

Revised Organisational Reviews Procedure and new Policy on Pay Protection

Policy and Strategy Committee

22 March 2011

Purpose of report

- 1 To seek approval for a revised Organisational Reviews Procedure and a new Policy on Pay Protection to be implemented retrospectively from 1 March 2011.

Main report

Background

- 2 The Procedure for undertaking organisational reviews has been in place since 1997. It includes the provision that allows an employee to retain his/her higher basic salary/wage rate when pay would otherwise be reduced as a consequence of a review or redeployment, often termed 'lifetime' pay protection.
- 3 'Lifetime' pay protection presents significant risks of equal pay challenge and litigation for the Council. This is because where pay protection is in place this creates circumstances where people doing the same job are paid at different levels and this could give rise to claims for equal pay. The only way to ensure people are paid properly for the jobs they do is to have no pay protection. There is also an ongoing cost involved in maintaining previous pay levels through protection (estimated to be £700,000 per annum) that is unsustainable given the unprecedented financial and budgetary pressures the Council is facing.
- 4 The legal advice to the Management side has been that any level of pay protection will increase the possible risk of equal pay challenge and as such steps should be taken to move to a no pay protection position for the future. The Trade Union side's view is that some form of pay protection should continue in order to support employees.
- 5 It should be noted that the three year Modernising pay protection that applied to 'Red Book' employees is a requirement imposed by the Scottish Single Status Agreement. This arrangement is unique to that group and is solely for the purposes of implementing the new pay and grading arrangements. There is **no legal obligation** on the Council to mirror the terms for other employees.

Proposed changes

- 6 The existing Procedure for the Conduct of Organisational Reviews is a collective agreement with the recognised Trade Unions.
- 7 The Management Side has engaged in detailed consultation and negotiations with the Trade Unions over a protracted period (since April 2010) with the aim of securing agreement on the policies proposed to replace the current arrangements.
- 8 Suggestions and amendments put forward by the Trade Unions were included wherever practicable. In the final meetings, the Trade Unions indicated that the revised Procedure was overall an improvement on the previous one. However, despite the efforts of both sides the final position was that no agreement could be reached.
- 9 In order to bring the new policies into effect, there was a requirement for the Council to formally withdraw from the existing collective agreement by giving the Trade Unions four months notice. In this regard, the letter giving notice of withdrawal was issued to the Trade Unions on 29 October 2010. A copy of the letter is attached as Appendix 1.
- 10 The Trade Unions have not responded formally to the notice of withdrawal. However, they have reiterated their view that some form of pay protection should continue to operate in order to support employees.
- 11 The four months' notice period ended on 28 February 2011. The Committee is asked to approve a revised Organisational Review Procedure and a new Policy on Pay Protection (as set out in Appendices 2 and 3 respectively) to apply retrospectively from 1 March 2011.
- 12 The Committee is also asked to approve that an amendment be made to item 2.5 – Changes to Establishment in the Scheme of Delegation to Officers to ensure it reflects the terms of the new Organisational Review Procedure. The current wording and the proposed amendment are set out in Appendix 4.

Financial Implications

- 13 The cost to the Council of lifetime pay protection arrangements is estimated to be £700,000 per annum. This figure includes employees whose pay has been reduced through review or redeployment etc. and legacy pay protection payments.

Environmental Impact

- 14 None

Recommendations

- 15 The Policy and Strategy Committee is recommended to:-
- a) note the contents of this report;
 - b) approve the revised Organisational Reviews Procedure (attached as Appendix 2) for implementation retrospectively from 1 March 2011;
 - c) approve the Policy on Pay Protection (attached as Appendix 3) for implementation retrospectively from 1 March 2011; and
 - d) approve the proposed amendment to the Scheme of Delegation to Officers (item 2.5) as outlined in Appendix 4.

Jim Inch
Director of Corporate Services

Appendices	<ol style="list-style-type: none">1. Letter to the Employees' Side Secretary dated 29 October 20102. Draft Revised Organisational Reviews Procedure3. Draft Policy on Pay Protection4. Proposed amendment to item 2.5 Scheme of Delegation to Officers
Contact/tel/Email	Philip Barr, Head of Human Resources Telephone 0131 469 3963, e-mail Philip.Barr@edinburgh.gov.uk
Wards affected	None
Single Outcome Agreement	Supports National Outcome 15 – 'Our public services are high quality, continually improving, efficient and responsive to local peoples' needs' Supports Local Outcome – 'Our services are continually improving and efficient'
Background Papers	None

Mr Kevin Duguid
Employees' Side Secretary
c/o UNISON Office
23 George IV Bridge
EDINBURGH
EH1 1EN

Date 29 October 2010

Your ref

Our ref PB/LD

Dear Mr Duguid

**NOTICE OF COUNCIL WITHDRAWAL FROM THE LOCAL AGREEMENT ON THE
PROCEDURE FOR THE CONDUCT OF ORGANISATIONAL REVIEWS**

I refer to our meeting on Wednesday 13 October 2010 which you attended with representatives of the GMB, Unison and Unite unions.

At the meeting, in your role as Employees' Side Secretary, you confirmed that the Trade Union side would not accept the draft revised Organisational Review Procedure as a replacement for the existing local collective agreement. You indicated that this was because of the changed definition of minor reviews which in your view gives Directors delegated authority to approve redundancies and grade changes that you believe would not be of a 'minor' nature given the new broad grade structure.

There has been extensive discussion and engagement with the Trade Union side on the content of the draft revised Organisational Review Procedure. The suggestions and amendments put forward by you and your colleagues have been included wherever practicable. I know from the Trade Union side comments that you recognise the draft revised Procedure to be, overall, an improvement on the previous one. I believe the final version has been enhanced through this process of consultation and engagement.

The ending of 'lifetime' pay protection on the implementation of Modernising Pay on 4 October 2010 has also been the subject of extensive dialogue with the Trade Union side. Whilst I acknowledge the Trade Union side reservations on this matter, I believe the Council's position is necessary to minimise the risks of potential litigation and the financial implications that may arise.

Philip Barr, Head of Human Resources, Corporate Services

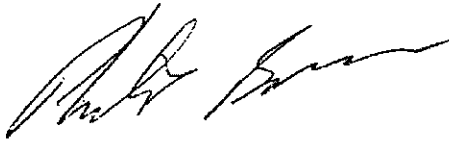
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It is disappointing that despite the efforts of both sides the draft revised Procedure has not been secured as a local collective agreement.

In view of the failure to reach agreement, on behalf of the City of Edinburgh Council I now write to give the recognised Trade Unions four months' notice of the termination of the existing local collective agreement on the Procedure for the Conduct of Organisational Reviews. The four months' notice will end on 1 March 2011.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Philip Barr', written in a cursive style.

PHILIP BARR
Head of Human Resources



ORGANISATIONAL REVIEW PROCEDURE

(covering all Council employees excluding Teachers)

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Draft – to apply retrospectively from 1 March 2011

ORGANISATIONAL REVIEW PROCEDURE

(covering all Council employees excluding Teachers)

1. INTRODUCTION

- 1.1 The Council is required to make the best use of available resources to provide efficient and quality services to the residents of the City of Edinburgh. This will require the Council to periodically review how services are delivered; its functions; organisational structures and staffing levels in order to meet changing business needs and priorities within critical timescales.
- 1.2 Reviews will be conducted in accordance with this Procedure to ensure that:
- a) the process is fair and consistent;
 - b) the Council meets its consultation obligations and involves the Trade Unions and staff;
 - c) business needs are met and staff uncertainty is minimised; and
 - d) the process is completed within the timescales set.

2. SCOPE AND KEY STAKEHOLDER RESPONSIBILITIES

- 2.1 The procedure applies to all employees, other than staff subject to Teaching terms and conditions of service.
- 2.2 Key stakeholders have an obligation to ensure that reviews are progressed and completed within reasonable timeframes while minimising disruption to services and uncertainty for staff. The responsibilities of the Service Director, Lead Officer, Trade Unions, employees and Human Resources (HR) are outlined in Appendix A.

3. PRINCIPLES

- 3.1 An **organisational review** involves structural or managerial change in the way services are organised that will:
- a) have a consequential impact on budget;
 - b) affect a substantial number of employees (typically 20 or more); and
 - c) involve a reduction in employee numbers and/or significant changes to contracts of employment.

3.2 The Procedure does not cover minor changes, for example an alteration to line management reporting arrangements with no other significant changes to contracts of employment. These will be addressed by the Service Director and through appropriate local consultation arrangements.

3.3 It is for Service Directors to initiate and progress organisational reviews to action decisions that have already been made by the Council or its Committees, relating to budget or other agreed policy/strategy. Where such a decision has not been made, any proposal to initiate an organisational review will require approval by the relevant Committee prior to implementation.

3.4 The Council has a legal obligation to engage in **meaningful consultation** with employees and the Trade Union Side at each stage in the organisational review process. In practical terms this will mean:

- a) providing information early and on an ongoing basis thereafter to enable employees and the Trade Union Side to prepare for consultation;
- b) involving the appropriate level of management in consultation and allowing the exchange of views before decisions are made;
- c) establishing regular meetings or a forum for ongoing dialogue (e.g. regular consultative meetings, local JCCs etc.); and
- d) conducting consultation throughout the process with a view to reaching agreement. (even where agreement is not a requirement).

3.5 A senior officer will be nominated as the lead for an organisational review (by CMT in the case of council-wide/cross-service reviews).

3.6 The flowchart at Appendix B sets out the key steps for a Lead Officer undertaking a review, namely:-

STAGE 1	Consider the business case and seek support
STAGE 2	Consult on the proposed review
STAGE 3	Develop the change proposals and seek approval to implement
STAGE 4	Once approved, implement the change

3.7 The Lead Officer will also be responsible for ensuring that an Equalities Impact Assessment is undertaken where required and the results shared with the Trade Unions initially when the review is proposed (Stage 1 of the Procedure) and again at the end of the development stage (see Stage 3).

4. STAGE 1 – REVIEW PROPOSAL

- 4.1 In determining the need for a review, the Council or the relevant Service will give due consideration to the business case (using the appropriate pro forma) and obtain approval as necessary for the review process to be initiated (see paragraph 3.3 above).
- 4.2 At the earliest opportunity, the Lead Officer will notify the Employee's Side Secretary and the Head of Human Resources in writing that it is proposed to undertake a review, setting out the basis of the review and the proposed timescales. The consultation information will include the following where they are known-:
- a) terms of reference for the proposed review;
 - b) start date for the review and proposed timescales for completion (including critical dates);
 - c) details of the Department/service area to be reviewed and the categories of staff affected;
 - d) copies of existing staff structures and job descriptions, where available; and
 - e) initial Equalities Impact Assessment and business case.

Reviews with possible job reductions/redundancies

- 4.3 Consultation with the Trade Unions and staff is an integral part of any organisational review process. Where a review involves possible job reductions/redundancies, this may also trigger the legal obligations to notify the Government and initiate formal consultation with the Trade Unions and employees. The triggers and minimum periods for consultation are set out below.

No. of proposed redundancies	Minimum consultation period (normally before notice is issued)
<20 or single redundancies	30 days
20-99	30 days
100+	90 days

Note: The numbers should include fixed term employees with over 3 months service where the reason for termination is redundancy.

- 4.4 The Lead Officer will be responsible for determining if statutory consultation on possible redundancies is required and ensuring that this process is undertaken. Further advice and support can be obtained from the HR Service.

- 4.5 When redundancy consultation obligations are triggered, in addition to the information at 4.2 above, the Lead Officer must provide the following information to the Trade Unions (and HR – Employee Relations) in writing-:
- a) reason(s) for the redundancy dismissal proposals;
 - b) numbers and categories of staff it is proposed to make redundant;
 - c) total numbers employed in each category at the establishment where redundancies are proposed;
 - d) how and when the redundancy dismissals will be effected;
 - e) the formula for calculating redundancy payments; and
 - f) other relevant details on the work area such as the level of vacancies, overtime and use of agency staff etc.
- 4.6 Where 20 or more redundancies are proposed, HR-Employee Relations will notify the Government on behalf of the Council or Service. Thereafter, the Lead Officer will provide a copy of the completed HR1 form to the Service Director, the appropriate Elected Member and the Trade Unions.

5. STAGE 2 – INITIATE MEANINGFUL CONSULTATION

- 5.1 When the consultation information is received, the Employee's Side Secretary will inform the Lead Officer for the review of the representative or steward who will be involved from the Trade Union Side.
- 5.2 The Lead Officer will invite the Trade Unions to a meeting to discuss the consultation information. The Trade Unions may request other information considered relevant to the review where it has not been previously provided.
- 5.3 Consultation at every stage in the process should be meaningful and approached with an open mind by all those involved and enable consideration of suggestions that may enhance or improve the proposed review or offer an alternative course of action.
- 5.4 The Lead Officer will also arrange for the consultation information to be discussed with the employees likely to be affected by the proposals. The manager concerned may hold an open meeting or choose to talk to staff in groups or one-to-one to make sure those affected understand the reasoning behind the review, the possible impact and so they can contribute their views.
- 5.5 Staff who are absent from work (e.g. due to maternity, sickness etc.) must be sent a copy of the consultation information to their home address and be kept informed of review progress so that they have an opportunity to participate in the consultation process.

6. STAGE 3 – DEVELOP PROPOSALS AND SEEK APPROVAL

- 6.1 The Service will develop new structures, job descriptions and detail any revised working patterns as part of the review process, within the timescales specified in the terms of reference. In doing so, the Service will take into consideration the views of the Trade Union representatives and staff
- 6.2 As a guide, the period to develop the review proposals should normally be at least 30 days where the review affects less than 100 employees, and at least 90 days for 100 employees or more.
- 6.3 Where the timescales for the review need to be adjusted or changed, the Lead Officer will notify employees and the Trade Unions of the revised arrangements and the reasons for the change.
- 6.4 During the period of the review the Lead Officer will engage in meaningful consultation with the Trade Unions and staff (through the Service JCC or other specific meetings, on the progress of the review and arrange to communicate developments to those affected.
- 6.5 Consultation meetings will be arranged to take place on a regular basis or in response to a request by the Trade Unions and staff. Wherever practicable, interim reports or other relevant papers should be given to the Trade Union side in advance of the proposed meeting.
- 6.6 Proposed Job Descriptions and Working Patterns will be submitted to the Remuneration Team for job evaluation and the determination of grade.
- 6.7 At the earliest opportunity, the Lead Officer will arrange for draft proposals arising from the review to be issued to the Trade Unions and the employees affected, supported by any proposed revised staffing structures, job descriptions, grading information and Equalities Impact Assessment.
- 6.8 The Lead Officer will, through meaningful consultation and discussion of the draft proposals arising from the review, seek to reach agreement on the draft proposals with the Trade Union(s) and staff. At the end of the consultation period, the Lead Officer will consider all comments and make a decision on the way forward. This decision will be communicated to the Trade Unions and all affected staff.
- 6.9 Where a Council decision has not already been made for a review to be actioned in relation to budget or agreed policy/strategy, the recommendations must be submitted to a relevant Committee for approval prior to implementation.

7. STAGE 4 – IMPLEMENT THE CHANGES

Implementation Date

- 7.1 Approved changes arising from a review will normally take effect from the date the relevant Service Director approves the recommendation unless an alternative future date is specified and approved.
- 7.2 Exceptionally, an alternative retrospective date may be specified (e.g. if changes are already in operation to meet statutory obligations or delays have occurred that are outwith the Council's control).

Assigning staff to posts in new structure

- 7.3 Once a revised staffing structure is approved, a mechanism will need to be created to deal with the assignment of existing staff to the new structure—
- a) **direct 'matching' into a post** - where it is essentially the same as the employee's current job and where the number of posts is the same or greater than before;
 - b) **ring-fenced 'matching' into a post** – where the post is essentially the same as the employee's current post but the number of posts available is less than before;
 - c) **use of restricted competitive interviews** - where direct 'matching' cannot be applied (i.e. where the post is not essentially the same as the employee's current job or is a newly created job with different duties and responsibilities).
- 7.4 The assignment protocol that is created will be the subject of meaningful consultation with the Trade Unions and reflect the following key principles:-
- a) due regard will be given to the legal definition of “suitable alternative employment” when assigning an employee to a post in the new structure (including posts at a lower grade). Factors that may influence the decision on whether a post is suitable include:-
 - i) job content, competencies and status;
 - ii) pay, hours and pattern of work; and
 - iii) location and working environment.
 - b) due regard will be given to the requirements of the Equality Act 2010 and the need to make reasonable adjustments to remove unnecessary barriers and allow an employee with a disability to be assigned to a post;
 - c) adoption of a “top-down” approach;
 - d) creation of a banding system for “ring-fencing” posts for assignment on the basis of “suitable alternative employment”;

- e) assignment based on an employee's existing substantive post and their completed Personal Profile Form, taking account of:-
 - i) employee's skills and experience in current and previous roles;
 - ii) competencies;
 - iii) basic pay; and
 - iv) status, hours and pattern of work, location and working environment

These factors will all influence whether a post is suitable.

- f) efforts will be made to take account of staff preferences for assignment in relation to locality, hours, working pattern where it is relevant and reasonably practicable to do so; and
- g) the assignment process will be subject to safe recruitment requirements where appropriate e.g. Disclosure Scotland checks, checking of eligibility to work in the UK, etc.

- 7.5 A 'ring-fenced group' for assignment will consist of any permanent employees who are eligible for assignment on the basis of "suitable alternative employment" within the area of the review. Fixed term employees are also required by legislation to be included for assignment except where their exclusion can be objectively justified (for example if the appointment is specifically to provide temporary cover for an absent post-holder or to temporarily provide cover pending the outcome of a review).
- 7.6 An employee will normally be assigned to a new structure on the basis of their substantive post.
- 7.7 An employee whose substantive post is affected by the review and who is absent or seconded elsewhere during that time will receive the same information as their colleagues and be included in the consultation and the assignment process.
- 7.8 An employee who has been undertaking the duties of a higher graded post on a temporary basis (i.e. 'acting-up') will **not** be assigned to a post on the basis of the higher 'acting up' grade. If the employee's substantive post is affected by the review, s/he will be assigned on the basis of that substantive grade.
- 7.9 Similarly, an employee who has been seconded into an area affected by a review will **not** be assigned to a post on the basis of the seconded post. If the employee's substantive post is affected by the review, s/he will be assigned on the basis of that substantive grade.
- 7.10 Employees affected by the review should be advised of the assignment protocol, assigned on that basis, and notified of the outcome of the assignment along with any changes to terms and conditions, including pay.

- 7.11 Information and data on the changes arising from an organisational review such as the revised structure; job descriptions and titles; grades and pay and any staff movement must be recorded and submitted to Human Resources/Payroll in accordance with the processes in place for that purpose.

Moving staff to the new/revised grade

- 7.12 Once assignment is complete, the employee will be moved on to the grade for the assigned post (assimilated). Placing will be in accordance with the Council's assimilation arrangements and be determined by the employee's current base pay:
- a) new/revised grade is higher than current pay grade – placing is on the minimum point for the new/revised grade;
 - b) new/revised grade is the same as current pay grade – placing is on the same spinal column point as before;
 - c) new/revised grade is lower than current pay grade – placing is on the maximum point for the new/revised grade.
- 7.13 HR will issue revised contractual information as appropriate and update employee records.
- 7.14 The Service Director will ensure that the organisational changes become operational.

8. EMPLOYEES NOT ASSIGNED TO A POST

- 8.1 An employee who is not assigned to a post following a review will be notified in writing of their position. The Service must meet its obligations under the Redundancy Procedure and a search for suitable alternative employment will be undertaken in accordance with the Redeployment Procedure.
- 8.2 Vacancies remaining after the conclusion of the assignment process will be subject to the normal recruitment and selection arrangements with appropriate priority being given to staff on the Redeployment register.

9. CERTIFICATE OF PENSION PROTECTION (LOCAL GOVERNMENT PENSION SCHEME)

- 9.1 If an employee is a member of the LGPS and a permanent reduction in pay occurs as a consequence of organisational change, the employee will be issued with a Certificate of Protection of Pension Benefits by the Council's HR Service Centre. If, for any reason, a certificate is not issued, an employee should contact the HR Service Centre to request one within 12 months of the pay reduction taking place.

10. PAY PROTECTION

- 10.1 If an employee is assigned to a lower paid post as part of a review, the terms and conditions of employment including pay for that assigned post will be applied. This will mean that a reduction in pay occurs. See further information in the Council's Policy on Pay Protection.

11. SUPPORT AND RAISING A CONCERN

- 11.1 The Lead Officer and the line manager will ensure that appropriate advice and support is made available to employees throughout the review process.
- 11.2 An employee or a group of employees with concerns about the application of the Organisational Review Procedure should talk it over informally with the line manager or another manager as early as possible to see these can be resolved.
- 11.3 If the matter cannot be resolved informally, the employee(s) can raise concerns formally through the Council's Procedure for Hearing Employee Grievances (or in the case of Chief Officers through the alternative processes that exist).

12. REVIEW

- 12.1 The Policy will be reviewed, as required, by the Director of Corporate Services and in consultation with the recognised Trade Unions.
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KEY STAKEHOLDER RESPONSIBILITIES

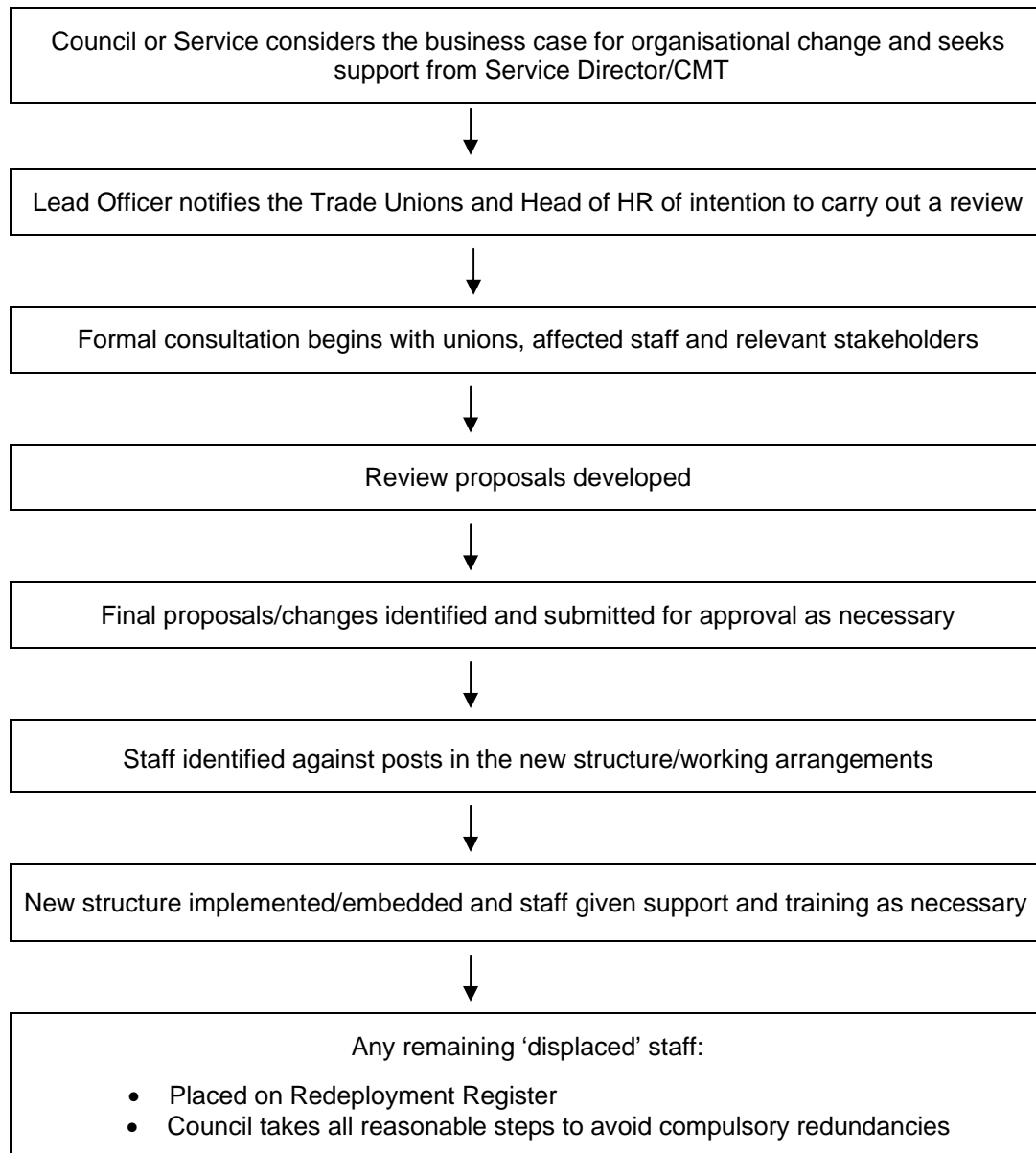
The Service **Director** and nominated Lead Officer will ensure the duties to inform, consult and communicate are initiated at an early stage and maintained throughout the review process with staff and the Joint Consultative Committee (or other consultative forum put in place for the review). Service Directors and line Managers will apply the process fairly and consistently within reasonable timescales, provide support to employees and ensure that all paperwork and audit trails are in place for changes made.

Service Directors are also responsible for ensuring that any new structure is fully operational once the review is complete.

In the case of cross-service review, the nominated Lead Officer must co-ordinate activities across Services to ensure that the above duties are met when a review involves more than one Service. S/he will also advise on the conduct and implementation of cross-service reviews to prompt consistent and co-ordinated action by those involved.

The **Trade Unions and employees** have a responsibility to participate in any restructuring process and to respond promptly to consultation exercises in order that their views are taken into account.

Human Resources will be closely involved in the conduct of reviews and be available to provide advice and support to Directors, Managers and staff during the implementation of revised staffing structures.

ORGANISATIONAL REVIEW PROCEDURE**FLOWCHART**



POLICY ON PAY PROTECTION

(covering all Council employees excluding Teachers)

1. Application of Pay Protection

- 1.1 The Council will adopt the following position with regard to the application of pay protection in a number of employment circumstances:
- a) Implementation of Organisational Reviews – **no pay protection**;
 - b) Redeployment as a consequence of reasonable adjustments required to comply with the Disability Discrimination Act – **no pay protection**;
 - c) Redeployment in order to mitigate sickness absence – **no pay protection**; and
 - d) Redeployment to mitigate redundancy dismissal – **no pay protection**.
- 1.2 A one-off arrangement applies from 4 October 2010 for a period of 3 years to employees assimilated to the new pay structure in accordance with Paragraph 19 of the 1999 National Agreement on Pay and Conditions of Service (the Red Book).
- 1.3 If staff move to another job during the Pay protection period and their new contractual pay is less than their protected pay, any residual Modernising Pay protection will continue until the new pay is more than the protected pay or the end of the 3 years.

2. Review

- 2.1 This policy will be subject to a periodic review by the Head of Human Resources.

COUNCIL SCHEME OF DELEGATION TO OFFICERS

1. Current wording of item 2.5 – Changes to Establishment

‘Directors can make changes to staffing structures, numbers and gradings (in accordance with approved job evaluation arrangements) except major staffing reviews which will continue to be reported to the Executive. However, they must keep to guidelines issued by the Director of Corporate Services. If guidelines do not apply, the Director must consult the Director of Corporate Services.’

2. Proposed revised wording for item 2.5 – Changes to Establishment

‘Where a Council decision has already been made for a review to be actioned in relation to budget or agreed policy/strategy, a Service Director can make changes to staffing structures, numbers and gradings (in accordance with approved job evaluation arrangements). The Service Director must keep to the terms of the Organisational Review Procedure or other guidelines issued by the Director of Corporate Services.

Otherwise, a Service Director must obtain approval from the relevant Council Committee to action an organisational review’.