

BRISTOL CITY COUNCIL

HUMAN RESOURCES COMMITTEE

For Information

25th FEBRUARY 2010

Report of: Service Director: Strategic HR & Workforce Strategy

Title: Redundancy Framework/Approval

Officer Presenting Report: Robert Britton, Service Director: Strategic HR & Workforce Strategy

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RECOMMENDATION

This report is submitted to this Committee for its information, in response to a resolution passed at an earlier meeting held on 5th January 2010.

Summary

On the 5th January 2010, this Committee considered a collective dispute lodged by the GMB regarding staff affected by the Residential Futures Programme (H&SC Directorate). In determining the outcome of this dispute, Members also resolved that:

“(5) In the light of contradictory interpretation of the Council's 'no compulsory redundancies' statement, a report would be prepared and considered by the Human Resources Committee in April 2010, to clarify the position.”

Given the need to conclude the employment situation of a small number of employees who have been displaced by this 'review', this report has been brought forward to the February meeting.

The significant issues in the report are:

Confirmation regarding the way in which redundancies are approved within the Council, and clarification regarding the extent to which 'pledges/guarantees' can be given that there would not be any "compulsory redundancies" arising from the "residential futures programme", have been included in this report.

1. Policy

- 1.1 Redundancies can arise from service reviews, changes in structure, and service realignments/closures. As set out in the Council's Pay Policy, authority to approve redundancies (and redeployment) is as follows:
 - (1) 1st & 2nd Tier JNC Directors : approval by HR Committee
 - (2) all other employees (except those in locally managed schools) : approved under powers delegated to the Head of Paid Service as operated by the Service Director: Strategic HR
 - (3) employees in locally managed schools : approval by the appropriate Governing Body (except Head Teachers, which have to be ratified by the Strategic Director: CYPS and the Head of the Paid Service.
- 1.2 The Pay Policy is determined by the HR Committee. There are no provisions within the current Pay Policy which give 'guarantees' of no compulsory redundancy.
- 1.3 The authority's New Opportunities procedure and the job search support programme provide support for all qualifying employees (ie employment contracts with more than one year's service) to search for and obtain alternative work within the City Council. It is not always possible to find alternative work which meets personal aspirations and other commitments, including distance travelled, hours available, work type, etc, within the business needs of the City Council.
- 1.4 In addition, the Council is bound by the provisions of employment law in relation to redundancies (eg having "objective selection criteria"), and the award of redundancy pay.

2. Consultation

2.1 Internal

This report has been forwarded to the relevant trade unions, for their information.

2.2 External

Not applicable.

3. Context

3.1 As part of the collective dispute, the GMB stated:

"Two members of staff have been put into the redeployment pool and given a 12 week notice period of redundancy. Another two/three are due to meet with management and their trade union early in the New Year, and will probably be given a similar letter informing them of their 12 week notice period in the redeployment pool. Yet three Executive Members all stated there would not be ANY compulsory redundancies."

3.2 The HR Business Partner for H&SC advises that:-

At the closure of the Hollybrook Elderly Persons Home, 5 employees have successfully appealed against the suitability of alternative jobs offered to them, and are therefore currently without substantive roles. They have been referred to the New Opportunities Procedure. Notice of dismissal on the grounds of redundancy has been withdrawn from the two employees to whom it had been issued, and has not been issued to the other 3 employees, pending the decision of this HR Committee.

4. Proposal/Clarification

4.1 It is legitimate for Members, the Head of the Paid Service, and/or Directors to seek to avoid compulsory redundancies, but this can only be achieved within the provisions of the Council's Managing Change Policy. Approval of the HR Committee would be required to vary the application of this Policy, which has on occasions, been done by a specific/bespoke resolution. Since local government reorganisation in 1996, the HR Committee has not, however, passed any resolution regarding guarantees of "no compulsory redundancies"

4.2 Even if this Committee did pass a resolution to this effect, it would almost certainly be impossible to implement, primarily because an employer, having deleted an individual's post (thereby creating a redundancy) cannot force an employee to take an alternative job. In these circumstances, the employee would be dismissed on the grounds

of redundancy, but the award of redundancy pay would be withheld. To retain a redundant employee in permanent redeployment/'garden leave' (thereby avoiding the discharge of a redundancy notice) would be impractical and liable to challenge by the district auditor, etc.

4.3 Members' attention is also drawn to the legal views below.

5. Other Options Considered

5.1 Not applicable.

6. Risk Assessment

6.1 See legal views below.

7. Equalities Impact Assessment

7.1 Not applicable. The Managing Change and Pay Policies apply equally to all employees within the Council, regardless of gender, ethnicity, disability, etc.

Legal and Resource Implications

Legal

This Report highlights the issue of whether an employer is able to guarantee a situation of no compulsory redundancies. Redundancy is a fair reason for dismissal. Under the Employment Rights Act 1996 section 139 redundancy is defined as a situation where :-

- a) the employer has either ceased, or intends to cease, to carry on the business for the purposes of which the employee was so employed; or
- b) the employer has ceased, or intends to cease, to carry on the business in the place where the employee was so employed; or
- c) the requirements of the business for employees to carry out work of a particular kind has ceased or diminished or are expected to cease or diminish; or
- d) the requirements of the business for the employees to carry out work of a particular kind, in the place where they were so employed, has ceased or diminished or are expected to cease or diminish.

These definitions will apply by operation of law and a redundancy situation will exist if one of these options applies to an employee's post. Where a work group is at risk of redundancy the employer is under an obligation to use a fair and objective selection criteria to select those employees who will be made redundant. An employer will also be required to seek suitable alternative employment for affected

employees. If such employment is available and the employee accepts it, the risk of redundancy will be removed. However if suitable alternative employment is not available (after any redeployment processes have been exhausted) and/or the employee refuses to accept the alternative role (jobs), the employee will under law be liable to dismissal on grounds of redundancy. (In the latter instance, an employer can with-hold a redundancy payment).

(Advice from Husinara Jones for Head of Legal Services)

Financial

(a) Revenue:

There are no financial implications arising from this report the purpose of which is to confirm and clarify the existing BCC Compulsory Redundancy procedures.

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

(b) Capital:

Not Applicable.

Land

Not applicable.

Personnel

As set out in paragraphs 4.1 to 4.3 above.

Appendices

None.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 Background Papers:

None