

Redundancy Policy and Procedure

Reviewed

Reviewed February 2010

Policy Approval

Executive Board

3 March 2010

Policy Statement

The Council is committed to providing a stable environment and to ensure, as far as possible, security of employment for its employees. However, it is recognised that changes in the demand for services, levels of funding, sharing services and/or the need for change because of technological, legal or organisational reasons may lead to a requirement for a reduction in the number of posts or the activities in certain posts.

According to the Employment Rights Act 1996, redundancy occurs when the employer

'has ceased or intends to cease:

- to carry on the business for the purposes of which the employee was employed by it

or

- to carry on that business in the place where the employee was so employed

or the fact that the requirements of that business:

- for employees to carry out work of a particular kind or
- for employees to carry out work of a particular kind in the place where they are so employed

have ceased or diminished or are expected to cease or diminish'.

Whilst the Council would wish to avoid redundancies wherever possible, the following procedures are designed to be applied whenever the potential for redundancies arises. The Council is committed to managing any redundancy situation in a sympathetic, fair and non-discriminatory manner.

This policy and procedure applies to all employees of the Council. To qualify for a redundancy payment, employees will have been employed for a minimum of two years. Service which can be included is limited to the last twenty years before redundancy.

The Council's Commitments

The Council has an obligation to consult with you if you are affected by a potential redundancy situation.

The Council will keep you, employee representatives where appropriate and the Staff Joint Forum informed, as fully as possible, about staffing requirements and any need for redundancies. Formal consultation with you, employee representatives where appropriate and the Staff Joint Forum will commence at the earliest opportunity and will comply with the requirements of Section 188 of the Trade Union Labour Relations (Consolidation) Act.

The Council will consider any alternative proposals with a view to reaching agreement on ways of avoiding redundancy and reducing the number of posts to be made redundant. This may include, for example, curtailing recruitment, reducing overtime, redeployment, retraining and reducing the use of external employees. Where job reductions are anticipated, the Council will start consultation in good time and will discuss:

- the reasons why it is proposed to make redundancies
- the number and descriptions of employees at risk of redundancy
- the total number of employees of any such description employed by the Council
- the proposed method of selection for redundancy
- the method of calculating the amount of redundancy payments to be made to those who are redundant
- the timescales that will apply and the method of communication. The timescale for consultation will be clearly outlined at the commencement of the consultative process. This timescale will depend on the particular circumstances of each case and these circumstances will be clearly stated to the Staff Joint Forum.

The timescale for consultation will have regard for the statutory timetable for consultation, which is as follows:

Number of Consultation employees to be dismissed at the establishment	Period over which redundancy takes effect	Minimum period
Less than 20	within 30 days	
20-99 days	within 30 days	30
100+ days	within 90 days	90

Where the number of employees affected by the proposed redundancy is 20 or more, collective consultation will be required. This will be carried out with the Staff Joint Forum and employee representatives.

Collective consultation does not preclude individual consultation. Wherever practicable, individual consultation will take place in the form of a meeting

between you and the appropriate Manager. However, where this is not possible, the information will be communicated in writing. You will have the right to be represented by a colleague or trade union representative. Consideration will be given to any matter raised by, or on behalf of, the employee in such consultations.

Specific Policy Areas

Measures to avoid or minimise redundancy

Before deciding upon compulsory redundancy, consideration will be given to the following measures which might avoid or minimise the need for redundancy:

- natural staff turnover
- restricting all recruitment in areas of reduced need
- reduction or termination of the employment of temporary or contract employees
- job share
- reduction in hours
- voluntary redundancy
- early retirement
- redeployment

The above list is not exhaustive and any or all may be used according to the circumstances and not necessarily in any particular order. As part of its consultation with employees, employee representatives where appropriate and the Staff Joint Forum, East Devon District Council will consider any other proposals, which are aimed at avoiding compulsory redundancy.

Volunteers for redundancy or early retirement

Where appropriate, you will be invited to indicate your willingness to consider voluntary redundancy. Such indications will not imply any commitment on the part of you or the Council.

Volunteers for redundancy (including those eligible for early retirement) may be considered from those normally within the same employment category as the employee group at risk where acceptance of redundancy by volunteers would reduce the risk of a compulsory redundancy. Consultations will take place with a view to reaching agreement in respect of the criteria to be used in the selection among the volunteers for redundancy.

The Council reserves the right to retain you on the grounds of specialist knowledge, training and qualifications to preserve organisational balance and therefore, has the right to refuse or to accept any volunteers for redundancy.

The Council will consider applications for early retirement from employees not themselves at risk if their leaving might then avert the need for redundancy. If such an application is approved, you would be eligible (if aged 55 and over) to receive payment of pension benefits in accordance with the Local

Government Pension Scheme.

When making any decision to allow an early retirement, the Council will take into account the financial implications associated with any such retirement.

If you take early retirement you will be subject to the re-employed pension rule if you take employment in another related public service (for example local government) whereby pension may be abated depending upon the amount of the new salary.

Compulsory redundancy

After consultation and careful consideration of all the other measures available, it may still be necessary to make you redundant on a compulsory basis. Compulsory redundancies will be made using selection criteria determined following consultation with you, employee representatives and representatives from the Staff Joint Forum.

The Council will always need to have regard to retaining specific knowledge, experience and skills to preserve a balance within the workforce and further criteria in addition to those outlined may be required to select individuals for redundancy.

If you are identified for redundancy you will be consulted about your proposed redundancy, including being given notification of your calculated entitlement to a redundancy payment and about any redeployment opportunities.

Application of selection methods

The Council is committed to using fair and non-discriminatory selection criteria and the following list is illustrative and gives examples of fair criteria:

- skills, experience and aptitude of the employee
- the standard of work performance
- flexibility and adaptability to respond positively to changing work practices
- the absence and disciplinary record of employees based on the previous 12 months. Absence records will not include any time taken in relation to an illness covered by the Disability Discrimination Act.

The selection criteria will be determined following consultation.

Where a restructuring results in potential redundancies, but also creates new roles the method of selection for those roles will generally include a structured interview. Where there are not significant changes to roles, but a diminishing requirement for them the method will generally be by matrix (a paper based assessment).

Notice

The notice period will be in accordance with your contract of employment or the statutory entitlement, whichever is the longer.

The notice period to the date of termination of employment will normally be worked, however, if you have been served notice of redundancy you may be requested to remain at home during this period. Where this is not possible,

payment in lieu of notice will be made.

Appeal

After the notice of dismissal has been issued, there shall be a right of appeal to a member of the Strategic Management Team or Chief Executive (if not previously involved) in respect of selection for redundancy and the ways in which the redundancy procedures have been operated.

Appeals should be lodged, in writing, stating the full grounds of the appeal within 10 working days of the notification of dismissal. The appeal will be heard as soon as practicable after receipt. Individuals have the right to be accompanied by a work colleague or trade union representative.

Redeployment

Redeployment, if possible and where appropriate, will be used to avoid compulsory redundancy. All suitable vacancies within the Council will be ring-fenced in order that they may be offered first, to those individuals whose skills and experience are compatible with the Job/Person Specification of the vacant post and who otherwise would be made redundant. An appointed member of the Human Resources Team will inform those at risk of all relevant vacancies within the Council.

If you are redeployed you will be given reasonable, appropriate training to enable you to perform the duties of the new job. Redeployment will be subject to your agreement and the relevant Director/Head of Service who will agree the formal selection process.

Trial period in redeployment

If you are redeployed, there is a mandatory trial period. The Employment Rights Act 1996, s 138 states that the trial period begins at the end of your employment under the previous contract, and ends after either:

- four weeks has passed from the date on which you started work under the new contract

or

- for a longer period that was agreed for the purpose of retraining.

There is no limitation to the number of trial periods that can take place if you are under threat of redundancy and are offered a number of alternative roles. It is appropriate that for each role undertaken a trial period takes place and if they all prove unsuitable and the contract is finally terminated, you are still treated as having been dismissed for redundancy when the original contract ended.

If you decline the offer of a suitable reasonable alternative or terminate the contract during the trial period, you shall be treated as having refused the offer of a new job. This will result in the forfeit of the redundancy payment (providing the new job was a suitable, reasonable alternative).

If you are not successful in securing redeployment, you may appeal against

the decision. Appeals should be lodged, in writing, stating the full grounds for the appeal within ten working days of the notification of the decision. Appeals will be heard by a member of the Strategic Management Team accompanied by the Head of Organisational Development as soon as reasonable practicable after the notification of appeal. No action will be taken to fill the post offering potential redeployment until the conclusion of the appeals process.

The Human Resources team will, within resources available, provide information, advice and help to employees at risk. The Council will circulate details of employees seeking redeployment, if requested, to other relevant organisations.

Salary on redeployment

It is expected that redeployment will normally be to a post near the existing salary level. However, applications for all suitable alternative posts will be considered. Where you are re-deployed to a post designated at a lower grade, salary and benefits will be frozen for one year.

Redundancy payments

Compensation for loss of employment on redundancy will be in accordance with statutory entitlement laid down in existing legislation. However, the Council will base redundancy pay on actual earnings or the statutory sum, whichever is the greater.

In order to qualify for a redundancy payment, employees must have been employed for a minimum of two years. Service which can be included is limited to the last twenty years (continuous Local Government service) before redundancy.

Parts A and B of this document explain the two different types of redundancy payments the Council will make depending upon your age and whether you belong to the Local Government Pension Scheme (LGPS). These are statutory and discretionary payments.

If, prior to the expiry of your notice of dismissal, you receive the offer of a job with a related employer (another public body), to start immediately or within four weeks of the end of the previous employment, then a redundancy payment cannot be made by the Council.

Assistance in finding other work

The Council will assist, where possible, at risk employees in finding alternative posts and in addition will grant reasonable paid time off to look for work or to arrange for training for new employment. Reasonable time off with pay will also be given to attend interviews. Such time off must be arranged in advance with the relevant Line Manager.

Advice and counselling

Advice on completing application forms and job interview skills will be provided by Human Resources. Individual counselling will be available through the Counselling Service for employees selected for redundancy and also for those who are not selected but would like extra support during the

period of uncertainty.

Miscellaneous

- If you leave on early retirement or redundancy other than at the end of the leave year, the Council will not deduct pay in respect of leave already taken in excess of your proportional entitlement.
- If you are provided with a lease car and you leave on the grounds of redundancy, the lease car arrangements will be terminated immediately. The cost incurred in prematurely terminating the lease will be met by the Council.
- If you have been provided with relocation assistance and you leave on the grounds of redundancy, there will be no requirement to repay any monies payable under the Council's further education or relocation policy.
- If you wish to waive all or part of your notice, agreement to this shall not be unreasonably withheld but shall be judged in the light of individual circumstances and the operational requirements of the business. Where agreement is given in writing to an early departure, entitlement to redundancy terms will not be unreasonably withheld, but you will not receive any payment in lieu of notice beyond the revised termination date. If you leave the Council before the notice period expires, without the agreement of your Head of Service, then entitlement to redundancy payment terms may be lost.

Outcomes

- Effective consultation with individuals and Staff Joint Forum regarding proposed need for redundancy
- Redundancies carried out according to best practice and current legislation.

Who is responsible for delivery?

- Everyone – the commitment of all Council staff is essential to make this policy work.
- The Strategic Management Team and Heads of Service are responsible for upholding this policy within the services.

Policy Review

May 2012 or earlier if required.

Redundancy Payments – Statutory and Discretionary

General Information relating to redundancy payments

The Local Government Pension Scheme (LGPS) stipulates that the earliest date you can retire and receive pension benefits is aged 55 if you are a member of the scheme. This is referred to as the “Earliest Retirement Date” (ERD) in this document and also in Part B.

Pension benefits relating to redundancy are explained in Part B of this document.

The Council’s policy incorporates are two types of redundancy payment:

- 1) Discretionary enhanced compensatory payment
- 2) Statutory redundancy payment

Your age and membership status of the Local Government Pension Scheme (LGPS) will determine whether payments are made in line with a) or b).

If you are:

- (a) **Under age 55 years - you will receive the Discretionary enhanced compensatory payment. This is because you are NOT entitled to any pension benefits. Any pension would be treated as if you are a normal leaver and become a deferred pension. This is further explained in Part A of this document.**
- (b) **Over age 55 years but NOT in the LGPS – redundancy payments will be based upon the Discretionary enhanced compensatory payment up to a maximum of 60 weeks pay. This is explained in more detail in Part A of this document.**
- (c) **Over age 55 years and in the LGPS – the statutory minimum redundancy pay will apply. This is because you are also entitled to your pension benefit. This is further explained in Part B of this document.**

Redundancy payments

In all cases, the calculator used for redundancy pay is based upon either your actual weekly pay OR a sum set annually by the government (known as the statutory minimum weekly pay).

Example: Annual salary = £15,000
Weekly pay is calculated as follows:
£15,000 divided by 365 x 7 = £287.67

Weekly pay used for redundancy calculation = £287.67

If you have no normal working hours and the hours worked vary from week to week, a week's pay shall be the average weekly pay for the 12 weeks prior to the effective date (calculation date). If you receive no pay for individual weeks within the 12 week period, then this period is extended to include the weeks where pay was made.

The date at which the weekly pay rate is determined is the date that the redundancy notice was given and **NOT** the last date of your employment (known as the calculation date).

For each complete year of service up to 20 years, you will receive a proportion of weekly pay which is determined in the following way:

AGE	ENTITLEMENT
Up to 21 years	half a week's pay
22 - 40 years	one week's pay
Over 41 years	one & a half week's pay

- Service must be continuous in local government (regardless of the number of local authorities you may have worked for).
- The maximum amount of service that is counted is limited to 20 years.
- The maximum amount of weeks' pay that can be accrued for a redundancy is therefore 30 weeks pay (60 weeks for discretionary enhanced compensation payments)

All redundancy payments are paid Tax/NI free for the first £30,000. Thereafter, they will be treated as income and subject to the normal statutory deductions.

Payments will be calculated by Payroll Services and normally made in your final salary payment and shown as redundancy pay on your payslip.

Part A

Discretionary enhanced compensation payments

The Council has adopted the use of this payment if you are below the earliest retirement date at the date of termination (not at the date of the decision notice) or if you do not receive any immediate benefits from the LGPS.

The date that the weekly rate is set is the date of termination of employment.

Service is determined based upon the final date of the notice period which is your last day of service.

Payments are limited to a maximum of 60 week's pay.

Your actual weekly pay or the statutory sum, whichever is greater, is used (see above for the example calculation of how this is arrived at), with the above age table used to calculate the number of weeks' entitlement.

A multiplier is applied to the number of weeks used within each age bracket. This multiplier is 2. This means that for the age bracket of "up to 21 years", this would equate to 1.0 week per years service. If the total redundancy pay exceeds the value of 60 weeks pay then the sum is reduced to this amount.

An example of the calculation would be as follows for an employee who earns £20,000 pa and is aged 45 and has 10 years' continuous service.

Weekly pay = - £20,000 / 365 x 7 = **£383.56**

Aged 22 – 40yrs = 5 yrs x 2 wks = 10 weeks x £383.56 = £3835.6

Ages 41 and above = 5 yrs x 3 wks = 15 weeks x £383.56 = £5753.4

Total Discretionary Redundancy pay = £9,589

The discretionary payments include the statutory redundancy payments and are **NOT** in addition to.

The calculation and payment of discretionary enhanced compensation payments will be carried out by Payroll Services and included within the final payment to the employee in the normal manner.

Payments are exempt from Tax and NI for the first £30,000 and thereafter subject to the normal statutory deductions.

Part B

The LGPS is a statutory scheme. It requires that each employer adopts a policy relating to a number of discretionary benefits within the scheme. This document works in conjunction with the Council's policy on Benefits and Employers Adopted Discretionary Powers.

The entitlement to LGPS benefits in a redundancy situation is subject to the following conditions:

- You are aged over the earliest retirement date (ERD – Age 55 as defined within the LGPS at the time of termination of employment.
- You have 3 months or more membership of the LGPS.
- You have less than 3 months service but have transferred pension rights into the LGPS (of any length) from another pension scheme.
- East Devon District Council confirms that the reason for the retirement is redundancy or efficiency.

The term "Pension Benefits" means the payment of an annual pension and depending upon your personal circumstances a single payment of a lump sum (called the "Lump Sum")

All pension lump sum benefits are paid "Tax Free". However, annual pension benefits may be subject to statutory deductions such as tax and National Insurance contributions. This will depend upon your individual circumstances.

Please note that a Redundancy Retirement will not result in a reduction to benefits.

If you are over the ERD (age 55) but **not** in the LGPS, then you will leave the Council's employment under the enhanced discretionary compensation payment as outlined in Part A. If you have a deferred pension then this cannot be released early if you are made redundant and over the ERD (age 55).

85 Year Rule

This is applicable to employees who reach the age of 60 by 31 March 2016.

If you are age 60 after the 1 April 2016 and opt to take your pension benefits between age 60 and 65 years then your benefits will be reduced by the table below.

If you are aged 60 by 31 March 2016 then you are able to see if the 85 year rule applies to yourself. This is where if age plus pensionable service (counted in whole years) meets 85 years. If it does not then both your pension and any lump sum will be reduced in proportion to the lesser of:

- (a) the number of years and days that you would meet the 85 year rule or
- (b) the number of years and days that you would reach your normal retirement date.

The reduction is calculated by the fund actuary and is shown as a percentage below:

Years early	Pension reduction % Males	Pension reduction % Females	Lump sum reduction for all members
1	8	7	2
2	15	13	5
3	22	18	7
4	28	23	9
5	33	27	11

With effect from 1 April 2008 the LGPS changed to a 1/60th scheme. This means that if you joined the scheme before this date then you will have two pension benefit calculations. One for service accrued under the old 1/80th scheme and one for service accrued under the new 1/60th scheme. There is no automatic lump sum under the new scheme. Members have the opportunity to convert some of their pension into a lump sum instead. Details of this and the new scheme are available on the intranet.

Example 1

Employee aged 55 years with pensionable pay of £20,000 and 12 years service in LGPS (6 years under the 1/80th scheme and 6 years under the 1/60th scheme)

$$£20,000 \times 6 \times 1/80^{\text{th}} = £1,500 \text{ annual pension}$$

$$£20,000 \times 6 \times 3/80^{\text{th}} = £4,500 \text{ lump sum}$$

$$£20,000 \times 6 \times 1/60^{\text{th}} = £2,000 \text{ annual pension}$$

Total annual benefits are £3,500 pension and a lump sum of £4,500.

Example 2

Employee aged 58 years with pensionable pay of £30,000 and 37 years and 122 Days service in LGPS (20 years 122 days under the 1/80th scheme and 17 years under the 1/60th scheme)

$$£30,000 \times 20 \text{ years } 122 \text{ Days} \times 1/80^{\text{th}} = £7,623.75 \text{ annual pension}$$

$\text{£}30,000 \times 20 \text{ years } 122 \text{ days} \times 3/80^{\text{th}} = \text{£}22,871.25 \text{ lump sum.}$

$\text{£}30,000 \times 17 \text{ years} \times 1/60^{\text{th}} = \text{£}8,500.00 \text{ annual pension}$

Total annual benefits are $\text{£}16,123.75$ pension and $\text{£}22,871.25$ lump sum.

You will be asked to provide your Birth Certificate, Marriage Certificate, Certificate of Civil Partnership (if applicable) and spouses/partners birth certificate (again if applicable). Payroll Services will provide copies for the administering authority, along with all appropriate information to effect payment of benefits to the employee. They are required for the payment of any future benefits to the surviving spouse or estate.

Payment of Pension benefits are as follows:

- (a) Lump Sum payments (if applicable) are normally made by the administering authority (Devon Pensions) within 7 working days of the date of you ceasing employment with the authority.
- (b) Payment of the annual pension by the administering authority (Devon Pensions) will be monthly on the final calendar day in each month.

All information concerning payment of pension benefits will come from the administering authority (Devon Pensions), including requesting any appropriate decisions from you if you are buying additional service via an AVC provider and whether you wish to commute some of your annual pension into a larger lump sum.