

JOINT NEGOTIATING COUNCIL EDUCATION AUTHORITY

7 February 2017

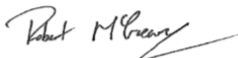
To **JNC Council Members**
MSO/TUSO

Joint Negotiating Council Circular No. 234

REDEPLOYMENT PROCEDURE

The Joint Negotiating Council, at its meeting held on 19 December 2016, agreed a Redeployment Procedure (reference Appendix 1 attached). The scope of the procedure is set out in Section 2.

This procedure should be read in conjunction with the former Staff Commission for Education and Library Boards' Code of Procedures on Recruitment and Selection and the supplementary EA Transitional Recruitment and Selection Guidance until such times as an EA Code of Procedures on Recruitment and Selection is developed and in place.



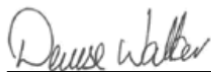
Management Side Secretary [Acting]
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EDUCATION AUTHORITY

REDEPLOYMENT PROCEDURE FOR STAFF EMPLOYED BY THE EDUCATION AUTHORITY

1. Introduction and context

- 1.1 This Redeployment Procedure should be read alongside the former SCELB Code of Procedures on Recruitment and Selection and the supplementary EA Transitional Recruitment and Selection Guidance.
- 1.2 The Redeployment Procedure has been drawn up in agreement with the recognised trade unions.
- 1.3 The Authority is committed to maximising the security of employment of its employees by seeking to avoid the need for compulsory redundancy. The purpose of the Redeployment Procedure is to support this commitment by providing arrangements to explore and identify redeployment opportunities for staff and to do this in a manner that is timely, fair and consistent across the Authority.
- 1.4 Restrictions on open recruitment will be put in place as appropriate to maximise redeployment opportunities and help minimise the need for compulsory redundancies where there are potentially surplus staff or staff expected to become surplus in future.

2. Scope

- 2.1 This Redeployment Procedure applies to all permanent staff and all other staff who have acquired rights who are employed by the Education Authority (subject to 2.2 below) for whom a surplus situation exists and the Authority is obliged to seek alternative employment.
- 2.2 This Procedure does not apply to the following staff for whom redeployment processes already exist:
 - Teaching Staff in schools;
 - Support Staff in Schools; and
 - Support staff in EA managed services delivering services to schools, such as catering, cleaning, grounds maintenance and transport.

3. General Principles

- 3.1 The primary objective of the Authority is to ensure the absorption of potentially surplus staff by means of redeployment to other suitable available posts. The Authority will seek to maintain the employment of individuals in posts that are broadly comparable with their substantive contractual employment (see Appendix A - Definition of 'substantive'), whilst also taking into account the personal circumstances and preferences of individuals in an effort to minimise hardship and domestic disruption for those staff who are redeployed.

- 3.2 Prior to potentially surplus staff being offered redeployment, the Authority may invite staff to volunteer to transfer to alternative posts. Therefore, it may not be the member of staff in the post that is no longer required who moves. The redeployment may be achieved through a series of staff moves.
- 3.3 Consultation with employees and their trade union representatives will take place on a timely basis in accordance with statutory procedures, to discuss the potential impact on individuals' employment and the options available.
- 3.4 Employees have the right to be accompanied to meetings to discuss their future employment options (with the exception of structured interviews), by a recognised trade union representative or a work colleague. Legal representation is not permitted.
- 3.5 In applying the Redeployment Procedure in relation to potentially surplus staff, the Authority will take into consideration the following:
- employees on maternity leave, adoption leave and shared parental leave¹;
 - Disability Discrimination Act (DDA) 1995 requirements;
 - flexible working arrangements in accordance with the statutory provisions and caring responsibilities.
- 3.6 In the event that the number of suitable alternative posts for redeployment is less than the number of suitable employees, individuals will be selected for posts through a 'structured interview'.
- 3.7 Only posts comparable to or below an employee's substantive contractual pay grade will be offered as redeployment.
- 4. Identifying Redeployment Opportunities**
- 4.1 When a potential surplus staff position arises within a directorate/service area, the relevant Director will be responsible for leading the change process. The directorate will continue to incur the costs arising from the surplus staff until the surplus position has been resolved. Throughout the change process the Director and managers will be supported by HR.
- 4.2 Directors will be responsible for identifying all available posts that provide redeployment opportunities for potentially surplus staff.
- 4.3 Directors will submit details of all available posts identified for potential redeployment for inclusion in an EA Redeployment Register which will be updated on a weekly basis.

¹ In accordance with the Maternity and Parental Leave etc, Regulations, Regulation 10; The Paternity and Adoption Leave Regulations 2002, Regulation 23; The Shared Parental Leave Regulations 2014, Regulation 39.

5. Process for Offering Redeployment

5.1 Employees for whom a potential surplus situation exists will be invited to attend a 'consultation meeting' with their appropriate manager and HR representative. The employee may be accompanied by their trade union representative or a work colleague. The purpose of this meeting is to explain the circumstances resulting in their employment being potentially identified as no longer required, to explain the redeployment process and to explore any personal circumstances of the employee to be taken into consideration by EA in seeking to facilitate redeployment. In circumstances where a number of employees are affected in the same location and or service/function area, initial group meetings may be conducted to provide staff with general information regarding the redeployment process. Trade unions will be invited to attend such meetings.

5.2 All available posts identified for redeployment will be recorded in an EA Redeployment Register and circulated to surplus staff on a regular basis. Where posts are restricted to a predetermined group, for example due to the specialist nature of their work, this will be clearly stipulated on the register. Eligible staff will be asked to indicate their interest in being considered for any of the available posts by submitting a completed application form for each post of interest. The application form will include an opportunity for employees to provide details of any disability, flexible working arrangements and caring responsibilities that they wish to be taken into consideration (paragraph 3.5 refers). The operation of the Redeployment Register also provides a mechanism for potentially surplus staff to indicate an interest in redeployment to other EA locations, if they so wish.

5.3 Redeployment posts will normally be offered to eligible applicants as follows:

Employees on maternity leave, adoption leave or shared parental leave will be given preference over other employees and in addition they will not be required to participate in any competitive selection process where such circumstances arise.

Subject to the above preference:

- Where there is an equal or lesser number of eligible applicants to posts available, offers will be made to all applicants, subject to any prerequisite criteria connected to the post (referred to as 'slotting in').
- Where there is a greater number of eligible applicants to posts available, offers will be made on the basis of a 'structured interview', subject to any prerequisite criteria connected to the post. The purpose of a structured interview is to best match the skill set of applicants with available posts.

5.4 In offering redeployment the Authority will, as far as possible, preserve existing flexible working arrangements² in terms of any potential adverse impact that may be caused as a result of proposed redeployment.

² Flexible working arrangements refers to alternative working arrangements that have been agreed in accordance with the statutory provisions, resulting in a permanent amendment to the employee's contract of employment.

- 5.5 All employees who take up a post as suitable redeployment will be entitled to a period of at least four weeks trial in the new post, taking into consideration any training and development needs identified to meet the demands of the new job (see section 7).
- 5.6 Where all available opportunities for broadly comparable redeployment at an employee's substantive pay grade have been explored and it is agreed by both parties that no suitable alternative employment is available, an unfilled post at a lower pay grade may be offered and pay protection arrangements applied. This is intended to be a transitional arrangement. At any time within the pay protection period management will seek to offer an alternative post at the protected substantive pay grade or alternatively, if that is not possible, allocate additional duties and responsibilities at the higher level of the pay protection. If having taken the above action, at the end of the pay protection period in the exceptional circumstance that no post can be provided at the protected substantive pay grade, the employee will remain in the lower graded post and revert to the top point of the salary scale of that post.
- 5.7 There is no statutory definition of what is deemed 'suitable'. The determination by EA that a post is suitable alternative employment will be assessed objectively, taking into account the following:
- the job role and responsibilities (for example budgetary, people management and other accountabilities), pay grade, working hours and location;
 - the qualifications (where applicable or where there is a statutory requirement) required to undertake the post, knowledge, experience and all the other requirements associated with undertaking the job successfully;
 - in the case of an employee with a disability³ the requirement to consider, where necessary, reasonable adjustments to enable the employee to remain in employment; and
 - personal circumstances including an employee's current flexible working provisions.
- 5.8 There is a requirement on both parties to explore opportunities for redeployment and in doing so the Authority will identify all available posts that provide potential redeployment opportunities, circulate details of these posts to surplus staff via a Redeployment Register, and surplus staff will indicate their interest in being considered for any of the available posts they deem suitable.
- 5.9 Redeployment will normally be pursued for a period of six months beyond which if no suitable alternative employment has emerged and all options for redeployment have clearly been exhausted, it may be necessary to give consideration to the termination of the employment contract on grounds of redundancy.

³ As defined in the Disability Discrimination Act 1995

5.10 Employees have access to an external counselling service provided by Carecall which can provide independent, confidential advice and support, information and counselling services.

6. Excess Travel

6.1 Where employees accept suitable redeployment in a different location, they may claim excess travel costs (subject to eligibility), in accordance with their contractual terms and conditions of employment. Excess travel costs are paid for a period of:

- up to 4 years for staff employed on NJC terms and conditions; and
- up to 2 years for staff employed on teachers terms and conditions.

7. Training and Development for Redeployed Employees

7.1 Where redeployment is accepted, training, re-training and development needs to meet the demands of the job will be assessed and provided as appropriate, in order to ensure the employee is fully equipped with the necessary knowledge and skills to meet the requirements of the new role.

7.2 The trial period can be extended by agreement for the purposes of training and development in the alternative job role.

7.3 If during the trial period, the employee decides that the redeployment offered is not suitable and this is deemed by EA to be reasonable in the circumstances, further redeployment opportunities will be explored and the employee will preserve the right to a redundancy payment in the event that suitable redeployment cannot be found.

8. Appeals/ Disputes

8.1 Employees have access to an internal grievance procedure⁴ to deal with disputes relating to terms and conditions of service. Employees accessing the internal grievance procedure have a right to be represented by a trade union representative or accompanied by a work colleague.

8.2 In compliance with the Staff Transfer Scheme, staff accessing the internal grievance procedure have a right of appeal under the Independent Third Party Dispute Resolution Procedure for non-pension matters only in the event of disputes in relation to:

- non-adherence to the Staff Transfer Scheme associated with the transfer of functions; or
- a change in workplace location which has been made as a result of the establishment of EA; or
- their designated employer.

⁴ The grievance procedure applicable to the employee in accordance with their contract of employment under TUPE.

**Appendix 1 to JNC Circular No 234
Redeployment Procedure**

Staff accessing the Independent Third Party Dispute Resolution Procedure for non-pension matters will have a right to be represented by a trade union representative or accompanied by a work colleague. Full details of the Independent Third Party Dispute Resolution Procedure for non-pension matters are set out in sections 8 and 9, and Appendix 2 of the Staff Transfer Scheme (available from the EA website www.eani.org.uk).

- 8.3 Employees are expected to utilise and exhaust the internal grievance procedure before turning to the Independent Third Party Dispute Resolution procedure. However, where the internal grievance procedure includes a final stage which is independent/external, that final stage is replaced by the Independent Third Party Dispute Resolution Procedure for non-pension matters.

Issued February 2017

Definition of “Substantive”

1 Introduction

- 1.1 In an environment where many employees have been moved around the system over recent years and may now be working in different roles or with additional responsibilities, an explanation of ‘substantive’ is required to avoid confusion and to ensure fair and equitable treatment of employees through the transition to and restructuring process in the EA. This is specifically about defining an individual’s substantive post with protection of terms and conditions of employment under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“the TUPE Regulations”).
- 1.2 This guidance will not be able to cover every situation affecting individual employees and HR advisers will need to assess the appropriate course of action on a case-by-case basis, taking legal advice as necessary. Therefore this appendix has been provided as guidance to assist with interpretation and consistency.

2 The explanation of Substantive

- 2.1 An employee’s substantive contractual employment is that specified in their contract of employment. The contract must denote a post that no other employee has a right of return to.

3 Seconded Employees

- 3.1 In the majority of cases the secondee’s originating (substantive) employer ceased to exist upon the creation of the EA. In such circumstances the secondee transferred to the EA on the basis of their substantive contractual employment (pre-secondment) in accordance with the Staff Transfer Scheme.
- 3.2 Following the staff transfer to the EA secondees have continued with their secondment where there is a continuing need for the work to be done and this temporary arrangement is recorded in the staff transfer data provided to the EA by the secondee’s former employer.

4 Acting Up / Temporary Promotions

- 4.1 Employees acting up/on temporary promotion transferred to the EA on the basis of their substantive contractual employment, in accordance with the Staff Transfer Scheme.
- 4.2 Following the staff transfer to the EA such employees continued with their acting up/temporary promotion arrangements where there is a continuing need for the work to be done and this temporary arrangement is recorded in the staff transfer data provided to the EA by their former employer.

5 Fixed Term Employees

- 5.1 Fixed term employees are those employees who do not have a permanent contract of employment to revert to. The substantive post for a fixed term employee is the post they were engaged in at the date of transfer to EA with TUPE protection of the terms and conditions of employment relating to that post, as their substantive post.

- 5.2 Employees who have been continually re-engaged through successive fixed term contracts for a period of four or more years shall be permanent, in accordance with the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, unless the employment on a fixed term contract is justified on objective grounds, for example where another employee has a contractual right of return to the post.
- 5.3 Following the transfer, EA has continued to review all fixed term contracts in accordance with the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, to determine:
- (i) whether there is a need for the fixed term contract to continue; and
 - (ii) whether the contract can be permanent.
- 5.4 Fixed term employees do not have a right to be given a permanent contract by virtue of the staff transfer to EA. The EA will obtain legal advice, where required, on any fixed term contract expiries or renewals that need to be considered.

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