



# Policy - Redeployment v2.0





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## **1. Policy Statement**

It is the policy of Denbighshire County Council to ensure as far as possible the employment security of its employees. There may be circumstances such as changes in an employee's personal health and well-being or changes to external funding, or service demands which will affect staffing needs and capability.

This policy provides guidance for Denbighshire County Council employees on Redeployment within the Council.

Where possible the Council will endeavour to find a suitable redeployment for employees who are classed as "at risk" of losing their job due to redundancy, require a Medical Redeployment, or participating in the capability process.

## **2. Contents**

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## **3. Introduction**

If an employee is affected by redeployment, the application of this policy will work more effectively if both the employee and their manager work together and review the employees' redeployment situation on a regular basis.

Redeployees are required actively to co-operate and participate in their redeployment. This includes:

- Completing and updating redeployment forms
- Attending meetings and interviews

- Accepting reasonable offers of suitable alternative work
- Personally identifying potentially suitable vacancies being advertised and
- Seeking alternative employment themselves.

#### **4. Aims of the Policy**

The aim of this policy, procedure and appendices, where possible, is to safeguard current and future employee's employment with the council.

It aids and assists positively in the recruitment process (e.g. saving on the cost of advertising and assisting where there are areas of localised/specific skill shortage) but does not take away from the manager the decision to recruit the best person for the job.

It covers the legal obligations of employers in the situations detailed in section 7 & 8.1 below and protects against unfair dismissal claims.

#### **5. Application/Scope of the Policy**

There are three situations where redeployment may be appropriate, redundancy, medical and capability.

The policy and procedures apply to all Denbighshire County Council employees with the exception of:-

- Staff appointed by a school governing body
- Directors and Heads of Service
- Agency workers
- Casual, relief & volunteer staff
- Modern Apprenticeships & other traineeships

The policy will apply to full-time, part-time, fixed term and temporary employees who have an employment contract with Denbighshire County Council, regardless of the hours worked.

## **6. Engagement /Participation/Consultation**

This policy has been drafted taking account issues raised by employees attending Staff Road shows & Breakfast meetings. It has also been consulted and negotiated with the Senior Leadership Team, managers and Trade Unions.

## **7. Legal & Other References**

The policy complies with the statutory minimum set out in the Human Rights Act 1998 and with consideration to the following legislation: -

- Employment Act 2002
- Employment Rights Act 1996
- Equality Act 2010

No job applicant or employee will experience discrimination, harassment or bullying, or receive less favourable treatment because of their age, disability, gender reassignment, marital or civil partnership status, race, pregnancy or maternity, religion or belief, sex, sexual orientation or caring responsibilities.

## **8. Redeployment Policy Details**

### **8.1 Criteria for Redeployment**

There are three situations where redeployment may be appropriate:-

- Medical capability
- Redundancy
- Employees choice during Capability process

#### **8.1.1 Medical Redeployment**

Current legislation in the form of The Equality Act (2010) requires an employer to make reasonable adjustments to the workplace and to employment arrangements so that a disabled person is not at any substantial disadvantage compared to non-disabled people.

An employee no longer has to be registered disabled to be afforded the protection of this legislation.

Therefore, when an employee is unable to continue in their job role because illness, or disability limits the employee from completing their present role to the required standards, and after implementing reasonable adjustments the employee is still unable to perform their present role as required, then the employer is required to seek alternative employment for that employee.

**It is important to note that employees on medical redeployment due to developing a disability or their disability condition has worsened will be given priority in assessment/matching exercises. The reason for this is the council's obligation to meet legislative requirements in accordance to the Equality Act 2010.**

### 8.1.2 Redundancy Redeployment

When an employee is issued with redundancy notice, the employer is required to seek suitable alternative employment for those employees.

An employee who is under notice of termination of contract on the grounds of redundancy has a statutory right to:

- A reasonable amount of paid time off to look for another job.
- A trial period of four weeks in an alternative job where the provision of the new contract differ in any material way from the original contract.

Within the council, it has been agreed that those employees identified as **'at risk' of redundancy** are afforded the opportunity to be placed on the Redeployment List and be included in review processes to find alternative employment.

### 8.1.3 Capability Redeployment

If an employee participating in the Capability process recognises they may/will not succeed in achieving the required competency levels by the conclusion of the process, they can volunteer to be registered on the redeployment list. If this is the case HR will be notified by the respective Supervisor/Line manager of the employees request.

The manager must ensure that the employee is aware of the possible outcomes of the redeployment procedure, which may ultimately be termination of employment, if during the capability timeframe no alternative employment is secured.

## 8.2 Redeployment Timescales

An employee's timeframe in the redeployment pool can alter as it is dependant upon the employee's notice period entitlement.

The minimum timeframe an employee can be in the redeployment pool is one month. The maximum timeframe an employee can be in the redeployment pool is 3 months, after which time if alternative work has not been secured their employment will be terminated.

The only exception to the maximum timescale is for staff classed as "at risk" of redundancy where in some circumstances it may be possible to give more notice of an impending redundancy and therefore give the employee "at risk" redeployment status sooner.

## **9.0 Redeployment – Procedures & Processes**

### **9.1 Medical Redeployment**

#### **9.1.1 Procedure**

Medical redeployment can occur because of disability or ill health.

The council has a legal obligation to make reasonable adjustments for disabled employees under the Equality Act 2010. This means proactively looking for suitable alternative employment for employees who have a disability and are unable to carry out the duties of their current role because of that disability. In such cases the council will endeavour to find an alternative role and avoid where possible the need to terminate their employment.

HR are notified by the Occupational Health Physician and the respective Supervisor/Line Manager of the employing Service that an employee is no longer able to carry out the duties of their current post due to ill health or disability, but it is possible for them to continue in employment if a suitable alternative post can be identified.

The employee concerned will be placed in the “redeployment pool” and matched against vacancies to establish if there are any “suitable alternative” posts available.

Where a suitable alternative is available and the employee meets essential criteria, or could be trained to do so within a reasonable period, the employee will be slotted into the vacant post.

Where there is more than one person suitable for the vacancy who is registered as a medical redeployee, then a competitive selection process will take place which will be ring-fenced to those employees.

The employee will be given a four week trial period in the alternative post. The purpose of the trial period is to give the employee and the Authority a chance to assess the employee’s suitability and decide whether the new job is a suitable alternative.

**It is important to note that employees on medical redeployment will be given priority in assessment/matching exercises against Redundancy Redeployees. The reason for this is the council’s obligation to meet legislative requirements in accordance to the Equality Act 2010.**

**If a Medical Redeployee wishes to apply for a vacancy:**

Should a Medical redeployee wish to be considered for any advertised DCC vacancy, they have two options regarding how they can apply:

- They can apply via the normal recruitment process and indicate on their completed application form that they are presently a medical redeployee.
- Alternatively, they can ask for a copy of their completed Redeployment Form to be sent by HR to the vacancy manager. HR will detail that the applicant is a medical redeployee and should be given prior consideration in the selection activity.

**Prior Consideration – what does this mean?**

All vacancy managers have been instructed to consider applications from redeployees with prior consideration. That means the vacancy manager should assess the redeployee applications first, prior to other applications and afford them this preferential treatment in the selection process. The redeployee will still have to demonstrate that they meet the essential criteria for the vacancy.

Vacancy managers can also exercise additional flexibility by interviewing redeployees before the advertised close date of the vacancy. This may be applicable if an individual is due to leave employment at DCC before the application close date of the vacancy.

### **9.1.2 Process**

As soon as possible following the confirmation of medical redeployment, the employee is required to complete the Redeployment Form and send it to HR. HR and/or the employees Supervisor/Line Manager can provide assistance to the employee in completing the Redeployment Form.

Details from Occupational Health Physician and the employee provide the council with the information required to look for alternative employment, e.g. physical capabilities, knowledge, skills and experience etc .

Upon receipt of both sets of information, HR will record the details and assess against current advertised vacancies and any future vacancies to assess if the employee could accommodate the vacant job role.

If the employee matches the essential criteria (or can be trained within a reasonable timescale) then the following process will be followed

#### **Medical Redeployment Process:**

1. As soon as possible following the confirmation of medical redeployment, the employee is required to complete the Redeployment Form (**see Appendix A**) and send it to HR. HR and/or the employees Supervisor/Line Manager can provide assistance to the employee in completing the Redeployment Form.
2. A medical redeployee who meets all the essential criteria is slotted into the vacant position.
3. A medical redeployee who does not meet all the essential criteria but could meet all the essential criteria after receiving appropriate training within a reasonable and agreed timescale will be slotted into the vacant position.
4. The medical redeployee will be given the opportunity of a four week trial period in the new position to assess suitability. This allows both employee and the new Manager to conclude suitability.
5. If the medical redeployee is successful during the trial period and agrees with the new manager/department to stay in the new post, then written communication will be provided to the employee to confirm they have transferred and their notice to leave employment at DCC is withdrawn.
6. If the employee and/or the new manager/department are able to demonstrate that the medical redeployee or job

role is not suitable within the trial period, then the medical redeployee will either :

- Be placed on garden leave until the end of their notice period
  - With the employee and the substantive manager's agreement, go back to their substantive post and work to the remainder of their notice.
  - With the employee and the substantive manager's agreement, leave DCC with a revised date of leaving and be paid Pay In Lieu of Notice.
7. A medical redeployee can have an unlimited number of opportunities to be considered for alternative employment and/or undertake trial periods. However, if no alternative employment is secured by their recognised date of leaving their employment with the council will end on this date.

## **9.2 Redundancy Redeployment**

### **9.2.1. Procedure**

The council has a legal obligation to try and mitigate redundancies, and as such will endeavour to avoid redundancies where possible.

HR will be notified by the employing Service that a job role is 'at risk' of redundancy, HR will also be informed of the associated employee (post holder) who is 'at risk' and will possibly be, or will be served with a redundancy notice. The employee(s) concerned will be put in a "redeployment pool" and assessed against vacancies to establish if there are any "suitable alternative" posts available.

When a job role vacancy is authorised to be advertised, the vacancy information is provided to HR and the individuals in the redeployment pool will be assessed against the essential criteria of the vacancy position to see if there is a match to the post. If an individual meets the criteria then a meeting with the vacancy manager will be arranged.

Where there is more than one person suitable for the vacancy, a competitive selection process will take place, which will be ring-fenced to the matched employees in the "Redeployment pool".

The successful redeployee will be given a four week trial period in the alternative post. The purpose of the trial period is to give the employee and the Authority a chance to assess the employee's suitability and decide whether the new job is a suitable alternative.

If the post is deemed not suitable the employee will go back into the "redeployment pool" until either another post becomes available or until the end of their notice period (which ever is soonest) when they will be made redundant.

As soon as an employee is classed as "at risk" of redundancy they will be eligible for the "redeployment pool".

During the redeployment period a list of all available posts should be kept by HR and distributed on a regular basis to redeployees.

## 9.2.2 Processes

As soon as possible following the confirmation of being 'at risk' of redundancy or being issued with notice of redundancy, the employee is required to complete the Redeployment Form (**see appendix A**) and send it to HR. HR and/or the employees Supervisor/Line Manager can provide assistance to the employee in completing the Redeployment Form.

Receipt of this enables HR to undertake the first process in Redundancy Redeployment, that is assessing the redeployee against currently advertised job roles. Following this initial assessment, continued assessments will take place each time HR receives an authorised job role vacancy to be advertised. This activity is Assessment Process. (see 9.1.2.1)

Following the Assessment Process, the next process applied is the Redeployment Process. (see 9.1.2.2)

### 9.2.2.1 Assessment Process Assessment :Step One

For DCC to assess and evaluate Suitable Alternative Employment for an employee (**for definition, see Appendix B**), an initial assessment will be made of the employees terms and conditions against the terms and conditions of the vacant post:-

- current job role grade (which indicates seniority and skill level)
- salary (SCP level), any applicable benefits or allowances
- working pattern (days, hours etc)
- work base location

The initial assessment highlights whether the employee's salary and contractual benefits are the same, that the duties and responsibilities of the (Suitable Alternative Employment) SAE are generally equivalent, that the status of the new job is generally comparable, and that the working hours and location of the job are in line with the employee's current contract.

### Assessment : Step Two

If the outcome of the initial assessment does not result in a recognised SAE match, a secondary assessment will be undertaken. At this point, DCC will expand the assessment criteria and look at vacant posts one grade higher and one grade lower than the employees current grade.

DCC will also utilise the indicators provided by the employee via their completed Redeployment Form. DCC will take into

account what the employee has specified as preferred work locations and their preferred hours / days of work. Therefore, the following would take place:-

- assessment of current job role grade will be expanded to automatically incorporate job role grades one position higher and one position lower. E.g., if the employee is on Grade 7, secondary assessment will include job roles of grade 6-8.
- assessment of salary and any applicable benefits or allowances will take place due to the association with grading assessment
- assessment of work base location may highlight an employee willing to consider jobs which are in any area of the county, or in specific areas, which may not be where their current work base is.
- assessment of working pattern (days, hours etc) may highlight an employee working full time is willing to consider jobs which are full time or part time
- Is the employee will to consider temporary work? If so, what is the temporary employment period they are willing to consider, e.g., 6 months or less.

### **Assessment : Step three**

Essential Criteria Assessment follows step one and two. A review of the job description and the person specification requirements will be made, assessment will then be made to see if the employee meets the job roles essential criteria. At this stage, it will be evident if the redeployee matches or does not match the essential criteria.

#### **If there is a match**

If there is a match then the Redeployment process will be adopted (see 9.2.2.2)

#### **If there is no redeployee match:**

If there is no match, then the vacancy will be advertised in accordance with the authorised instructions on the Vacancy Control Form, which may include advertising externally. In all cases, the advert will be placed on the Internal Vacancy Notice Board for all DCC employees to view.

### **If a Redundancy Redeployee wishes to apply for a vacancy**

Should a Redundancy redeployee wish to be considered for any advertised DCC vacancy, they have two options regarding how they can apply:

- They can apply via the normal recruitment process and indicate on their completed application form that they are presently a redeployee.
- Alternatively, they can ask for a copy of their completed Redeployment Form to be sent by HR to the vacancy manager. HR will detail that the applicant is a Redundancy redeployee and should be given prior consideration in the selection activity.

### **Prior Consideration – what does this mean?**

All vacancy managers have been instructed to consider applications from redeployees with prior consideration. That means the vacancy manager should assess the redeployee applications first, prior to other applications and afford them this preferential treatment in the selection process. The redeployee will still have to demonstrate that they meet the essential criteria for the vacancy.

Prior consideration does not apply to Head of Service positions; such recruitment activity for senior positions will follow the procedures within the Recruitment Framework.

Vacancy managers can also exercise additional flexibility by interviewing redeployees before the advertised close date of the vacancy. This may be applicable if an individual is due to leave employment at DCC before the application close date of the vacancy.

### 9.2.2.2 Redeployment Process

1. A redeployee who meets all the essential criteria is guaranteed an interview for the vacant position.
2. If the redeployee, having met all the essential criteria confirms her/his interest in the post, HR may ask the redeployee to complete an application form stating their relevant experience etc, (this is dependant upon the vacancy managers requirements)
3. The redeployee is interviewed by the relevant Supervisor/Line Manager for the vacancy position.
4. If successful, the redeployee will be appointed and the terms and conditions of the new post.
5. If the redeployee is not successful, the department will be asked to justify their reasons not appointing. These reasons will be considered by HR and a decision will be made when all the points raised have been thoroughly reviewed.
6. A redeployee will be given two opportunities to assess **suitable alternative employment** (see appendix B for full details). If, after the two occasions, the redeployee does not wish to pursue the third opportunity, then they forfeit their right to redundancy payment and their employment will end on their previously stipulated date.
7. A redeployee can have an unlimited number of opportunities to apply for **alternative employment** (see appendix B for full details). . They will not forfeit their right to redundancy payment if they refuse an offer of alternative employment and if they have not secured alternative employment by their date of redundancy, their employment will end on this date.

## **9.3 Capability Redeployment**

### **9.3.1 Procedure**

If an employee participating in the Capability process recognises they may/will not succeed in achieving the required competency levels by the conclusion of the process, they can volunteer to be registered on the redeployment list. If this is the case HR will be notified by the respective Supervisor/Line manager of the employees' request.

The manager must ensure that the employee is aware of the possible outcomes of the redeployment procedure, which may ultimately be dismissal if during the capability timeframe no alternative employment is secured.

The employee concerned will be put in the "redeployment pool" and matched with vacancies to establish if there are any appropriate posts available.

Where a suitable alternative is available and the employee meets essential criteria, or could be trained to do so within a reasonable period, the employee will be interviewed by relevant individuals within the Service to assess suitability.

If successful, the employee will transfer to the new position with transfer timescales agreed by the respective Supervisor/Line Managers.

The employee who is under capability redeployment has no right or entitlement to a trial period in the alternative post.

If unsuccessful, the employee will remain in their current post and on the redeployment list for the remainder of the capability process time frame.

There are no limits imposed on the number of applications that can be made by the employee whilst volunteering to be on the redeployment list.

### 9.3.2. Process

#### Capability Redeployment Process:

1. As soon as possible following the confirmation of Capability redeployment, the employee is required to complete the Redeployment Form (**see Appendix A**) and send it to HR. HR and/or the employees Supervisor/Line Manager can provide assistance to the employee in completing the Redeployment Form.
2. A Capability redeployee who meets all the essential criteria of the advertised vacancy is guaranteed an interview for the vacant position.
3. If the Capability redeployee, having met all the essential criteria confirms her/his interest in the post, HR may ask the redeployee to complete an application form stating their relevant experience etc, (this is dependant upon the vacancy managers requirements)
4. The Capability redeployee is interviewed by the relevant Supervisor/Line Manager for the vacancy position.
5. If successful, the redeployee will be appointed and the terms and conditions of the new post andl transfer to the new position with transfer timescales agreed by the respective Supervisor/Line Managers.
6. If the redeployee is not successful, the department will be asked to justify their reasons not appointing. These reasons will be considered by HR and a decision will be made when all the points raised have been thoroughly reviewed.
7. If unsuccessful, the employee will remain in their current post and on the redeployment list for the remainder of the capability process time frame.

## **9.4 Redeployment Form**

It is important that all Redundancy, Medical and Capability redeployees completed the Redeployment Form as soon as possible following their change in employment circumstances. Upon completion of the form it should be sent to the HR Department to enable assessments to take place against vacant positions.

- a. Completed forms should contain the following to allow for a full matching process to be undertaken: -
  - current and past work experience including responsibilities
  - qualifications held and at what level
  - any specialist knowledge and any training received and
  - the salary/grade the redeployee is willing to consider
  - the work base/location that the employee is willing to consider
  - the hours of work and work pattern the employee will consider

## **9.5 Assessment Process**

This process will be accommodated by the HR Department. To allow a full and complete assessment to be undertaken, it is highly recommended that each and every Redeployee complete and send a copy of their Redeployment Form to HR as early as possible in their redeployment time period.

Detailed below are the responsibilities for each participant in this process.

### **9.5.1 Supervisor/Line Manager Responsibilities**

These major 'players' in this activity have certain responsibilities to undertake, these are detailed below:

- a. Via respective process (redundancy consultation, sickness absence management, capability), the relevant Supervisor/Line Manager advises the employee of the change in their future employment status.
- b. Supervisor/Line Manager issues employee with a 'redeployment form'.
- c. Supervisor/Line Manager advises employee to complete and return the 'redeployment form' to HR within one week.
- d. Supervisor/Line Manager to allow employee reasonable access to DCC's electronic notice board to view vacancy notices during work time.
- e. Supervisor/Line Manager to work with employee to allow reasonable time away from work to attend DCC interviews. (Dependant upon service requirements and the amount of time awarded will be pro rated in accordance with part time hours).
- f. If the Supervisor/Line Manager has a vacancy; they are required to follow the recruitment process detailed in the Recruitment Framework.

## 9.5.2 Redeployee Responsibilities

- a. Employee is given notification of change in employment circumstance by Supervisor/Line Manager via either redundancy or medical reasons. or  
Employee volunteers to be placed on the redeployment list whilst participating in the capability process.
- b. Redeployee issued with a 'redemption form' to complete and return to HR as soon as possible, but preferably within one week.
- c. Completed forms should contain the following to allow for a full matching process to be undertaken: -
  - current and past work experience including responsibilities
  - qualifications held and at what level
  - any specialist knowledge and any training received and
  - the salary/grade the redeployee is willing to consider
  - the work base/location that the employee is willing to consider
  - the hours of work and work pattern the employee will consider
- d. Employee should check DCC's electronic Intranet and vacancy notice board to view vacancy notices on a regular basis.
- e. Employees without access to the council's electronic Intranet or vacancy notice board will receive a copy of the council's internal vacancy bulletin via email or post on a weekly basis.
- f. Employees should be in contact with HR on a regular basis to advise if their alternative employment preferences have changed or if they identify a post which they wish to be considered for (even though the post is not an obvious match.  
**Please note, until the redeployment form is returned to HR, the redeployment matching process cannot commence.**

### **9.5.3 HR Responsibilities**

- a. HR receives completed redeployment form and logs employee details onto the redeployment list.
- b. Should further clarification be required concerning employment history and skills or future alternative employment preferences, then a member of HR may arrange a telephone conversation or face-to-face meeting with the employee.
- c. Matching exercise to be undertaken each occasion an employee joins the redeployment pool and each occasion a vacancy is received by HR.
- d. HR to be advised of the recruitment schedule and selection techniques to be used by the interviewing panel.
- e. HR to contact redeployee to advise of suitable vacancy and recruitment process details.
- f. HR to be advised of the outcome of the selection process by the respective Supervisor/Line Manager.
- g. The successful applicant/candidate will be advised by HR and a release date negotiated by the two relevant Supervisor/Line managers.
- h. HR will update interview outcome details against vacancy applicants/candidates and feedback will be provided by the selection panel members to unsuccessful applicants/candidates.
- i. If no redeployees are considered suitable to interview as they have not meet all the essential criteria, HR to advise relevant Supervisor/Line Manage that the recruitment process can accommodate their vacancy being advertised. Recruitment process to commence.

## **9.6 Recruitment Process Considerations**

Supervisors/Line Managers are responsible for following the Recruitment processes for Internal and External advertising as detailed in the Recruitment framework

For quick reference purposes, detailed below is a snapshot of the processes involved:

### Internal vacancies

Upon appropriate approval and prior to advertising the vacancy internally, HR assess the vacancy information with employees on the redeployment list. Information to be received by HR to undertake this exercise is:

- A copy of the vacancy control form
- A copy of the job advert
- A copy of the job description and
- A copy of the person specification. External vacancies

After SLT consideration and prior to advertising, HR assess the vacancy information with employees on the redeployment list.

Information required by HR to undertake this exercise is:

- A copy of the vacancy control form
- A copy of the job advert
- A copy of the job description and
- A copy of the person specification.

### **9.6.1 Freedom to recruit**

Freedom to recruit, internally or externally, will only be provided if HR have no suitable employees to consider for redeployment or following the interview/selection process, the redeployee candidates have been unsuccessful.

HR will advise the appropriate Supervisor/Line Managers and let them know they are free to recruit.

## **10.0 Redeployment - The Appeal Process**

Employees wishing to appeal a redeployment decision should do so using the Corporate Appeals Procedure.

## **Terminology**

- Alternative Employment
- Competitive selection process
- Modification Order
- Reasonable period
- Redeployment pool
- Ring fenced
- Suitable Alternative Employment
- Training Provision
- Trial period

### **Alternative Employment**

When an employee is issued with redundancy notice, the employer is required to seek suitable alternative employment; however the council has chosen to also look for alternative employment too. The council will take reasonable steps to find, where possible, alternative employment by looking at planned vacancies ranging from one grade higher and one grade lower than the employees current grade for affected employees throughout the entire redundancy notice period, right up to the last day of employment.

The council will also utilise the indicators provided by the employee via their completed Redeployment Form. The council will take into account what the employee has specified as preferred work locations and their preferred hours / days of work etc.

### **Competitive Selection Process**

As part of a recruitment process, Supervisor/Line Managers may employ a variety of mechanisms to test an applicant's suitability for the post, e.g., interview, psychometric tests etc.

Should there be a number of candidates who are suitable, then the selection process means they will compete against each other to determine which candidate is the most appropriate. Again, the Supervisor/Line Manager will determine the most appropriate method and if there are enough applicants to consider, may even adopt selection technique such as assessment centres.

## **Modification order – what is it?**

The Modification Order is primarily a list of certain Government Bodies who offer continuous service. For example, should an employee of Denbighshire find alternative employment in a neighbouring Council or with other recognised bodies on the Order, then their length of service 'carries over' to the new employer.

Should a Denbighshire employee who has received notice of redundancy find alternative employment with an employer covered by the Modification Order and transfers employment prior to, or at the end of their notice period, they will not be classed as redundant, they will transfer employment and have protection under the Order and transfer their length of service.

Should a Denbighshire employee take employment with an employer covered by the within 4 weeks of their date of leaving Denbighshire, then there is no redundancy dismissal but a transfer to the new employer with continuous service. At this point, if the employee has received a redundancy payment, then they are required to return the payment to Denbighshire.

Should a Denbighshire employee take employment with an employer covered by the after 4 weeks of their date of leaving Denbighshire, then a redundancy dismissal is recognised. The employee retains their redundancy payment and has a new continuous service date with their new employer.

## **Questions & Answers regarding the Modification Order Q1**

### **Who is covered by the Modification Order**

It is impossible to create a list of every body on the Order by individual name as this would cover several thousand organisations. It is useful to remember that the idea of the Order is that those employers who are in the local government 'family' are included.

It is advisable for an individual who wants to know if a potential new employer is covered by the Modification Order, to directly ask the employer this question.

**Q2 How can a Denbighshire employee secure their continuous service when taking employment with an employer covered by the Order**

To maintain continuous service, the employee has to transfer within 4 weeks of their date of leaving employment at Denbighshire.

**Q3 How can a Denbighshire employee secure their redundancy payment when taking employment with an employer covered by the Order**

To retain their redundancy payment the employee will have to come to an agreement with the new employer to allow them to have a gap in employment of more than 4 weeks between the date of leaving Denbighshire and commencing employment with the new employer.

When they commence employment with the new employer, this means that their continuous service date will be the date in which they start with the new employer.

**Reasonable period**

The definition of reasonable is 'sensible, not excessive'. Therefore, this principle should be applied when determining an employee's time period away from work. It is very difficult to give an explicit answer too as it is dependent upon whether the employee is full time or part time etc.

**Redeployment Pool**

This describes the group of employees who are considered redeployees due to redundancy, medical or capability redeployment.

**Ring Fenced**

During redundancy situations, when there are a number of employees affected by redundancy within a department/ service, any recognised vacancies will be advertised within the affected group of individuals first. This means those affected have the opportunity to apply for the position(s) before anyone else.

### **Suitable Alternative Employment (SAE) – What is it?**

When an employee is issued with redundancy notice, the employer is required to seek suitable alternative employment for those employees. The duty is on Denbighshire to take reasonable steps to find, where possible, suitable alternative employment for affected employees throughout the entire redundancy notice period, right up to the last day of employment.

Suitable Alternative Employment (SAE) has come to mean work that:

- the employee can reasonably be expected to do, taking into account his or her level of seniority and skills; and
- is on terms and conditions that are not substantially less favourable to the employee's redundant position.

This generally means that the employee's take home pay and contractual benefits are the same, that the duties and responsibilities of the new job are generally equivalent, that the status of the new job is generally comparable, and that the working hours and location of the job are in line with the previous contract.

A job vacancy that is suitable in all other respects apart from pay will not normally be SAE

It may be the case that, where a vacancy may match an employee's skills but does not qualify as suitable alternative employment, the council are advised to discuss the vacancy with the employee.

The employee may prefer to apply for a non-equivalent post rather than be made redundant, but if they refused to consider a non-equivalent vacancy this would not affect their entitlement to redundancy pay or their entitlement to be offered other suitable alternative employment that becomes available during their redundancy notice period.

### **Questions & Answers regarding SAE**

#### **Q1: What is an unreasonable refusal of an offer of suitable alternative employment (SAE)?**

The issue of suitability is judged on key factors such as pay and terms and conditions, the suitability for the employee's skills and abilities etc. However, the reasonableness of a refusal to accept the new job offered is judged from the employee's point of view at the time of the refusal. For example, a refusal of an offer of SAE will normally be reasonable if it is because the employee has already accepted a job with a new employer. Or it may be that an extra two miles of commuting to a new job is fine for one employee but could be deemed to be unreasonable for another employee who can show that the extra commute adversely impacts on their particular personal circumstances.

An employee who unreasonably refuses an offer of SAE may forfeit their entitlement to redundancy pay. The reason for the dismissal will still be redundancy however the Employment Rights Act 1996 allows the employer to withhold redundancy compensation where the employee has either refused a suitable alternative role or terminated their contract during the trial period without good cause.

**Q2: Would a fixed-term contract qualify as suitable alternative employment (SAE) for an employee being made redundant from a permanent post?**

Generally, a fixed-term post is unlikely to qualify as SAE for an employee being made redundant from a permanent position because it could be judged as being substantially less favourable terms and conditions. However, the longer the duration of the fixed-term contract, the more likely that the offer would be considered suitable, so each case must be considered on its own facts. It would fall upon the employee to show that it was reasonable for them to refuse it, for example, by relating it to future job prospects.

If the employee chooses to accept a fixed-term contract, the expiry of that contract will be a dismissal in law. The reason for the dismissal will most likely be redundancy (if the contract has expired because the work no longer exists). Therefore, before the end of the fixed term contract, the employer must follow a fair redundancy procedure, which includes consulting with the employee and consider alternative employment and a redundancy payment.

**Q3: An employee has made no effort to look for alternative employment within the council. Can the council withhold the redundancy payment?**

Ultimately, it would be up to an employment tribunal to decide but the employer must be able to show that they took adequate steps to identify suitable alternative employment within the organisation and invite the employee to consider accepting it.

However, councils can encourage employees to look for opportunities for work within the organisation, for example by sending vacancy lists to employees under notice of redundancy, but statutory redundancy pay can only be withheld where it can be shown that the employee has unreasonably refused an offer of suitable alternative employment.

**Q4: Does the council have to look for suitable alternative employment (SAE) for employees whose fixed-term contracts have come to an end?**

An employer should give fixed-term contract employees who are eligible for a redundancy payment the same access to any redeployment opportunities as a permanent employee.

**Training Provision**

Via redundancy legislation, employees who have been given formal notice of redundancy have the opportunity to **seek** training provision whilst within their notice period.

DCC seeks to aid all those employees affected by redundancy by allowing them reasonable time off work to **organise** such training. Employees should work with their Supervisors/Line Managers to organise this and refer to the Redundancy Policy for more information.

**Questions & Answers regarding Training Provision**

**Q1 What is a reasonable expectation of an employee on the redeployment list concerning training provision from DCC?**

Due to the financial constraints the council has to work under, there is very limited training fund provision, however, should any redeployees who has been given notice of redundancy wish to receive certain job role specific training, then they are to apply to their Supervisor/Line Manager.

This can be applicable if the employee feels that by receiving such training they will increase their chances of securing alternative employment.

## **Trial Period – What is it?**

Legal Definition = An employee who is under notice of redundancy has a statutory right to a trial period of four calendar weeks in an alternative job where the provisions of the new contract differ from the original contract. The trial period begins when the previous contract has ended and ends four weeks after the date on which the employee starts work under the new contract.

DCC definition = An employee who is under notice of redundancy has a statutory right to a trial period of four calendar weeks in an alternative job where the provisions of the new contract differ from the original contract. At DCC the decision has been taken to allow the trial period to commence any time within the notice period (with Manager's agreement) and DCC has not applied any restriction on the number of trial periods an employee can undertake.

Therefore, the employee does not have to wait until the end of their notice period to commence a trial period. If during the trial period the employee or the employee's new manager concludes that it is not a suitable arrangement, then the employee may return to their substantive post and continue to work their notice and continue to apply for alternative roles.

## **Questions & Answers regarding Trial Periods**

**Q1: Can an employee have trial period during their notice period?**

Yes they can. The council has made the decision that it will be flexible and supportive to employees who are actively seeking alternative employment within the council.

## Q2 If an employee's trial period is during their notice period, is their notice period suspended?

### Yes and No.

**Yes**, if their trial period is in DCC, their notice period will be suspended and the following may occur:

- **If the employee is successful during the trial period** : the new manager/department and the employee agree to stay in the new post, then written communication will be provided to the employee to confirm they have transferred and their notice to leave employment at DCC is withdrawn. The employee has secured alternative employment, therefore, no redundancy payment is made.
- **If the employee is unsuccessful during the trial period** : if the employee and/or the new manager/department are able to demonstrate that the employee or job role is not suitable within the trial period, then the employee will either :
  - Be placed on garden leave until the end of their notice period
  - With the employee and the substantive manager's agreement, go back to their substantive post and work to the remainder of their notice.
  - With the employee and the substantive manager's agreement, leave DCC with a revised date of leaving and be paid Pay In Lieu of Notice.

**No**, their trial period will not be suspended if the employee is undertaking a 'voluntary' trial period in a local company which has been organised by Denbighshire Voluntary Services Council (DVSC). This event can only take place if there is agreement from the employees Line Manager/Supervisor.

DCC are working in partnership with DVSC and should an employee under notice of redundancy wish to volunteer for a 'voluntary' trial period work programme with a local company, then DVSC is pivotal in searching and organising such an event. If a employee is successful in obtaining a 'voluntary' trial period, then they can work in the local company whilst their notice period continues to run. At the end of the 'voluntary' trial period organised via DVSC the employee will either :

- Be placed on garden leave until the end of their notice period from DCC
- With the employee and the substantive manager's agreement, go back to their substantive post and work to the remainder of their notice.
- With the employee and the substantive manager's agreement, leave DCC with a revised date of leaving and be paid Pay In Lieu of Notice.

**Q3 If the employee has a successful trial period and transfers to the new post / department, does the employee have any pay protection for the remainder of the trial period, i.e., if Employee X has 12 weeks redundancy notice and has a trial period in weeks 3- 6, when they transfer in week 7, do they retain the pay of their substantive post or immediately transfer to the new terms and conditions with or without payment protection to the end of their notice period?**

They transfer to the new post on the terms and conditions applicable to that post. The employee does not get any pay protection.

**Q4: What happens if an employee insists their trial period has been unsuccessful and they want to have redundancy pay but the manager thinks it has been fine? What options does the council have in this situation?**

The trial period is the time for DCC and the employee to test the suitability of a new job. To be successful in claiming (during the trial period) that the new job is not suitable, the employee would have to show that the skills needed are substantially different to their redundant job. DCC must assess whether the employee's objections to the redeployed post are reasonable and whether it agrees that the trial period has not been successful and the new post is therefore unsuitable.

If DCC agrees that the redeployed post is unsuitable, the employee will revert to their original redundancy notice and may be offered other SAE before the redundancy dismissal takes effect.

If DCC thinks that the employee is unreasonably refusing the post and therefore unreasonably terminating their employment it can withhold redundancy pay.

**Q5 If a trial period is agreed, but due to the employee's length of notice cannot accommodate a period of four weeks, can DCC organise to extend the notice period to accommodate the trial period? If this can happen, which department is accountable to pay for the 'extra' notice period?**

Yes, the extension can be agreed and organised to accommodate the trial period. The responsibility for the extra cost lies with the substantive department.

**Q6 When an employee is on a trial period, what payment do they get paid?**

The employee will retain their current/substantive pay.