

## **Human Resources Procedure**

### **Redundancy and Efficiency Procedure**

#### **Scope**

This procedure applies to all employees of Cheshire East Council. It is not applicable to schools based employees. There are specific procedures for schools employees which can be accessed via the Schools Intranet Site.

#### **Purpose**

The purpose of this procedure is to outline the considerations to be made and process to be followed when a redundancy situation arises or where it may be considered to be in the interests of efficiency of the organisation for an employee's employment to terminate.

#### **Definition of Redundancy**

A Redundancy situation is defined by the Employment Rights Act 1996 (s.139(1)) as

a) the fact that the employer has ceased or intends to cease to carry on the business for the purposes of which the employee was employed, or to carry on the business in the place where the employee was employed

Or,

b) the fact that the requirements of the business for employees to carry out work of a particular kind or for employees to carry out work of a particular kind in the place where the employee was employed have ceased or diminished or are expected to cease or diminish

A redundancy payment can only be made where the statutory definition of a redundancy is met. It cannot be paid in any other circumstances.

#### **Definition of Efficiency**

There may be occasions when it is in the interests of the Council to release an employee from the organisation to reduce costs to improve efficiency. The release may include payment of a lump sum or severance payment, where the release achieves the more effective use of resources and provides value for money.

#### **Procedure**

Where the possibility of redundancy arises, management will enter into

consultations with the appropriate employees and employee representatives as early as possible with a view to discussing of all the options. Reference should also be made to the Restructuring Policy.

The Council will seek to avoid compulsory redundancy wherever possible. Consideration will be given to the following subject to the Council's business needs at the time.

- Normal employee turnover and retirements
- Recruitment freeze or the use of temporary or fixed term contracts or other short term methods of covering the work, e.g. acting up arrangements.
- Ring fencing vacancies to affected employees
- Reducing costs by reducing overtime; reviewing the balance of gradings (using job evaluation as appropriate); reviewing working patterns (to avoid those that attract enhancements)
- Buy out of hours, considering whether employees would be willing to reduce their hours
- Retraining/Reskilling for employees to enable them to develop new skills and so move on either within or outside the Council
- Outplacement and counseling services which may assist employees in finding employment outside of the Council
- Protection of earnings for a limited time where there is a reasonable alternative job at a lower level.
- Redeployment

### **Compulsory Redundancies**

This will be considered where it has not been possible to find an alternative to redundancy.

### **Consultation**

It is a legal requirement to consult both employees and appropriate representatives about potential redundancies. Consultation should include discussion on ways of:-

Avoiding dismissals

Reducing the number of employees to be dismissed

Mitigating the consequences of the dismissals

Selection Criteria

with a view to reaching agreement.

Where the Council is considering reductions in staffing levels it will consult relevant recognised trade unions and employees.

At any time during the consultation period, the proposals may be withdrawn or modified in response to changes in circumstances or the identification of an alternative course of action.

Consultation will take place at the earliest opportunity even when the employees to be made redundant are volunteers, and irrespective of whether or not they are members of the recognised trade union, or whether they qualify for redundancy pay.

Consultation for all redundancies will take place at the earliest opportunity but where:-

- i) 20 or more redundancies are proposed at one establishment (ie Cheshire East Borough Council) within a 90 day period consultation will begin at least 30 days before the first dismissals take effect.
- ii) 100 or more redundancies are proposed at one establishment within a 90 day period, consultation will begin a minimum of 45 days before the first dismissals take effect.

Timescales for proposed redundancies of less than 20 will be part of the consultation but the process will be the same.

#### **Discussions with the Trade Unions will include:**

- a) The reasons for the proposals;
- b) The number and job titles of those potentially affected
- c) The total number of employees of that job title employed at the establishment in question;
- d) The proposed method of selecting the employees who may be dismissed;
- e) The proposed method of carrying out the dismissals

#### **Notification to Secretary of State**

Notification to the Secretary of State will be made if proposing to dismiss as redundant at least 20 employees. A copy of this formal notification will be sent to the Trade Unions.

#### **Consultation with Employees**

Consultation with employees will take place at two levels: collectively and individually. Precisely what is notified to employees and exactly how it is done will vary according to particular circumstances but in broad terms it is usual to follow a collective meeting with individual discussions. It is recommended that a representative of the Human Resources Team be invited to both meetings. Trade Union representatives will also be invited to attend these collective meetings.

#### **Collective Consultation**

A collective meeting is useful for giving information to groups of employees on:-

- \* The financial backgrounds to the need for redundancies.

- \* The alternatives that management have considered.
- \* The numbers and categories of employees likely to be affected.
- \* The criteria to be used in selecting employees for redundancy.
- \* When individuals will be informed of their position.
- \* The opportunity for individual discussions.
- \* The content and availability of assistance and support
- \* Cheshire East Council's redeployment procedure.

Employees should be invited to comment on the proposals within an agreed timescale. Further meetings may need to be arranged as a result.

### **Individual Consultation**

Employees affected will be offered an individual consultative meeting with their manager and the Redeployment Officer to discuss the details of the process. Employees may be accompanied at this meeting by a Trade Union representative or a work colleague.

Individual counselling can be provided where appropriate and necessary.

### **Selection Criteria for Redundancy**

The selection criteria to be used will be notified as part of the consultation for any particular proposed reduction.

### **Voluntary Redundancy (VR)**

In conjunction with the above measures, Cheshire East Council will consider volunteers for redundancy either directly or indirectly but volunteers will not automatically be accepted. (Indirect or 'bumped' redundancy is where a volunteer in a continuing job is dismissed to make way for another employee who would otherwise be redundant). In such circumstances the volunteer's employment is terminated on grounds of redundancy.

When considering applications for voluntary redundancy the Council will consider:

- The need for the competency and skill set to meet the current commitments
- The uniqueness of that competency and skill set in the organisation to the expected demand
- The likely need for that competency and skill set to meet future needs
- The likely timescale of future needs, comparing the cost of retention with the cost of VR and future re-recruitment
- The opportunity to cross skill or retrain remaining staff to fill the gap, and the cost and timescale to achieve this
- The cost of VR

## **Termination of Employment**

The termination of employment on the grounds of redundancy requires formal approval from the VR panel.

### **Appeals**

If an employee wishes to exercise his right of appeal against the issuing of a notice of termination of employment on the grounds of redundancy he/she must do so by lodging a notice of the grounds of appeal in writing to the Head of Service and copied to the Head of Human Resources within ten working days of being notified of the action.

The written notice of appeal must clearly state the grounds for the appeal.

The appeal will be heard in line with the appeals process in the Dismissal Procedure.

### **Period of notice**

Where the employer gives notice of the termination of employment notice will be as follows:

<u>Length of continuous employment</u>	<u>Period of notice</u>
Less than 4 weeks	No entitlement to notice
Four weeks but less than two years	1 week
Two years but less than 12 years	1 week for each year of continuous employment
12 years or more	Not less than twelve weeks

Previous service with any public authority to which the Redundancy Payment Modification Order applies will count towards the length of service for notice periods (provided that all service has been continuous).

In Compulsory Redundancy situations (only) where Cheshire East Council is unable to serve the appropriate period of notice by the date on which employment ceases, advice should be sought from Human Resources regarding the discretion to apply pay in lieu of notice.

### **Annual leave**

Where employees have been given notice of termination on the grounds of redundancy, managers should try to ensure that they use up any outstanding leave entitlement, accrued up to the end of their employment. In cases of release on the grounds of business efficiency or Voluntary Redundancy, any unused leave entitlement at the date of termination will be lost and this will be reflected within the settlement agreement.

In a compulsory redundancy situation (only), where an employee is not able to take outstanding leave due to work pressures, they may be entitled to a payment in lieu, in accordance with the provisions of the Working Time Regulations. In such situations managers must seek advice from Human Resources.

### **Letters of Dismissal**

Notification of redundancy dismissal will be in writing and include notice periods, details of the redundancy payments and pension's benefits payable where there is an entitlement and notification of the employee's right of appeal with details of how the employee may exercise this right if he/she wishes.

### **Leaving Early**

If an employee resigns in anticipation of being selected for redundancy s/he will have no entitlement to a redundancy payment.

### **Redundancy Payment Modification Order**

If an employee who has been served notice of the termination of employment on the grounds of redundancy, but before the date on which their notice expires, is offered suitable alternative employment, either by Cheshire East Council or with a public authority within the Redundancy Payment Modification Order to start within four weeks of the expiry of the notice, s/he will have no entitlement to a redundancy payment.

If, however, employees are offered employment by an employer which is not within the Redundancy Payment Modification Order s/he will remain entitled to receive the redundancy payment from Cheshire East Council.

### **Redundancy Payments**

In a redundancy situation, as defined by the Employment Rights Act 1996 an employee may be eligible for either early retirement or severance, depending on the circumstances.

For employees in the Local Government Pension Scheme, the provisions are:

#### **Compulsory Redundancies**

- early release of pension benefits in line with pension scheme rules (if aged 55 and over with at least two years membership in the LGPS or with transferred pension).
- a redundancy payment in accordance with the State formula based on the employee's actual week's pay.

#### **Voluntary Redundancies**

- This is the same as for compulsory redundancy, but with an additional payment of 0.8 times the statutory payment, bringing the total payment to 1.80 times the statutory formula and up to a maximum of 50 weeks pay. This additional element is awarded in accordance with the Local Government (Early Termination of Employment) (Discretionary

Compensation) Regulations 2000 and the Council reserves the right to change all discretionary elements.

Employees who are not in the LGPS will be entitled to:

**Compulsory Redundancy** - a redundancy payment in accordance with the State formula based on the employee's actual week's pay.

- **Voluntary Redundancy** - a redundancy payment in accordance with the State formula based on the employee's actual week's pay **plus** an additional payment of 0.8 times the statutory payment, bringing the total payment to 1.80 times the statutory formula and up to a maximum of 50 weeks pay. This additional element is awarded in accordance with the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2000 and the Council reserves the right to change all discretionary elements.

### **Mutual Termination / Settlement agreements**

The Council uses settlement agreements as a matter of course for all voluntary redundancies and exits on the grounds of efficiency, and this applies to all employees, including Chief Officers, including Chief Executive.

### **Salary Sacrifice Schemes**

Where an employee is participating in Salary Sacrifice schemes, e.g. Green Car Scheme/Purchase of Annual Leave etc., at the time of redundancy their redundancy or severance payment on the grounds of efficiency will be calculated using the pre sacrificed salary.

### **Time off for Job Hunting**

An employee who has been given notice of dismissal on the grounds of redundancy is entitled, during the period of notice, to reasonable time off with pay to look for other employment or to arrange training for future employment.

Employees should always check with their manager that it is convenient for them to take time off to look for work, visit the Job Centre or attend an interview, before they arrange or confirm an appointment.

### **Release on grounds of business efficiency (for employees age 55 or above in the Local Government Pension Scheme - LGPS)**

There may be occasions where the Council will consider retirement where the release of the employee achieves the more effective use of resources and provides value for money for the Council. It may be used to facilitate restructuring and/or to avoid a redundancy, and will not result in the deletion of the post holder's post from the structure in the same way as redundancy would. An employee cannot be compelled to retire under this scheme, it can only be voluntary.

To be eligible an employee must be:

- age 55 or above
- in the LGPS with at least 3 months membership or transferred service.

The scheme gives unreduced payment of accrued pension benefits and employees may also be paid a lump sum payment, under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006. The discretionary lump sum payment will be based on the merits of each individual case but up to a maximum of the same amount that would be permitted under the Council's Voluntary Redundancy scheme.

Factors to be taken into account in awarding compensation would include:

- Overall reasonableness, including benefits to the Council tax payer by the employee leaving the Council's service.
- Direct financial savings to be incurred by the employee leaving the Council's service.
- Employee relations considerations.

### **Release on grounds of business efficiency (for employees under age 55, or those not in the Local Government Pension Scheme- LGPS)**

The Council will also consider release on the grounds of efficiency for employees aged under 55 years, to enable the Council to continue to achieve effective use of resources and provide value for money.

The scheme provides for a lump sum payment to be made, based on the merits of each individual case but up to a maximum of the same amount that would be permitted under the Council's Voluntary Redundancy scheme

Factors to be taken into account in awarding compensation would include:

- Overall reasonableness, including benefits to the Council tax payer by the employee leaving the Council's service.
- Direct financial savings to be incurred by the employee leaving the Council's service.
- Employee relations considerations.

### **Re-employment**

The re-employment of any former employees who have left the employment of the Council or Legacy Councils on the grounds of voluntary redundancy or efficiency grounds is not permitted. Under truly exceptional circumstances, exception to this rule may be made by the Head of Human Resources in conjunction with the Leader and the relevant Portfolio Holder.

Reappointment and re-engagement includes all types of contractual relationships whether they be a contract of employment, contract of service, etc. and whether the individual is appointed as an employee or engaged as an interim, direct consultancy or via an agency or other supplier.

### **Equality**



Cheshire East Council will ensure that, when implementing this procedure, no employee will be disadvantaged on the basis of age, disability, gender reassignment, marital status or civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. This means that the policy may need to be adjusted to cater for the specific needs of an individual, including the provision of information in alternative formats where necessary.

### **Monitoring and Review**

The procedure will be reviewed in the light of operating experience and/or changes in legislation.

Data relating to this procedure will be collated and monitored periodically to ensure that the procedure is operating fairly, consistently and effectively. Issues that are identified from the data will be dealt with appropriately.

Useful Links:	Restructuring Policy
Prepared by:	HR Policy and Strategy Team
Date :	11.12.13
	1.4.14
	April 2016
Revisions and reasons:	Changes to redundancy consultation period.
	LGPS 2014
	Clarification of efficiency
Review Date:	April 2019