

**BRISTOL CITY COUNCIL
HUMAN RESOURCES COMMITTEE**

16th October 2008

Title: New Opportunities Procedure - Further Report

Ward: City Wide

Report of: Head of Human Resources

Officer presenting report: Lorna Whitehead, HR Manager

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1. Report Summary

- 1.1 The purpose of this report is to seek Committee's further consideration of the New Opportunities Procedure (NOP) in response to matters raised by the trade unions under "public forum" at the September meeting of this committee.
- 1.2 The two key issues raised were:-
 - (i) appeal rights re: (un)suitable alternative posts, and
 - (ii) the so-called "domino effect".
- 1.3 The Committee are also asked to agree to those changes which have been agreed in consultation with union colleagues, to which all unions were invited.

2. Recommendation

Following further consultation, the Committee adopts the following amendments to the Procedure, with effect from 1st October 2008:-

- (1) The proposed appeal rights as set out in paragraph 5.1 below, which will also be incorporated into the Managing Change Policy.
- (2) The extent to which staff redeployed into posts where the pay difference is greater than 20%, will be monitored to see whether or not the "domino effect" occurs.

3. Policy

A new NOP was approved by this committee at its September 2008 meeting.

4. Consultation

(a) Internal

Further Consultation has been carried out with the trade unions following this committee's previous meeting, the outcome of which will be reported verbally at this meeting.

(b) External

N/A

5. Background and Assessment

The committee is asked to consider the following issues:-

5.1 Appeals Procedure:

The Unions raised a concern at the previous meeting regarding the lack of a specific appeal mechanism in the policy and argued that the NOP should have its own appeal process in line with other major policies.

The amended Policy only gave re-course to employees through the Grievance Policy.

At this meeting, the trade unions requested that the NOP should have its own appeals process. Having given this matter further consideration, the Head of HR supports this request, as an appeal process will be more efficient and timely than a 3 stage grievance process. This change has been incorporated into the Procedure as Appendix A.

5.2 Pay Protection:

The Unions welcomed the expansion of pay protection to up to 20% from the previous rate of 15%. However, it was highlighted that due to the very high levels of inflation any pay protection could lead to a rapid decline in the real value of a protected salary and that this should be kept under review. It was agreed at the meeting to review this on an annual basis.

5.3 Voluntary Redeployment:

There was much discussion about the term “voluntary” at the previous HR Committee meeting. The Head of HR explained that employees could elect to take lower graded posts, to keep them in employment, with no loss to their pay for up to a maximum of three years in line with the provisions of the policy.

This provision would operate purely on a voluntary basis and no one would be forced to take a lower paid job.

The Unions raised concerns that this could possibly have a derogatory “domino effect” on the lower paid employees whereby managers recruit the higher paid / better skilled workforce to the detriment of those who could be suitably matched to the post.

It was agreed that this will be monitored on a quarterly basis with figures to the TU Officer Group on how many employees have been successfully redeployed into lower graded posts. A further report will be presented to this Committee in 6 months time to report on the “domino effect”.

5.4 Medical Redeployment

It was agreed that 9.2 of the policy would be numbered to make it clearer who has priority.

6. Risk Assessment

To leave the policy unchanged would be a barrier to successful organisational change throughout the Bristol City Council. Harmonisation with Managing Attendance and Managing Change policies is vital to mitigate discrimination claims as a result of inconsistent application of policies.

7. Equalities Impact Assessment

It is highly unlikely that any equalities group will suffer detriment as a result of these further amendments to this Procedure.

8. Legal and Resource Implications

Legal:

There are no further legal implications arising from this report.

(Advice from Legal Services - Husinara Islam)

Financial:

(a) Revenue

There are no Finance implications arising from this report.

(Advice from Stephen Skinner, Head of Finance, CSS and Chief Executive Departments)

(b) Capital N/A

(Advice from designated Finance Officer)

Land: N/A

Personnel:

As set out in paragraphs 5.1 to 5.4 above.

Appendices:

Appendix A New Opportunities Appeal Process

Appendix B Addendum to New Opportunities Procedure

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
Background Papers: None

New Opportunities Appeals Process

1. Appeal against the suitability of the alternative post offered without undertaking a trial period :-

Should you wish to appeal on this basis you should write to the Head of Human Resources within 5 working days of receipt of the offer of redeployment stating your wish to appeal and the reasons for the appeal.

Your appeal will be heard by a Service Manager normally at 2nd or 3rd tier level, from a different division or from another department, and a HR representative, not previously involved in the case, either directly or indirectly. You will be invited to present your case to the Appeals Panel who will either :-

i) Uphold the appeal in which event you will return to the New Opportunities Scheme for the remainder of the time outstanding (or the remainder of time outstanding on your notice period) . If no alternative posts are found before the end of the notice period, the original reason for dismissal will stand and you may be entitled to a redundancy payment .

ii) Reject the appeal in which event you can either

a) Accept the alternative job offered or

b) Reject the job offered , in which case the reason for termination of employment (for at risk employees) will be redundancy but the obligation of the Council to pay any entitlement to redundancy pay (and an enhanced payment of pensions rights) is removed.

In the case of medical redeployment if the appeal is rejected you can either remain in the post on a permanent basis, chose to resign or your contract will be terminated on the grounds of medical capability at the end of the notice period. You will be given five working days from the date of the appeal decision (which will be confirmed in writing) to decide which of the above options you wish to choose. If no response is received within the period, you will be deemed to have chosen option ii).

2. Appeal (by employee) against suitability of a post during or after a trial period :-

Should you wish to appeal on this basis you should write to the Director of Central Support Services whilst undertaking the trial period (or no later than within 2 working days of the completion of the statutory trial period), stating your wish to appeal and the reasons for the appeal.

Your appeal will be heard by a Service Manager normally at 2nd or 3rd tier level, from a different division or from another department, and a HR representative, not previously involved in the case, either directly or indirectly. You will be invited to present your case to the Appeals Panel who will either:-

i) Uphold the appeal in which event you will return to the New Opportunities Scheme for the remainder of the time outstanding (or the remainder of time outstanding on your notice period) . If no alternative posts are found before the end of the notice period the original

reason for dismissal will stand and you may be entitled to a redundancy payment .

ii) Reject the appeal in which event you can either

a) Accept the alternative job offered or

b) Reject it, in which case the reason for termination of employment (for at risk employees) will be redundancy but the obligation of the Council to pay any entitlement to redundancy pay (and an enhanced payment of pensions rights) is removed.

In the case of medical redeployment if the appeal is rejected you can either remain in the post on a permanent basis, chose to resign or your contract will be terminated on the grounds of medical capability at the end of the notice period. You will be given five working days from the date of the appeal decision to decide which of the above options you wish to choose. If no response is received within the period, you will be deemed to have chosen option ii).

3. Appeal (by employee) following completion of an unsuccessful trial period:-

Should you wish to appeal on this basis you should write to the Director of Central Support Services within seven days of being notified that the trial period has been unsuccessful , stating your wish to appeal and the reasons for the appeal.

Your appeal will be heard by a Service Manager normally at 2nd or 3rd tier level, from a different division or from another department, and a HR representative, not previously involved in the case, either directly or indirectly. You will be invited to present your case to the Appeals Panel who will either:-

i) Uphold the appeal in which event your permanent appointment to the post will be confirmed

ii) Reject the appeal in which event you will return to the New Opportunities Scheme for the remainder of the time outstanding (or the remainder of time outstanding on your notice period) . If no alternative posts are found before the end of the notice period the original reason for dismissal will stand and you may be entitled to a redundancy payment .

4. Appeals Hearing

The purpose of the appeal is to review the reasonableness of the original decision and if necessary determine an alternative outcome. You (the appellant) or your trade union representative, will state the grounds for appeal and may call witnesses you feel will support your position.

You or your representative and your witnesses can then be cross questioned by the presenting manager (the manager who made the original decision or their representative) and the appeal panel to obtain further clarification. The presenting manager responds and may also call witnesses. The presenting manager and any witnesses they may have called are cross questioned by you (the appellant) or your representative and the appeal panel. Both parties sum up evidence - firstly the presenting manager and then the appellant or their representative. The appeal panel adjourns to consider the outcome.

**ADDENDUM TO NEW OPPORTUNITIES PROCEDURE –
Employees of schools with “delegated budgets”**

This addendum does not form part of an employee’s contract of employment and does not create any contractual rights.

All staff within locally managed schools will be given consideration under the New Opportunities Procedure as long as they meet the qualification criteria. The circumstances in which staff will have access to the procedure are set out below:-

Where it has been agreed in writing between with the School HR Advice and Support Team and the individual school, employees in a work group who are identified under the school’s Management of Change Procedure as being potentially at risk of redundancy, the employee/s affected will be considered for job matching opportunities in the CYPS department. This shall be in accordance with section 8 of the New Opportunities Procedure. This shall last until an employee has been redeployed or until an employee has been notified that they been selected for redundancy and issued with contractual notice. The other provisions set out in paragraphs 9,10 and 11 of the procedure shall also apply.

- Where an employee is issued with contractual notice of dismissal, they shall be referred to the Corporate New Opportunities Procedure for the duration of their contractual notice period. Notice can only be extended with the written agreement of the governing body.
- The arrangements for priority consideration (above) will also apply where an employee has been recommended for redeployment to a different post on the grounds of “ill health” in accordance with paragraph 6.1 c of the procedure and “in the interests of the efficiency of the service” where an employee is no longer able to reach the standard of performance required for their job, but may be suitable for redeployment to a less onerous post.
- Where a school based employee accepts alternative employment within a Council Department.
- Where an employee is offered and accepts post (including on a trial period) they will cease to work at the school and become a direct employee of the council.

Appeal Rights

Appeals against the decision to dismiss on the grounds of redundancy

If an employee wishes to appeal against the decision of the governing body to dismiss them on the grounds of “redundancy” or “efficiency”, then this will be considered by a committee of the governing body in accordance with the management of change procedure.

Appeals against an unsuccessful trial period

The employee shall have the right of appeal to the Director of Central Support Services within five working days of receiving written notification of the decision to end the trial period.

Failure to satisfy the requirements of the trial period will mean that the dismissal decision of the governing body stands. Where a trial period has extended beyond the employee's contractual notice, the dismissal shall take effect from either:-

- a) the end of the trial period; or
- b) with immediate effect.

In all circumstances, any pensions and severance costs shall be met by the governing body or the CYPS Pensions and Severance Budget.

Redeployment between schools

Redeployment between schools is not part of the New Opportunities Procedure.

Time Period

There is no entitlement for an LMS employee to be given a temporary work placement for 3-12 months, unless the governing body is prepared to underwrite the cost. In exceptional circumstances the Head of the Paid Service, or his nominee has the discretion to vary these arrangements.