

WILTSHIRE COUNCIL

STAFFING POLICY COMMITTEE

5th April 2011

Amendment to redundancy policy – re-employment by Wiltshire Council

Purpose

1. The purpose of this report is to propose an amendment to the redundancy policy which was agreed in October 2010.

Background

2. The current redundancy policy includes a clause covering re-employment by Wiltshire Council, and states: -

“If you were dismissed on redundancy grounds you may be considered for re-employment to posts within Wiltshire Council after the minimum statutory period of four weeks has elapsed subject to the following conditions:

- The 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.
- The appointment was made on the basis of the best person for the job with regard to the usual selection procedures.
- The appointment has corporate director approval”.

3. This clause has caused some misunderstanding amongst staff, which has led to the belief that employment with the council may be possible 4 weeks after their dismissal. This is incorrect for existing posts, but does apply where posts are newly created following dismissal.
4. In addition the legal team have advised that by applying this policy to all redundant staff this may result in legal challenges on the basis of “restraint of trade”.
5. Restraint of trade could apply if the council is unable to justify the restriction it places on employment. In the case of compulsory redundancy this restriction could be challenged as it is likely to be held to be unreasonable to oblige a person to look for work outside their area of residence when, through no fault of their own, they have been made redundant.
6. In addition to this a review of the policy has highlighted the need for a time limit in the application of the policy, to ensure fairness and equity.
7. The proposed amendment to the policy would provide further clarity on its application, will prevent any legal challenge, and ensure fairness in its

application.

Main considerations

8. The clause in the policy currently applies to all redundant staff. This means that staff who leave on compulsory redundancy grounds, and are therefore in receipt of the statutory redundancy payment, or no payment at all, are prevented from being re-employed by the council in any post which existed in the council at the time of their dismissal.
9. By applying this clause in the policy to all redundant staff the council could be challenged on grounds of “restraint of trade”. This means that the council could be precluding certain people from applying for posts which they would otherwise be legally entitled to apply.
10. To prevent any legal challenge on the basis of “restraint of trade” it is recommended that the clause in the policy should be amended to exclude those staff dismissed on compulsory redundancy grounds, but apply where staff dismissed have been in receipt of the voluntary (enhanced) redundancy payment.
11. This can be justified as the payments are enhanced. The maximum voluntary (enhanced) redundancy payment equates to 12 months net pay, and applies to all employees with 16 years or more service. The average voluntary (enhanced) redundancy payment equates to 7 months net pay. It is therefore reasonable to place a restriction on the re-employment of these former employees.
12. The clause in the policy currently has no time limit, which essentially means staff who are dismissed, and in receipt of a voluntary redundancy payment, will be prevented from being employed in a role which existed at the time of dismissal forever
13. On reviewing the practice in other large organisations it is common practice to apply a 12 month time limit in this type of clause. The legal team has advised that 12 months would be a reasonable time limit to place on this clause. As a result it is recommended that the policy is amended to include a time limit of 12 months from the date of dismissal.
14. Taking all of these factors into account it is recommended that the re-employment by Wiltshire Council clause in the redundancy policy is amended to:

“If you were dismissed on redundancy grounds you may be considered for re-employment to posts within Wiltshire Council after the minimum statutory period of four weeks has elapsed subject to the following conditions:

 - The post did not exist and was not foreseeable at the time of the dismissal.
 - The vacancy has been advertised in accordance with Wiltshire Council policy and procedures.

- The appointment was made on the basis of the best person for the job with regard to the usual selection procedures.
- The appointment has corporate director approval

These conditions will apply for 12 months from the date of your dismissal, after which you may be considered for re-employment to any post within Wiltshire Council.

If you were dismissed on compulsory redundancy grounds these conditions will not apply and you may be considered for re-employment to any post within Wiltshire Council after the minimum statutory period of four weeks has elapsed”.

15. External advice has also been sought from Veale Wasbrough (solicitors), to ensure the policy is consistent with those in other large organisations, including other council’s. Their advice confirms that provided by the legal team that this would not amount to an unfair restraint of trade as the council is not preventing employment in the wider jobs market, and that this approach is common practice amongst large employers including the BBC, Aberdeen City Council, Fife Council, Essex County Council.
16. At a meeting with the trade unions on 15th March 2011, this proposed amendment to the redundancy policy was accepted.

Environmental Impact of the Proposal

17. None.

Risk Assessment

18. None.

Financial Implications

19. None.

Recommendations

20. To approve the amendment to the redundancy policy.

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The following unpublished documents have been relied on in the preparation of this Report: **None**