

# Re-employment or Re-engagement of Former Employees

## 1. Introduction

This section covers the re-employment or engagement of former employees who have received a redundancy payment from the Authority and/or who are already in receipt of their Local Government Pension Scheme (LGPS) pension benefits.

The re-engagement of former employees can, in some circumstances, provide practical solutions to specific workload/project staffing needs. Former employees will also have a wealth of knowledge about and experience of the organisation.

However, there is a danger that such appointments, if not considered and made through a structured approach, can be seen as nepotism; favouritism; denying developmental opportunities to current staff; circumventing equalities provisions and potentially denying redeployment opportunities to staff at risk of compulsory redundancy.

For those staff leaving on voluntary redundancy, where it is clear there will be an ongoing need for the skills, knowledge and experience of a particular individual, careful consideration should be given to whether the person can be allowed to leave the service on voluntary redundancy. Alternatively, it may be possible to revise the last day of service, to enable suitable contingency plans to be developed. If an employee leaves the service and it is subsequently identified that there was an intention to re-employ and the individual returns after a short space of time then there are potential implications in terms of continuity of employment and the validity of any redundancy payment made.

A balanced judgement is therefore needed, taking all of these issues into account. HR advice must be sought by managers in all cases prior to entering discussions with individuals regarding any opportunity for re-employment. Any such

arrangements must also be cost effective and provide best value in the use of Council resources.

## **2. Inland revenue - employment status**

The Inland Revenue requires the authority to determine whether an arrangement with a consultant or contractor constitutes a contract of employment or can be deemed to be on a self-employed basis.

This includes a pro-forma the employing department will need to use to make a judgement, based on the responses to set questions. This determination will need to be made for each and every contract or agreement that is proposed as the decision on status is related to the contract, not to the individual. This process to determine status must be undertaken before the engagement is agreed and any contract is signed.

Where this process determines that an engagement constitutes a contract of employment, then normal County Council terms and conditions will apply and the work must be paid for at the rate for the job assessed where appropriate through job evaluation. Remuneration arrangements must comply with corporate pay policy.

### **Protocol – short term or consultancy**

**3.1** It must be clear from the outset as to whether the arrangement is to re-employ through a contract of employment or to engage as a consultant with a contract for service following the relevant procurement process. This relates to employment on a short term or consultancy basis.

**3.2** Areas where the re-engagement of former employees may be appropriate include:

- discrete pieces of work where the ex-employee has the appropriate levels of skill and experience that are not available elsewhere within the Council.
- where it is more cost effective to re-engage a former employee given their specific experience, skills and knowledge.
- where there are problems in maintaining authorised staffing levels in a difficult recruitment market.
- where work of an urgent nature arises at short notice and cannot reasonably be accommodated within existing resources.
- where it is not possible for the work to be undertaken by retraining, redeployment, acting up arrangements or secondment of staff from elsewhere within the organisation.
- where there are ad hoc pieces of work where the frequency with which the need arises is difficult to predict, for example, employment or complaint investigations.

Such skills gaps should be addressed in the longer term under the HR strategy through structured workforce planning.

**3.3** Such arrangements should be time limited and be subject to appropriate written agreements covering the nature, duration, quality standards for the work to be undertaken and the basis on which the agreement will be terminated.

**3.4** The initial consideration for providing cover for urgent work, where there are vacancies/staff absences/unexpected peaks in workload, should be through the use of temporary employment contracts advertised in the normal manner or through acting up or secondment arrangements made available to existing staff, as appropriate in the circumstances. This should particularly be the case where the work relates to the normal business of the service area concerned, as opposed to defined projects or 'one-off' tasks.

**3.5** The final decision on the course of action to be taken should rest with the Corporate Director for the relevant department, having consulted with the Service Director, Customers, Governance and Employees. This will be subject to consideration of the particular business case.

**3.6** For the purpose of these rules, former employees will be defined as anyone who has previously held a permanent employment contract with Nottinghamshire County Council.

**3.7** Re-engagement on a short term or consultancy basis should not be offered to:

- former employees who were retired prematurely on grounds of ill-health where the conditions for ill health retirement benefits being released still exist as defined by the regulations and rules of the Local Government Pension Scheme (LGPS). Further information on the 3 tiers of ill health retirement can be found in Section H8 paragraph 3.2 of the Personnel Handbook.
- former employees who were dismissed for reasons of conduct. Managers should seek the advice of the relevant Head of HR when considering the re-employment of a former employee dismissed on the grounds of capability particularly where health has been a factor.
- former employees whose employment with the Council ended by mutual consent on terms set out in a compromise agreement.
- former employees who retired on efficiency grounds, where these grounds still affect the ability of the individual to carry out the work in question.
- former employees where there have been substantiated allegations or findings of harassment and bullying, or where there are known safeguarding concerns.

**3.8** Re-engagement on a short term or consultancy basis may be offered to:

- former employees who resigned and who may have subsequently undertaken paid employment or consultancy elsewhere.
- employees who were made redundant (either on a compulsory or voluntary basis), subject to an appropriate period of time having elapsed. Normally a minimum of 6 months is proposed as the usual provision, however for urgent work on a time limited basis, a reduced period may be considered provided this period is not less than one month

**3.9** Where re-engagement is being considered, Corporate Directors should ensure that:

- the pro forma on employment status has been completed, and that the engagement complies with the Inland Revenue provisions on employment status. Advice should be sought at the earliest opportunity from Financial Services and the Head of HR.
- any proposed re-engagement is in response to a genuine service need and not a response to canvassing.
- full consideration is given to equality of opportunity and where more than one potential candidate may be available the appointment should follow established recruitment and selection principles.
- the proposed arrangements comply with Financial Regulations requirements on the procurement and use of consultants, (as set out in Section E of the Financial Regulations).
- the individual has been made aware of the need to seek advice on the potential impact of their re-engagement on LGPS benefits (please see section 4 below).

- the decision to offer re-engagement is robust, able to withstand scrutiny, and that the terms of engagement (including specification of work to be undertaken, duration and payment arrangements) are clearly stated in writing.
- appropriate records relating to the engagement and work being undertaken are retained.
- the trade unions are informed of any such appointments through the relevant JCNP.

#### **4. Protocol – permanent or longer term re-employment**

**4.1** Where a former employee who has previously received a voluntary or compulsory redundancy payment, is offered re-employment with the County Council, on a permanent basis or for a period of more than 12 months, consideration will be given to whether part or all of the compensation payment should be recovered. The decision will be at the discretion of the relevant Chief Officer and be based on the following criteria:

- part or all of the compensatory element of the redundancy payment will be recovered where a former employee is re-employed to do the same or a very similar role to the one they previously undertook.
- whether the role is at the same or a lower grade than the post previously held.
- where the individual left on the grounds of voluntary redundancy; the pension will be abated. If the individual was compulsorily redundant consideration will be given on a case by case basis to determine whether in the particular circumstances the pension should be abated.
- a break of at least 4 weeks must elapse before a former employee is re-employed and recovery of part or all of the redundancy payment will be considered for a period of up to 6 months after the last day of service.

- no recovery action will be taken where a former employee is re-employed after 4 weeks have elapsed, in a role of a lower grade than the one previously held, where the vacancy protocol [PDF] has been applied and no internal candidate(s) has been identified as suitable to fill the role.

**4.2** The Local Government Pension Scheme (Administration) Regulations 2008 requires each administering authority to formulate and review its policy concerning abatement (that is, the extent if any, to which the amount of retirement pension payable to a member from any pension fund maintained by it under the Scheme should be reduced or extinguished, where the member has entered a new employment with a Scheme employer, other than one in which he or she is eligible to belong to a teachers' scheme).

**4.3** Pension abatement will be considered where a former employee is re-employed on a permanent basis. The decision to abate will rest with the Chief Officer for the employing department in consultation with the Service Director, Customers, Governance and Employees.

**4.4** Where a former employee is re-employed on a time limited basis, not exceeding 12 months, and upon the production of a business case explaining the rationale for the re-employment, there will be discretion for Chief Officers not to apply pension abatement.

**4.5** Any former employee engaged through a consultancy framework, on a preferred supplier list or on a separately procured consultancy basis, where payment is for a contract for service and not made through an employment contract, will not be the subject of pension abatement.

As agreed at Personnel Committee on 7 July 2011

