

# Wiltshire Council Human Resources Policies & Procedures

## Redundancy Termination Procedure

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#### **Policy Statement:**

This procedure is for dealing with staff facing the prospect of redundancy.

#### **Introduction / Purpose:**

This procedure outlines the process for dealing with staff facing the prospect of redundancy.

#### **Objectives:**

The objective of this procedure is to ensure that statutory requirements are met in dealing with staff facing redundancy.

#### **Scope:**

The policy applies to all Wiltshire Council employees, apart from teachers and non teaching staff appointed in accordance with the Schools Standards and Framework Act 1998 and the Education Act 2002. In redundancy matters that involve Chief / Statutory Officers and Deputy Chief Officers (i.e. Chief Executive, Corporate Directors and Service Directors) of the Council these procedures must be read in conjunction with their terms and conditions of employment (i.e. JNC for Chief Officers of Local Authorities Constitution of Service) and Wiltshire Council's Constitution.

## **Procedure / Application:**

### **DEFINITION OF REDUNDANCY**

The dismissal of an employee on the grounds of redundancy occurs in one of the following circumstances:-

- a) The business ceases.
- b) Closure of the employee's normal place of work.
- c) The number of employees needed to do the work has diminished because the work required has diminished.
- d) The number of employees required has diminished although the work has not diminished.

A redundancy payment can only be paid for dismissals which meet the statutory definition of redundancy. It cannot be paid otherwise.

Wiltshire Council seeks to avoid compulsory redundancies. The following measures may be adopted in order to minimise dismissal of staff on the grounds of redundancy:-

- a) Not filling vacancies within a particular business area.
- b) Restricting appointments where a vacancy may constitute alternative employment for an employee facing dismissal.
- c) Restricting the amount of overtime working and/or the engagement of agency staff.
- d) Consideration of alternative working arrangements, e.g. job sharing, part-time working.
- e) Reviewing those staff appointed on a temporary basis specifically pending a review of the structure or service.

### **CONSULTATION**

It is a requirement to consult both staff and appropriate representatives about proposed 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 Wiltshire Council is considering reductions in staffing levels it will seek the views of relevant recognised trade unions and staff.

The principal objective of consultation is to enable matters of interest to both management and employees to be jointly examined and discussed. 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.

## When Should Consultation Start?

Consultation has to 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.

Failure to consult could result in financial compensation being awarded to redundant employees by an Employment Tribunal.

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

- i) 20 or more redundancies are proposed at one establishment (ie Wiltshire Council) within a 90 day period consultation must 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 must begin at least 90 days before the first dismissals take effect.

Consultation must begin before dismissal notices are sent out because the duty to consult rests on Wiltshire Council proposing to issue notices of dismissal. This does not mean that dismissal notices can be sent out the day after consultation begins. There must be sufficient meaningful consultation before notices of dismissal are sent out, i.e. there must be time for the union representatives who are consulted to consider properly the proposals that are being put to them and to formulate constructive proposals.

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

## Letters to Trade Unions

The letters consulting Trade Union representatives must include:

- a) The reasons for the proposals;
- b) The number and job titles of employees which Wiltshire Council proposes to dismiss as redundant;
- 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 (e.g. how and when employees will be informed) including the period over which the dismissals are to take effect.

This information must be disclosed before consultation begins and if the employer has not formed a view on all the above details by the time consultation must begin, he must propose provisional details for discussion although the employer is free to make changes throughout consultation, having regard to comments made during the consultation period.

An employer is not compelled to accept any particular representation, but equally, consultation must be meaningful. The employer must consider representations and reply to them, stating the reasons if any are rejected.

Wiltshire Council is a single employer in law. In order to ensure that statutory obligations are met, the Director of Resources must be informed about the timing and content of consultation letters.

## **Notification to Secretary of State**

Employers who are proposing to dismiss employees as redundant have a duty to notify the Secretary of State in respect of redundancies involving at least 20 employees. This notification must be made within the same timescales as those laid down for consultation with appropriate representatives. Failure to comply with this requirement is a criminal offence. Therefore, it is essential that the Director of Resources is advised of all consultations.

## **Consultation with Staff**

Consultation with staff should take place at two levels: collective and individual. Precisely what is notified to staff 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 may also attend these collective meetings.

### **Collective Consultation**

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

- \* The financial backgrounds to the need for redundancies.
- \* The alternatives that management has considered.
- \* The numbers and categories of staff likely to be affected.
- \* The criteria to be used in selecting staff for redundancy.
- \* The procedure for securing authority for the dismissals from the Head of the Paid Service, (the Chief Executive) or his nominated Officer.
- \* When individuals will be informed of their position.
- \* The opportunity for individual discussions.
- \* The content and availability of the Employee Assistance Programme.
- \* Wiltshire Council's redeployment policy.

Staff 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. Staff should be offered the opportunity of having their trade union representative present if they wish. At this meeting the following points should be covered:-

- a) A summary of the background to the need for redundancies.
- b) An explanation of the criteria used to select staff and how they apply to the individual in question.
- c) An explanation of the need for the approval of the Head of the Paid Service or his nominee and the probable timescale within which this will be sought. The individual should also be advised of their right of appeal.
- d) An explanation of the next steps, i.e. letter of dismissal, redundancy and pension entitlements, whether or not the individual will be required to work the notice period and when the employment will finish.
- e) An explanation of the employee's statutory right to reasonable paid time off during notice to look for new employment.

- f) Consideration of redeployment.
- g) The Employee Assistance Programme, including the availability of counselling.

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

## **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**

In conjunction with the above measures, Wiltshire 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 is dismissed on grounds of redundancy.

Consideration of volunteers for redundancy will include:

- a) Ability to redeploy otherwise redundant employees.
- b) Practicality and the needs of the service/department (e.g. skills loss of volunteer).
- c) Financial implications.
- d) Legality.

## **TERMINATION OF EMPLOYMENT**

The termination of employment on the grounds of redundancy requires the approval of the Head of the Paid Service (the Chief Executive) or following consultation with the Service Director – Human Resources & Organisational Development, or nominee, who for these purposes shall include:

- a) The Corporate Director of the Directorate in which the employee works; or
- b) Such other second or third tier Officer as that Corporate Director has authorised for that purpose.

There is a right of appeal against the termination of employment.

## **APPEALS**

If an employee wishes to exercise his right of appeal he/she must do so by lodging a notice of the grounds of appeal in writing with their Service Manager and copied to the HR Advisor who has been involved with the case within ten working days of being notified of the action.

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

All appeals will be heard by an Appeals Panel within 25 days of the receipt of the appeal being received.

The employee and his/her representative will be given notice in writing at least five working days in advance of the time and place of the hearing.

Any extension on the timeframes must be agreed in advance by both parties.

The Appeals Panel consists of a nominated representative who has not had prior involvement with the case, advised by a representative from Human Resources. At the appeal hearing both parties (i.e. the individual who is appealing against the action taken against them and the officer who is presenting the management's case) have the opportunity to state their case and to ask questions of each other. The employee may be accompanied to the appeal hearing by a work colleague, or a union representative. Once they have heard the case the panel may make the following range of decisions.

The nominated representative hearing an appeal against the action taken / decision to dismiss the employee may allow the appeal, or dismiss the appeal.

The Appeals Panel has power in the case of an appeal against action that includes dismissal to:

- dismiss the appeal; or
- to allow the appeal;

There is no further right of internal appeal against the decision of the Appeals Panel.

Employees may be represented at formal hearings and appeals by a trade union representative or a friend who is an employee of the Council.

### **Period of Notice**

If employment is terminated on the grounds of redundancy, staff are entitled to a period of paid notice. That period is either the contractual period (i.e. the period specified in the Statement of Particulars) or that to which someone is entitled by statute, whichever is the greater. The statutory period is:-

<b>Period of Continuous Employment</b>	<b>Notice</b>
One month or more but less than 2 years	1 week
Two years or more but less than 12 years	1 week for each year of continuous employment
Twelve years or more	Not less than 12 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). If Wiltshire Council is unable to serve the appropriate period of notice by the date on which employment ceases, employees will be entitled to pay in lieu of notice. It will amount to the net pay which otherwise would have been payable if the appropriate period of notice had been served.

## Letters of Dismissal

Letters of dismissal should contain:-

- a) Notification that the Head of the Paid Service or his nominee has approved the termination of employment on the grounds of redundancy.
- b) Notification of the notice period which the employee is entitled to, when this will commence and when it will expire, i.e. the date of dismissal.
- c) The length of the notice period to which the individual is entitled can be found by taking the longer of:-
  - the notice period stipulated on the individual's Statement of Particulars; or
  - a calculation of one week's notice for each completed year of service up to a maximum of twelve weeks.
- d) Whether or not the employee is required to work his/her notice, and if not, the arrangements for payment in lieu of notice.
- e) Reference to the redundancy payment and pension benefits payable where there is an entitlement.
- f) Notification of the employee's right of appeal and details of how the employee may exercise this right if he/she wishes.

In individual cases the letter may need to include reference to arrangements for repayments of car loans, and the return of lease cars, Identity Badges, Access Cards and protective clothing and the like.

Pay in lieu of notice may arise where it has not been possible or desirable for the employee to work all or some of his/her notice period, e.g. where an establishment has closed or there is no work available. Where an employee receives pay in lieu of notice, the letter of dismissal should be appropriately worded to reflect this. The effect of this sort of arrangement is that the employment is terminated on a given date (usually the employee's last working day) and the employee receives a payment equivalent to net pay for the balance of his/her notice period.

## Garden Leave

This is the term applied to all or part of a notice period during which an employee is paid but cannot work either for his/her existing employer or for a different one. Only if the contract contains an express provision to provide only agreed pay, rather than work is the employer entitled to send an employee on garden leave. The use of garden leave should be used cautiously since there may not be a contractual power to provide pay but no work. The Director of Resources should be consulted.

## Appeal Against Dismissal on Grounds of Redundancy

An employee dismissed on the grounds of redundancy is entitled to appeal against their dismissal. If unsuccessful at appeal and subject to one year's service, the employee may then appeal to an Employment Tribunal claiming unfair dismissal.

The letter of dismissal must specify the employee's right to appeal internally. Appeals should be lodged in writing within 10 working days of the date of receipt of the letter informing the employee of the decision to dismiss.

## **What Happens if a Member of Staff wants to Leave Early?**

The employee can seek to waive a period of notice. The Service Director will need to agree this. If it is agreed, the period of notice will be paid to the new revised date of termination of employment and financial benefits (such as redundancy payment and pension) will be calculated from the date on which employment ceases. The following conditions must apply for a redundancy payment not to be forfeited:

- i) Wiltshire Council must have told the employee that s/he will become redundant on a date notified to her/him in writing; and
- ii) Wiltshire Council must agree to the premature termination of her/his employment and agree in writing to bring forward the date of the employee's dismissal for redundancy.

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

## **Suitable Alternative Employment**

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 Wiltshire 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, staff 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 Wiltshire Council.

## **Re-employment by the Wiltshire Council Following Dismissal on the Grounds of Redundancy**

If a member of staff is dismissed on redundancy grounds and is not in receipt of an enhanced pension they may be considered for re-employment to posts within Wiltshire Council after the minimum statutory period of four weeks' absence has elapsed, subject to the following conditions:-

1. The new post did not exist or was not foreseeable at the time of the dismissal. The vacancy has been advertised in accordance with Wiltshire Council policy and procedures.
2. The appointment has been made on the basis of the best person for the job with regard to the usual selection procedures.

The Head of Paid Service has discretion to appoint former employees who are in receipt of an enhanced pension subject to the above conditions if the appointment is in the best interests of the authority. In this case, if the aggregate of pension and new salary exceeds the former salary then the enhanced element of the pension will be abated.

## **REDUNDANCY PAYMENT**

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

All staff to be eligible to compensation under the 2006 Discretionary Compensation Regulations. The compensation will be based upon a multiplier of four times the number of



weeks of pay to which the individual is entitled under the Statutory Redundancy Payment, but subject to a maximum of 104 weeks, and with the use of normal weekly pay; or  
In respect of those staff aged 50 years and over, and who are in the local government pension scheme, either the application of the Discretionary Compensation Regulations as above, or augmentation of pensionable service as set out below.

Augmentation of pensionable service to be graduated as follows:-

Less than five years pensionable	-	No augmentation
Five up to ten years reckonable service	-	Two years
Ten up to fifteen years reckonable service	-	Three years
Fifteen up to twenty years reckonable service	-	Four years
Twenty years and over reckonable service	-	Five years.

Plus the payment of redundancy payment with the use of normal weekly pay.

If necessary, augmentation to be “capped” at the cost to the Council of applying the Discretionary Compensation arrangements set out above.

Statutory Redundancy payments up to £30,000 are not subject to tax or National Insurance deductions.

### **Timescale**

These arrangements have been designed for local government reorganisation and will be reviewed no later than April 2011.

### **Cost to Employer:**

The employing department bears the cost of an employee's redundancy payment together with the capital cost to the pension fund of early payment of pension and augmentation.

## **REDUNDANCY AID PACKAGE**

Loss of employment is a traumatic and stressful experience. Wiltshire Council seeks to mitigate the effects of redundancy on staff, by:

- The Redeployment Scheme where potentially redundant employees' current skills and abilities are assessed against current vacancies within Wiltshire Council before the post is advertised externally, and by
- The Employee Assistance Programme (EAP) which offers practical help and personal guidance for those wishing to receive assistance on job search skills, careers guidance and self-assessment, financial benefits, education and training opportunities, etc. The precise details will be determined as part of each reduction proposal.

## **REDEPLOYMENT**

In order to assess whether a vacancy may provide redeployment, staff who have been served notice of redundancy or who are under threat of redundancy will be required to complete a Person Profile form which will provide details about their current employment, skills and experience.

The redeployment process involves assessing vacancies which could constitute suitable alternative employment for staff who are facing dismissal on the grounds of redundancy. Vacancies are assessed, in the first instance, against the person profile details in order to establish whether a vacancy could provide suitable alternative employment for an employee who may otherwise be made redundant.

### **Suitable Alternative Employment**

Staff at risk of redundancy will be asked to register onto the on-line vacancy website to enable them to be notified of vacancies which appear to constitute suitable alternative employment for them, having regard to the duties and responsibilities of the post, to the specification in terms of skill, qualifications, experience, grade, location and hours.

If there are staff under notice of redundancy who:

1. hold jobs of a similar nature
2. outwardly meet the person specification
3. are graded on the same grade or within one grade higher or lower than the vacancy

will be notified as potential suitable alternative employment. Applications will be restricted to those staff.

Any employee who has been notified of a vacancy that may provide suitable alternative employment must apply as specified in the notification. 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 a decision is made).

An employee who is regarded by management as capable of performing the duties and responsibilities of a post and is made an offer which constitutes suitable alternative employment but who rejects such an offer will jeopardise the entitlement to redundancy payment and pension consequent upon dismissal.

### **Pay Protection**

Where a lower paid post is offered (one grade lower than substantive post) and accepted as suitable alternative employment then protection of base pay will apply for a period of three years. 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. This is subject to review as part of the LGR harmonisation exercise.

### **Retraining for Redeployment**

In cases where suitable alternative employment has been identified for an employee who is facing redundancy, training in areas where the specification has not been met will be arranged. However, judgements will have regard to the availability, cost and length of such training, and the willingness and ability of the employee to learn new skills.

## **Other Alternative Employment**

Staff who have been served notice of redundancy may wish to consider a vacancy advertised on the Council's vacancy website as alternative employment, even though the vacancy cannot be regarded as being 'suitable'.

Where the employee appears to meet the job criteria and is willing to accept a post which is graded below the grading protection range as alternative employment, that employee must be considered for the vacancy before any other candidates can be considered. This is because if they accept and if they complete the trial period (see below) this would render the job as a suitable alternative. In considering a post below the grading protection range the employee should be encouraged to assess the pension implications.

Where a vacancy offers the opportunity for promotion, normal recruitment procedures apply and staff who have been served notice of redundancy who apply for such a vacancy will be considered in open competition with other applicants.

## **Trial Periods**

Where an offer of suitable alternative employment or alternative employment is made by Wiltshire Council to an employee who would otherwise be redundant, the employee must be allowed to work a trial period of four weeks (or longer, for the purposes of retraining). During this time the employee can decide about the suitability of the post offered. The trial period is calculated on four calendar weeks counting from the date on which the employee commences work under the new contract.

If the employee, or employer, terminates the contract of employment within the trial period the employee will be treated as having been dismissed when the previous employment ended. The employee is then entitled to a redundancy payment unless it can be shown that the alternative employment was suitable and that the employee unreasonably refused to continue with it.

## **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.

Staff should always check with their manager that it is operationally viable 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.

## **ANNUAL LEAVE**

Employees will be entitled to payment in lieu of untaken leave entitlement up to a maximum balance of 4 weeks' (20 days) entitlement in accordance with the provisions of the Working Time Regulations.

Any annual leave taken or authorised to be taken before notice is issued and which exceeds the entitlement at the date of termination of employment will not be recovered.

## **REPAYMENT/NON-REPAYMENT OF LOANS AND EXPENSES**

### **What happens to leased cars?**

If the lease on a car has not run its full 3 years early termination costs will be incurred. These charges will, for the reason of redundancy, be paid by the employee's department, not the employee.

### **Repayment of a car loan**

Car loans should normally be repaid in full by an employee on the termination of their employment. The outstanding amount can be deducted from a redundancy payment. However, an employee may request for repayment of the loan to be deferred. This would be subject to agreement by the Finance Service Director. In any such arrangement:-

- a) The employee's department must under-write the debt pending full repayment.
- b) Interest on the outstanding loan will be related to the Lloyds Bank base rate. The interest rate applicable to loans under the assisted car purchase scheme will not apply.
- c) If repayment is made through deductions from the Wiltshire Council pension there will be no additional charge. If, however, repayment is made by standing order or direct debit, a small service charge will be levied.

### **Repayment of Moving Home Allowances**

If a member of staff received moving home allowances on joining the Wiltshire Council, and by their date of redundancy are still within the repayments time scale of 24 months, they will not be required to repay any monies received under this scheme.

### **Mortgage Subsidy**

No repayment of any mortgage subsidy payment will be required where employment is terminated on the grounds of redundancy.

### **Training Expenses**

Where employment is terminated on the grounds of redundancy repayment of any training expenses will not be required.

### **Contact Details:**

HR Advisory Team

### **Policy Version History:**

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