

DRAFT June 2003

NEW HARROW PROJECT

Protocol for Managing Organisational Change – Appendix IV.

DISPLACED EMPLOYEES

Employees will be displaced when they are not allocated to a post to the new structure as a result of one or more of the following:-

- Assimilation
- Ring fencing
- Open competition
- Redeployment

As a result the employees will be at risk of redundancy.

Redundancy - definition

Redundancy is defined by section 139 of the Employment Rights Act 1996 as a dismissal which is wholly or mainly due to the fact that:

the employer has ceased, or intends to cease to carry on the business for the purposes for which the employee was employed; or to carry on the business in the place where the employee was so employed; or

the requirements of the business for employees;

- to carry out work of a particular kind; or
 - to carry out work of a particular kind in a place where they were so employed;
- have ceased or diminished or are expected to cease or diminish.

For the purposes of trade union consultation rights **only**, a redundancy is defined as a 'dismissal for reasons not related to the individual concerned or for a number of reasons all of which are not so related'.

Employment legislation determines that the expiry of a fixed term contract (of any length) is a dismissal and the reason for dismissal may be defined as redundancy. Hence there will be a need to consult with the individual at the expiry of a fixed term contract. (See appendix on consultation).

MEASURES TO AVOID REDUNDANCIES

Where redundancies are possible, the relevant Senior Officer should discuss with the Chief Personnel Officer (or his/her nominee) whether there are other means of reducing requirements for employees, such as:

- phasing-in the reduction through natural wastage (i.e. not recruiting to vacancies as they arise);
- reducing the use of temporary and agency staff;

- discontinuing any secondments;
- limiting recruitment;
- retiring employees aged over the normal retiring age;
- reducing overtime;
- considering alternative working arrangements e.g. part-time, job sharing;
- seeking voluntary reduction in hours;
- transferring staff to other jobs;
- seeking volunteers for redundancy/early retirement;
- considering 'bumped' redundancies; and
- considering redeployment elsewhere in the council

Voluntary Redundancy

Before commencing steps to identify individual redundancies, the staff group affected by the changes should be consulted and volunteers for redundancy invited. Pension benefits will be in line with the council's policy at that time.

Acceptance of volunteers is at the discretion of the council which retains the right to determine whether to release an individual. Such a decision will be based on: -

- The need retain an appropriate balance of skills and experience in the workforce to ensure that services are maintained and delivered effectively;
- The financial implications of releasing an individual. Redundancy/early retirement will only be considered where there is an identifiable saving; and
- The viability of suitable alternative employment.

Discussions on the use of voluntary redundancy/early retirements will take place with the trade unions as part of the consultation process.

Employees whose requests for early retirement or redundancy are not agreed will be given a written explanation of the reason for the refusal.

Transfers

Transfer to another job

The intention of a transfer is to avoid a redundancy by moving an employee prior to selection for redundancy.

This can only take place where the council has a contractual right to transfer the employee and where a transfer could have taken place regardless of whether there is a risk of redundancy. Where there is no contractual right to transfer the employee a transfer may still take place if both parties agree.

Transfers will normally be between similar posts of the same grade, where earnings are not affected. The selection criteria outlined in the section on competitive interviews (appendix II) will only need to be applied where more than one employee wishes to transfer and more than one employee is affected. However where an employee volunteers to transfer to a lower grade post, it will be on the terms and conditions of that post with no protection of earnings.

Transferred Redundancy (bumping)

This is where an employee not in the original pool of selection volunteers to be made redundant and their job is given to a potentially redundant employee. There must be a direct connection between the employee who leaves the council on the grounds of redundancy and the group of directly affected employees.

Bumped redundancies can only take place when an overall reduction in the workforce results.

If the potentially redundant employee moves into the post before receiving notice of redundancy, they are not entitled to a four-week trial period.

If the potentially redundant employee has received notice of redundancy they will be entitled to a 4-week trial period. If this is successful full notice will be given to the volunteer who will be entitled to receive a redundancy payment.

Voluntary reduction in hours

The option of a voluntary reduction in hours enables employees to reduce their contractual working hours and receive a lump sum compensation award. This option is only available where a reduction in hours is a practical option; such as to achieve budget reductions. All requests for reduction in hours must be authorised by a Director/Head of Service. The lump sum compensation payment will be calculated as follows:

Hours	Compensation
Reduction in Hours Involving Less than 20% loss of gross pay	No Compensation
Reduction in Hours involving 20 – 40% loss of gross pay	No of weeks on Statutory Redundancy Grid x weekly loss of pay
Reduction in Hours involving more than 40% loss of gross pay	No of weeks on Statutory Redundancy Grid x weekly loss of pay plus an additional payment for notice x weekly loss of pay

The compensation payment will be subject to tax, NI deductions etc. If the employee is a member of the pension scheme, any reduction in hours will not affect their continued membership, but it will affect their benefits. Employees should be advised to seek individual advice from the pension section before agreeing the changes.

An employee who requests a voluntary reduction in hours must agree to pay back an element of the compensation if he/she leaves the job voluntarily either to another post internally or externally or increases their hours within a defined period. The amount to be paid back will be based on the difference between the compensation paid and the savings actually made, calculated on an individual basis, the principle being that the scheme must not cost more than the savings it produces. E.g. Where an employee has received compensation of £1,500 wishes to leave and savings made since their reduction in hours amount to £1000 the employee will be required to pay back £500.

REDEPLOYMENT - OFFERS OF ALTERNATIVE EMPLOYMENT

Redeployees are classified as those employees who have no posts within the council as a result of one or more of the following:

- Assimilation

- Ringfencing
- Open competition
- A rationalisation or closure of services

As well as the obligations as a good employer, the council has a statutory responsibility to assist employees in finding alternative work, as a means of reducing the numbers dismissed due to redundancy.

If necessary, employees affected by the organisational change may be issued notices to terminate their contracts of employment immediately after the proposed reorganisation is agreed. The assimilation and redeployment processes will commence at the same time. For employees who are not assimilated or appointed to a job in the new structure, suitable alternative employment will be sought within the council during their period of notice. The employee may be given temporary duties to undertake during their period of notice.

Where employees are identified for re-deployment they will be given a list of all current vacancies (A copy of the internal vacancy list will be sent to their home address) and will have first priority for consideration of any suitable alternative job with the council. This will include an interview with the appropriate manager from the Department in which the vacancy exists. The alternative job may be in the employee's existing Department or in another Department.

The Employee Relations Section will carry out a matching exercise and bring to the attention of the relevant Personnel Officer any vacancies which may be suitable for redeployees before an advertisement is placed. It is also the responsibility of the redeployee to identify and apply for any suitable vacancies direct with the recruiting department. They should indicate on their application form that they are a redeployee and as such, where they meet the minimum criteria as set out in the person specification, will be interviewed.

Factors to consider in determining the suitability of the job:

- nature of the job
- the similarity between old and new jobs
- the employee's skills and experience and whether these fit the job description and person specification
- pay and benefits
- hours/shift patterns
- Permanence
- Location

The council will endeavour to offer employees selected for re-deployment alternative employment, provided that suitable jobs are available. All offers will be made having regard to the circumstances of the individual employee.

In the event that a number of redeployees are seeking redeployment to the same job and are equally suitable, the following priority should be given (based on Mingo case):

- Women returning from maternity leave under threat of redundancy
- Redeployees with a disability
- Employees who have received notice of redundancy
- Employees redeployed (as a result of potential redundancy) within last 12 months

Refusal of suitable alternative employment

Where an employee unreasonably refuses offers of alternative suitable employment they may lose all rights to redundancy compensation,

TRIAL PERIODS

No trial period is necessary when, before the end of the employee's employment under their previous contract of employment (i.e. the date of termination due to redundancy), an employee is offered renewal of their contract of employment or re- engagement on the **same terms as the previous employment including the capacity and place in which the employee is employed**. The employee will be treated as not having been dismissed and if they refuse such an offer there will be no entitlement to redundancy pay.

A trial period is necessary when an employee is offered any other post which differs in capacity, place and /or on others terms and conditions. In other words, if the provisions of the proposed contract differ at all from the provisions of the employees' previous contact, Section 138(3) of the ERA 1996 entitles the employee to a trial period.

The offer of alternative employment will be put to the employee in writing and should be made before the employment under the previous contract ends.

The effect of the trial period is to give both the employee and the council the chance to assess whether the new post is appropriate

Length of the trial period

Redeployees will be entitled to a trial period of a minimum of four weeks. This may be extended to a maximum of 12 weeks in exceptional circumstances, e.g. as a reasonable adjustment for a disabled employee, or if a specific training need is identified prior to the trial period.

If an employee works beyond the end of the four week period (or any jointly agreed longer period), any redundancy entitlement will be lost as the employee will have been deemed to have accepted the new employment.

Purposes of trial periods

The purposes of the trial period are to:

- enable the employee to acquire the skills and knowledge necessary to perform the duties of the new job to a satisfactory level;
- allow both the employee and managers to determine the suitability of the employee for the job.

The Chief Personnel Officer should ensure that the relevant Line Manager understands her/his responsibilities before and during the trial period. The role of the manager during this period is crucial. Departmental Personnel will provide the manager with written guidance, as described below, on her/his responsibilities before the trial period begins.

The Departmental Personnel Manager will be available to advise on the operation of trial periods. Advice is also available on procedures for determining the success or otherwise of a trial period, including the procedures to be adopted where the trial is viewed as unsuccessful.

Role of Managers during Trial

The Manager must ensure that the redeployee receives reasonable support and guidance in adapting to the duties of the new job. This process requires the manager to:

- before the trial redeployment begins, identify the skills and knowledge required to undertake the duties and responsibilities of the job;
- audit the employee's knowledge and skills against those required for the job and, if necessary, put together a package of measures to enable the employee to acquire them;
- hold regular supervisory meetings with the employee (initially these should be weekly, although they may often only involve a few minutes);
- set targets for the employee in terms of the duties/activities involved in the job;
- monitor the employee's performance against the targets and provide feedback;
- identify any problems with performance as early as possible;
- take necessary remedial action to assist the employee to improve performance - this may include training, asking the employee to work more closely with an experienced colleague, closer supervision, etc.;
- keep written records of all action taken during the trial period, and of supervisory meetings held with the employee.

Unsuccessful trial periods

Where the line manager identifies an on-going problem with the performance of the employee, and remedial action does not resolve this, the line manager must advise the Departmental Personnel Manager as soon as possible. The line manager is not required to await the completion of the trial period before involving Personnel, if it is clear that support and guidance is unlikely to produce an improvement in performance.

A range of factors may affect the success of redeployment. Circumstances will vary from case to case. However, the sorts of issues that could be relevant include:

- differences in specific duties/tasks could require different skills and knowledge - for example the employee may be uncomfortable in a job which requires more contact with members of the public and stronger communication skills, or requires familiarity with new technology
- responsibilities attached to the jobs- although the duties may be similar the level of responsibility attached may be different between the jobs
- level of supervision - for example, an employee who in the old job worked under close day-to-day supervision might find difficulty in adapting to a job where there is more autonomy given
- difficulties in adapting to the working culture of the new unit, for example, moving from a team-based working environment to an environment which is more individualistic
- more onerous travel arrangements, different hours or shift patterns, effects on domestic responsibilities, etc., or even on health
- employee inability or unwillingness to develop the skills required for the new job
- problems for the employee in achievement of targets (which should have been set by the manager)

In practice, the greater the differences between new and old jobs the easier it may be for either party (but particularly the employee) to establish that the redeployment has not worked.

Either party may claim that the trial period has established the unsuitability of the new job. If both sides agree, then the trial period will be terminated. If the employee's notice period for redundancy has expired, then they will receive their redundancy payment, with the date of termination being the date the employment under the old contract ended. If their notice period has not expired then the redeployment process will recommence at the stage reached prior to the unsuccessful redeployment. If no further redeployment opportunities are possible, then the employment will be terminated on the grounds of redundancy.

If there is a disagreement about the success of a trial, the reasons for this should be explored but if no agreement can be reached then either party can decide that the alternative duties are not suitable and on that basis to terminate the arrangement. The employee would, however, have to have reasonable grounds to explain why the duties are not suitable. If the employee unreasonably refuses an offer of suitable alternative employment, they will not be entitled to receive a redundancy payment.

If there is any other issue that arises that is not connected to the change in job but results in the council deciding that the employee should leave its employment, e.g. an act of gross misconduct, then the employee will lose their right to a redundancy payment. However in these circumstances it is necessary to follow the appropriate council procedure e.g. disciplinary procedure before dismissal takes place, and in such circumstances the reason for dismissal would be misconduct.

EMPLOYEES WITH A DISABILITY

In order to fulfil its obligations under the Disability Discrimination Act 1995, where an employee with a disability is being considered for assimilation or redeployment to a different job, consideration must be given to any reasonable adjustments that can be made to enable that employee to successfully undertake the new duties. Where necessary, every effort will be made to redeploy disabled employees to suitable alternative posts.

PROTECTION ARRANGEMENTS

Protection of Salary

UNDER DISCUSSION

Protection of earnings for teachers will be in accordance with the teachers' pay and conditions of employment document. For further information contact the Education Personnel section.

Protection of Other Terms and Conditions

Place of Work and Working Patterns

Place of work and working patterns will not normally be protected and will, where necessary, vary in accordance with the requirements of the post to which the employee is

re-deployed. Consideration will be given to flexible or phased in arrangements subject to operational requirements.

Contractual Hours

Where the grade/rate of pay of the post to which the employee is re-deployed is unchanged but the contractual hours of work are less than their current contractual hours (s)he will be entitled to a lump sum compensation payment calculated in accordance with the voluntary reduction in hours scheme.

Where the grade/rate of pay of the post to which the employee is re-deployed is less than their current grade/rate of pay and the contractual hours are less than their current contractual hours; the employee will be entitled to protection of salary based on the new contractual hours. They will not be entitled to a lump sum compensation payment.

Where the contractual hours of work of the post to which the employee is re-deployed are less than their current contractual hours but their earnings are equal to or greater than their previous earnings the employee is not eligible for protection or compensation.

Essential Car User Allowance

An employee whose post carries an essential car user allowance will lose the allowance if there is no allowance attached to the post to which (s)he is redeployed.

Lease Car Scheme

An employee with a lease car who is redeployed will be entitled to retain their car until the expiry of their current lease car agreement. Upon expiry of the current lease car agreement their entitlement to participate in the lease car scheme will cease.

Redeployment into Schools

Under local management of schools, Governing Bodies determine who will work in a school. Employees seeking redeployment to a school can be nominated by the Council for consideration by the Governing Body.

If an employee is interested in being redeployed to a post within a school the personnel section should be contacted. All schools are expected to co-operate in redeploying staff.

CONTRACTS AND NOTICE OF TERMINATION

Departmental Personnel are responsible for issuing appropriate contractual documentation to employees appointed to jobs in the new structure. The Departmental Personnel Manager will be available to advise on appropriate pay and conditions of service to be applied to employees in their new jobs. This includes any salary protection arrangements.

Departmental Personnel will also draft and issue any necessary notices of termination of employment.

Notice of Termination in Redundancies

Employees are entitled to one week's notice for each year of service to a maximum of 12 weeks or the notice entitlement due under the contract, whichever is the greater.

Where an employee has been warned of a risk of redundancy but has not been given formal notification but leaves before the date of redundancy, he/she will not be entitled to a redundancy payment.

If an employee has been given a written date for redundancy and wishes to leave during his/her statutory period of notice, he/she will be entitled to a redundancy payment, calculated to the date on which they leave, provided their manager agrees to them leaving. The request to leave early must be made during the employee's statutory notice period and must be in writing.

Where it is not agreed, the Council may refuse to make a redundancy payment. Further advice is available from the Departmental Personnel section.

Where the final date for redundancy is not known e.g. where an establishment is closing and clients need to be placed in other accommodation, issuing notification of redundancy may be delayed until the closure date is finalised. Thereafter employees may receive all or part of their redundancy payment in lieu of notice.

GRIEVANCE

If an employee considers that they have been treated unfairly at any stage of the redundancy procedure they may pursue the matter under the Grievance Procedure. Access to the grievance procedure ceases on their last day of service.

A redundant employee is entitled to ask to see an anonymous comparison of the assessment information between themselves and others in the pool of selection. This should only be made available if the individual has registered a grievance in writing.

RE-EMPLOYMENT

Redundancy Payments will be affected if an employee receives an unconditional offer of employment from this or any other Local Authority (or any other employer participating in the Local government Pension Scheme), on or before their last day of service with this Council or takes up such employment within 4 weeks of their last day of service.

If an employee in receipt of an augmented pension from the Council is re-employed, the augmented pension will cease during the period of re-employment.

MONITORING

The Chief Personnel Officer, in conjunction with the relevant Senior Manager, (or nominated officer) will monitor the impact of any reorganisation, both to ensure its effectiveness and that the process has been carried out in a fair and equitable manner. In particular it will be monitored to ensure that it does not impact adversely or disproportionately on any group based on their gender, race or disability.

All information on assimilation, appointment through the ring-fence, redeployment, voluntary and compulsory redundancy will be collected and analysed by gender, ethnicity, and disability. If any disproportionate or adverse impact is identified the Chief Personnel Officer will investigate and put forward proposals for remedying this as appropriate.

Monitoring information will be made available to the trade unions.

DOCUMENTATION

All decisions relating to reorganisations, including information relating to selection for assimilation, appointment or redundancy should be recorded in writing and retained on the individual employee's personal file.

Appendix A**REDUNDANCY PAYMENT SCHEME as at 30 May 2003****(a) Employees under 50 years of age**

- (i) Employees under 50 years of age who have at least 2 years reckonable service will be eligible for payments based on age and length of qualifying service in accordance with the statutory scheme.
- (ii) Service does not have to be continuous provided that the break does not exceed 1 month and 1 day. However, previous service will not count if the employee has already received a redundancy payment in respect of that period.
- (iii) The scheme applies to full time and part time employees irrespective of hours worked.
- (iv) A weeks pay is calculated in accordance with the provisions of the 1984 Local Government (Compensation for Redundancy and Premature Retirement) Regulations. The actual amount of a week's pay is calculated as for pensionable pay and is based on the amount of pensionable pay and benefits received in the 12 months before termination.

(b) Employees aged 50 years or over

Employees with more than 1 but less than 2 years' service are eligible to receive a lump sum payment of 5 weeks pay.

ENHANCED REDUNDANCY SCHEME

Note: This scheme is only applicable to employees who were employed by the London Borough of Harrow on the 31.3.95.

(a) Eligibility

- (i) Applies to employees under 50 years of age
- (ii) Also applies to employees over 50 years of age who are not eligible under the Pension Regulations, or Compensation Regulations 1989 for immediate payment of benefits.
- (iii) Employees must have at least one year's Local Government service.
- (iv) The scheme applies to full-time and part-time employees irrespective of the number of hours worked.

(b) Payments

- (i) 75% enhancement to the statutory redundancy payments including provisions of the 1982 Local Government (Compensation for Redundancy and Premature Retirement) Regulations.

- (ii) Additional payment of up to 5 weeks pay to a maximum of 5 x the statutory redundancy weekly pay limit, 1 week's pay for 1 year's service, 2 weeks' pay for 2 years' service up to a maximum of 5 weeks pay.

© **Employees aged 50 years and over**

Providing employees meet the service requirements of the Pension Regulations they are entitled to be considered to receive the maximum number of added years applicable under the Local Government Pension Scheme.