

Summary of legal advice

1. The EFDC Redundancy & Redeployment procedure (the "EFDC Procedure") is comprehensive, and this should be followed throughout the process which appears to be the case to date.
2. In terms of whether there is a redundancy situation in this particular case, it would appear that there is roughly the same amount (or perhaps less) of a particular kind of work but fewer employees are needed to do it. As a result of the overarching reorganisation, it would also appear you are looking to make better use of resources and also potentially look to save money. It is anticipated that EFDC will satisfy the statutory definition of redundancy in most or all cases at this phase. That said, in instances where the statutory definition of "redundancy" is not satisfied, and in future, EFDC should be mindful that it may be possible to rely on "some other substantial reason" as a potentially "fair" reason for dismissal.
3. With respect to the 7 directors, and without detailed knowledge of each respective post, it would appear likely that there would be a legitimate redundancy situation here. Thus to ensure ensuing dismissals are deemed "fair", EFDC must ensure that the posts held by dismissed employees are actually "redundant", and, it must also ensure a fair process is undertaken with respect to each individual dismissal. This will include, but not be limited to, undertaking the appropriate individual and collective consultation.
4. In this particular instance, the redundancy is only to involve Director Level and Assistant Director level employees, entailing 7 proposed redundancies at Director level and around a further 17 - 20 proposed redundancies at AD level (in the worst case scenario). It is important to note here that, regardless that some employees may ultimately obtain voluntary redundancy, and, regardless that some may ultimately obtain alternative employment via ring fence and/or assimilation, all posts are proposed to be deleted before that occurs, so, all of these employees will be deemed "potentially redundant" for procedural/timing purposes by a Tribunal.
5. Employees have been put at risk of redundancy in accordance with the policy and procedure and carried out consultation of over 45 days, thus sufficient for the purposes of employment legislation. We understand that consultation has occurred both with the Unions and individually.
6. It appears clear from the documentation reviewed that the Council has taken on board the feedback from the consultation. This is important as what is required to be demonstrated is that any consultation was meaningful and therefore the documentation is helpful.
7. Individuals within the pool have now been advised in writing in accordance with the procedure.
8. In relation to the Director posts, it has been determined that the new roles are not sufficiently similar for the purposes of assimilation. Voluntary redundancy applications have been made by individuals and once these are accepted

formally the selection pool for the 7 Directors will be reduced. Those not applying for VR and/or not being accepted for VR will then form part of the selection pool for the new Director Roles and a ringfencing process will then ensue in accordance with the policy. In the event that there is more than one candidate per new role, an interview selection process will need to be adopted. In the event that only one candidate applies for a role and that individual is deemed to be appointable, that employee can be offered the role without the need to be interviewed. This role would be considered to be 'suitable alternative employment' in accordance with the Redundancy Policy, and as a result, a four week trial period will follow. It should be noted that in the event that an individual is not deemed to be appointable to the role it may be appropriate to recruit externally.

9. Individual AD's should also be individually consulted in a similar manner and this appears to have been done from the documentation reviewed. Again, once Voluntary Redundancies are agreed/finalised, individual post holder should be notified of their proposed redundancy and the proposed way forward. In the vast majority of cases, that will involve an assimilation process (as per part 8.2.1 of the EFDC Procedure). A four week trial period will also be applicable here.
10. Section 151 Officer and Monitoring officer: EFDC proposes that the Director of Resources be its Chief Financial Officer/s151 Officer. The qualifications required of that officer are listed within section 6 of the Local Government and Housing Act 1989. In this instance, I anticipate that this person would be an appropriately qualified person under that section.
11. EFDC also proposes that the Director of Governance (Solicitor to the Council) is to be its Monitoring Officer. This would also be appropriate.
12. Advice on the Returning Officer: In terms of the Returning officer role, this role can essentially be allocated to any officer. We understand that the Chief Executive is to take over responsibility of this role. That is acceptable.
13. If the EFDC Constitution and internal procedures refer to old positions/prior delegated powers, they will also need to be changed.

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