

Implementation Executive

6th October 2008

Appointments Procedure

Purpose

1. To seek direction from the Implementation Executive on the timescale to be adopted for making appointments to posts in the new structures

Background

2. On the 1st April 2009 staff currently employed by the District Councils will be transferred to Wiltshire Council with TUPE rights i.e. protected on their existing terms and conditions
3. Following the recent appointments to Service Directors work has been taking place on the organisational structures which, subject to budgetary provision, will apply from April 2009.
4. These structures then need to be populated by the application of an Appointments Procedure. It is clear from Face to Face meetings and other comments that many staff across the five authorities are keen to have clarity and certainty about their position in 2009/10 as early as possible. This can only happen if the Appointments Procedure begins to be applied once structures have been finalised.
5. Staff have been advised that it is hoped to inform very many staff of their position from April 2009 by the end of December 2008.

Proposed Appointments Procedure

6. Attached at Appendix 1 is the proposed Appointments Procedure. This has been the subject of detailed negotiations within the Joint Consultative Committee comprising HR Managers from the five authorities and Trade Union representatives (both full-time and lay)
7. Following several months of negotiations the Unions have agreed its content. However, they do not agree that it begin to be applied as soon as structures are finalised. Rather, they argue that it should be applied from April 2009 onwards.
8. The Unions are concerned that:-
 1. Those District Council staff not appointed through ownership or ring fenced prior consideration would become identified by December 2008 as potentially displaced and redundant following their TUPE transfer in April 2009

2. There is no legal power for the necessary statutory consultations to be undertaken by the transferee or at risk letters to be sent to such staff until their transfer into the employment of Wiltshire Council has taken place
3. The consultations which Wiltshire Council would then undertake in April 2009 would not enable the Unions to make meaningful representations towards avoiding the potential redundancies. The design of structures would already have taken place.
4. Any staff who, following the receipt of an at risk letter, subsequently become dismissed on the grounds of redundancy, would be subject to unfair dismissal. Their dismissal would be connected to a decision and an action made by the transferee prior to transfer. (If an Employment Tribunal determines that a dismissal is by reason of or connected to a TUPE transfer it is automatically unfair)

Options

9. There appear to be three options open to the Implementation Executive:-
 1. To adopt unilaterally the Appointments Procedure and to authorise its early application
 2. To accept the Trade Union view and enter into a collective agreement on this basis
 3. To adopt the Appointments Procedure in principle but to apply it only to County Council staff prior to the 1st April 2009 and to District Council staff thereafter.

Option 1 (to adopt unilaterally the Appointments Procedure and to authorise its early application)

10. There would be the risk of a reference to Employment Tribunal by:-
 1. The Unions on the basis of failure by Wiltshire Council to consult properly about possible redundancies and
 2. Of unfair dismissal of any former District Council employee dismissed on the grounds of redundancy.
11. If such a claim were upheld by an Employment Tribunal the financial consequences are:-
 1. Up to 90 days pay for each breach of duty to consult
 2. Up to £72,000 for unfair dismissal

However, the precise awards have to have regard to the particular circumstances of the case

12. The Unions would withdraw from participation in job evaluation panels. Job evaluation is being used to assess consistently "job size" across the five authorities and is one of the proposed criteria for appointing through ownership or ring fenced prior consideration. The non participation by the Trade Unions in the job evaluation exercise might incline some staff to challenge their allocation to a job (or their non allocation) on the basis that their Union had not been party to "job sizing". This in turn could have the effect of slowing down the application of the Appointments Procedure

13. There are clearly financial, industrial relations and employee relations risks (which may linger beyond LGR) associated with this approach. However, the potential costs of litigation would be mitigated by the achievement at the earliest date of populated structures which are consistent with budget provision.
14. How real are those risks?
 1. The overwhelming majority of District Council staff are likely to be allocated into a job by ownership or ring fenced prior consideration. Many work in service areas which in April 2009 will not be subject to any organisational change and consequently not subject to possible job loss
 2. There are currently about 600 temporary staff, recruited primarily to protect the employment of permanent staff. Of these about 200 are in administrative and clerical roles. Such roles are most likely to be the subject of rationalisation. The County Council bid anticipated a loss of about 250 jobs. It therefore appears possible to move towards the required staffing level by terminating the employment of temporary staff
 3. If redundancies are necessary the severance package agreed by the Implementation Executive may encourage volunteers whose dismissal could remove the need for compulsory redundancy which in turn would remove the risk of reference to Employment Tribunal.

Option 2 (Accept the Trade Union view)

15. The implications and possible consequences include:-
 1. The risk of litigation would be reduced.
 2. The Unions would more likely participate in the job evaluation process. In turn, there are likely to be less challenges from staff over appointments.
 3. The period during which reductions to the staffing levels would take place would probably take longer than six months. The workload during that period would be enormous since it would require both the application of the Appointments Procedure, the operation of the redeployment process and the termination of employment.
 4. The longer the period before reductions are achieved the more difficult would it be to meet the budgetary targets.
 5. The inability to appoint Service Heads and middle managers prior to the 1st April would defer preparation for the new authority. Service delivery from that date could be adversely affected.
 6. Many staff would be disappointed and frustrated by the delay in knowing their position from April 2009. This could be difficult to manage. Given the uncertainty some staff may become inclined to look for jobs elsewhere.
 7. The process of harmonisation of pay and other terms and conditions to ensure equal pay, and proposed in the attached Appointments Procedure for the 1st October 2009 would almost certainly need to be deferred. This would perpetuate the risk to the new authority of an equal pay challenge arising from the merger of five authorities with different pay and terms of employment.

Option 3 (Adopt the Appointments Procedure in principle but apply it only to County Council staff prior to the 1st April 2009 and the District Council staff thereafter)

16. The implications and possible consequences include:-

1. There would be a two speed approach with County Council staff being appointed and informed in advance of District Council staff. This would probably antagonise District Council staff. It would disadvantage them as there would be less jobs open to them and consequently potentially more redundancies.
2. The Unions would probably not agree to such an approach and may adopt a policy of non-cooperation.
3. The ability to plan for the new authority would fall almost exclusively to County Council managers. It would not promote "inclusion".

Proposal

17. The Implementation Executive is asked to determine its preferred approach. This should then be the subject of immediate notification to staff and Trade Unions.

Richard Woodroofe
Assistant Director, LGR Staffing
1st October 2008

Revised Procedure For Appointing To Posts In New Structure

1. Purpose

The purpose of this procedure is to:-

- 1.1 Seek to maximise appointments and minimise compulsory redundancies.
- 1.2 Comply with employment law/individual rights.
- 1.3 Appoint suitable people.
- 1.4 Support those staff whose employment is being terminated.

2. Scope

2.1 This procedure applies to all staff :-

- a) Currently employed by the County Council as at the 1st April, 2009 excluding those employed under the Soulbury Agreement and JNC for Chief Officers and those employed in schools.
- b) Employed by the District councils as at the 31st March, 2009 and who have the statutory right to be transferred to the employment of Wiltshire Council with effect from 1st April, 2009.

3. Preventative Measures

3.1 In addition to the measures specifically referred to elsewhere in this procedure, in order to maximise appointments and minimise compulsory redundancies :-

- a) The County Council and District Councils will continue to apply the recruitment protocol currently in place which seeks to restrict permanent appointments in service areas most likely to be affected by structural change.
- b) The new Wiltshire Council will continue to apply such a restriction until satisfied that the opportunity for continuing employment for permanent employees will not be jeopardised.

3.2 Any proposed removal of or change to the recruitment protocol will be the subject of joint discussion.

4. **Ownership**

Ownership will apply :-

- 4.1 Where a post in the new structure is substantially the same as the post-holder's existing post, i.e.
 - a) The same or substantially the same duties and responsibilities identified from the existing and new job description/job information or evaluation questionnaire, or other relevant documentation.
 - b) The same or very similar skill, knowledge/experience mix having regard to the job description/job information questionnaire/recent recruitment exercises.
 - c) The similarity of job evaluation score. Similarity will apply where the evaluation score for the existing job falls within the evaluation points range of the grade for the job in the new organisation. (Job Evaluation of the existing job and that in the new organisation will be conducted by trained and joint panels of evaluators using the Greater London Provincial Council scheme as applied by the County Council.)
- 4.2 The number of existing job holders who meet the criteria above is the same as or less than the number of jobs in the new structure.
- 4.3 Where ownership is established the post-holder :-
 - a) If previously employed by the County Council will be appointed on the evaluated grade and pay rate attaching to the post; and
 - b) If previously employed by a District Council will continue to be employed on their existing pay and other terms and conditions subject to (c) below; and
 - c) Where the pay rate attaching to the evaluated grade is higher than the post holders current pay, the post holder will be appointed to that higher level, but remain on their other existing terms and conditions.

5. **Ring Fenced Prior Consideration**

- 5.1 Where the criteria in 4.1 above are met but the number of jobs available in the new organisation is less than the number of staff meeting those criteria, appointment will be made on the basis of "ring fenced prior consideration".
- 5.2 Selection from within that ring fence will be by the following :-
 - a) An interview with the manager of the section in which the vacant post is located. (The manager will have been issued with a briefing pack, from which the Trade Unions will have been consulted, designed to promote consistent and objective selection. The manager will be required to keep a record of the outcome of the interview.)

- b) A statement from the existing manager specifying whether the employee is currently subject to any disciplinary/capability proceedings or warnings and to the number and level of the employees sickness absence during the past year. (This statement will be made available to the employee in advance of the interview).

5.3 Where ring fenced prior consideration is established the post-holder :-

- a) If previously employed by the County Council will be appointed on the evaluated grade and pay rate attaching to the post; and
- b) If previously employed by a District Council will continue to be employed on their existing pay and other terms and conditions subject to (c) below; and
- c) Where the pay rate attaching to the evaluated grade is higher than the post holders current pay, the post holder will be appointed to that higher level, but remain on their other existing terms and conditions.

5.4 Those staff within the ring fence who are not appointed by the application of the prior consideration selection process will be at risk of termination of their employment on the grounds of redundancy, and will be subject to the redeployment process as a means of trying to avoid the termination of their employment.

6. **Appeals against Ownership and Ring Fenced Prior Consideration**

6.1 An employee may appeal on the following grounds.

6.2 He/She has been:

- a) Appointed to a post on the basis of ownership or ring fence prior consideration which is not substantially the same as their existing post or
- b) Not appointed to a post on the basis of ownership or not considered for employment through ring fence prior consideration despite there being a post substantially the same as their existing post

6.3 Any appeal will need to be supported by evidence (such as the JEQ for the existing post). The appeal will be determined within 10 working days of the appeal being submitted by the Service Director for the post in question, the Assistant Director (LGR staffing transition) and a Trade Union representative

7. **Removal of Existing Job**

7.1 Those staff whose existing job is removed or is substantially changed and are at risk of termination of their employment on the grounds of redundancy will be subject to the redeployment process as a means of trying to avoid termination of their employment.

8. **Unfilled Posts Following Ownership And Ring Fenced Prior Consideration (voluntary early redeployment)**

- 8.1 Following appointments by ownership and ring fenced prior consideration unfilled posts will be advertised in the period to the 31st March 2009 to all staff in order :-
- a) To maintain services.
 - b) To provide displaced staff with the opportunity to secure an appointment prior to April 2009.
 - c) To provide staff who have been appointed on the basis of ownership or ring fenced prior consideration with an opportunity to secure a more senior post, thereby providing further opportunity for displaced staff to be appointed.
- 8.2 Appointment to such posts will :-
- a) Take effect from the date of appointment, rather than 1st April, 2009.
 - b) Be on the terms and conditions attaching to the post.

9. **Redeployment with Effect from 1st April, 2009**

- 9.1 An employee who is not allocated a post on the basis of ownership or ring fenced prior consideration (see paragraphs 4 and 5 above) or voluntary early redeployment (see paragraph 8 above) or whose job is removed or is substantially changed (see paragraph 7 above)
- a) Will continue to be employed on the terms and conditions applying as at the 31st March, 2009 and
 - b) Will be issued with At Risk notice on or shortly after 1st April, 2009.
 - c) Will be the subject of statutory consultation on or shortly after 1st April, 2009.
 - d) If necessary will be issued with notice of termination of employment following the consultation. (The period of notice will be the statutory or contractual, whichever is the greater)
- 9.2 During the period of consultation and notice the employee will be subject to the redeployment process for a period of three months and will be subject to the measures for redeployment set out below for the possible provision of suitable alternative employment. If, despite those measures, no suitable alternative employment is made available, then at the end of that notice period the employment will cease on the grounds of redundancy, with access to the appropriate severance payments. In exceptional cases, and by mutual consent, the period notice can be shortened.

- 9.3 Any vacancy which arises whether because of staff turnover or because it is a new post will be examined as potential redeployment for an individual who is in the “redeployment pool”.
- 9.4 The matching of a potentially redundant employee against a vacancy will be based upon factors such as similarity of :-
- a) Duties and responsibilities;
 - b) Knowledge, skill and experience;
 - c) Job evaluation score (see paragraph 4.1[c] above and 9.8 below);
 - d) Working hours and time;
 - e) Location (But having regard both to the general requirement that this will be applied by all parties reasonably and to any particular individual circumstances. A scheme of additional travelling expenses will be developed to recompense staff for additional travelling costs).
- 9.5 Selection will be by the following :-
- a) An interview with the manager of the section in which the vacant post is located. (the manager will have been issued with a briefing pack about which, from which the Trade Unions will have been consulted, designed to promote consistent and objective selection. The manager will be required to keep a record of the outcome of the interview.)
 - b) A statement from the existing manager specifying whether the employee is currently subject to any disciplinary/capability proceedings or warnings and to the number and level of the employees sickness absence during the past year. (This statement will be made available to the employee in advance of the interview).
- 9.6 All offers of suitable alternative employment will be subject to a trial period of four weeks in accordance with statutory requirements but with the ability to be mutually extended to three months to enable re-training and familiarisation with the requirements of the job.
- 9.7 Staff who are in the redundancy redeployment pool but who reject an offer of suitable alternative employment risk forfeiting their severance payment. (Where forfeiture of severance payment is being considered for unreasonable refusal there will be consultation with the employee before any decision is made).
- 9.8 Where the evaluated score for the existing job falls within one grade higher or lower than the evaluated grade for a new job it will be regarded as potentially suitable.
- 9.9 Where the pay rate attaching to the evaluated grade is higher than the post holder’s current pay, the post holder will be appointed to that higher level.

- 9.10 Where a lower paid post is offered and accepted as suitable alternative employment then protection of base pay will apply for a period of three years. Existing base pay will be frozen at its current level. During the protection period no increments or national pay awards will be applied until the minimum of the grade of the new substantive post matches or exceeds the frozen salary. At the end of the protection period the employee will be placed upon the maximum of the substantive grade.

10 **Unfilled Posts**

- 10.1 Posts which are not filled after the application of ownership, ring fenced prior consideration, voluntary early redeployment, and which have made available to those within the redeployment pool without an individual having been successfully appointed, will be subsequently advertised to all staff within the new organisation. Only when all these avenues have been exhausted may vacancies be advertised externally.

- 10.2 Selection will be by the following :-

- a) An interview with the manager of the section in which the vacant post is located. (the manager will have been issued with a briefing pack, about which the Trade Unions will have been consulted, designed to promote consistent and objective selection. The manager will be required to keep a record of the outcome of the interview.)
- b) A statement from the existing manager specifying whether the employee is currently subject to any disciplinary/capability proceedings or warnings and to the number and level of the employees sickness absence during the past year. (This statement will be made available to the employee in advance of the interview).

- 10.3 The appointment will be on subject to the County Council's grade and pay arrangements and to its other terms and conditions.

11. **Volunteers for Early Termination of Employment**

- 11.1 The authority will seek to be flexible in order to avoid compulsory redundancies. It will therefore consider requests for redundancy from any employee who

- a) Is ring fenced for prior consideration but whose withdrawal from that ring would enable the continuing employment of an otherwise potentially compulsory redundant employee.
- b) Has a job in the new organisation but whose redundancy would avoid an otherwise compulsory redundancy (i.e. the bumped principle).

- 11.2 The authority will also sympathetically consider requests for termination of employment from staff who are placed in the new organisation but whose dismissal would not avoid a compulsory redundancy. In such circumstances the test of redundancy might not be met but the authority would sympathetically consider the termination of the employment on the grounds of the efficiency of the service with access to the appropriate severance package.

- 11.3 In considering such requests under 11.1 and 11.2 above, the Authority will have regard to the particular circumstances, but will need to ensure that it retains sufficient skills, expertise and experience to deliver services. Additionally, having had regard to the particular circumstances, the Authority may define categories of employee from whom it invites volunteers.
- 11.4 There will be no right of appeal against the refusal by the Authority to agree a request for early termination of employment.

12. **Support for Redundant Staff**

- 12.1 The authority will make available to those staff whose employment is being terminated on the grounds of redundancy (or efficiency of the service) a package of assistance such as :-
- a) Supporting the individual in the period leading to the termination of their employment, for example through counselling or coaching.
 - b) Providing practical support to assist in the search for employment including, for example, IT skills training or other relevant training.
 - c) Providing financial advice.
- 12.2 The authority will seek to tailor the support available to the particular needs of individuals.

13. **Appeals**

- 13.1 An employee whose employment is terminated on the grounds of redundancy will have the right to appeal against the dismissal.

14. **Harmonisation**

- 14.1 Grade and pay arrangements, and other terms and conditions, which are equal pay compliant will apply to all staff with effect from 1st October 2009.
- 14.2 There will be a proper process of consultation and negotiation to this end.

15. **Co-operation and Consultation**

- 15.1 There will be full co-operation between the parties on the application of this procedure.
- 15.2 Any employee who is the subject of its application has the right to be accompanied to any meeting with Management by a Trade Union Representative.