



WARWICK TOWN COUNCIL

Managing Organisational Change, TUPE Transfers and Redundancies

1. Scope of policy

It is the policy of the Council, through forward planning, to ensure as far as possible security of employment for our employees. However, it is recognised that there may be the need for the reorganisation of our workforce due to economic changes, organisational requirements, developments in technology and processes or the transfer of services between Councils. This may affect our future employment requirements.

2. The Councils commitment

The Council, wherever possible, will endeavour to provide the longest contractual terms of employment possible to achieve continuity of employment for all employees of the council.

When short term funded projects (under two-year duration) are coming to an end the Council will be looking to work in partnership with employees to secure funding for new projects, if possible, with a view to offering alternative employment however, this cannot be guaranteed. If the Council cannot provide further employment we will support employees and workers in their search for employment allowing reasonable time off to attend interviews during their notice period.

Employees with more than two years' service, either on fixed term or permanent contracts, whose post is no longer required by the Council have employment rights. This includes the Council consulting with employees, depending on the number of employees affected, either individually or collectively with the view of avoiding or reducing the level of redundancies. If redundancies cannot be avoided redundant employee are entitled to statutory redundancy payment and reasonable time off to attend interviews or training to secure alternative employment. Please see section 4.3 on Managing Redundancy

3. Managing organisational change

The Council is committed to managing organisational change situations that will impact on employee's and worker's continuity of employment in a fair and consistent manner, to minimise anxiety for employees and any adverse effects that the change may have on services that the Council provide.

This will include involving staff at an early stage in consultation on any changes to the Council's staffing structure, any tenders or retenders for the provision of

services, working arrangements and funding requirements which will be needed to form part of the tender submission.

Employees and workers will be involved in identifying an action plan based on the option of winning or losing a contract, the impact and potential changes in working arrangements and how these changes will be managed.

4. Procedure for implementing change

4.1 End of fixed term contracts:

The Council will engage employees on a fixed term period if it is known that the funding available is time limited and clearly identified from the onset when the contract will come to an end.

Before the end of a fixed term contract the Clerk will arrange a meeting with the post holder to discuss if it is viable to seek further funding to extend the working arrangements and the contract of employment. The employee will also be notified that their continued employment with the Council is 'at risk'.

The Clerk will bring to the attention of the employee at risk any vacant posts or potential Council vacancies that may arise that they can apply for.

If further funding and internal vacancies are not identified, one month before the contract is due to expire, if the post holder has: -

- been in post for less than two years', confirmation should be given that the contract will be terminated and the offer of reasonable time off to attend interviews to seek alternative employment outside of the Council will be given during this period. As the length of service is under 2 years this will not justify the payment of statutory redundancy pay.
- more than two years' service, 8 weeks before the end of the contract confirmation should be given that the contract will be terminated and the offer of reasonable time off to attend interviews to seek alternative employment outside of the Council will be given during this period. As the length of service is over 2 years this will justify the payment of statutory redundancy pay.

4.2 Managing internal restructures

- Employees will be consulted on the proposed restructure and how this may impact on their Job Role.
- Where a post in the new structure is wholly or mainly the same as the post that an employee was undertaking before the

reorganisation (i.e. 70% of the new post is the same) they will be eligible to be slotted into the new post unless, two or more employees have a similar claim on the post in which case informal interviews will be held to select and appoint to the post.

- Employees displaced in the restructuring will be formally informed that their continuity of employment is 'at risk' because of their post no longer being required by the Council.
- Before vacancies in the new structure are externally advertised these will be brought to the attention of employees 'at risk'. Employees will be given the opportunity to apply for these vacancies as an alternative to redundancy and if considered, with reasonable training, suitable for the post will be offered the employment. This may be offered or requested on a 3-month trial basis without this affecting the employees right to redundancy payments.
- Employees remaining displaced at the end of this process will be given formal notice of redundancy and issued with a letter confirming their termination date and setting out redundancy payments that will be paid in their final salary payment and their right to appeal against the decision to terminate their employment on the grounds of redundancy.

4.3 Managing redundancy

The Council will wherever possible seek to minimise the effect of redundancies through full and meaningful consultation with affected employees. Where compulsory redundancy is inevitable the Council will handle the redundancy in the most fair, consistent and sympathetic manner possible.

The aim of this section is to clarify what procedures will be followed in the event of redundancies becoming unavoidable.

4.3.1 Avoidance of redundancies

In the event of a reduction in workloads or change in Council Policy serious enough to require a reduction in working hours, our first step will be to consider organisational ways of adjusting to the reduction. This will include:

- Managing the reduction in employee through natural wastage (anticipating the future demands and not recruiting to vacancy as they arise)
- redesigning jobs and reorganising work when vacancies not recruited to.
- asking for volunteers to work part-time or job share
- considering any other proposals put forward by employee

If we are unable to achieve the required savings by taking any of the above actions we would ask for volunteers for redundancy. However, the Council reserves the right to refuse to agree to make someone redundant if it is not in the council's interests to do so.

4.3.2 Consultation

In the event of compulsory redundancies being unavoidable, as the number of employees to be made redundant at any one time is likely to be less than 20 employee the Council will consult individual employees, you will be allowed to be accompanied at consultation meetings by a workplace colleague, Trade Union Full Time Official or a Trade Union Representative. The consultation will include:

- redundancies proposed
- reasons for the proposals
- number and descriptions of employees who it is proposed to make redundant
- total number of employees of that type employed in the Council
- proposed method of selecting the employees for redundancy
- how the redundancies will be carried out
- how any redundancy payments will be calculated

The consultation will be carried out for the purpose of considering ways of:

- avoiding the dismissals
- reducing the number of employees to be dismissed, and
- mitigating the consequences of the dismissals

In addition to any collective discussions, any individual employee whose job is considered for redundancy will also be consulted to consider alternative suggestions.

4.3.3 Selection of staff for redundancy

The criteria for the selection of staff to be made redundant will be discussed as part of the consultation process. We will ensure that any criteria selected are fair and objective.

Any employee selected for redundancy will be notified in writing, following individual consultation.

4.3.4 Notice period

The employee's contractual or statutory period of notice, whichever is the greater, will apply.

4.3.5 Redundancy pay

Redundancy pay will be calculated in accordance with the relevant statutory provisions, which are based on the employee's age, length of continuous employment based on full years' service, and the current actual weekly wage capped at the maximum statutory weekly rate.

4.3.6 Right of appeal

Any employee who feels that the selection criteria was unfair or incorrectly applied can appeal against the decision of the termination of their employment on the grounds of redundancy. This also applies to the employees taking voluntary redundancy. Any such appeal must be made in writing within ten working days of receiving the redundancy notification to the Clerk. The Clerk will arrange a meeting within five days with the employee and a panel of Councillors. The employee will have the right to be accompanied by a Trade Union Representative, work colleague or a full time Union Official. The decision will be communicated to the employee within ten working days of the meeting.

4.3.7 Time off to seek alternative employment

Any employee made redundant will be considered for other suitable jobs that arise in the Council during their notice period, if no such jobs are available, appropriate time off will be given to look for alternative employment. If you have been employed by the Council for more than two years you will be allowed 4 days off during your notice period of which 2 days will be on a paid basis and 2 days on an unpaid basis to attend training or interviews in support of finding alternative employment. Employees with less than 2 years' service will be allowed 4 days off during their notice period unpaid to attend training or interviews in support of finding alternative employment.

5 Management of the transfer of services (TUPE Transfers)

5.1 Definition of TUPE

- If during a Transfer of Services from one Council to another or another organisation this does not place the existing employees in a position of redundancy as TUPE regulations will apply and existing employees will transfer with the services into the new organisation.
- TUPE stands for the Transfer of Undertakings (Protection of Employment) Regulations 2006, which was updated with the Collective Redundancy and Transfer of Undertakings (Protection of Employment) Amendment Regulations in 2014. The purpose of TUPE is to protect employees if the business in which they are employed changes hands.
- TUPE preserves an employee's continuity of employment and terms and conditions of service. An employee has the legal right to transfer to the new employer on their existing terms and conditions of employment and with all their existing employment rights and liabilities. This includes any outstanding claims such as claims for unlawful discrimination, unpaid wages or personal injury.
- TUPE effect is to move employees, workers and any associated contracted liabilities from the old employer (known as the transferor) to the new employer (known as the **transferee**).

5.2 Situations in which TUPE will apply

TUPE will apply where: -

- the Council may cease to carry out activities for itself and assign them to an independent contractor to perform. (outsourcing)
- the Council decides to stop the activities being carried out by a contractor and brings them in to deliver the services themselves (insourcing)
- a funder decides to award a contract for services to another provider following a retendering process. (Outgoing employer – Transferor)
- a funder awards a contractor for services to the Council that had been previously undertaken by another provider following a retendering process. (Incoming employer- Transferee)

5.3 TUPE procedure Scope

The following procedure applies to all employees and workers

5.3.1 The Process for Outgoing services – where the Council is the transferor (current employer).

- **Planning (stage 1)**

At this stage, pooled employees and workers will be identified by the Clerk who are wholly or mainly working in the delivery of the service that will be the subject of the transfer. Employees and workers will be notified of the pending transfer and informed of how this may impact on their employment situation.

A schedule of consultation meetings will be agreed with employees and workers in order that employees and workers can be actively involved and supported by the Clerk.

Depending on the number of employees and workers affected:

- if more than 10 employees are affected arrangements will be made for an employee ballot to be undertaken for an agreed number of employee representatives to be appointed to represent staff in future collective consultations regarding the transfer,
- if there are less than 10 employees involved consultation will be undertaken on an individual basis.

Letters of intent will be sent to employee representatives if appointed or direct to individuals if no representatives are appointed.

- **Preparation for transfer (stage 2)**

A meeting should be arranged by the Clerk with relevant employee representatives/employees to explain as soon as possible if a service is to be transferred and discuss in more detail the potential implications of TUPE transfer and how employees will be kept informed of any implications this will have for them.

Whilst there are no timescales stipulated in the TUPE regulations, the Council will commence employee consultation at the earliest opportunity to enable the Council to consult with the appropriate representatives/individuals to review the list of employees submitted as transferees. The updated list will be shared with the new service provider.

The Council will work with the relevant representatives/individual employees to develop a positive relationship with the new service provider and through joint consultation meetings identify

any potential adverse impact on the employees transferring within the identified pool. Such matters covered will be:

- Staffing
- Transfer of staff records
- Timescales
- Terms & conditions of employment
- Pension arrangements
- Issues arising from contracts of employment
- Should the new employer provide a special measure letter the Council will bring this to the attention of transferring employees during consultation.

The TUPE regulations require that the Council provides Employers Liability information to the new employer at least 28 days before the transfer date:

Any issues identified will be discussed with individuals to be able to explore with the new service provider the options for removing or mitigating this impact where appropriate.

Special arrangements will need to be taken to ensure employees who are absent from work e.g. because they are on maternity leave, sick leave, secondment or a career break, are briefed and consulted on the proposals.

- **Transfer (stage 3)**

The employees affected by the transfer will receive the following information confirmed in writing from the Council as the outgoing organisation on transfer:

- Confirmation that their post will transfer from the Council
- Details about the new employer;
- Confirmation of when the transfer will take place; and
- Confirmation that their terms and conditions of employment will transfer with them along with their length of service with the Council as continuous employment.

Any employees who have indicated that they do not wish to transfer will also receive written confirmation:

- The employee has indicated that they do not wish to transfer;

- On the date of the transfer their contract of employment will not transfer to the new organisation; and
- They will be deemed to have resigned from the Council's employment.

5.3.2 The process for incoming services– where the Council is the transferee (new employer)

Where the Council is the receiving organisation in a TUPE situation, professional Human Resources/legal support should be obtained as early as possible in the process.

- **Planning Stage (Stage 1)**

At this stage, the Council will:

- Consider informing Trade Unions and Employee Representatives/employees of a potential service transferring in to the Council.
- Weigh up the pros and cons and implications of the transfer of service in to the Council.
- Begin to construct a TUPE process plan for integration of the service into the Council.

- **Preparation for transfer (Stage 2)**

As part of the preparatory work the Clerk will be involved in the attendance at consultation meetings with transferring employees and this will be discussed and agreed with the transferring organisation before the consultation process begins.

The TUPE regulations require that the current terms and conditions for employees transferring continue after the transfer to Council. The Council will request the Employers Liability information to be provided as soon as possible and at least 28 days before the transfer date:

- pay arrangements (method and date).
- pay scales/increments.
- hours of work, including any flexi scheme in operation.
- annual leave entitlements.
- changes to place of work/ travel arrangements.
- confirmation of whether relevant pre-employment/disclosure checks/entitlement to work in the UK have been completed.
- confirmation of whether there are any liabilities to transfer e.g. personal injury.

- any outstanding employee relations issues, e.g. discipline, grievance, capability, ill-health cases etc.
- organisational structure information.
- terms and conditions information.
- the identity and age of the employees who will transfer;
- information contained in the employees' written particulars of employment and details of any claims that the transferor reasonably believes might be brought in the future.
- personal files.

Any issues identified that cannot be accommodated either due to economical, technical or financial reasons will be brought to the employee's attention in a special measures letter during pre-transfer consultation and before transfer, along with the business case for the changes.

- **At point of transfer (Stage 3)**

At this stage, the Council receives the transferring staff and the Clerk should ensure a welcome letter is produced and distributed to all transferring employees. An initial induction meeting should be held and appropriate induction arrangements put in place for employees transferring into the Council so that all employees/teams are managed, settled and clear about what their changed reporting arrangements are.

Employees will also be informed of the time scale and arrangement that will be put in place to consult on the changes that were identified in the special measures letter.

- **After the transfer (Stage 4)**

At this stage, the Council will start the consultations with all employees and workers in relation to any restructuring that needs to take place because of the transferring employees and workers and how this may impact on existing Council employees and structures and inform/consult about potential redundancies (if any are necessary) in line with the procedure outline in **paragraph 4.3**

The Council will also consult in general and ensure reasonable allowances are made whilst employees adjustment and integration is achieved within the Council.

The Council will review the effectiveness of the Councils policies and procedures in line with the integrated employees and workers.