



Consultation Protocol including Procedure for Consulting on Policy

Produced by Schools' HR

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This policy has been consulted centrally and fully agreed by teaching trade unions. To change any aspect of this policy at a school level, the relevant body must consult appropriately with school teaching staff and their recognised trade union representatives.

Note: In this document, any reference to the terms "Governor" or "Governing Body" shall be interpreted to also mean "Trustee" or "Board of Trustees," unless the context specifically indicates otherwise.

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CONSULTATION - SCHOOL BASED STAFF

1. What is Consultation

Consultation is the process by which management, members of staff and their representatives jointly examine issues of mutual concern. It involves seeking acceptable solutions to problems through a genuine exchange of views and information. It does not remove the right of managers to manage, as they will need to make the final decision.

It provides for the views of members of staff to be sought and considered before a decision is reached and, in certain circumstances, consultation is a legal requirement.

Governors, head teachers and senior managers may consult at various levels depending on the subject. The Council has established consultation forums at various levels of the organisation to enable meaningful consultation to take place and officers and representatives of the teacher associations and support staff trades unions meet on a regular basis for this purpose at Joint Consultative Committees.

2. Why is it important to consult?

Consultation is an early opportunity to share a problem and consider options to resolve it. In resolving issues in this way, consultation will be likely to resolve workplace disputes and any related detrimental impact on performance before the situation arises.

Consultation enables management to share information with representatives and members of staff, so that their final decision is fully informed. It can lead to better alternatives being identified that achieve the same objective.

Meaningful consultation can lead to greater employee commitment, greater trust between management, the workforce and the recognised trade unions, and hence a better employee relations environment.

In certain circumstances, consultation is a legal requirement. For instance where proposed action could potentially lead to employees becoming redundant, there are certain consultation requirements. Failure to consult could lead to the Employment Tribunal making substantial awards against the Council and, in prescribed circumstances, costs could fall to be met from a school's budget.

Consultation is also necessary if a change is proposed to an employee's pattern of work. Change not covered in the contract of employment, without the agreement of the employee and without proper consultation could lead to a claim of unfair dismissal. It is essential, therefore, in such circumstances, that management consult and strive to reach agreement.

3. When will managers need to consult?

The following circumstances give examples of when managers will need to consult:

- Where there are proposals to restructure staffing establishments, especially where reductions in staff numbers are involved.
- Where there is an intention to reallocate work and the contracts of employment do not provide for this.
- Where it is proposed to change the hours of work of staff including working patterns, where the contracts of employment do not provide for this. It should be noted that even where contracts of employment provide for the change proposed, it is still best practice to consult as by so doing managers will be treating staff properly by involving them.
- Where it is proposed that staff undertake work of a different kind and the contracts of employment do not provide for this.
- Where it is proposed to change conditions of employment. It should be noted that any proposals of this type would need to be considered corporately as there might well be implications across the Council. If managers are considering any such proposals it is essential that they be discussed with the School Employment Advisory Team before any action is taken.
- Where there is a proposed business transfer to an organisation outside of the Council, which might or might not involve a TUPE transfer.
- Where there are concerns about Health and Safety at work.

4. When should consultation start?

Managers should start consultation at the earliest opportunity. It is important that consultation starts as soon as the proposed course of action is contemplated.

5. Who should be consulted?

Where any change is contemplated that will affect the working hours or patterns of work of staff, or to reallocate work or introduce work of a different kind where the contracts of employment do not provide for this, or to change the salary, grade or conditions of service of staff, those staff must be informed as a first step. Depending on the nature and scale of the change being considered staff representatives might need to be involved from the outset. Where significant or contractual change is proposed representatives of the recognised teacher association and/or support staff trades unions would need to be involved and this could be done at school level. Where change proposed in one school would impact on policy or procedure across a range of schools it would be appropriate for consultation to take place at the relevant Joint Consultative Committee.

6. How should consultation be undertaken?

Consultation must be meaningful and not a sham. It must therefore be entered into at the stage at which change is contemplated and certainly not at the point when management has decided to move forward and implement it. Consultation should, therefore, commence as soon as practicable before any decisions are made.

The trade union representatives and employees must be provided with full information, sufficient to enable them to respond. They must also be given adequate time to respond. A draft proposal might be appropriate for the purpose of consultation or the subject might involve the production of a series of options. Consultation can take place at meetings between managers and staff, with local staff representatives, at Joint

Consultative Committees, and may involve school governors, representatives of the LEA and/or church authorities, depending on the nature of the issue

7. What if agreement is not reached?

Reaching agreement is desirable but there might be circumstances where this will not be possible. Where management has a good business case to implement the proposed course of action and has followed a proper process of consultation, change should still be possible.

For example, where contracts of employment do not provide for the change and the proposed action goes to the heart of the contract, the action of implementing the proposal will be a fundamental breach of the contract. In this circumstance it would be possible that employees could walk away from their employment and claim unfair dismissal leading, potentially, to substantial costs being awarded against the school. In these circumstances, if proposed change is to go ahead, the appropriate course of action would be to dismiss the employees concerned and contemporaneously offer new contracts that are identical, save for the changed term or condition. In this event managers would need to be able to demonstrate that the consultation conducted was meaningful and that the good business case justified the action taken.

However, before such a course of action was considered, discussion of the full facts of the matter with the school's HR advisor.

8. Procedure for Consultation on Recommended HR Policies and Procedures for Schools

See Appendix 1.

**PROCEDURE FOR CONSULTATION ON
LOCAL AUTHORITY RECOMMENDED HR POLICIES
AND PROCEDURES FOR SCHOOLS**

1. Introduction

This procedure sets out how the Local Authority will consult with the recognised trade unions on new or revised policies and procedures for recommendation to schools. The policies covered by this protocol relate to matters of human resources management.

There is an obligation on employers to ensure that the views of employees are considered (through their trade union representatives) before changes to HR policies and procedures are implemented. Where terms and conditions are affected, meaningful consultation is a statutory requirement. This does not in any way remove the right of managers to manage.

2. Purpose

The purpose of this procedure is to ensure that where new, or changes to, human resources policies and procedures are proposed, appropriate officers, school managers and trades union representatives have an understanding of the process that will be followed relating to relevant consultation and the roles each plays in the process.

3. Scope

This procedure applies to formal consultation between officers acting on behalf of the Local Authority and the representatives of trade unions who are recognised to represent school based employees, on new or revised human resources policies and procedures.

This procedure does not cover consultation whereby individual schools are required to consult on specific proposals relating to human resource changes for example: staffing reviews, restructures, reductions, school closures and other human resource changes taking place within a particular school.

Formal consultation does not apply to documents for guidance which are offered to schools as models or exemplars, although these should be shared with union colleagues.

Policies consulted on under this process are recommended for adoption by all schools within Liverpool where staff members are represented by local trade union representatives. Where a policy has been agreed under this process, there is no requirement for further, school level, consultation.

4. Process

Where the need for new policies or procedures, or changes to existing policies or procedures, have been identified, a new or amended draft document will be prepared by LA officers in consultation with interested parties (which will include the Managerial Associations). A lead officer will be identified.

The formal consultation period will begin with the lead officer sharing the draft documentation with representatives of trade unions who are recognised to represent school based employees and then presenting the policy, with their rationale for change, to the Policy Task Group.

The consultation period will be for 30 working days and may be shortened or extended by agreement with all parties. An end date for responses and comments to be received by the lead officer, will be included in the information provided.

During the consultation period existing JCC meetings may be utilised for representatives of the different groups to meet with the LA officers to discuss the documentation. Any responses and comments should be sent in writing to the lead officer by the date specified. Failure to respond to the documentation by any party will not delay the process and will be taken as 'no formal feedback'..

5. Implementation

Following the consultation period, the lead officer will email the post-consultation document to the Clerk of JCC in time for the next full Teachers' JCC meeting for formal agreement. Where agreement is reached, the lead officer will recommend adoption of the agreed policy or procedure to schools.

Should agreement not be reached, this does not prevent the lead officer from recommending adoption of the policy or procedure to schools, however, the published policy will include a Document Status sheet indicating the reasons for disagreement so that further, school based, consultation can take place.