

## Annex 2

### REORGANISATION, REDUNDANCY AND REDEPLOYMENT PROCEDURE

#### A Purpose

*Tonbridge and Malling Borough Council is a large organisation with a wide range of functions which may be increased, decreased or changed from time to time. Organisational change has become a regular feature of everyday life in local government. It is inevitable therefore that from time to time the Council will need to reorganise its services to meet different demands and circumstances, and that this will affect the Council's employee requirements.*

In addition to the Council's commitment to doing everything reasonably practical to maintain the employment of its staff during periods of organisational change, it also has a statutory duty under the terms of the Equality Act 2010, to consider reasonable adjustments which may include redeployment opportunities for employees who become disabled within the terms of this Act.

This procedure specifies Tonbridge and Malling Borough Council's reorganisation, redundancy and redeployment processes.

#### B Definitions

For the purposes of this procedure, a **reorganisation** is defined as a proposal to materially change an existing, Member agreed, staffing structure within a section or service.

A **redundancy** is defined in law as occurring in one of the following three circumstances:

- 1 the employer ceases or intends to cease the business in which the employee was employed
- 2 the employer ceases or intends to cease to carry on the business in the place where the employee was employed
- 3 the requirement to carry out work of a particular kind has ceased or diminished or is expected to cease or diminish.

*The processes described in this procedure pertaining to redundancy apply to all employees of the Council..*

Tonbridge and Malling Borough Council is committed to **redeploying** or seeking alternative work for employees who would otherwise be made redundant as well as those who can no longer undertake their substantive role due to a disability (as defined by the Equality Act 2010).

#### C Scope

*It is the Council's policy to deploy its workforce in order to achieve maximum effectiveness through flexibility and to maintain and protect continuity of employment. Employees may therefore at some time be requested to carry out various appropriate duties within the general scope of their appointment. They may also be requested to work at different locations within the Council's area, in which case expenses will be reimbursed as prescribed by the National Scheme of Conditions of Service and/or as determined by local agreement.*

*Where there is a need for reductions in the number of people employed, reorganisations in the way that employees are deployed, or a consideration of redeployment opportunities for those who become disabled, the Council will take the steps set out in this procedure.*

## **D Notification and Consultation**

The Council is committed to consulting with employees over changes to organisational structures and jobs, and has a statutory duty to consult staff and trade unions over proposals that may result in 20 or more redundancies over a period of 90 days or less.

Staff and relevant trade unions should be made aware of proposals for organisational change and the reasons for this at the earliest opportunity regardless of whether any redundancies are likely to occur. Early, informal consultation meetings should take place to allow the opportunity for staff to make meaningful contributions to the decision making process.

*Where a decision is contemplated which is likely to result in job losses formal consultation will begin, with both the appropriate Trade Unions and the employees who could potentially be affected, as soon as practical before the proposed implementation date, to allow consideration of counter proposals and alternatives to redundancy.*

In accordance with the statutory minimum timescales for formal consultation, consultation over situations with the potential for 20 or more redundancies over a period of 90 days or less will commence no later than 30 days before the first possible dismissal by reason of redundancy may take effect, or 90 days in the unlikely event of 100 or more employees being potentially dismissed as redundant.

In the event of volunteers being sought for redundancy, they should be included as well as potential compulsory redundancies when counting possible redundancies for consultation purposes, notification to the Trade Unions and, in the unlikely case of potentially 20 redundancies or more, notification to the Secretary of State for Business Innovation and Skills

Should a formal consultation need to take less than the statutory minimum, the Council will seek the agreement of the appropriate Trade Unions and staff to a reduced consultation period

Written details of the proposal and possible redundancies resulting from re-organisations must be provided to the appropriate Trade Unions at the outset of formal consultation and should contain the following information:

- reason for the proposal
- number and description of potentially redundant employees
- total number of employees in the service
- proposed method of redundancy selection
- proposed method of carrying out dismissals including the timescale.

Before final decisions on making any redundancies are taken by the Council, there will be full consultation with the individual affected employees and with appropriate trade unions.

*In this consultation, the Council will set out its proposals for dealing with the human resources implications of the proposed changes including the steps it proposes to take to preserve employment.*

*Local Branch Offices of trade unions and/or District Officers will be entitled to address the appropriate Committee, Sub-Committee or Group of Members of the Council in order to present their views on the proposed changes. Any such presentations will be made in private.*

*Any employee to whom this policy applies has the right to consult his or her Trade Union or a representative who is a workplace colleague during working hours and to have a representative present during discussions, consultations and negotiations covered by this policy (except interviews for jobs).*

Thorough and meaningful consultation ensures that staff and their representatives have the opportunity to contribute to decisions that may affect their jobs and services.

## **E Voluntary Redundancies**

When deciding whether or not to seek volunteers for redundancy, careful consideration should be given to the skills and experience that will be required beyond the reorganisation. If a decision is made to seek volunteers, it is essential that criteria are developed for selecting volunteers based on the ongoing and future needs of the service.

## **F Redundancy Selection Criteria**

Redundancy selection criteria must be drawn up with advice from Personnel Services and in consultation with the appropriate trade unions. The criteria must be clear, objective (based on the future needs of the service), free from any discriminatory factors and fairly applied to all staff. Selection criteria could include:

skills  
experience  
standard of work performance or aptitude for work  
attendance (excluding absences related to disability, maternity,  
paternity, or adoption leave)  
disciplinary record.

Once it has become apparent that there is a risk that some employees may be made redundant, subject to appropriate consultation, the relevant managers will identify a “pool” of individuals who are “at risk” of redundancy. The relevant managers will advise the relevant staff, in writing, that they are “at risk” and will advise them of the criteria that will be used to select individuals for redundancy.

## **G Measures to Protect Continuity of Employment**

*Every effort will be made to redeploy employees who are selected for redundancy to another work area with due regard to their skills and capabilities and any training needs which may arise.*

*The following outlines the steps to be considered (not necessarily in this order).*

*Where the cost is not prohibitive and existing Contracts so allow, consultancy, contracting and agency services in the service affected or in other services may be reduced, suspended or abolished, where this would create employment opportunities for potentially displaced employees.*

*Overtime and the use of temporary employees will be reviewed in any area where this would provide employment opportunities for “at risk” employees.*

*Vacancies arising in the course of natural turnover and wastage will be notified to “at risk” employees prior to posts being advertised;*

*they will be given an opportunity to discuss the job in question and to express their view as to whether they wish to be considered;  
they will be given an interview, tests and other selection procedures as appropriate for the post in question;  
the vacancy will be offered to an “at risk” employee, unless there are good and acceptable reasons why this is not a viable option.*

*Employees who are eventually selected for redundancy will be expected to co-operate in exploring options for suitable alternative employment. A statutory right to a trial period exists for employees who would otherwise be dismissed as redundant are offered alternative employment. The offer must be made:*

- before the employee’s existing employment contract ends; and

- the new employment must commence no later than four weeks after the employee's existing employment ends.

In these circumstances a maximum of a four week statutory trial must be included in the offer. If the trial period does not result in confirmation in the post, the situation will be reviewed in the light of the employee's wishes and the availability of other alternative posts. If no other suitable re-deployment options are identified, the redundancy payment is made as if the employee had left on the expiry of their original notice period.

The four week trial period can be extended for the purposes of retraining, by agreement, in writing, specifying the date on which the trial period ends and setting out the terms and conditions that will apply after the end of the trial period. If this proves to be unsuccessful, the employee will revert to being at risk of redundancy.

*Where an employee cannot be immediately redeployed, but it is foreseen that future opportunities will arise, consideration will be given to retaining them on a supernumerary basis, seconding them elsewhere, and/or retraining them.*

*During the period in which redeployment is being pursued, training in terms of the skill requirements of any specific new job, or in terms of enhancing the employee's employment prospects with the Council or any other employer will be offered so far as is practical and reasonable. This includes "outplacement" training and assistance. In the event that the displaced employee is not offered a permanent post within the Council's service, training and expenses will not be recoverable if the employee obtains a post with any other employer.*

*In the event that a post from which an employee has been redeployed is again required to be filled, it will be offered to the redeployed employee.*

## **H Offers of Redeployment**

*Offers of redeployment will be made in writing and will include:*

*the type of work to be undertaken and the training to be given where appropriate;*

*the location of the new job;*

*the rates of pay applicable to the appointment and any other terms and conditions which may be different from those applying to the previous employment;*

*provision of a four week trial period on both sides where appropriate;*

*any other relevant factors within the scope of this procedure.*

Redundancy payments can be withheld where an individual unreasonably refuses offers of suitable alternative employment, or considers that the reasons for terminating the statutory trial period are unreasonable.

## **I Redeployment Due to Disability**

Following advice from Occupational Health or other appropriate medical practitioner, where the employee is no longer able to undertake their substantive role because of a disability within the meaning of the Equality Act 2010 and reasonable adjustments cannot be made, redeployment to a suitable alternative post must be considered.

Efforts to redeploy on the substantive grade must be made but where this is not possible an offer of redeployment to a lower grade post should be considered. This will be deemed to be a “reasonable adjustment”.

Redeployment may also be possible for employees seeking another job due to ill health and arising from the Capability Procedure, who are not disabled under the terms of the Equality Act 2010. However, employees in this category would not be entitled to salary protection as outlined in Section J below.

## **J Protection of Salary**

The purpose of salary protection is to enable employees who are redeployed due to redundancy, or due to disability within the meaning of the Equality Act 2010, to adjust to a lower level of remuneration.

*Subject to the terms outlined below, if the wage or salary grade in the discontinued job exceeds that in the new job, the Council will, in normal circumstances, preserve on a personal basis:*

- (i) for a period of two years, the wage or salary grade and contractual benefits and payments applying immediately prior to replacement;*
- (ii) for a further period of one year, the level of protection is ‘frozen’ at the expiry of (i). i.e. there is no pay award or incremental progression.*

*After the period of three years referred to in (i) and (ii) above, all protection will cease and the employee will be remunerated according to the actual grading of the current job.*

*There may be individual cases of abnormal circumstances, in particular:*

- (i) those where an employee had the opportunity to pursue or accept a similar or higher paid job to that which he/she originally held;*

- (ii) *those, probably at a high level within the organisation, where protected as outlined in (i) and (ii) above would negate or significantly hinder the operation of the new organisation.*

*In such exceptional cases the question of protection of existing terms and conditions will be a matter for consultation and negotiation with both the employee and the appropriate Trade Union.*

*The total cost of salary protection must be reasonable in relation to the cost of other possible options to deal with situations of redundancy. Therefore, that total cost should not normally exceed the sum of the termination payment that would otherwise have been made, savings from the recruitment process, savings from reduced induction and training needs and any other financial factors that are relevant to the case. Where the cost of the level of protection that would be afforded exceeds this figure, consideration will be given to reducing the level of protection to bring into line with the latter figure. The means of implementing the reduction will be agreed with the employee e.g. a lower level of protection or protection for a reduced period. Where the Central Services Director and the employee's "new" Chief Officer consider that there are exceptional circumstances warranting a higher level of protection than that provided by the terms of this paragraph, they may vary the level in consultation with the Chairman of the General Purposes Committee and the Cabinet Member for Finance and Health.*

*For the purpose of redeployment, non contractual payments such as overtime earnings, are deemed not to be part of the specific salary of any employee.*

## **K Dismissal on the Grounds of Redundancy**

An employee who has been dismissed by reason of redundancy must:

- 1 be notified in writing of the decision to make their post redundant,
- 2 meet with the Service Chief Officer (or his/her nominee) and a representative from Personnel Services to discuss the reasons for the redundancy,
- 3 have the opportunity to appeal against the decision.

The employee may be accompanied by a Trade Union representative or a workplace colleague to the meetings specified in 2 and 3 above.

## **L Appeals against Dismissal on the Grounds of Redundancy**

- 1 Appeals must be made, in writing to the Central Services Director, within 10 working days of the employee receiving the letter giving notice of the termination of their employment on the grounds of

redundancy. The appeal should describe the grounds on which the employee wishes to challenge the dismissal decision.

- 2 Appeals will be heard by a Chief Officer (or their nominated deputy) from a service other than that in which the redundancy is taking place, advised by a representative from Personnel Services. The Chief Officer hearing the appeal will write to the employee advising them of the time and date of the appeal hearing. Normally this will be within 10 days of receipt of the employee's written appeal (and always within that individual's notice period). The Chief Officer (or their nominated deputy from the service that made the redundancy decision will also be present at the meeting.
- 3 The employee who is appealing the decision will present their appeal and the Chief Officer (or their nominated deputy) who made the dismissal decision will respond to the points raised. The manager hearing the appeal may ask additional questions of either party. The employee has the right to be accompanied by a Trade Union representative or a workplace colleague
- 4 The decision may be made at the end of the appeal hearing or no later than 5 working days and should be confirmed in writing.
- 5 Appeals may be heard collectively and represented by a Trade Union or a nominated spokesperson for the group.
- 6 If, following review, the original dismissal is overturned, the individual will be reinstated.

## **M Time Off to Look for Work Elsewhere**

The Councils will honour the statutory right of employees, who have been continuously employed for at least 2 years, and who are under notice of dismissal by reason of redundancy, to take time off during working hours to look for another job elsewhere.

## **N Terms of Redundancy**

*The provisions set out in this Section form the Council's Policy on Compensation based upon the provisions of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (the "2006 Compensation Regulations") ,*

*The compensation arrangements set out in this Section are at the absolute discretion of the Council and no employee has an entitlement to compensation before an award is made.*

*Subject to the following, in the particular circumstances:*



- (i) *the Council having regard to the extent to which the exercise of its discretionary powers, in accordance with its policy, unless properly limited, could lead to a serious loss of confidence in the public service.*
- (ii) *the Council being satisfied that its policy (as set out in this Section) is workable, affordable and reasonable having regard to the foreseeable costs.*
- (iii) *there being no redeployment opportunities which the employees could be reasonably required to take up;*
- (iv) *the termination rendering sufficient revenue savings; and*
- (v) *the Management Team and consultee members/member bodies agreeing that the proposed staff structure and termination settlement are reasonable in all the circumstances of the case;*

*the Council may exercise its discretion to make a payment calculated by using the Government's statutory redundancy payment calculator formula and the employee's actual week's pay for those who are made redundant or depart on the grounds of the efficiency of the service. The Redundancy Ready Reckoner in Appendix 1 is used to calculate the pay due.*

*The terms in this Section apply to any employees who are dismissed by reason of redundancy or in the interest of the efficiency of the service.*

If an employee under notice of redundancy receives an offer prior to the date of redundancy (in local government or a related service) covered by the Redundancy Payments (Continuity in Local Government etc ) Modification Order 1999, to commence within 4 weeks of their date of termination, there will be no entitlement to a redundancy payment.

## **O Operating the Procedure**

*Termination settlements and salary protection agreements are subject to the approval of the Central Services Director and Chief Officer concerned, in consultation with the Management Team. Where the costs of a termination settlement have not previously been reported to the General Purposes Committee as part of the report proposing the reorganisation leading to the termination, those costs must also be agreed with the Chairman of General Purposes Committee and the Cabinet Member for Finance and Health.*

*The Central Services Director will either personally or through a senior member of his/her staff:*

*advise and assist the displaced employee in finding other suitable alternative employment;*

*consult and liaise with Chief Officers or appropriate senior members of their staff;*  
*keep the employee informed of developments and deal with problems;*  
*maintain close consultation with the employee and his/her union and ensure that the situation is jointly reviewed on a regular basis.*

*The effectiveness of the Policy will be kept under review and it will be revised from time to time should changing circumstances so dictate.*