



# **MANAGING WORKFORCE CHANGE**

<b>Title</b>	Managing Workforce Change
<b>Who should use this</b>	All Staff
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<b>Approved by Joint Board</b>	
<b>Reviewer</b>	<b>PA &amp; Office Manager</b>
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## Review History

<b>REVIEW NO.</b>	<b>DETAILS</b>	<b>RELEASE DATE</b>
1	REVIEWED APRIL 2015	
2	FULLER FORMAT WITH ADDITION OF SECTION 2 MATCHING POLICY AND SECTION 3 REDUNDANCY POLICY	JULY 2017
3	ADDITION AT SECTION 3.5 – NO COMPULSORY REDUNDANCY PLEDGE	FEBRUARY 2021
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## Section 1

### Framework

#### 1.1 Context

The Board has an overarching responsibility to ensure that an appropriate workforce structure is in place to meet the organisational vision, values and performance objectives, and to deliver high quality, cost effective and integrated services.

This focus on quality services requires ongoing monitoring and review of the way our business is designed and delivered and, as appropriate, the implementation of alternative delivery models, new working methods, redesigned jobs, increased productivity, new skills and revised working patterns and arrangements.

The Board is committed to safeguarding jobs and maximising employment opportunities. However, this commitment needs to be set in the context of wider strategic organisational objectives of improving service delivery for the people of Ayrshire. Accordingly, the Board will make the workforce changes that are necessary to achieve these wider organisational goals and this may include reducing overall employee numbers in certain areas; changing job remits (and, if appropriate grades); amending working practices, patterns, work locations, terms and conditions and other similar changes. In such circumstances, the Board will take all reasonably practicable steps to avoid or mitigate any detrimental impact on employees, particularly where this is financial, but it cannot guarantee to do so.

The Board acknowledges the uncertainty such change can create and this Framework aims to ensure that in such circumstances fair and reasonable processes are applied. This will include full and informative consultation with trade unions and employees on the changing requirements and the options to achieve these.

#### 1.2 Scope

This Framework applies to all employees. It outlines how the Board will approach and manage significant changes affecting the workforce as seamlessly and effectively as possible.

By necessity, the Board will have to respond to evolving, and often conflicting, service demands and customer requirements and reducing resources and it is, therefore, not possible to definitively prescribe or restrict the circumstances in which there will be workforce changes requiring the application of this Framework. However, these are likely to include:

- service reviews;
- structural redesign;
- changes in working practices;
- relocation of services;
- reduction or cessation of service delivery;
- efficiency savings which result in the deletion of jobs that are occupied; and
- changes to service delivery arrangements which result in another organisation delivering the service

The Framework will not apply where:

- the changes relate only to the creation of new jobs;
- the changes relate only to line management arrangements;
- there is a slight change to work location;
- the changes relate to the deletion of vacant posts where there is no (or only marginal) impact on remaining jobs; or
- there are proposed variations to an employee's, or to a number of employees', job descriptions which are not substantial.

The Framework is primarily designed to deal with workforce changes required as a result of legislative or organisational changes. However, as appropriate, the Redeployment Policy will also be used to support employees who, for personal reasons (for example, ill-health, capability, or disability) can no longer continue in their substantive post. It should be noted that the Redeployment Policy will not apply to cases where an employee moves to another post as a result of the outcome of a disciplinary situation.

### **1.3 Principles**

The framework reflects an organisational recognition that:

- planned, strategic and coordinated change should be the norm and that unplanned, unexpected change should be the exception;
- organisational change will be a continuous part of the Board's business;
- effective workforce planning is essential to meet future service needs;
- there is a requirement to adopt a more flexible approach to changing job requirements;
- job security and employability will be maximised and promoted where practicable;
- employees should understand that all jobs may be subject to change;
- at the earliest possible stage, a manager who is contemplating change to service delivery needs to identify and assess any resulting implications for workforce requirements and plan accordingly;
- meaningful consultation will take place as soon as it is reasonably practicable;
- fair treatment and support will be assured for employees who are displaced or who face redundancy.
- meaningful ongoing communication is essential to ensure employees and trade unions are aware of any proposed changes and of the potential implications for working arrangements;
- redundancies will be minimised and avoided where possible;
- whenever possible, displaced employees will be redeployed to suitable alternative roles;
- employees will be expected to make all reasonable efforts to adjust and adapt to suitable alternative roles; and
- transferable skills will be identified and developed where practicable.

### **1.4 Definitions**

For the purpose of this Framework:

A **Job** –is the description used for a particular remit, for example, a Valuer, Divisional Assessor or Administrative Officer.

An employee's substantive job will be used for the purpose of this policy, unless he or she has been in another temporary position for 4 years or more, in which case the temporary position will be used.

A **Post** – is the description used for the number of a particular job, for example, 6 part-time posts of or 10 full-time equivalent posts.

## **1.5 Potential Impact Of Workforce Changes**

For the purpose of this policy, the most significant and relevant workforce changes relate to:

- reduction in the number of post of a particular kind;
- structural changes involving the deletion of existing jobs and the creation of new jobs;
- changes to job remit, working pattern, location, hours of work, or grade; and
- changes to service delivery arrangements, such as shared services, partnerships, external contracting and other similar measures.

### **1.5.1 Reduction in the number of posts**

This is the most obvious and common redundancy situation. In this case, a job remains unchanged (for example, in terms of duties, responsibilities or grade) but it is necessary to reduce the number of posts in a particular job group, involving selecting employees for redundancy.

The Redundancy Policy is outlined at Section 3 below, including the selection criteria.

### **1.5.2 Structural change**

In some situations it may be necessary to change structural design so that jobs are deleted because they no longer reflect service requirements and new jobs are created which do. Where all posts of a particular job type undertaking a particular remit are deleted, all postholders may, technically, be redundant. However, in many cases, the new jobs that are created to replace the obsolete jobs, although different, may be suitable alternative employment and, therefore, in advance of issuing at risk of redundancy notices, attempts will be made to match employees in deleted jobs to the newly created jobs, as outlined in the Matching Policy at Section 2 below.

### **1.5.3 Changes to job remit, working pattern, location, hours of work, or grade**

In some cases, the necessary change relates to an existing post that will continue to exist following the change, albeit with some adjustments, for example, revised duties or responsibilities, working patterns, location, hours of work, grade etc. The necessary changes need to be implemented by varying contracts of employment and will involve full consultation and discussion with individual employees and relevant trade union representatives. Following this consultation process, the employees, for whom the changes are necessary, will be asked to accept the necessary contractual variation. Ultimately, if an employee does not accept the variation required to implement the required change, it will be necessary to terminate the existing contract (with appropriate notice) and issue a new contract which contains the required contractual terms.

In many cases, a reduction in working hours will be achieved by varying an existing contract. However, it is accepted that more significant reductions in working hours may constitute redundancy, with associated entitlement to redundancy pay. The test in such cases will be the extent to which the new hours are a reasonable alternative to the original hours. Where the reduction in hours is limited, and all other aspects of the job remain unchanged, the Board may deem an employee's refusal of the alternative post hours to be unreasonable, with the result that it is not appropriate to pay a redundancy payment.

More generally, the ongoing monitoring and review of Board services will inevitably lead to changes in the way services are designed and delivered. This, in turn, will have implications for the working patterns and arrangements of employees providing those services, with an increasing requirement for flexibility and mobility, for example, home working arrangements, hot-desking, and touch-down locations. Although these new ways of working will not necessarily require contractual changes, any such proposals will be discussed with the employees who may be affected and the relevant trade union representatives at an early point and prior to any changes being made.

#### **1.5.4 *Changes to service delivery arrangements***

As part of its Improvement Agenda, the Board is committed to a rolling programme of Service Reviews which consider the current service delivery arrangements (both in terms of design and performance) and may identify and appraise alternative options for service delivery, such as shared services, partnerships and external contracts.

Service reviews may result in changes to workforce numbers, job remits, structural design and working hours and patterns. However, on occasions, they may also result in a change of service provider, which has a potentially significant workforce implication, through the transfer of the work to another organisation and the application of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) 2006 (as amended). Section 5 below outlines the Board's TUPE Policy.

### **1.6 Measures to Avoid or Address Displacement of Employees**

In situations where workforce change is likely to result in employee displacement, for example, where the number of posts of a particular job kind is reducing, or where a post is being deleted entirely, the Board will consider measures to avoid employee displacement, such as:

- restricting or freezing recruitment of permanent employees;
- reducing or eliminating overtime;
- freezing or reducing the number of temporary employees; and
- reducing or eliminating the use of casual workers;

It may also be appropriate to consider measures which will avoid the requirement for displacement by reducing the working hours of some or all employees in a job group. For example, in a situation where the level of work of a 10-person team needs to reduce by 1 FTE, it may be appropriate from a business perspective to consider reducing the weekly hours of all 10 employees to achieve the 1FTE reduction, rather than deleting a post and displacing one employee. Obviously, the potential for such alternative solutions will be dependent upon service requirements, subject to consultation with the affected employees and relevant trade union representatives, and conditional on the necessary changes to contractual terms.

As noted above, in terms of employee rights, more significant reductions in working hours, implemented to avoid the requirement to reduce the overall job numbers, may, in themselves, constitute redundancy. However, where an alternative post of the same job kind is available, with only a slight reduction in hours, an employee's refusal to accept the change may be deemed to be unreasonable with the effect that payment of a redundancy payment may not be justifiable.

It may also be possible to seek and accommodate applications for voluntary severance, either to avoid the need to select employees for redundancy or to free up a post elsewhere in the organisation, unaffected by the change, in order to provide a redeployment opportunity. It should be noted that in registering interest in voluntary severance there is no obligation either on the part of the Board to agree to release the employee on these terms, or on the employee to accept any offer made in this respect.

More generally, the Board will make every effort to identify suitable alternative employment for employees who are displaced as a result of workforce changes as outlined in the Redundancy Policy at Section 3 of this Framework.

### **1.7 Consultation and Engagement**

The Board will fully comply with statutory consultation requirements, for example, in terms of redundancy, TUPE etc. However, reflecting an organisational conviction that robust consultation and engagement is essential for the effective management of **all** organisational change, it will ensure employees who are, or are potentially, affected by any proposed change and the relevant trade union representatives, are informed and consulted as soon as practicable in relation to workforce changes covered by this policy. This will include:

- communicating openly and honestly with employees and their representatives;
- giving employees and their representatives clear and up-to-date information;
- ensuring trade union representatives are provided with adequate time to appropriately participate in consultation and represent their members as and when required; and
- allowing employees and their representatives the opportunity to meet and to make suggestions about proposed changes which impact on them.

## Section 2

### Matching Policy

#### 2.1 Introduction

There will be situations, most particularly structural reviews, where a number of jobs (which are no longer meeting the needs of the service) are deleted and new, and different, jobs are created (which do so) and it will be necessary to match the employees displaced by the post deletions to the newly created jobs.

It should be noted that where some, but not all, posts of a particular kind are deleted, but the remaining posts will continue to operate as before, or with only slight changes, it will be necessary to select the employee(s) to be displaced. This situation is not covered by the matching process and will be dealt with in accordance with the Redundancy Policy, using the Redundancy Selection Assessment Form.

Where there are only minor changes to a job, the existing job remit will be varied and there will be no need to delete the post and create a new one. This situation will be dealt with by varying existing contracts of employment, and is not covered by the Matching Policy.

Where all posts of a particular job kind are deleted, but new and different ones are created, it is not necessary to select employees, because all employees in that job are effectively displaced. In this situation, the number of new posts may differ for the original number of posts that have been deleted. The matching process will be used to match displaced employees to the new posts.

In some situations, certain duties and responsibilities may simply cease to exist (where, for example, they are no longer necessary because of changing technology, service demands, legislation, or process design). In other situations, duties may remain and be incorporated into one or more of the new jobs.

While in such circumstances, depending on the similarity between the deleted and newly created jobs, the employees may technically be redundant, prior to progressing the redundancy or seeking alternative employment elsewhere in the Board, a process will be undertaken to match displaced employees to the newly created jobs. It should be noted, however, that, depending on the similarity between the deleted and newly created posts, an employee may reasonably refuse to accept the available new post on the basis that it is unsuitable alternative employment and retain entitlement to the appropriate severance payment.

The nominated senior officer has responsibility for overseeing all matching exercises.

#### 2.2 Process

The overall purpose of the matching process is to match employees, whose jobs are deleted, to newly created posts through a comparison of the remits of the deleted and new posts by identifying the elements which are common to both.

In such situations, the Manager who knows the remit of the old jobs and the planned remit of the newly created ones will identify the employees for whom the new job is potentially a suitable match. An employee will be considered for matching purposes where the new job contains any post-specific element of his/ her deleted job, unless he/ she does not hold a particular qualification which is an essential requirement of the new post. It should be noted that generic responsibilities, that exist in both the deleted and new posts, (such as supervising staff or ensuring compliance with health and safety requirements) will not make an employee eligible for matching if the deleted post did not include any of the post-specific duties of the new job.

Details of the proposed matching will be shared with the relevant trade unions in advance of employees being advised, to enable trade union representatives to respond to queries from their members about their individual personal circumstances. However, recognising the need for confidentiality in terms of individual employee information, the information shared with the trade unions cannot be circulated to all the employees affected.

Managers will respond to queries they receive directly, for example from employees who are not members of a trade union.

Following discussion with trade union representatives, letters will be sent to employees who are displaced as a result of the deletion of his or her post advising:

- that their post has been deleted and the reason for this;
- of the fact that new posts have been created which might represent suitable alternative employment;
- that a matching process will be undertaken to match displaced employees to newly created posts;
- of the posts which appear potentially to be a suitable match;
- that they should rank the identified potential match posts in order of preference (where there is more than one post identified);
- that the employee should identify additional or alternative posts which he or she consider to also be potentially a suitable match;
- that it will be for the manager to ultimately determine if additional or alternative posts are potentially a suitable match; and
- that they should indicate if they don't think any of the identified posts are suitable.

It should be noted that the employee is only potentially a suitable match. The new jobs are different and do not directly replicate the deleted ones; if they did, there would have been no requirement to delete the original jobs. Therefore, the Manager must be satisfied that the employee is capable of carrying out the new job and will do so by using established recruitment and selection arrangements. This will be particularly important where the new post has greater responsibility.

Where there are more employees for whom the new job is a potentially suitable match than there are available posts, employees will have to go through a competitive selection process. Reflecting the fact that there may be more than one post which is a potentially suitable match for an employee, efforts will be made to accommodate employee preference in terms of the sequence and number of competitive interviews.

At the point when it is clear that the only alternative employment available to an employee is at a lower grade, the employee will be advised that he or she is at risk of redundancy.

Where an employee is not appointed to any of the new jobs which were potentially a suitable match, he or she will, effectively, be in a redundancy situation and will be placed on the Board's Redeployment Register and issued with appropriate notice of termination of employment on the grounds of redundancy. From this point, the Board's Redundancy Policy will apply, for example, in terms of right to time off, redeployment and severance payments. During the notice period, every effort will be made to identify other suitable alternative employment.

Posts not filled through the matching process will be filled through a normal recruitment process, unless the post is suitable for redeployment purposes.

## **2.3 Consultation**

Matching may be the result of a process covered by other Board policies or frameworks, which outline consultation requirements. However, as a minimum, in all situations where matching is necessary, the following will apply.

### **2.3.1 Collective Consultation**

At the earliest opportunity, trade unions will be provided with details of:

- the reason for the proposals;
- the specific changes that are proposed, including deletion and creation of posts;
- the employee groups who will be affected;
- the proposed matches for the affected employees; and
- the proposed timescales for implementing the changes.

The timescales for this consultation will be undertaken on the basis that:

- consultation will take place when the proposals are still at a formative stage;
- adequate information, on which to respond, will be shared;
- adequate time, within which to respond, will be given; and
- the Board will conscientiously consider the responses to the consultation.

### **2.3.2 Individual Consultation**

In addition to discussion with trade unions, employees affected by the changes will be advised of the proposals as soon as practicable. Managers will arrange to meet the employees (either collectively or individually) and will be accompanied by a representative from the SAC HR Team as appropriate.

Employees will be given the opportunity to be accompanied by a trade union representative or work colleague at individual meetings with the Manager.

At the earliest opportunity employees will be provided with details of:

- the reason for the proposals;
- the specific changes that are proposed, including deletion and creation of posts;
- the employee groups who will be affected;
- the proposed method of matching employees to new posts; and
- the proposed timescales for implementing the changes.

Employees will also be given the opportunity to raise any concerns, comments or objections to the proposals.

Employees on maternity or paternity leave, long term sickness absence, career break, adoption leave or other authorised absence will be consulted through the least intrusive and stressful method of contact, which will be agreed with the employee.

## **2.4 Complaints About the Outcome of Matching**

As outlined above, the Matching process will be initiated where existing posts are deleted and new and different ones are created. At the point at which the Matching process is applied, the decision to delete the original post(s) has already been taken by the Board, and, therefore, there is no right to appeal against such a decision.

Although a separate and discrete process, the same principles are applied to matching as to normal recruitment – similar selection methods will be used and appointment based on merit, with the individual(s) who demonstrate the greatest competency being matched to the new post(s). Reflecting these similarities, an employee who believes he or she has been treated unfairly or been discriminated against will have the right to complain through a process which is consistent with the provisions of the Boards Recruitment and Selection Policy. An employee wishing to do so should write to the nominated senior officer within 14 days of being advised of the outcome of the matching process.

Complaints will be investigated by an independent Board Officer and a response issued normally within 10 working days from receipt of the complaint. An employee who remains dissatisfied with the response can appeal against the response by sending written confirmation of the grounds of the appeal to the nominated senior officer, within 14 days of receipt of the response. Such an appeal will be dealt with at Stage 2A of the Board's Grievance Policy, following which, the matching complaints procedure will be at an end.

It should be noted that while an employee can complain about the outcome of a matching process, such a complaint can only relate to his or her own circumstances or outcome. Consistent with the terms of the Recruitment and Selection Policy (which does not permit, for example, an applicant to complain about the inclusion of another candidate in an interview shortlist) there is no route open to employees to complain about the inclusion of another employee in a matching process for a particular post, or about any other issues affecting another employee(s).

An employee who is not appointed to an alternative post through the matching or redeployment policies will have his or her employment with the Board terminated on the grounds of redundancy at the end of the notice period. The employee will have the right to request a review of the circumstances which led to his or her redundancy dismissal as outlined in the Redundancy Policy.

## Section 3

### Redundancy Policy

#### 3.1 Introduction

The Board's primary responsibility is to provide efficient and effective services to its residents, communities and service users, and, as outlined above, this involves the requirement to make the necessary workforce changes. Notwithstanding, within this context, the Board will make every effort to safeguard employment and avoid job losses.

However, in some situations, a reduction in employee numbers or jobs, which constitute redundancy, will be inevitable. In such circumstances, the Board will handle the process in a fair, consistent, objective and non-discriminatory manner. Employees will be given support and advice during the process and efforts will be made to identify suitable alternative employment.

Earlier sections of this Framework outline the situations where changes in the workforce may lead to a redundancy situation, for example, the reduction in the number of a particular job; deletion of posts; change of remit, reduction in hours. In restructuring situations, where a number of jobs are being deleted and a similar number of new jobs created (albeit with different remits and/ or grade), the matching process should be completed before there is any move to activate a compulsory redundancy.

The Board will fully comply with its statutory obligations.

In all circumstances, before a post is declared redundant, or employees notified to this effect, the nominated senior officer will review the situation to confirm whether or not a redundancy situation exists. This policy will only be initiated where there is a genuine redundancy.

The nominated senior officer has responsibility for overseeing all redundancy situations, including the selection for redundancy process.

#### 3.2 Definition of Redundancy

Redundancy is a dismissal under employment law which is attributable, wholly or mainly, to the fact that:

- the employer has ceased or intends to cease to carry on the business for the purposes for which the employee was employed, or has ceased, or intends to cease, to carry on that business in the place where the employee was employed; or
- 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 he/ she was so employed, have ceased or diminished or are expected to cease or diminish. In this respect, the reduction in the working hours of all or some employees, but where the overall number of employees remains unchanged, may also constitute redundancy.

Whether or not a redundancy situation exists will be determined by the particular circumstances and each case will be considered individually with due regard to the impact on the employee concerned.

### **3.3 Avoiding Compulsory Redundancy**

As outlined above, when it is established that staffing reductions, which may result in displacement of staff, are necessary, the Board will take steps to avoid or minimise the number of possible redundancies by considering any or all of the following:

- restricting or freezing recruitment of permanent employees;
- reducing or eliminating overtime;
- freezing or reducing the number of temporary employees;
- reducing or eliminating the use of casual workers;
- reducing employees' working hours; and
- seeking applications for voluntary severance.

### **3.4 Process**

If the above measures are insufficient to achieve the necessary reductions, compulsory redundancies may be unavoidable. In such circumstances, the Board will consult with the appropriate trade unions, as soon as it is known that redundancies will need, or are likely, to be made, even if the employees in question are not members of a trade union.

Similarly, if in a structural review the only available alternative employment (identified through the matching process, outlined at Section 2 above) is reasonably deemed to be unsuitable by the employee, he or she will be in a compulsory redundancy situation and, in conjunction with discussions with the trade unions, the employee shall be notified accordingly.

The relevant Manager will consult with the relevant trade union as soon as it is known that redundancies will, in all likelihood, be unavoidable, but at the very least within the timescales required by legislation. The Manager will also consult with the individual employees who may be affected by, or included in, the redundancies.

Employees in posts which are at risk of redundancy will be issued with an 'at risk of redundancy' letter.

Where all posts of a particular job type are being deleted, it will not be necessary to select the employees who will be redundant, since all will be.

Where not all posts of a particular job type are being deleted, it will be necessary to select the employees who will be redundant and this process will be carried out using the Redundancy Selection Assessment Form below.

Employees who have been issued with an 'at risk of redundancy' notice but who have not been selected for redundancy or who have been redeployed to suitable alternative employment will receive written confirmation that the notice is withdrawn.

The nominated senior officer is specifically tasked with coordinating the communication, consultation and selection process in all redundancy situations and for ensuring compliance with the above provisions.

### 3.5 No Compulsory Redundancy Pledge

Reflecting the extent of the Board's commitment to avoid compulsory redundancy, in addition to the statutory and contractual undertakings outlined in this Framework, this Pledge ensures that any employee who is displaced from his or her substantive post and is 'at risk of redundancy', and who wishes to remain in the Board's employment, will be given the opportunity to do so.

This additional commitment means that an employee who is at risk of redundancy will not be served with notice to terminate his or her employment until an offer of alternative employment has been made. Such an offer will, wherever possible, be made within a 4-week period (the 4-week pre-notice period) following confirmation that the employee is displaced. If there is no alternative employment available within that 4-week period the employee will be offered the first available employment thereafter for which he or she meets the minimum criteria.

#### 3.5.1 Conditions

- a) The No Compulsory Redundancy Pledge applies only to employees who are at risk of redundancy, as defined in this Framework – referred to in this Pledge as 'displaced' employees;
- b) In terms of access to and selection for alternative employment, the displaced employee may have to compete with other employees seeking redeployment for other reasons such as ill-health or capability. In these circumstances, the terms of the Board's Redeployment Policy will apply; and
- c) The alternative employment will be as suitable as is available in terms of grade, working hours/pattern, remit, location and terms and conditions however, may not be the same as the job from which the employee has been displaced.

#### 3.5.2 Process

- a) If an employee accepts the alternative job that is offered, redeployment will be in accordance with the Board's Redeployment Policy, including the right to preservation of earnings
- b) If an employee refuses the alternative job that is offered the following will apply:
  - i) Where an employee refuses alternative employment which is the 'same' or 'very' similar to the post from which he or she has been displaced (for example on the same grade and working hours and similar remit) the 'no compulsory redundancy pledge' will be deemed to have been honoured and the employee will be issued with notice of termination of employment immediately the offer is refused, irrespective of when in the 4-week pre-notice period the offer is made.
  - ii) Where an employee refuses alternative employment which is 'reasonably' similar to the post from which he or she has been displaced (for example, one grade lower or slightly reduced working hours) the 'no compulsory redundancy pledge' will be deemed to have been honoured, but notice of termination of employment will not be issued until the end of the 4-week pre-notice period. During the remainder of the 4-week period, further efforts will be made to identify additional alternative employment which is more similar to the original post from which the employee has been displaced.
  - iii) Where no 'same' or 'very' or 'reasonably' similar alternative employment is available during the 4-week pre-notice period, the employee will be offered the most suitable alternative job (albeit one that is potentially quite different from the post from which he or she has been displaced) that is available at the end of the 4-week period, or as soon as one becomes available thereafter, and the 'no compulsory redundancy pledge' will be deemed to have been honoured. If the employee refuses that alternative employment, he or she will be issued with notice of termination of employment.

- iv) If the offer of alternative employment is conditional on successful completion of a trial period at the end of which the employee is deemed to be unsuitable, the 'no compulsory redundancy pledge' will not be deemed to have been honoured and notice of termination of employment will not be issued until an unconditional offer of alternative employment has been made or the employee completes a trial period to the satisfaction of the new employing manager.
- v) If an employee refuses the alternative employment that is offered, the terms of the Redundancy Policy will apply, including the right to severance payments.
- vi) Once notice to terminate the employment has been issued, the terms of the Redeployment Policy will apply. If it has not been possible to find an alternative post during the notice period, at the end of the notice period, the employee's contract of employment will be terminated.
- vii) The nominated senior officer has responsibility for overseeing the application of the No Compulsory Redundancy Pledge and will liaise with the trade unions where the employee disagrees with the 'suitability' of an alternative post. The nominated senior officer will make the final decision on the 'suitability' of a post and there will be no further right of appeal. If an employee remains dissatisfied with this decision their recourse is through the process outlined in this Policy.

### **3.6 Selection for Redundancy**

The Board will apply as precise and objective selection criteria as possible and apply these fairly and consistently.

A representative of South Ayrshire Council Human Resources team will always be involved in the selection process.

Where all posts of a particular job type are being deleted, it will not be necessary to select the employees who will be redundant, since all will be.

Where not all posts of a particular job type are being deleted, it will be necessary to select the employees who will be redundant.

The nominated senior officer, will clearly record the outcome of the selection process, using the Redundancy Selection Assessment Form.

The nominated senior officer and a representative from the SAC Human Resources team will meet the employees who have been selected for redundancy and clearly outline the reason for their selection.

Where, at the end of the selection assessment process, the number of employees with the same lowest score is greater than the number of people to be selected, final selection will be determined by a competitive selection process, with the employee(s) with the lowest score in that selection process being declared redundant.

Employees selected for redundancy will be issued with notice of termination of employment, in accordance with contractual entitlements.

In selecting employees for redundancy, the Board will not, under any circumstances, make reference to:

- pregnancy and all reasons relating to maternity leave;

- acting as an employee representative or a trade union representative or trade union membership;
- being employed on a part time or fixed term basis;
- a reason relating to any protected characteristic as defined by the Equalities Act 2010;
- pay and working hours related to an employee's statutory rights;
- taking action on health and safety grounds; and
- for making a protected disclosure within the meaning of the Public Interest Disclosure Act 1998.

If no suitable alternative employment is available an employee will be made redundant during pregnancy or maternity or adoption leave, provided the reason for redundancy is unconnected with the pregnancy or maternity or adoption leave, and a fair redundancy selection process has been followed.

### **3.7 Complaints About the Outcome of the Redundancy Selection Process**

As outlined above, a redundancy situation will generally be the result of a decision of the Board – for example, to close a facility or end or reduce the provision of a particular service. The existence of a redundancy situation will be a matter of fact and law and there is no right to appeal against the decision which led to the redundancy.

However, an employee, who believes the selection for redundancy criteria has been unfairly applied or procedures not complied with, will have the right to lodge a complaint. An employee wishing to do so should write to the nominated senior officer within 14 days of being advised of the outcome of the matching process.

Complaints will be investigated by an independent Board Officer and a response issued normally within 10 working days from receipt of the complaint. An employee who remains dissatisfied with the response can appeal against the response by sending written confirmation of the grounds of the appeal to the Assessor or nominated senior officer, within 14 days of receipt of the response. Such an appeal will be dealt with at Stage 2A of the Board's Grievance Policy, following which, the redundancy complaints procedure will be at an end.

An employee selected for redundancy, who is not appointed to an alternative post through the redeployment process, will have his or her employment with the Board terminated on the grounds of redundancy at the end of the notice period. The employee will have the right to request a review of the circumstances which led to his or her redundancy dismissal as outlined below.

### **3.8 Alternative Employment**

An employee who is selected for redundancy will be considered for suitable alternative posts in accordance with the Board's Redeployment Policy outlined at Section 4 below.

The Board reserves the right to withhold redundancy payment in the event that the offer of suitable alternative employment is unreasonably rejected by the employee. For example, if an employee rejects the offer of a job which offers the same level of basic pay, similar seniority, status and similar conditions of employment to the post from which he or she is being made redundant, this may be considered to be unreasonable. Where such action is being considered, the matter will be fully discussed with the employee and his or her trade union representative before any decision is taken.

If an employee, who is in a redundancy situation (either through selection or at the end of the matching process) accepts an alternative post, genuinely believing it to be suitable alternative employment, but, within a 12-week period subsequently and reasonably concludes it is not suitable

(for example, where the employee is simply unable to fulfil the post requirements) he or she will be entitled to leave the Board's employment with the same severance payments as would have applied if he or she had not accepted the alternative post. Such a situation will be at the employee's request; discussed with his or her trade union representative; and treated as a voluntary severance. The employee will not be entitled to notice or to pay in lieu of notice or to other redeployment opportunities.

### **3.9 Financial Issues**

#### **3.9.1 Statutory Redundancy Payment**

An employee with at least two years continuous service at the date of redundancy will be entitled to a statutory redundancy payment.

Service with other public organisations detailed in the Redundancy Payments (Continuity of Employment in Local Government etc.) (Modification) Order 1999 will count as continuous local government service for redundancy payment purposes. An employee's continuous service start date for the purpose of calculating statutory redundancy entitlement is detailed in his or her contract of employment, and will be confirmed when provisional financial figures relating to the redundancy are provided.

An employee, who is in a compulsory redundancy situation, will be afforded the same severance terms as are available through the Board's Voluntary Severance arrangements.

Redundancy Payments of up to £30,000 are tax free.

The Board may offer an enhanced severance payment or superannuation benefits to employees who request voluntary severance, as determined from time to time through the Board's Retirement Framework.

#### **3.9.2 Pension**

Employees who were members of the Local Government Pension Scheme (LGPS) on, or before, 5 April 2006 may be eligible to receive immediate, unreduced LGPS benefits at age 50 if their employment is terminated on the grounds of redundancy or business efficiency.

Employees who joined the LGPS on, or after, 6 April 2006 will be eligible to receive immediate, unreduced payment of LGPS benefits from age 55 if their employment is terminated on the grounds of redundancy or business efficiency.

It should be noted that an employee who elects to receive added pension years, will be deemed to have left under the Board's voluntary severance scheme, and will **not** be entitled to a statutory redundancy payment.

### **3.10 Loss of Entitlement to a Redundancy Payment**

An employee may lose the entitlement to a redundancy payment if he/she:

- refuses without good reason an offer of suitable alternative employment;
- declines without good reason an interview with a recruiting manager for a post which is considered by the Board to be suitable; and
- is dismissed for misconduct during the trial or notice period;

### **3.11 Re-Employment of Employee Following Redundancy**

The Redundancy Payments (Continuity of Employment in Local Government etc.) (Modification) Order 1999 is a statutory order, which provides an employee with continuity of employment, in terms of redundancy, for a range of bodies, including all Local Authorities in Scotland, England and Wales.

If an employee is under notice of redundancy (i.e. is still employed) and receives an offer of employment with another employer covered by the Modification Order, and starts work within four weeks of leaving the Board, he or she will lose entitlement to the redundancy payment. Employees are required to disclose the detail of any such offer to the Board.

If an employee has left the Board, claimed a redundancy payment and then begun work with another Modification Order employer within 4 weeks of leaving, the redundancy payment will be reclaimed and will have to be repaid.

However, if an employee received an offer of employment after he or she left the Board and/or starts work after a period of longer than 4 weeks, he or she will be entitled to keep the redundancy payment but his or her continuous local authority service (in terms of the Modification Order) will be deemed to have been broken.

Employees who have accessed their pension, and have been awarded added years' service, may be subject to an abatement of their pension if they are then re-employed with another Modification Order employer. In such circumstances employees must confirm the financial implications with Strathclyde Pension Fund Office.

### **3.12 Support for Employees**

#### **3.12.1 *Time off work to search for alternative employment opportunities***

Subject to operational requirements, employees selected for redundancy will be given reasonable time off work during their notice period to look for alternative work, seek retraining opportunities or to attend interviews. The Board will grant an employee a maximum of 2 days with pay and a further 3 days without pay for such purposes, both will be pro-rated for part-time employees.

#### **3.12.2 *Advice and assistance***

Wherever possible, the Board will provide other advice and assistance to employees selected for redundancy, for example:

- circulating information relating to local job vacancies;
- communicating available training opportunities and business start-up opportunities;
- providing job search training, help with CV preparation and interview training; and
- establishing an advisory contact point for employment benefits/employment agencies

#### **3.12.3 *Repayment of loans, etc***

Any outstanding repayments that the employee is due to pay to the Board will be deducted from the employee's final payment.

### **3.13 Consultation**

#### **3.13.1 Collective consultation**

This consultation will be undertaken with a view to avoiding or limiting the effects of the redundancies and to this end the Board will provide relevant trade unions with the following written information:

- the reasons for the proposals;
- the numbers and description of employees which it is proposed to make redundant;
- the total number of employees currently employed in each category who may form the pool for selection for redundancy;
- the proposed method of selecting employees for redundancy;
- the proposed method of carrying out the dismissals including the period over which the dismissals are to take effect; and
- the proposed method of calculating the amount of any redundancy payment.

The Board will consult in all redundancy situations at the earliest possible opportunity, but at the very least shall consult:

- at least 45 days before the first dismissal takes place, where 100 or more employees are to be made redundant within a period of 90 days or less; and
- at least 30 days before the first dismissal takes place, where between 20 and 99 employees are to be made redundant within a period of 90 days or less.

The timescales for this consultation will be undertaken on the basis that:

- consultation will take place when the proposals are still at a formative stage;
- adequate information, on which to respond, will be shared;
- adequate time, within which to respond, will be given; and
- the Board will conscientiously consider the responses of the consultation.

The consultation will be with a view to reaching agreement with trade union representatives and will include discussions about ways of:

- avoiding the dismissals;
- reducing the numbers to be dismissed; and
- mitigating the consequences of dismissals.

Notification of redundancies involving 20 or more employees at any one establishment over a 90 day period must also be sent within the timescales detailed above and via an 'Advance Notification of Redundancies' HR1 form ([link](#)), to the Secretary of State for Business Innovation and Skills. A copy of the form will be sent to relevant trade union representatives.

#### **3.13.2 Individual consultation**

Individual consultation will take place concurrently with the Collective Consultation process outlined above.

The Manager (accompanied by a representative from the SAC HR Team if appropriate) will meet individual employees.

Employees will be given the opportunity to be accompanied by a trade union representative or work colleague at each stage of this process and at individual meetings with the manager.

The process to be followed will contain the following steps:

- an initial meeting at which the employee will be advised that they are at risk of redundancy and the reasons for this;
- an explanation of the proposed arrangements to select for redundancy and how the overall process will be handled and the timescales for implementing the changes;
- the employee will be given the opportunity to put forward any reasonable alternatives to redundancy and to raise any concerns, comments or objections to the proposals; and
- the employee will be given a letter setting out the above points.

Employees on maternity or paternity leave, long term sickness absence, career break, adoption leave or other authorised absence will be consulted on their potential redundancy situation through the least intrusive and stressful method of contact, which will be agreed with the employee.

### **3.14 Review of Selection for Redundancy**

An employee who is not appointed to an alternative post at the end of the redeployment process will have his or her employment with the Board terminated on the grounds of redundancy at the end of the notice period. In such a situation, the employee may request a Review of the circumstances which led to the dismissal, and can do so by writing to the Assessor or nominated senior officer within 14 days of being formally notified of the termination of employment.

Such a Review will be considered by the Board's Appeals Panel. The purpose of the review will be to assess compliance with the relevant Board policy(ies), for example, Matching, Redundancy or Redeployment.

It should be noted that this is a review process, not an appeal, since the Panel cannot:

- reverse the original decision of the Board, one of its Panels, or an Officer using delegated authority, which resulted in the redundancy situation;
- substitute the decision of a manager (which may also have been reviewed by independent Board officers through the Complaints process) regarding the outcome of an interview process or redundancy selection exercise; or
- amend the outcome of the redeployment process.

If the Appeals Panel concludes the policy(ies) has not been fully complied with, it will refer the matter back to the Assessor or nominated senior officer, highlighting the issues or areas of concern. The Assessor or nominated senior officer will consider and address the issues highlighted by the Appeal Panel.

At the end of this process, the Assessor or nominated senior officer will report back to the Appeals Panel to outline the action that has been taken.

## Redundancy Selection Assessment Form

<b>Name of Employee:</b>	
<b>Job Title:</b>	
<b>Employee No:</b>	
<b>Service Area:</b>	
<b>Date of Assessment:</b>	

<b>Points</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>Points</b>
No of days of Sickness absence <sup>1</sup>	11+		6-10		3-5		2		1		0	
Sickness Occurrences	>3	3	2	1	0							
Disciplinary Record	Final Written Warning		Written Warning		Oral Warning				No warnings			
Key Work Objectives	Not Achieved			Achieved in part			Achieved			Exceeded		
Length of Service – completed years	0	1	2	3	4	5	6	7	8 or more			
<b>Total</b>												

<b>Completed By:</b>	
<b>Job Title:</b>	
<b>Date:</b>	
<b>Signature:</b>	

<b>Notes:</b>	
Sickness:	The best year's attendance during the 3 years prior to the date of Assessment should be used. A year is one year back from the assessment date, and so on – for example, if the assessment date is 15 October 2012 then the 3 absence periods are: 15 October 2012 to 16 October 2011, 15 October 2011 to 16 October 2010 and 15 October 2010 to 16 October 2009.
	All absences covered by Equalities Legislation will be discounted and the assessment period extended into the previous year by the length of the discounted period.
Discipline:	Only warnings that are Live at the date of assessment will be considered.
Performance:	Scoring will be based on current PDR and/ or Manager's review of performance at date of assessment. Note – in situations where various managers have completed PRD reviews for the affected 'pool' it may be necessary to review scoring levels and standards to ensure consistency for this purpose and to determine whether the PDR score can be used for selection purposes.
Service:	Continuous service calculated in terms of the Modification Order.

## Section 4

### Redeployment policy

#### 4.1 Introduction

The Redeployment Policy will be used to support employees who can no longer continue in their substantive post because of either organisationally initiated changes, such as structural reviews or changes to personal circumstances, such as ill-health, capability, and disability. It should be noted that the Redeployment Policy will not apply to cases where an employee moves to another post as a result of the outcome of a disciplinary situation. Further the Boards capability to redeploy employees is very limited because of the size of the organisation.

#### 4.2 Register

The Board will maintain a Redeployment Register of employees who are eligible for redeployment.

In some cases, an employee will be registered as requiring redeployment without having been served with notice of the termination of employment. For example, an employee who has a degenerative illness, which over time will require redeployment to an alternative working environment, may be registered as requiring redeployment at an early stage of the condition and while he or she is still able to perform the duties of the substantive post. In such cases, to afford maximum opportunities to secure suitable alternative employment before the employee can no longer carry out the duties of the substantive post, he or she may go onto, and remain on, the Register for some time.

However, in most cases, employees will remain on the Redeployment Register for a limited period of time. At the earliest point when it becomes clear that an employee is displaced, he or she will be placed on the Register and, at the very latest, on the date on which notice of termination of the employment is issued. The employee will remain on the Register for the duration of the notice period – a maximum of 12 weeks. During the notice period the Board will attempt to identify suitable alternative employment.

While on the Redeployment Register an employee will normally continue to work in his or her substantive post. However, where this is not possible, for example where the employee is medically incapable of doing so, he or she will be transferred to another appropriate position on a temporary basis for the duration of the notice period, during which more permanent redeployment opportunities will be sought.

In normal circumstances, an employee who is placed on the Register will be, or will just have been, issued with due notice of termination of employment. If the employee is successfully redeployed during the notice period, notice of termination of employment will be withdrawn.

In the event that the employee is redeployed on a trial period, the notice period will continue to run during the trial period.

If it has not been possible to find an alternative post during the notice period, at the end of the notice period, the employee's contract of employment will be terminated.

### **4.3 Vacancies**

#### **4.3.1 *Where an employee(s) is displaced***

Before a vacancy is advertised, employees on the Register will be considered against the requirements of the vacant post.

Employees on the redeployment situation will be considered for suitable alternative posts, provided they meet the essential criteria or could satisfy the essential criteria with a reasonable period of training.

Posts, which the Board considers to be unsuitable for redeployment, will be advertised in the normal manner and any consequential vacancy will be considered for redeployment purposes.

#### **4.3.2 *Where future displacement is possible***

At the start of a process or exercise which may result in workforce change, although it may not be possible to establish whether the necessary changes will result in employee displacement or, if displacement were to become necessary, what the nature or scale of that displacement would be. However, in situations where it seems likely that displacement may occur, albeit the specific detail of this is unknown, the Board, through consultation with the trade unions, may, at an early stage and before the final position is known, implement measures to avoid or mitigate any likely displacement. For example, giving employees, who are at risk of displacement or of being detrimentally affected by structural changes (but not yet on the Redeployment Register), restricted access to vacancies. Any such arrangements will be fully discussed with the trade unions at the earliest opportunity and in advance of any notification or communication with the affected employees.

### **4.4 Process**

The overriding condition of redeployment is that the employee meets the essential requirements of the vacant post. However, it is recognised that some training and support for employees who are redeployed to an alternative post may be necessary and this will be provided prior to the employee taking up the new post or during the trial period.

The Board will attempt to redeploy an employee to a post on similar terms and conditions of employment and to minimise any financial detriment. However there can be no guarantee that employees will be redeployed into a post at the same grade, hours of work, location, etc. Redeployment to a post on a higher grade is not normally permitted, however, in certain circumstances, where the employee in question is facing compulsory redundancy and where other measures have failed to free up an alternative post at the substantive grade, this will be allowed, subject to the employee meeting the essential job requirements. The SAC Human Resources Team will advise on whether there is scope in this respect.

In circumstances where more than one employee on the Redeployment Register meets the requirements of an available post, recognised selection arrangements will be used, for example, assessment centre or competitive interview. Any complaint about the outcome of such a selection process will be dealt with in accordance with the Board's Recruitment and Selection Policy.

All employees on the Register will be given equal access to suitable available jobs; there will be no priority given to any category of displaced employee (for example, a redundant employee versus someone who requires redeployment because of health reasons).

## **4.5 Redeployment During Maternity Leave**

The period from the beginning of a maternity leave until the end of maternity leave is a protected period. Therefore an employee who is on maternity leave has a statutory right to be offered any available suitable alternative employment if selected for redundancy. There is no requirement for her to compete for a suitable alternative post. If no suitable alternative employment is available then the employee will be made redundant during leave period, provided the reason for redundancy is unconnected with the maternity leave.

## **4.6 Preservation**

An employee who is redeployed to an alternative post on a lower grade will be eligible for basic salary preservation for a 12 month period, but with no protection of terms and conditions which were specific to the original post. In such circumstances the employee will be placed on the top point of the new salary grade thereby minimising the financial loss.

Where an employee's earnings subsequently increase but are still less than the previous contractual pay on which the preserved salary is based, or where an employee reduces his or her hours, the amount of preservation will be reduced proportionately.

In situations where an employee, is redeployed to an alternative post which is more than one grade lower than the original post, is subsequently appointed to a post which is on a higher grade (but one which is still lower than the original post), the employing Manager will have discretion to appoint to the top point of that grade, which, as far as possible, reinstates the original grade. In considering this matter, the employing manager, will have regard to the similarity of the original and new jobs, and the period that has passed since the employee undertook the original, higher graded, post. An employee who is redeployed to an alternative, lower graded post who is subsequently appointed to a post which is on the original grade, will be placed on the spinal point her or she was on before the original redeployment.

The Redeployment Policy does not apply where an employee moves to another post as a result of the outcome of a disciplinary situation, and preservation will not be available to employees where the new post is on a lower grade.

Salary preservation will be paid for a period of 12 months at 100% of the difference between the salary of the original higher-graded job and the new lower-graded job. Salary preservation will end after twelve months or when the employee's contractual earnings equal or exceed the preserved salary, whichever is earlier.

If an employee, in receipt of preservation, is redeployed and accepts an alternative post on fewer hours than his or her substantive post, the salary preservation will be modified proportionately to reflect this.

Where additional travel costs are incurred, excess travel expenses may be payable in accordance with the Board's Terms and Conditions of Employment.

## 4.7 Trial Period

A trial period can be agreed where an employee and/or the Manager of the post (into which the employee is being redeployed) considers it appropriate. This trial period will normally last for 4 weeks. However, in exceptional circumstances, or where a longer period is necessary to assess suitability, it will be possible to extend the trial period, for example, where an additional period of training is required to enable full assessment of suitability.

During a trial period an employee's substantive salary will be preserved, proportionately adjusted as necessary, to reflect any reduction in the number of hours being worked. Where the employee's redeployment is confirmed at the end of the trial period, he or she will continue to receive preservation for the remainder of the 12 month period, starting from the date the trial period commenced.

Preservation of earnings will not be payable during a trial period where the earnings reduction relates wholly to a reduction in hours.

Any excess travel expenses incurred during a trial period may be payable in accordance with the Boards Terms and Conditions of Employment.

Arrangements will be made to monitor the performance of the employee and review meetings will be held with the employee to discuss progress. Reviews will be carried out during the trial period to ascertain progress and suitability, discuss any problems and identify additional or alternative training or support requirements.

Training and support will be provided to the employee and the new line-manager to allow a reasonable and proper assessment to be made.

Where, during the trial period, an employee's performance falls short of what is required, the concerns will be raised at the earliest opportunity. A review meeting will be arranged to discuss the matter and identify any additional support or training that can be provided.

An employee is required to highlight any problems he or she experiences during the trial period and identify any additional support and/ or interventions that are required.

If at the end of the trial period, despite all help and guidance, an employee is unable to carry out the duties of the alternative post to the required standard, he or she will be deemed unsuitable for the post and advised of this at the final review meeting. The employee will return to his or her substantive post and further redeployment opportunities will be pursued during the remainder of the notice period.

At the end of the trial period, if the employee concludes the post is unsuitable as alternative employment, the Manager will assess the suitability, the employee's objection, and his or her commitment and participation during the trial period. This assessment will determine the employee's entitlement to severance payments (including statutory redundancy) should dismissal be unavoidable, and will be fully discussed with the employee and his or her trade union representative.

#### **4.8 Unsuccessful Redeployment**

If an employee, who is in a redundancy situation (either through selection or at the end of the matching process) accepts an alternative post, genuinely believing it to be suitable alternative employment, but, within a 12-week period subsequently and reasonably concludes it is not suitable (for example, where the employee is simply unable to fulfil the post requirements) he or she will be entitled to leave the Board's employment with the same severance payments as would have applied if he or she had not accepted the alternative post. Such a situation will be at the employee's request; discussed with his or her trade union representative; and treated as a voluntary severance. In such circumstances, the employee will not be entitled to notice or to pay in lieu of notice, or to other redeployment opportunities.

## Section 5

### Transfer of Undertakings (TUPE) Policy

#### 5.1 Introduction

The Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended in 2014, is the main piece of legislation governing the transfer of an undertaking, or part of one, to another. The regulations are designed to protect the rights of employees in a transfer situation, enabling them to enjoy the same terms and conditions, with continuity of employment, as formerly.

#### 5.2 Application of TUPE

The TUPE Regulations will apply in the following situations:

- a transfer of an undertaking, business or part of an undertaking or business, where there is a transfer of an economic entity which retains its identity; and
- a service provision change – for example, where a contract to provide a client (public or private sector) with a business service is:
  - awarded to a contractor (contracted out or out-sourced); or
  - re-let to a new contractor on subsequent re-entering (reassigned); or
  - ended with the bringing in-house of the service activities (contracted in or in-sourced).

#### 5.3 Process

The Board is committed to ensuring that:

- all employees who transfer to and from the Board in the circumstances outlined above do so with the protection of TUPE;
- meaningful consultation and communication takes place with employees and trade union representatives, in line with statutory requirements and in a planned and properly managed way;
- employees affected by the change are provided with appropriate advice and assistance;
- employees who are affected and relevant trade union representatives, are aware of proposals and decisions as early as possible; and
- the transfer process is fair to all parties and includes full consultation.

Employees who are covered by the provisions of TUPE do not have an alternative option of redeployment within the Board or to a redundancy payment as a result of the transfer.

## **5.4 Principles**

### **5.4.1 *Application of TUPE to staff transferring into the Board***

The Board will take over the contracts of employment of all the employees who are employed in the undertaking at the time of the transfer, (except for those dismissed for economic, technical or organisational reasons entailing a change in the workforce) on the same terms and conditions as they were employed, except in relation to occupational pensions.

The Board will take over all of the rights, powers, duties and liabilities in respect of transferring employees (apart from where an agreement regarding liabilities has been put in place with the transferor).

The Board will take over any collective agreements that apply to transferring employees.

The Board will make information available to trade unions and/ or employee representatives who represent the transferring employees, and consult them on matters related to the transfer.

The Board accepts that some employees have the right to object to a transfer under TUPE and so will not transfer. However, in such circumstances their employment will come to an end at the date of transfer and they will be treated as having resigned from the transferor employer, rather than having been dismissed.

The Board will ensure it obtains all information required to continue to pay and manage staff transferred to it under TUPE, and carry out the work required. In this respect the Board will require that a due diligence questionnaire is completed by any employer seeking to transfer staff, as well as statutory information required by the TUPE Regulations.

### **5.4.2 *Application of TUPE to staff transferring from the Board***

The Board will endeavour to ensure that any new employer will take over the contracts of employment of all the employees who are employed in the undertaking at the time of the transfer, (except for those dismissed for economic, technical or organisational reasons entailing a change in the workforce) on the same terms and conditions as they were employed by the Board.

The Board will endeavour to ensure that any staff transferred to a new employer from the Board will have access to a pension which is broadly comparable to the Board Superannuation Pension Scheme.

The Board will endeavour to ensure that any new employer takes over all of the rights, powers, duties and liabilities in respect of employees transferring to it.

The Board will endeavour to ensure that any new employer takes over the Board's collective agreements that apply to transferring employees.

The Board will endeavour to ensure that the new employer makes information available to trade union representatives and consults with them on matters related to the transfer.

The Board accepts that some employees have the right to object to a transfer under TUPE and so will not transfer. However, in such circumstances their employment will come to an end at the date of transfer and they will be treated as having resigned from the Board, rather than having been dismissed.

The Board will ensure it provides all information required by a future employer to enable it to continue to pay and manage staff transferred from the Board, under TUPE, and carry out the work required. In that respect the Board will be prepared to complete any due diligence questionnaire provided by the new employer, as well as statutory information as required by the TUPE Regulations.

## **5.5 Consultation**

### **5.5.1 *Collective consultation***

TUPE may be the result of a process covered by another Board policies or frameworks, which outline consultation requirements, for example, the Service Review Framework. However, in all situations where TUPE is being considered, consultation will commence at the earliest opportunity once the potential for a transfer has been identified. The TUPE Regulations do not define a specific timescale for consultation, however the Board is committed to ensuring that the time provided for the formal consultation stage is long enough for consultation to be meaningful and allow sufficient time for trade union representatives to consider the proposals.

Prior to the formal consultation commencing, the Board will notify the trade unions that a transfer is proposed. The following information will be shared with the trade unions:

- that a transfer is to take place;
- the reason for the transfer and when it is expected to take place;
- the implications for the employees;
- the measures that the employer expects to take in relation to the employees;
- the proposed list of transferring employees; and
- the proposed project plan and timeline (including confirmation of the process to be followed to identify the new service provider).

The formal consultation process will include discussions about:

- the financial background for the need to transfer;
- the initial TUPE list of employees to transfer;
- the impact of the proposed changes on employees and service delivery arrangements;
- the proposed timescale for the transfer;
- any measures that are expected relating to the transfer (for example changes to pay dates or pension arrangements) or confirmation that no such measures are planned;
- any anticipated impact on employees who will not transfer but whose jobs will be affected;
- any available, information about the new employer, it's terms and conditions of employment and pension arrangements; and
- the process that will be followed, including when individuals will be informed of their position and the opportunity for individual discussions and the tender/ procurement process to be followed.

As part of the consultation process views will be sought on the impact of the proposed transfer from an equalities perspective. The Board will work with the relevant trade union representatives to identify any potential adverse impact on particular groups within the identified pool and explore options for removing or mitigating this impact, where appropriate.

Employees on maternity or paternity leave, long term sickness absence, career break, adoption leave or other authorised absence will be consulted, using the least intrusive and stressful method of contact, which will be agreed with the employees.

#### 5.5.2 ***Individual notification***

Formal consultation for TUPE purposes will be with trade union representatives. However, the Board will ensure individual employees who are affected by a Transfer will be given as much information as possible, including written confirmation of:

- the fact that a transfer is going to take place;
- the likely date of transfer;
- the reason for the transfer;
- the legal, social or economic implications of the transfer (as far as these can be ascertained), such as a change of pension arrangements; and
- any measures that are expected relating to the transfer (for example changes to pay dates or working patterns) or confirmation that no such measures are planned.