

London Borough of Bexley - Redeployment and Salary Protection Procedures

HR Service Effective from April 2010 (as agreed by General Purposes Committee January 2010)

1. Introduction

The Council has a legal obligation to redeploy potentially redundant employees, where suitable alternative employment is available, and to avoid redundancies wherever possible.

This document details the process to be followed when employees face termination of their employment on the grounds of redundancy, business efficiency, ill health or capability due to disability.

2. Scope

The redeployment and salary protection procedures apply to all employees whose current employment is at risk of termination on the grounds of redundancy, business efficiency termination, ill-health or capability due to disability (with necessary amendment to allow for differing structures within Community and Voluntary Controlled Schools, Adult Education College, etc).

Note that teachers are excluded from the salary protection arrangements as they have their own nationally agreed safeguarding scheme.

The salary protection arrangements detailed in these procedures will also apply if an employee's grade is reduced as a result of a re-grading exercise. (This excludes regradings resulting from the Single Status job re-evaluation exercise for which specific protection arrangements apply).

Managers are required to co-operate across the Council to ensure the successful operation of this procedure.

3. Redeployment in Specific Instances

3.1 Redundancy Redeployment

Redeployment will be sought for all redundant employees until the last day of service. Redundancy volunteers are expected to co-operate with the redeployment process and consider suitable alternative employment in the same way as those subject to compulsory redundancy.

Employees under notice of redundancy are entitled to reasonable time off with pay in order to find new employment, or to make arrangements for training for future employment. This may include time off to search for suitable vacancies as well as to attend job interviews. The employee will still be required, however, to meet any obligations in connection with their terminating role.

3.2 Business Efficiency Termination Redeployment

Redeployment will be sought for business efficiency terminations under this procedure. This is on the basis that these are 'employer led' terminations with cost implications which, like redundancies, need to be avoided if possible.

Reasonable paid time off with pay to seek alternative work will be allowed at times agreed by the manager, subject to service needs.

3.3 Medical redeployment

Medical redeployment is only available in the following circumstances:

- employees identified by the Council's Occupational Health Service (OHS) as being permanently incapable of discharging efficiently the duties of his/her post but capable of undertaking alternative work
- employees confirmed by the Council's OHS as being unable to carry out the duties of their post because of a disability, and it has not been possible to make reasonable adjustments to allow continuation in that post
- where the Council's OHS advise that the individual should not, on medical grounds, return to their substantive post or where OHS advise that temporary redeployment to an alternative post will facilitate the employee's return to full duties in their substantive post

3.4 Redeployment of Disabled Employees

Managers must consult a Senior HR Adviser at the earliest opportunity if they have a disabled employee in need of redeployment.

Where an employee with a disability is seeking redeployment, they will be considered alongside other redeployees. However, managers must consider any reasonable adjustments that may be necessary to ensure that any possible detriment is prevented. This could mean making adjustments to the selection process or making adjustments to a job role that would enable a disabled employee to carry this out.

More advice can be found in the Council's guidance on disability on the staff intranet, B:HIVE and, specifically in respect of redundancy situations, within the Council's Redundancy procedures. See also Section 6 below.

Managers should engage with the employee at all stages of the redeployment process and seek advice from their Senior HR Adviser and the Occupational Health Service as appropriate.

4. Priority Consideration

An employee on maternity or adoption leave who is under notice of dismissal on the grounds of redundancy must be offered any suitable alternative vacancy available in preference to other employees – even if they are not the most suitable candidate for the job. Failure to comply with this requirement will result in an automatically unfair dismissal.

5. The Redeployment Process

1. Redeployees will complete a Redeployment Form identifying their skills, abilities, experience and relevant qualifications and specifying the sorts of posts for which they wish to be considered. This form will be used as the basis for matching redeployees against current and forthcoming vacancies.
2. The HR Service will regularly review the establishment list to identify pending and actual vacancies that may be suitable for redeployment. They will investigate the suitability of any such vacancy with the employing department and ensure that the vacancy is not advertised until redeployment has

been discounted. This process will include consideration of posts covered by agency staff or consultants.

3. The HR Service will notify the redeployee of any vacancies that arise that could be deemed to be 'suitable alternative employment' (see below), that closely match their existing job role, or which may otherwise be suitable, and arrange an interview for the post.

Redeployees do not necessarily have to meet the person specification in full to be considered a potentially suitable match.

4. A redeployee who sees a job advertised for which they believe they are suitable, or that they wish to be considered for, should notify their HR contact immediately.

Redeployees with internet and intranet access will be expected to review the vacancy schedules each week. Redeployees without such access will be sent copies of any vacant posts advertised by the HR Service.

5. If a potentially suitable redeployee is identified after a job is advertised, but before the offer is made, the redeployee shall be considered for the post in advance of applicants being considered through the normal recruitment process.
6. Redeployees will not be put forward for interview where there is a requirement for a specific qualification that the redeployee does not hold and which they could not obtain within a reasonable period.
7. Redeployment measures will commence at the earliest opportunity, eg. as soon as a potential redundancy situation arises and will continue until the last day of service.
8. The HR Service will maintain a record of all posts that have been discussed with the employee as possible redeployment opportunities along with any reasons for rejecting such offers.
9. Offers of alternative employment will be made in writing and with an appropriate trial period, if required by statutory provisions, as detailed in Section 8 (below).

6. Selection and Appointment through the Redeployment Process

Managers, in consultation with the HR Service, will agree the most appropriate method of selection for a potential redeployee against a vacant post. This will vary depending upon how closely the new job role matches the old, whether there is more than one redeployee being considered for the role, etc.

The appointment process will be an objective assessment of the redeployee's knowledge and competencies/behavioural profile against the person specification requirements for the new post, taking also into account skills that the employee could acquire with training. This will include an objective discussion about the redeployee's relevant skills and competencies for the new role with the redeployee's current manager. Additional information including appraisal documentation, attendance history, training and development records, etc may also be considered.

The redeployee will need to meet any specific post requirements that are fundamental to the role, e.g. to pass a Criminal Records Bureau check.

If a redeployee has a disability within the definition of the Disability Discrimination Act 2005, and reasonable adjustments do not enable them to stay in their original job, if a vacant post exists that the

employee can do –taking into account the transferable skills that the employee has and could acquire with training – the employee should be transferred into that position and provided with any necessary training and any applicable reasonable adjustments. It will not be necessary to hold a competitive interview in the absence of other redeployees.

7. Responsibilities of Redeployees

Redeployees are required to actively co-operate and participate in seeking redeployment. Failure to do so may result in loss of redundancy and severance benefits.

Redeployees are required to:

- complete and update their redeployment forms promptly
- attend meetings and interviews as required
- accept reasonable offers of suitable alternative work
- identify potentially suitable vacancies being advertised in the Council
- seek alternative employment themselves

8. Offers of Alternative Work and Trial Periods

The process for offering alternative work, with or without a trial period, will vary depending upon the reason for which redeployment is being sought. In redundancy situations there are statutory obligations to meet that do not apply in other circumstances. The differing arrangements are explained below:

8.1 Alternative Work and Statutory Trial Periods – Redundancy Redeployments Only

This Section applies to redundancy situations only. For offers of alternative work and trial periods in other circumstances, refer to Section 8.2 and 8.3 accordingly.

Alternative Work

Any reasonable alternative job offer should be put in writing, even where it is believed that it may be rejected. The offer should detail how the new employment differs from the old and must be made before the previous contract ends. The offer must be for the new job to start either immediately after the end of the old job, or after an interval of not more than four weeks and include provision for a statutory four week trial period. (Where the termination takes effect on a Friday, Saturday or Sunday, four weeks commences from the following Monday).

Reasonable alternative job offers should still be made even if they do not entirely match the existing post in terms of pay, grade, job content, etc.

Managers should decide whether or not a post should be considered a 'suitable alternative' in consultation with their Senior HR Adviser. Accurate records will be kept of the grounds for this decision on the employee's file.

When determining if an alternative role within the organisation is 'suitable alternative employment' the following factors should be considered:

1. the training, qualifications and behavioural profile of the employee
2. his or her previous job (which may involve arguments about status)
3. whether the new job would represent a drop in earnings for him/her
4. any problems involved for the employee if the employment is in a different place (subject to a contractual mobility clause)
5. any evidence that similar offers had previously been regarded as suitable for the class of employees affected

It should be made clear to the employee that an alternative job offer is considered by the Council to be 'a suitable alternative job offer' and that refusal to accept the offer will lead to the loss of redundancy and severance entitlements. Only if the employee has reasonable grounds for refusing the alternative post will redundancy entitlements be retained.

If the employment offered is considered to be 'suitable alternative employment' and the employee refuses the offer, the manager, in consultation with the Senior HR Adviser, will consider the employee's reasons for refusing the offer. If it is considered that the employee has reasonable grounds to refuse the offer, alternative employment will continue to be sought and the employee will retain their entitlement to redundancy and severance payments. If the employee's reasons for refusal are not considered to be reasonable, the employee will be informed and entitlement to redundancy and severance payments will be lost.

Should an employee refuse an offer of employment that is not considered to be 'suitable alternative employment', they will retain their right to a redundancy and severance payment and further redeployment opportunities will continue to be sought.

Statutory Trial Period

An employee who is under notice of redundancy has a statutory right to a trial period of four weeks in an alternative job where the provisions of the new contract are materially different from the original.

A formal job offer made through redeployment initiatives, which includes a statutory trial period, should either accompany the formal notice of redundancy or be sent as soon as possible thereafter.

This trial period can be extended, for retraining purposes only, by written agreement setting out the date on which the trial period ends and the employee's terms and conditions after it ends. Agreement to a longer trial must be reached before any trial period begins and specific reference should be made to the retraining aspects of the post that lead to the requirement for an extended trial. At least four weeks of the trial period must be performed after the expiry of the original contract to meet statutory requirements.

If the trial period is successful, employment in the new job will continue and the employee will have no further entitlement to a redundancy payment.

Unsuccessful Trial

If the employee commences a trial period but consideration is being given to terminating the new contract within or at the end of the four weeks, by the employer or the employee, the employee will be invited to a

meeting with the appropriate manager and Senior HR Adviser to discuss the implications. Whether or not the employee will retain their entitlement to redundancy and severance payments will depend upon, as a minimum, the following factors:

- the suitability of the alternative post offered
- any reasons put forward by the employee as to why the post offered may not be a suitable alternative
- any failure by the employee to fully co-operate during the trial

The outcome of the discussions and decisions taken at this meeting will be confirmed in writing.

If the termination was due to a reason unconnected with redundancy, e.g. misconduct, there will be no entitlement to redundancy or severance payments.

Full contractual notice will have been given to coincide with the day on which the previous contract ended. No further notice will therefore be due if the employment is terminated during or at the end of the four-week trial period.

8.2 Alternative Work & Trial Periods – Non-redundancy redeployments

Where an offer of alternative employment is materially different to the existing post it will be offered on a trial period of at least 4 weeks, during which time the redeployee can assess the suitability of the job and the line manager can assess the suitability of the redeployee. The trial period may be extended with the agreement of both parties to 12 weeks, for the purpose of retraining, to satisfy the requirements of the person specification.

Managers will ensure that the requirements of the job are fully understood and provide the necessary structure and training to support the employee in their new role.

If it seems likely that a redeployee will not complete their trial period successfully, they will be advised of the situation at the earliest opportunity and invited to a meeting with the appropriate manager and Senior HR Adviser to discuss the implications (which will vary depending upon the reason for redeployment) and to consider any other available redeployment opportunities.

The outcome of all trial periods will be confirmed in writing and will include written reasons for non-appointment where applicable.

8.3 Alternative Work - No trial period necessary

If an alternative post is available to a redeployee that is materially the same as their existing post, in respect of job content and terms and conditions of employment, the employee will be issued with a variation to their existing contract of employment without the need for a trial period.

9. Salary Protection Arrangements

Where an employee is redeployed to a post which is lower graded than their existing post they will be assimilated to the closest scale point below their existing salary. A personally protected sum that is the difference between the old and new salary will then be payable in accordance with the Salary Protection Scheme.

These salary protection arrangements will also apply if an employee's grade is reduced as a result of a re-grading exercise.

(Note that Teaching staff receive a 'safeguarded sum' as detailed in the 'School Teachers Pay and Conditions document' and therefore the following salary protection arrangements apply to non-teaching staff only).

The Salary Protection Scheme

A fixed 'personally protected sum' based on the difference between the old, higher salary scale point and the new, lower salary scale point will be payable.

This protected sum will reduce accordingly as the salary of the new post increases (due to pay awards, re-grading or any other means) until the salary of the new post equals or exceeds the personally protected sum. At this time protection will cease and the salary of the new post will be fully applied.

Important notes:

1. Protection will apply for up to two-grades difference only. Where alternative employment is found that is more than two grades lower than the substantive post, salary protection will be offered but limited to the equivalent of two grades.
2. Protection will apply to basic pay for the employee's substantive post only. Market Premia, Honoraria, Choices, Essential User Car Allowance and any other allowances, enhancements or benefits relating to the employee's previous post or working patterns are excluded from protection. The exception is in respect of lease cars. Lease agreements will continue for the remaining term, with employer and employee contributions unchanged, until the lease car agreement comes to an end. Any new lease arrangement will then be at the rate applicable to the new post.
3. It is the hourly rate of pay that is protected. If the hours of the new post vary from the old post, the protected salary will be paid for the contracted hours worked in the new post only. E.g. if the old post was for 36 hours per week at Bexley 19 and the new post is for 30 hours at Bexley 17, the hourly rate of pay for Bexley 19 will be protected and paid for 30 hours per week.
4. Performance related pay awards will be applied as applicable to the post to which the award relates in the year that redeployment takes place. i.e. If an increment is awarded for performance in the old, higher graded post, protection will be recalculated incorporating the higher point on the substantive scale that the employee would have achieved.
5. If a bonus is awarded for performance in the old, higher graded post, this will be calculated at the old, higher graded rate. Bonuses may not be awarded for performance in the new, lower graded post while protection arrangements apply (reflecting the fact that the employee is already receiving enhanced salary for the duties being undertaken).