

# Redundancy Policy and Procedure

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## Redundancy Policy and Procedure

### 1. Policy Statement

- 1.1 This policy applies to all employees of Manx Care, excluding Civil Servants and Manual and Craft workers whose terms and conditions are determined by the Public Services Commission.
- 1.2 It is the policy of Manx Care to avoid the need for redundancies through careful forward planning of its human resource requirements, including any consequential staff development needs. However, it is recognised that there may be changes in organisational requirements or working practices which will affect staffing needs. It is recognised that in order to avoid redundancies flexibility may be required from both staff and management to adapt to new staffing requirements, working methods, and organisational needs.
- 1.3 It is Manx Care's aim to avoid the use of compulsory redundancy where possible. Therefore, as soon as it becomes apparent that redundant posts may arise, consideration should be given as to whether it is possible to avoid staff being made redundant through natural wastage and limiting recruitment, re-allocation of post holders to similar roles elsewhere, changes to working practice to increase flexibility and reduce the need for supplementary staffing, ceasing work done through an agency or Manx Care bank.
- 1.4 Where it appears that redundancies are unavoidable, Manx Care, in consultation with the recognised Trade Unions and other staff representatives, will take appropriate steps to minimise the need for redundancies. If redundancy cannot be avoided Manx Care will handle the redundancy in accordance with employment law, best practice and its values.

### 2. Consultation

- 2.1 Manx Care will consult with affected groups of staff and their representatives at the earliest practicable opportunity whenever there appears to be a situation which could lead to redundancies. Manx Care will carry out consultations over an appropriate period in consideration of the number of staff involved.
- 2.2 The purpose of consultation will be to provide an early opportunity for discussion on the various options for reducing the number of surplus posts whilst seeking to achieve the required balance of skills and experience to meet operational needs.
- 2.3 During consultations, management will provide full information to employees and their representatives about the circumstances giving rise to potential redundancies, and will allow adequate time to respond in consideration of the numbers of staff represented. In particular Manx Care will provide the following information in writing to relevant staff representatives at the outset or as soon as reasonably practicable:

- the reasons for the proposed redundancies;

- an indication of the present and proposed future organisational structure, including numbers and grades
- the numbers and categories of posts that may be redundant and their location
- the number of employees directly affected by the potential redundancy
- details of roles which will indirectly be affected by redundancy
- details of how the reduction in staffing and any other changes will be carried out and the criteria for selection for redundancy.

2.4 Manx Care will give serious consideration to any proposals and representations put forward by staff representatives, during the consultation period and will reply to them in writing, within the timescales specified for consultation.

2.5 Consultation between Manx Care and staff representatives will seek to reach agreement on ways to avoid redundancy. Where it is not possible to agree measures to avoid redundancy, consultation will aim to seek agreement on ways of minimising the number of redundancies, determine the criteria to be used to select employees for redundancy and mitigate the consequences of any redundancies on staff who are directly or indirectly affected.

### **3. Measures to Avoid or Minimise Redundancy**

3.1 As noted above Manx Care will seek to avoid or minimise redundancies wherever practicable to do so by means of the following measures as deemed appropriate Manx Care in the particular circumstances:

- assessing the effect of normal staff turnover to make use of natural wastage
- freezing or restricting recruitment of permanent staff
- limiting the engagement of temporary staff
- eliminating as far as practicable overtime working
- investigating the use of alternative working arrangements, such as part-time working, reduced hours, job-sharing

### **4. Selection for Redundancy**

4.1 As indicated in the paragraph above, wherever possible Manx Care will seek to apply voluntary means to achieve the required reductions in staff numbers. Such volunteers will not be unreasonably refused. However Manx Care must ensure that it retains the necessary balance of skills and experience amongst staff to carry out its future commitments effectively, and in the event of circumstances where entirely voluntary means cannot be used is committed to a transparent, fair, consistent, objective and non-discriminatory selection procedure.

4.2 It is the policy of Manx Care that if the need for redundancies arises, selection for redundancy will be made on the basis of objective criteria, which will be reasonably, fairly and consistently applied. Manx Care will also ensure that the pool of employees to whom the selection criteria are applied is fairly defined.

4.3 The chosen selection criteria will be capable of objective substantiation and of being backed up with evidence and data. For example, Manx Care may use

performance, skills, qualifications, attendance records, disciplinary records and other factors that can be clearly evidenced.

4.4 The application of selection criteria will be compliant with the Equality Act 2017. Further guidance can be found at Annex B.

## **5. Appeals**

5.1 An employee who has been notified of redundancy and considers that the selection criteria have been unfairly applied in their case or that their dismissal is unfair for any other reason may appeal. Appeals must be submitted in writing no later than seven working days from the date of the notice of redundancy, to the person named on the notice letter. The notice letter should include information on this provision.

## **6. Redeployment**

6.1 The following paragraphs set out the provision in relation to redeployment when a redundancy situation has been confirmed. This does not preclude redeployment taking place at an earlier stage, for example where potentially suitable vacancies are identified by either staff or management before consultation is complete.

Staff are identified as redundant and notified of their potential redundancy, Manx Care will actively seek suitable alternative work for them within Manx Care prior to their redundancy taking effect. While every effort will be made to identify alternative work this cannot be guaranteed. In considering alternatives account will be taken of the individual's skills, levels of responsibility and seniority, and career aspirations, and Manx Care will endeavour to offer a post of comparable status and terms, and conditions. Consideration will be given to retraining where practicable in order to assist with redeployment into alternative work.

Offers of alternative work to employees under notice of redundancy will be made in writing, specifying any differences in terms and conditions which may result, the length of any trial period, and any other conditions. Staff in receipt of such an offer should indicate their acceptance, or their reasons for refusal in writing, being mindful of paragraph 6.3 below.

6.2 Staff may be redeployed into posts graded lower than the redundant post, however this is subject to there being a vacancy and the additional costs of pay protection being acceptable to Manx Care. If this is agreed, staff will have their basic salary protected on a personal basis against loss of earnings, to include any annual increase as negotiated by the respective pay bodies, but will exclude any incremental progression. This protection arrangement will remain in place for no longer than 5 years for MPTC only, after which time the employee will revert to the grade for the post.

6.3 Staff that unreasonably refuse an offer of alternative employment will not be entitled to a redundancy payment.

6.4 Staff who are redeployed to alternative posts will do so on the basis of a mutually agreed trial period, the length of which should be at least 4 weeks, but will depend upon the nature of change of duties (and any retraining) involved.

- 6.5 If, at the end of the trial period the alternative role proves to be an unsuitable alternative, the entitlement to any redundancy payment is retained.
- 6.6 A redundant employee who wishes to leave Manx Care before the expected redundancy date but is under notice of redundancy will, subject to agreement by Manx Care, be permitted to leave on a mutually agreed date and that date shall become the revised date of redundancy for the purpose of calculating any entitlement to redundancy payment. Requests to leave early will be considered by the Care Group Manager in consultation with Human Resources.

## **7. Assistance with Job Seeking**

- 7.1 Manx Care will grant employees who are under notice of redundancy reasonable time off with pay to seek alternative work, or to arrange training. They will be permitted reasonable use of Manx Care's office facilities such as telephone, email, internet access, photocopier etc. to assist with this.
- 7.2 Advice on completing application forms and job interview skills will be provided by the Office of Human Resources on request.
- 7.3 Support is available from officers of the Staff Welfare Service on 687027 for those employees who wish to access it.

## **8. Severance Payments**

8.1 Severance payments will normally comprise the following elements, if appropriate:

- Redundancy payment (either statutory or as entitled under the IOM Government compensation scheme)
- Payment in lieu of outstanding holiday entitlement.
- Payment in lieu of contractual notice in accordance with terms and conditions of employment
  - Employees who are made redundant (either on a voluntary or compulsory basis) will not be required to repay any relocation or training expenses normally recovered on termination. Any Manx Care property must however be returned or paid for before termination takes effect.

## Annex A

### Avoiding Discrimination When Making Redundancy Decisions

This section looks at how managers can make sure they are not discriminating unlawfully in inviting volunteers for, or selecting employees for redundancy and in particular:

- Redundancy procedures and criteria
- Which jobs are in the selection pool?
- Deciding on the selection matrix and how to score it
  - Length of service
  - Absence record and working hours
  - Training and qualifications
- Avoiding unlawful discrimination against disabled people
- Maternity leave and suitable alternative employment
- Age and redundancy payments

#### A. Redundancy procedures and criteria

The procedures must avoid unlawfully discriminating against employees with protected characteristics. As a reminder, the nine protected characteristics under Equality legislation are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

For example, in the case of disabled people, failing to make reasonable adjustments including adjustments to redundancy criteria and procedures, is a form of unlawful discrimination. This applies whether seeking volunteers or making compulsory redundancies

#### B. Which jobs are in the selection pool?

If all employees in a particular workplace or doing a particular job are not selected, managers must ensure that the selection pool does not discriminate unlawfully.

#### For example:

*An organisation is facing budget cuts and decides to reduce the size of its marketing team. There are four people in the team (one man and three women) and the employer decides to put just the two people who work part-time, who are both women, into the pool for redundancy, believing that their earnings are less important to them than to those people who work full-time, who are more likely to be 'breadwinners'. Because women are more likely to work part-time, this approach will be indirectly discriminatory (having a worse impact on the two part-timers who are women and on other women than it does on men) unless the employer can **objectively justify** what they have done. An approach which would be less likely to discriminate unlawfully would be to put everyone in the marketing department into the pool.*



## C. Deciding on the selection matrix and how to score it

To avoid risking possible discrimination, it is better to use a selection matrix containing a number of separate selection criteria rather than just one selection criterion. The recognised trade union should also be consulted and anyone who scores employees against the criteria must have been trained on how to avoid unlawful discrimination.

### Length of Service

It is possible to use a length of service criterion for selecting employees for redundancy but only in certain circumstances, as it could indirectly discriminate on the following:

- Younger people who will not have built up as long an employment record
- Women, who often have more interrupted careers, or
- Disabled people, whose disability may have interrupted their career

Length of service should only be one of the factors, and may be objectively justified and does not constitute direct (eg age) or indirect discrimination (e.g sex). It may be used with the aim of, **for example**:

- Retaining experience, and it can be shown:
  - That length of service is a **proportionate** way of achieving an aim
  - Why the aim could not be achieved another way that does not disadvantage the selected workers to the same extent.

### Absence record and working hours

If an employee's absence record or working hours are used to select for redundancy, care must be taken to avoid direct or indirect discrimination

#### For example:

- *If a woman is selected because of her absence on maternity leave or because of pregnancy-related illness, this will almost always be direct discrimination because of pregnancy or maternity.*
- *If an employee is selected because they have taken time off or because they work flexibly to care for a disabled relative, this risks being direct discrimination by association because of disability.*
- *If a disabled employee is selected because they have needed time off or because they work flexibly for a reason connected to their disability, this risks being **discrimination arising from disability** unless the employer can **objectively justify** using this criterion.*

## Training and qualifications

The appropriateness of using qualifications to select employees for redundancy will vary according to the situation. If there are two employees working in similar roles, but one has an additional relevant qualification which adds to their ability to do the job, deciding to make the less well-qualified person redundant is unlikely to discriminate unlawfully.

It is also acceptable to say that an employee must have a particular qualification if that qualification is an essential requirement for the job that cannot be met by experience or further training.

However, if qualifications which are not especially relevant or the qualifications used are defined too narrowly without thinking through the consequences, unlawful discrimination can occur if the use of those qualifications would have a worse impact on employees who share a protected characteristic and it cannot be objectively justified

*For example, choosing to make redundant just those employees with a qualification from a non-British university*

### D. Avoiding unlawful discrimination against disabled people

When considering disabled employees for redundancy, **reasonable adjustments** must be made to the criteria and process. If an employee in the pool is a disabled person and it was known or could reasonably be expected to have been known, they must not be treated unfavourably because of something connected to their disability unless it can be shown that this is **objectively justified**.

#### For example:

*An employer knows that one of their employees is a disabled person. They select employees from the pool on the basis of absence over the past two years. The disabled person has taken a lot of time off work in relation to their disability (the time off being 'something connected with the disability'). If the employer cannot objectively justify this decision, it is likely to be discrimination arising from disability. A better approach would be for the employer to exclude disability-related absence from the absence which is used to score employees against that criterion this would probably also be a reasonable adjustment.*

In addition, if an employee in the pool is a disabled person, the manager must make 'reasonable adjustments' if these are needed to remove barriers that employee would face which a non-disabled person would not face. This means considering what adjustments would remove those barriers, and if they are reasonable adjustments, they have to be made. This involves looking at each criteria in turn and how the disabled employee is scored against them, making reasonable adjustments to each of them where necessary.

Reasonable adjustments also means removing barriers for disabled employees during the process of redundancy, e.g. providing easy to read formats for someone with a learning disability.

## **E. Maternity leave and suitable alternative employment**

Where during a redundancy exercise alternative jobs are available, managers should make sure these are offered to potentially redundant employees using criteria which do not unlawfully discriminate.

The situation is different if any of the potentially redundant employees is a woman on maternity leave.

In this situation, she does not have to go through selection against the criteria for filling a vacant post. Instead, she must be offered any suitable available job or any associated employer.

The offer must be of a new contract to come into effect as soon as the previous contract ends and must be such that:

- the work is suitable and appropriate for her to do, and
- the capacity, place of employment and other terms and conditions are not substantially less favourable than under the previous contract.

## **F. Adoption leave and suitable alternative employment**

Where during a redundancy exercise alternative jobs are available, managers should make sure these are offered to potentially redundant employees using criteria which do not unlawfully discriminate.

The situation is different if any of the potentially redundant employees are on adoption leave. In this situation, they do not have to go through selection against the criteria for filling a vacant post. Instead, they must be offered any suitable available job or any associated employer.

The offer must be of a new contract to come into effect as soon as the previous contract ends and must be such that the work is suitable and appropriate them to do, and the capacity, place of employment and other terms and conditions are not substantially less favourable than under the previous contract.

## **G. Age and redundancy payments**

Even though they are on the face of it indirect discrimination because of age (since younger employees are likely to lose out, since they will find it harder to build up the longer service), enhanced redundancy payments based on length of service are permitted without having to objectively justify this, so long as they are calculated in the same way as statutory redundancy payments.

## **H. Redeployment & redundancy procedures and race**

With an increasingly diverse workforce, staff of different nationalities, ethnic or national origins will be employed. As a result, there may be employees for whom English is not their first language.

Therefore, managers should consider assistance to those whose English skills are limited and find difficulty in communicating in English in an emotive situation, therefore an employer may wish to provide an interpreter.