

# TONBRIDGE & MALLING BOROUGH COUNCIL

## GENERAL PURPOSES COMMITTEE

30 January 2012

### Report of the Central Services Director

#### Part 1- Public

#### Delegated

### **1 REORGANISATION, REDUNDANCY AND REDEPLOYMENT PROCEDURE**

**This report outlines the need for the recasting of the Council's Employment Stability Policy (attached as Annex 1) into a Reorganisation, Redundancy and Redeployment Procedure, and presents a draft procedure in Annex 2 to this report.**

#### **1.1 The need for a procedure**

- 1.1.1 For many years the Council has been committed to the Employment Stability Policy that sets out the steps it will take to minimise the need for compulsory redundancies. This policy has stood the Council in good stead, and there have been very few compulsory redundancies. In the procedure in Annex 2 to this report, all of the existing elements of the former Employment Stability Policy have been retained (and are indicated in italics in Sections A, C, D, G, H, J, N, and O).
- 1.1.2 To date, where there has been a need for compulsory redundancies, the steps taken have been in compliance with the relevant legislation, but outside of a formally agreed and established procedure. Given the financial challenges facing local government, I believe that the time has come to expand the Employment Stability Policy into a comprehensive Reorganisation, Redundancy and Redeployment Procedure so that if there is a need for compulsory redundancies in the future the Council will have recourse to a procedure that is known to all involved and is demonstrably transparent and fair. The procedure in Annex 2 contains the following additions to the former Employment Stability Policy;
- i) Section B defines the terms "reorganisation, redundancy and redeployment";
  - ii) Section D clarifies the Council's approach to consultation in potential redundancy scenarios, and specifies the statutory requirements for consultation periods and notifying the Secretary of State for Business Innovation and Skills;

- iii) Section E makes a commitment to developing criteria for the selection of volunteers based on the ongoing and future needs of the service, in the event of a decision to seek volunteers in any potential redundancy scenario;
- iv) Section F describes the legal necessity of determining the criteria by which staff will be selected in the event of a need for compulsory redundancies.
- v) Section I gives guidance on handling redeployments in circumstances where an individual has been deemed by the Council's Occupational Health Adviser to be disabled according to the terms of the Equality Act 2010, or in which a member of staff has requested redeployment because of their own concerns about their health;
- vi) Section K sets out the steps to be followed when dismissing an employee on the grounds of redundancy;
- vii) Section L specifies the procedure to be followed if an individual, or a group of individuals, appeal against their dismissal on the grounds of redundancy.

1.1.3 The policy in Annex 2 to this report was considered and approved by the Council's Joint Employee Consultative Committee on 1 December 2011.

## **1.2 Legal Implications**

1.2.1 The procedure set out in Annex 2 to this report is compliant with the following items of employment law:

Trade Union Labour Relations (Consolidation ) Act 1992

The Employment Rights Act 1996

The Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999

Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002

Local Government Pensions Scheme Regulations 1997 (as amended)

Local Government (Early Termination of Employment)(Discretionary Compensation)(England and Wales)Regulations 2006

Local Government Pensions Scheme (Benefits, Membership and Contributions) Regulations 2007

Equality Act 2010.

- 1.2.2 The Government is currently consulting on proposals to reduce the statutory timescales for consultation in potential redundancy scenarios. As it is highly probable that the consultation period will be reduced, I recommend that Section D of the policy in Annex 2 to this report is amended to reflect whatever statutory timescales are eventually set for consultation.

### **1.3 Financial and Value for Money Considerations**

- 1.3.1 By specifying the steps which are both legally compliant and in accordance with guidance from the Arbitration Conciliation Advisory Service (ACAS), the Council is reducing the potential for claims of unfair dismissal, and is minimising its exposure to the risk of high awards being made by Employment Tribunals.
- 1.3.2 Unlike the Employment Stability Policy, the procedure in Annex 2, (Section N), alludes to the statutory position conferred by the Redundancy Payments (Continuity in Local Government etc) Modification Order 1999 which states that if an employee under notice of redundancy receives an offer of employment in another organisation covered by the Order, commencing 4 weeks within their date of termination, there will be no entitlement to a redundancy payment.

### **1.4 Risk Assessment**

- 1.4.1 Members will note that the following clauses relating to permanent and temporary employees in the former Employment Stability Policy have been removed:

Section 1:3:3 “High priority will be given to maintaining the employment security of permanent employees wherever possible” and,

Section 2:2:3 “Temporary employees, by the very nature of their employment terms, are not covered by this policy (though this does not preclude reasonable attempts to maintain their employment from being made, or affect their statutory employment rights).

These two references have not been retained in the Procedure in Annex 2 because they could be misleading and expose the Council to a risk of contravening of the Fixed Term Workers (Prevention of Less Favourable Treatment) Regulations 2002 and the Modification Order 1999.

- 1.4.2 Under the terms of the Employment Stability Policy, in cases of redeployment, a trial period of up to 3 months could be granted to establish whether or not the individual was suited to and suitable for the new post. According to the terms of the Redundancy Payments (Continuity in Local Government etc)(Modification) Order 1999 this could be misleading as it could potentially contravene the statutory 4 weeks trial period. Therefore, the procedure in Annex 2, in Sections G and H, recommends an approach to a trial period that more accurately reflects the detail of the Modification Order (i.e. 4 weeks statutory trial period, extended by

agreement for further training, which, if not successful results in the employee reverting to an “at risk” status).

## 1.5 Equality Impact Assessment

1.5.1 See 'Screening for equality impacts' table at end of report

## 1.6 Recommendations

1.6.1 I recommend that the Council adopts the Restructuring, Redundancy and Redeployment Policy set out in Annex 2 to this report.

1.6.2 I also recommend that, should the anticipated legislative changes to the timescales for consultation in redundancy scenarios actually materialise, Section D of this report is amended to reflect these changes.

Background papers:

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Nil

Julie Beilby

Central Services Director

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	The recommended procedure is compliant with the Equality Act 2010.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	Yes	The recommended Procedure provides guidelines for redeploying individuals who become disabled, and is compliant with the rights of those employed on a temporary or fixed term contract.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

*In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.*