may be commissioned in such an event that one is required.

4.2 At this point, the lead member of the school's Organisational Change Panel (usually the Headteacher) is required to submit the their Business Case) with indicative financial implications in terms of savings and cost of redundancy/severance, to CEO and Trust Board for initial discussion, challenge and consideration. A decision in principle by the CEO and Trust Board must be received before consultation with staff and trade unions can commence. Wherever possible, the Headteacher should informally tell the trade unions of the proposed restructure before any written documentation is sent. This will avoid surprise and potentially could avoid industrial relations issues.

4.3 Trustees will consider business cases for reorganisations when the school has to reduce or reorganise its staffing establishment:

- for budgetary reasons; or
- to respond to organisational or curricular changes.

5 TIMESCALES

5.1 The timescale for the restructure process will depend upon the number of affected staff and will be followed by a contractual notice period.

- It is recommended that whether or not a restructure involves redundancies, the consultation process will be 30 calendar days. This is to ensure that the consultation is meaningful, and sufficient time is given to consider and manage the proposed changes.

- However, where less than 20 employees are affected, the consultation process may be closed earlier than 30 days by mutual agreement, in order to minimise disruption and enable the school to meet changing needs more rapidly.
- Where more than 99 employees are affected, a minimum consultation period of 45 calendar days applies.
- Where 20 or more employees are involved and there is a possibility of redundancies, a s.188 formal notification must also be issued.

The Trust will begin consultation as soon as it is identified that there exists the possibility of a redundancy situation.

6 PROPOSALS AND CONSULTATION

6.1 Informal Consultation

- 6.1.1 Trade unions and staff must be informed as early as possible that a re-organisation is being considered and informal consultation initiated.
- 6.1.2 Before staff are informed of any proposals, the school will write to recognised trade unions inviting them to attend a meeting to discuss the proposals. The invitation will include details of the proposals.
- 6.1.3 Following the meeting with trade unions, there will be a meeting with staff and their representatives to explain the proposals (this can be immediately after the first meeting with trade unions).
- 6.1.4 Depending on circumstances, the Headteacher may choose to brief colleagues who are directly affected by the proposals first (this is advisable if only a small number of people are directly impacted), and then hold a full staff meeting after this. Or they may decide that it is appropriate just to hold a full staff meeting.

6.2 Formal Consultation - Initial Proposals

- 6.2.1 Provided that a decision in principle has been given by the Trust, the school's Organisational Change Panel will start formal consultation with staff and trade unions. Following the initial meeting with the trade unions, formal proposals should be put to the staff and trade unions, by writing to every member of staff that is affected, either directly or indirectly and inviting them to a group consultation meeting to discuss these. A consultation pack should be provided at the meeting. The consultation should involve all affected staff and therefore it is important to make arrangements for consulting staff who are away from

the workplace e.g. on maternity/paternity leave, long term sickness or secondments.

6.2.2 The consultation documentation should include:

- the reasons for the reorganisation
- the broad principles upon which the new structure or new work processes will be based
- the number and description of staffs at risk
- the total numbers at the establishment (current and proposed structure)
- steps that will be taken as a means of trying to avoid compulsory redundancies, e.g. voluntary redundancy/early retirement, bumped redundancies, natural wastage, alternative internal redeployment, reductions in hours, agency staff
- how redundancy pay will be calculated
- the proposed method for selecting for compulsory redundancies, in the event that this is necessary
- current and proposed job descriptions, with indicative grades
- timetable
- draft assimilation list
- the Schools Organisational Change Procedure;
- equality analysis (no individuals should be identifiable)
- any other relevant information.

6.2.3 In the case of a whole-school restructuring, if some parts of the structure remain unchanged this should be indicated at the earliest possible stage and this part of the structure excluded from the reorganisation. Consideration will need to be given as to how the reorganisation will be phased, managed and implemented, whilst ensuring the appropriate input of all those concerned and a consistency of outcomes.

6.2.4 The school's Organisational Change Panel will be responsible for consulting with staff and trade unions on methods for making reductions, and for selecting posts for redundancy following full consultation. In the event of a disagreement between members of the school's Organisational Change Panel the Headteacher will have the casting vote.

6.2.5 This written document should be sent to the trade unions and relevant staff as soon as is reasonably practical and where possible at least 3 months before the first dismissal is envisaged to take place. It is expected that more complex reorganisation proposals may need a longer timescale. Voluntary redundancies may still take place prior to this, providing all parties agree.

- 6.2.6 Invitations may be sought at this point for volunteers for redundancy. The Trust's Organisational Change Panel will consider curriculum requirements when deciding whether to accept an application for voluntary redundancy.
- 6.2.7 Headteachers will be aware that employees may seek employment elsewhere during the consultation process and should update proposals to take account of posts which may become vacant as a result of employee resignations.
- 6.2.8 Where sufficient staffing reductions cannot be met through the above methods, the school's Organisational Change Panel will be responsible for identifying the numbers and types of posts for compulsory redundancy.
- 6.2.9 The school's Organisational Change Panel will continue to consult with staff and trade unions regarding the proposals and on the proposed selection criteria for making compulsory redundancies.
- 6.2.10 The proposed selection criteria must be objective, transparent, measurable, relevant, fair and non-discriminatory and should be consistently applied. It is expected that the criteria will relate to the skills, qualifications or experience required for the new role(s) and with reference to the School Development Plan.

6.3 Assimilation and ring fencing

- 6.3.1 In determining the relevant pool of staff for assimilation purposes, staff acting up or seconded will be treated on the basis of their **substantive** post. Temporary staff or permanent staff covering posts temporarily will normally be excluded.
- 6.3.2 The consultation paper for a restructure should, where appropriate, contain a proposed assimilation list, which will be consulted on as part of the formal consultation process. This list will detail all staff affected by the restructure and what rights they have to any posts in the new structure. The possible rights they could have are:
- Direct assimilation rights
 - Competitive assimilation rights
 - No assimilation rights

6.3.3 **Direct assimilation**

This means that there is no substantial difference between the member of

staff's current job description and the new job description in the new structure AND there are either more posts than staff or an equal number of posts and staff in the proposed structure. At the date at which the new structure comes into force, the member of staff is assimilated into the new job description and duties.

6.3.4 Competitive assimilation

This means that there is no substantial difference between the member of staff's current job description and the new job description in the new structure BUT there are more staff than posts in the new structure. For these posts, if voluntary measures do not reduce numbers sufficiently, then there will be a competitive selection process in line with normal school recruitment procedures to determine who is appointed.

6.3.5 Ring-fencing

Where there are new posts or vacancies in the structure to which no staff have assimilation rights, it may be agreed that these are ring fenced to staff affected by the restructure. Where there are staff who at risk of redundancy, they will normally be considered for such posts first as an offer of suitable alternative employment. Where there are no staff at risk of redundancy or where a wider ring fencing will potentially free up other roles as suitable alternative employment ringfencing may, on agreement, be opened to all staff regardless of whether they have a post or not and this will not be limited to two grades up or down.

6.3.6 The order in which interviews take place, i.e. assimilation interviews and ring fence interviews, should be discussed and agreed as part of the consultation process based on the specific circumstances of the restructure.

6.3.7 To apply for a post in the ring-fence, staff will be asked to complete and submit an expression of interest form. Staff are not limited to only one application. The interview will be based on a normal recruitment process.

6.3.8 After the ring-fence, any remaining posts may be recruited to following the usual Trust approval process.

7 CONSEQUENCES OF FAILURE TO CONSULT

7.1 The requirements of consultation will not be met if the trade unions are presented with a complete package where the relevant decisions have already been taken.

- 7.2 Inadequate or insufficient consultation can lead to the trade unions obtaining a protective award from an Employment Tribunal against the employer. This would require the employer to make a payment for a protected and specified period to staff who have been dismissed or are likely to be dismissed. This payment would be additional to any redundancy payment to which the staff would be entitled.
- 7.3 Employees who consider that they have been unfairly treated in the process may pursue an unfair dismissal complaint through an Employment Tribunal. such complaints can include questions relating to the statutory definition of redundancy, the criteria and/or methods for selection, inadequacy of consultation or attempts at redeployment.

8 IDENTIFYING STAFF AS REDUNDANT

- 8.1 Following the close of consultation and if sufficient volunteers for voluntary redundancy have not been found the school's Organisational Change Panel will apply the agreed selection criteria and identify which staff are provisionally redundant.
- 8.2 The school's Organisational Change Panel will write to those staff whose posts have been identified and offer to meet with them in a one to one meeting in order that they may make individual representations, a HR team member may also be present. Employees will be entitled to be accompanied by their trade union representative, or a colleague, should they wish. The purpose of this meeting is for the school's Organisational Change Panel to explain the reasons for the employee's selection and for the employee to ask any questions relating to this. The employee may also wish to present reasons why they should not have been selected to the Panel. However, it should be noted that the meeting is not an opportunity for the employee to add to information already provided during the selection process or comment on the performance of other employees in the pool. At the end of the meeting the employee may wish to ask the Panel to reconsider its provisional selection decision.
- 8.3 Following this meeting, the Panel, if applicable, will write to the relevant individuals confirming their decision to make a determination to dismiss on the grounds of redundancy, they will be advised that they may appeal in writing, against the decision to terminate their current contract by reason of redundancy, this must be in writing within 5 working days of receipt of the letter.
- 8.4 The Trust will issue the requisite notice of dismissal, on grounds of
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redundancy. Suitable alternative employment will be sought for those individuals selected for redundancy across the Trust. Where this search for alternative employment is unsuccessful, the determination to dismiss will proceed.

- 8.5 The search for redeployment will be coordinated by the Trust. Where staff are redeployed into a post and the salary is lower, they shall be entitled to salary protection in accordance with the Schoolteachers Pay and Conditions document and for support staff any salary protection will be in accordance with the Council's redeployment policy, that is protection of total pay of up to two grades difference for a period of two years

9 APPEALS

- 9.1 A member of staff may appeal against their selection for redundancy to an appeals committee of the governing body. Upon receipt of appeals, the Appeals Panel will meet with the appellant and their representative to consider the grounds for appeal.

9.2 .

- 9.3 The Appeals Panel will write to the individual concerned informing them of their decision, which will be final.

10 SUGGESTED REPORT FORMAT TO THE BUSINESS CASE TO BE SUBMITTED TO THE CEO AND TRUST BOARD

10.1 **Executive Summary**

This should include the reasons for the proposal, i.e. is the proposal due to financial constraints or restructuring. Also include action taken to mitigate redundancies.

10.2 **Restructuring Proposals**

This section should give details of number and the posts that will be at risk. The current and proposed structures should also be included as appendices.

10.3 **Financial Implications**

The financial situation should be outlined in this section, including the savings

made, if any, as a consequence of the proposed reorganisation, indicative costs of redundancy and budgetary information included as appendices.

10.4 **Outline Timetable**

Relevant dates should be shown in table format.

10.5 **Any Additional Notes**

Any information that you feel may be useful for the CEO/ Trust Board can be included in this section of the report.

This section will also detail all key staff and trade unions who will be involved in the process.

10.6 **Appendices**

- The current structure
- The proposed structure
- Equality analysis

11 **FURTHER INFORMATION**

For further information about this policy please contact the HR team.