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GIG Felindre  
Velindre NHS Trust

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## REDEPLOYMENT PROCEDURE

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## **1. INTRODUCTION AND AIM**

Redeployment is a process by which suitable alternative employment is sought for employees who are, for a variety of reasons, unable to carry out the duties of their current post, either permanently or temporarily.

Redeployment is referred to in a number of existing Trust policies e.g. NHS Wales Organisational Change Policy (OCP), Managing Attendance at Work Policy, Capability Policy, Redundancy and Security of Employment Policy and Disciplinary Policy.

This procedure is designed to provide a framework for redeployment in conjunction with these policies (with the exception of the Organisational Change Policy, which has its own separate Redeployment Procedure) and any other situation where the redeployment of an employee may be appropriate.

There is an expectation that all employees, including Directors, senior managers and line managers will co-operate fully in the implementation of this procedure, to enable Velindre University NHS Trust and hosted organisations to fulfil its legal obligations to its employees.

## **2. SCOPE OF THE PROCEDURE**

This procedure will only apply in instances where redeployment is appropriate (See Section 3 below).

The procedure will not apply to redeployment cases which may arise as the result of an organisational change process. Such redeployment cases will be managed in accordance with the NHS Wales Organisational Change Policy.

This procedure relates to the redeployment of employee's within Velindre University NHS Trust. Where appropriate the Trust or hosted organisation may approach other NHS Wales organisations to establish if they can assist with redeployment cases. Such approaches to NHS Wales organisations will be managed by the Workforce and OD Department. It should be noted that these organisations have no obligation to co-operate with the redeployment process, unless the redeployment is related to an OCP case.

Where an employee potentially meets the definition of disability contained within the Equality Act 2010, the Trust has a positive duty under the legislation, supported by case law, to make reasonable adjustments to ensure that they remain in employment, wherever feasible and practical. This includes a requirement to seek and where applicable provide the employee with suitable alternative work (see Section 3 below for details on considerations for suitable alternative role). This may require the manager to treat a disabled employee more favourably, to remove any disadvantage which may be attributable to their disability (Refer to Section 7 and 8 of the Managing Attendance at Work Policy).

## **3. AIMS AND OBJECTIVES**

The aim of the procedure is to, where appropriate, redeploy employees into suitable alternative employment posts. The Trust wishes to retain the knowledge, skills and experience of its employees. As such, the option of redeployment may enable an individual to remain in employment, in a different vacant role, which is better suited to their needs and/or abilities, when it is clear that it is no longer tenable for them to remain in their substantive post.

The objectives of the procedure are: -

- To provide clear advice, support and guidance to managers and employees regarding their role(s) and responsibilities in managing redeployment situations.
- To minimise the incidence of dismissal which may arise as a result of a potential redeployment situation.

There are many eventualities whereby redeployment in accordance with the provision of this procedure might be necessary or appropriate, for example:

- Long term sickness absence cases
- Frequent short term sickness absence cases
- Health issues directly relating to an employee's occupation / role
- End of a fixed term contract where an employee has more than 2 years continuous service with an NHS organisation(s)
- Where downgrading of band / grade is recommended due to unresolved capability issues
- As an outcome of a disciplinary hearing
- Where conflict resolution has not been possible, and Divisional Directors, Senior Managers and Senior Workforce staff considers that redeployment is an appropriate option to safeguard the team/department, service provision and/or health of the employee concerned
- After a secondment or a career break, where the post has changed or could not be held vacant
- Alternative to compulsory redundancy (outside of an OCP process).

Where the need to redeploy employees occurs as a result of any of the above scenarios, alternative employment should be considered by the manager and the employee. The following criteria will be considered when identifying suitable alternative roles:-

- Nature of the job, including job content (including similarity to existing role)
- Status of the role
- Salary
- Hours of Work
- Workplace (Base) (including potential travel distance / time / modes of transport etc.)
- Work environment
- Job / career prospects
- Qualifications, knowledge and skills required for the role

- Personal and/or domestic circumstances. In relation to personal circumstances employees will be expected to show some flexibility by adapting their domestic arrangements where possible<sup>1</sup>

The manager should where appropriate take advice from the relevant Workforce Department when considering the suitability criteria. Occupational Health advice and / or support should also be sought in ill-health related cases, to determine the appropriateness of redeploying the employee and details of what roles etc. may constitute a suitable alternative post.

The employee in partnership with the relevant Workforce Department, will actively seek redeployment opportunities for a maximum period, which is equivalent to the employee's contractual or statutory notice period, whichever is longer. Once an employee has been identified as a redeployment candidate their details will be added to the Trust's Redeployment Register by the relevant Workforce Department. The redeployment period may include time spent in a temporary or a secondment posts but will exclude any agreed trial periods.

In exceptional circumstances (e.g. the employee is not able to attend work due to sickness absence, bereavement etc.) the redeployment trial period may be extended, following discussion between the line manager, a senior Workforce Manager and the employee's trade union representative / work colleague.

#### **4. PRINCIPLES**

Implicit within the aims and values of the Trust are key principles relating to equality and diversity. The Trust promotes equality of opportunity in respect of how our employees are managed and treated.

Where the Trust is seeking a redeployment opportunity, identified roles must be vacant, approved via the relevant scrutiny panel for advertisement and fully funded. The Trust will not create posts to accommodate individual needs. In respect of temporary redeployment cases, the manager may use available funds to provide a short-term interim solution, which meets the needs of the service and the employee, this must have a specified end date.

An employee may not benefit financially from being transferred into a redeployment post, therefore employees will only be considered for redeployment into posts that are on the same pay band / grade as their substantive post. An exception to this will be where an employee is being redeployed due to a capability or a disciplinary issue. In such cases, the employee may be redeployed into a post which is on a lower pay band / grade than that of their substantive post. In such circumstances pay protection provisions will not apply. Similarly, if an employee wants/requests to take a lower banded position, pay protection provisions will not apply.

Where an employee on the grounds of ill-health makes a specific request to be considered for posts which are more than one pay band / grade lower than their substantive post band

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<sup>1</sup> Account must be taken of the requirement to make reasonable adjustments for staff covered by the Equality Act 2010.

/ grade, such requests will be accommodated. In such circumstances pay protection provisions will not apply.

## **5. ROLES AND RESPONSIBILITIES**

The effective operation of this procedure is dependent on the full co-operation of all Velindre University NHS Trust divisional and hosted organisation's managers working collaboratively, to ensure that all appropriate vacancies are made available to redeployment candidates.

The Workforce Department, in co-operation with the scrutiny process, will review and consider all new vacancies, against the Trust's Redeployment Register, to determine whether they may offer potential suitable alternative employment opportunities.

The Trust will not arrange open competition interviews for new vacancies, until potential redeployment candidates have been considered for these posts, via the agreed redeployment process.

Once a post has been identified by the Workforce Advisor/Support the manager will then liaise with the redeployee and the Recruiting Manager to assess suitability.

### **5.1 Executive Redeployment Lead**

The Executive Director of Workforce and OD will have overall organisational responsibility for ensuring the effective resourcing and operation of this procedure.

All divisions and hosted organisations are required to implement a vacancy scrutiny and control process. This process will ensure that no vacancies are authorised to be advertised via an open competition process, until it has been confirmed that the approved vacant posts do not offer potential suitable alternative opportunities to any redeployment candidates. The Workforce Advisor/Support will liaise with each other, to establish whether any vacancies could potentially provide suitable alternative employment, to an employee on the Redeployment Register.

If posts are advertised without being considered against the candidate's available on the redeployment register, the Executive Director of Workforce and OD may request that the advertisement / recruitment process is withdrawn until their suitability can be determined.

### **5.2 Line Manager**

The line manager will be required to make the Workforce Team aware of the details of any employee who has been identified as a potential redeployment candidate. This is to ensure that they and the affected employee are provided with timely and appropriate advice and support throughout the process. The line manager will support the Workforce Team representative in managing the redeployment process.

### **5.3 Nominated Workforce Officer / Manager**

The Trust / hosted organisation will nominate a Workforce Officer / Manager, to support

redeployment candidates in their search for suitable alternative employment. The Workforce Advisor / Manager will act as the “Redeployment Case Manager” for all such redeployments cases.

It will be the role of the nominated redeployment case manager to:

- ensure the identified employee’s information is recorded on the Trust’s Redeployment Register, to facilitate the appropriate management of their case
- ensure the details / information contained within the Trust’s Redeployment Register are maintained and kept up to date
- review all vacancies that are submitted via the Trust’s / hosted organisation’s Scrutiny Process, to establish whether any of these posts could offer a potential suitable alternative opportunity, to employees on the Trust’s Redeployment Register
- as necessary, assist staff on the redeployment register to access NHS jobs and any other online recruitment sites, recruitment media etc. to download / access vacancy information
- ensure that all appropriate vacancies and the associated recruitment documentation is made available to employees registered on the redeployment register
- discuss appropriate vacancies with employees on the redeployment register to assist them to assess and make an informed decision regarding their suitability of vacant posts, with particular reference to the person specification, job description and any other available vacancy related information
- as necessary, assist employees with their application for suitable alternative posts, where it has been identified that they meet the essential selection criteria for the role
- ensure that employees designated as at risk, that meet the essential short-listing criteria are offered the opportunity to discuss the post with the appointing manager, prior to the commencement of the formal recruitment process
- liaise with the relevant Workforce Manager, should an appointing manager fail to offer a post to an employee where it has been determined that they meet the suitability assessment criteria for the post. This will ensure the matter is investigated and resolved appropriately and in a timely manner
- liaise with the relevant Workforce Manager, to determine the legal and contractual consequences, should an employee on the redeployment register decline to apply for a potential suitable alternative employment post, which has been brought to their attention or accept the offer of such a post
- ensure employees that are on the redeployment register have access to

counselling / careers advice services etc., communicating the availability of such services as appropriate; and

- manage the workforce transactional processes associated with the redeployment of an employee.

#### 5.4 Appointing Manager

The appointing manager is responsible for;

- ensuring that redeployment candidates that express an interest in their vacancy and meets the criteria for the post are offered the opportunity to have a suitability assessment meeting/discussion in respect of the post
- ensuring where redeployment candidates meet the suitability assessment criteria for the post (based on the content of their CV / Information Collection Form) and following a successful suitability assessment meeting/discussion, are offered the post, prior to the post being made available to applicants via an open recruitment competitive process. If there is only one suitable 'at risk' employee identified for a redeployment post, the Trust may offer it to that employee without any formal suitability assessment process.
- offering a four-week trial period where there is uncertainty about an employee's suitability for a post. The trial period will provide both parties time to appropriately assess the suitability of the post. In exceptional circumstances, the trial period can be extended for a maximum of 8 weeks by mutual agreement. This should be on the basis that further assessment of progress needs to take place, based on the assessment process, established and agreed prior to the commencement of the trial period.
- seeking advice from the nominated Redeployment Case Manager where they have been requested to undertake a suitability assessment with a redeployment candidate and they disagreed that they meet the essential criteria for the post i.e. job description and person specification. In such circumstances the manager should write to the Redeployment Case Manager providing reasons for their assessment of the candidate's information
- not advertising an approved post via open recruitment competition until it has been confirmed that there are no redeployment candidates eligible to apply
- reporting the outcomes from the suitability assessment meeting / discussion and where appropriate providing initial feedback if their suitability is unclear to the redeployment candidate and the Redeployment Case Manager.
- notifying the candidate of their decision regarding their suitability for the post, following their discussion with the Redeployment Case Manager; and
- providing the Redeployment Case Manager with a copy of their suitability assessment meeting records / notes, to ensure the reasons for not making an offer of suitable alternative employment are reasonable, objective and

documented.

## 5.5 Employee

Where it has been confirmed that it is reasonable and appropriate to seek suitable alternative employment for an employee, they will be designated by the Trust as a redeployment candidate.

Redeployment candidates may also request that their details be notified to other NHS Wales organisations for consideration of vacancies. It should be noted that these organisations have no obligation to co-operate with the redeployment process, unless the redeployment is related to an OCP case. Where an employee is interested in a post advertised in another NHS organisation, the Workforce Redeployment Case Manager will ensure that their details (as contained in the Information Collection Form) are forwarded to the Workforce Department of the NHS organisation, for consideration during the shortlisting process.

It will be the responsibility of the redeployment candidate to:

- maintain regular contact with their Redeployment Case Manager, including notifying them of any extended periods of absence, such as annual leave, sick leave, maternity leave etc., to ensure that information about vacancies can continue to be made available to them during the redeployment period
- complete and sign the Information Collection Form, providing all relevant information / documentation in relation to contact details, employment record, qualifications, experience and role / job preferences
- complete and sign the Redeployment Scheme Employee Agreement Form to comply with the terms of the redeployment scheme and work proactively with the Trust to secure alternative employment, within the prescribed notice period timescales
- access and review NHS jobs and other relevant intranet job search sites, recruitment media etc. on a daily basis, to assist in the identification of potentially suitable internal and external NHS / public sector vacancies
- consider and pursue all reasonable suitable alternative employment opportunities within the Trust / NHS Wales as appropriate
- bring to the attention of their Redeployment Case Manager any vacancies which they are interested in and their Redeployment Case Manager may not be sighted on, to enable such opportunities to be explored via this process, if appropriate
- contact their Redeployment Case Manager, should they require any additional information regarding vacant posts to enable them to make an informed decision regarding the suitability of the vacancy
- participate in the suitability assessment process in respect of all identified suitable alternative posts and attend all associated arranged meetings

- approach their manager to request reasonable time off work to attend suitability assessment meetings / discussions / interview, in relation to their redeployment
- co-operate fully when considering and being considered for suitable alternative posts. Whilst reasonable attempts will be made to accommodate employee's preferences, they should not unreasonably refuse to accept a suitable alternative employment post. Should an employee unreasonably refuse a post that has been assessed by the Trust as being one which could provide suitable alternative employment, the matter will be investigated. Should this process determine that the employee has unreasonably refused to participate in an interview process / accept an offer of suitable alternative employment, it may result in the employee losing their entitlement to a contractual or statutory redundancy payment upon termination of their employment
- meet with a senior Workforce Manager should their Redeployment Case Manager believe that they have unreasonably refused an offer of suitable alternative employment.

All redeployment candidates will be entitled to be accompanied by a trade union representative or a work colleague, if they so wish during any redeployment related meetings. The employee's trade union representative or workplace colleague will not be permitted to attend any suitability assessment meetings / discussions or interviews.

#### 5.6 Occupational Health Services

Occupational Health advice will be sought where appropriate in respect of cases relating to ill-health, capability etc. to explore reasonable adjustment and which post(s), nature of duties and hours of work etc. would be deemed to be suitable in the employee's specific circumstances. Advice regarding the appropriateness of seeking Occupational Health assessment in redeployment cases may be sought via the relevant Workforce Department.

Where a temporary reduction in hours is recommended following an occupational health assessment, to facilitate a gradual return to full duties, reference should be made to Section 7 of the Managing Attendance at Work Policy – Rehabilitation back into the Workplace following sickness absence.

#### 5.7 Trades Union / Representative

At the request of the redeployment candidate their trade union / professional organisation representative may be responsible for;

- Supporting the employee and attending meetings with them in relation to their redeployment. This will **not include** attendance at suitability assessment meetings with an appointing manager, to discuss a specific post or formal interviews
- Working with the Workforce Department to address any concerns they may have regarding the Trust's and/or the employee's adherence to the provisions of this procedure, seeking to resolve any issues of concern, informally where possible.

## **6. REDEPLOYMENT ON HEALTH GROUNDS**

Redeployment most commonly arises as an option when an employee is unlikely to be able to return to work in their existing post, in the foreseeable future, due to ill-health capability reasons. Such cases normally occur following a period of long-term sickness absence. Alternative solutions in respect of adjustment to the type, hours, location and nature of work, should be considered by the manager, in conjunction with advice from the relevant Workforce Department and the Occupational Health Department. These sources of advice can assist to determine what changes would constitute a reasonable adjustment, in respect of the employee's underlying health condition and prognosis for recovery.

The suitability and equivalence of posts will be considered broadly and flexibly by the relevant Workforce Department, in discussion with the employee and where appropriate their Trade Union representative. Such discussions will take full consideration of the advice provided by the Occupational Health Department.

Where a reduction in hours is recommended by the Occupational Health Department on a temporary basis, to facilitate a gradual return to full work duties, reference should be made to Section 7 of the Managing Attendance at Work Policy.

It should be noted that endeavouring to find redeployment opportunities for employees with health issues is deemed to be good practice, as it strives to retain employees and may assist to ensure that reasonable adjustments are made in compliance with the requirements set out in the Equality Act 2010 and the Managing Attendance at Work Policy.

If an employee becomes disabled and they are no-longer able to fulfil requirements of their substantive post, reasonable adjustments should always be explored in the first instance. If the adjustments cannot be made to the employee's substantive post, attempts should be made to redeploy them into a suitable alternative post. In such cases specialist advice should be sought in relation to the employee's practical needs, which may be accessed through the Occupational Health Department or from external sources such as a specialist consultant, GP, the Disability Employment Advisor (Employment Service), the Shaw Trust, Remploy or other specialist organisations/charities, for example, the RNIB.

### **6.1 Procedure for Redeployment on Health Grounds**

The Trust's Redeployment Register will be held by the Workforce Department. Opportunities will be actively sought for a maximum period in compliance with the employee's contractual or statutory notice period, whichever is the greatest, from the date that the employee has been identified or deemed fit to participate in the redeployment process. The redeployment period may include time spent in a temporary or a secondment posts but will exclude any agreed trial periods.

Suitable alternative posts for redeployment will be sought across the Trust, including within hosted organisations. The employee can either provide a Curriculum Vitae (CV) or complete the Collection of Information Document to help inform the Trust and the employee's judgements regarding the types of redeployment posts which may provide suitable alternative employment. It is the employee's responsibility to ensure that they

provide all information necessary to assist the Trust in finding suitable alternative posts. In determining suitability, consideration will be given to the factors set out in Section 3 of this procedure along with any specific medical / reasonable adjustment advice.

The contractual / statutory notice period will run concurrently with the redeployment period. Should a suitable opportunity be identified, the notice period may be extended to accommodate the trial period, where applicable.

Where the redeployment period has come to an end with no success the contract of employment is considered for termination on the grounds of capability due to ill health, in accordance with the All Wales Managing Attendance at Work Policy.

## **7. OTHER CIRCUMSTANCES FOR REDEPLOYMENT**

Where redeployment situations occur as a result of any of the below circumstances, alternatives in type, band / grade hours, location and nature of work, should be considered by the manager and the employee, taking advice from the relevant Workforce Department.

### **7.1 Outcome of a Capability process**

Where it has been determined through the application of the NHS Wales Capability Policy that an employee would benefit from being redeployed into an alternative post advice should be sought from the relevant Workforce Department, as every case will be different.

### **7.2 Ending Temporary/Fixed-Term Contracts**

Refer to the Redundancy and Security of Employment Policy, Section 2. Advice should be sought from the Workforce and OD Department, as every case will be different and may not be subject to redundancy.

### **7.3 Flexible Retirement**

Managers must liaise with their Workforce Officer / Manager to identify suitable alternative redeployment within the Trust if the employee is seeking to 'step down' or retire and re-engage. Please refer to the Trust's Accessing NHS Pension and Retirement Policy.

Advice should be sought from the relevant Workforce Department, as every case will be different.

### **7.4 Respect and Resolution**

Where it has been identified and recommended through the application of the NHS Wales Respect and Resolution Policy that an employee would benefit from being redeployed into a suitable alternative post, advice should be sought from the relevant Workforce Department, as every case will be different.

## **8. TRIAL PERIODS**

Where an employee is seeking a redeployment for a reason other than redundancy, they are legally entitled to be provided with the same opportunity to undertake a four-week trial period. The trial period will provide the employee and the appointing manager with an opportunity to decide whether they consider the new post to be suitable. A trial period may also be used where the suitability of the post is disputed or unclear to either the appointing manager or the employee. A longer trial period (up to 8 weeks) may be agreed by the appointing manager and the employee, in limited circumstances, for example to provide training or re-training.

Where a trial period is agreed, the appointing manager and the employee should establish in writing, the agreed duration of the trial and how both parties will assess the suitability of the post during and / or at the end of this period.

At the end of the trial period, it is the responsibility of the appointing manager to inform the Redeployment Case Manager and the employee whether or not the appointment to the post has been regarded as successful. Where the employee proves to be competent in the new post within the first few weeks, the appointment can be confirmed at any stage, prior to the end of the four-week trial period.

Redeployment will be treated in the same way as if the person had been recruited to the post via an open recruitment process i.e., they will be appointed on to the appropriate pay band and pay point and NHS Terms and Conditions of Service. The offer of the redeployment post, i.e. the new substantive post, will be confirmed to the individual in writing and they will be provided with a copy of their new contract of employment.

Where the appointment is deemed not to have been successful at the end of the agreed trial period, the written objective reason(s) must be provided to the relevant Redeployment Case Manager.

Where the manager concludes that the trial appointment has been unsuccessful and the employee is not suitable for the post, they will be responsible for putting the objective reason(s) in writing to the employee, copied to the Redeployment Case Manager.

Where the employee concludes that the trial appointment has been unsuccessful and the post is not suitable for them, they will be responsible for putting their objective reason(s) in writing to the appointing manager and the relevant Redeployment Case Manager, using the.

In the event of an unsuccessful trial period, the written reasons will be reviewed by the Redeployment Case Manager and discussed with a senior Workforce Manager/ Executive Lead (depending on the seniority of the post), in the relevant organisation, to determine what follow up action may be required, if any.

If a redeployment trial period is confirmed to have been unsuccessful, a further opportunity may be sought i.e. a total of two, if there is time within the remaining redeployment period.

If an offer of redeployment to a post which is considered to be suitable and reasonable is rejected by an employee, no further redeployment will be offered by the Trust.

Where it is concluded that an employee has **unreasonably** refused to participate in

suitability assessment meetings or refuses an offer of suitable alternative employment (at the offer stage or following a trial period), they can be removed from the redeployment register and the Trust reserves the right to proceed to terminate their employment.

Where it is established that an employee has **reasonably** refused an offer of suitable alternative employment (at the offer stage or following a trial period), they will be required to continue to seek suitable alternative employment, in accordance with the provisions set out in this procedure for the duration of their notice period.

## **9. UNSUCCESSFUL REDEPLOYMENT**

An employee who is offered a new job via the redeployment process will be provided with a copy of the job description and person specification, detailing the post and the requirements to perform effectively in the role. Where any of the terms and conditions attached to the post differ to those contained in the employee's substantive post, these will be set out separately in writing as will any protection arrangements (if applicable) which may apply.

The refusal to accept an offer of a suitable alternative employment will affect an employee's eligibility to receive a contractual redundancy payment as set out in Section 16.17 of the NHS Terms and Conditions of Service Handbook. Where it is determined that an employee is not eligible to receive a contractual redundancy payment the Trust will consider their eligibility to receive a statutory redundancy payment. This will be assessed on a case by case basis by the relevant Workforce Department, with reference to the facts of the case.

In relation to redeployment into a suitable alternative employment post, the criteria outlined in Section 3 of this procedure will be considered, as will the reasonableness of the employee's refusal of the post, if applicable.

Where an employee fails to be redeployed into a suitable alternative employment post by the end of the relevant notice/redeployment period, the Trust must follow the appropriate dismissal procedure. The procedure to be followed will depend on the circumstances of the case. Where a dismissal is required at the end of this process, the manager should refer back to the relevant original Workforce Policy, as outlined below:

- Managing Attendance at Work Policy
- Disciplinary Policy
- Capability Policy
- Retirement Policy
- Redundancy and Security of Employment Policy

## **10. PAY AND PROTECTION**

Protection of pay will only apply in the following redeployment case:

Where the reason for redeployment is due to ill-health and is being managed under the All Wales Managing Attendance at Work Policy with Occupational Health advice, the

individual will, if appropriate, receive short-term protection of earnings, in accordance with the NHS Terms and Conditions of Service.

If an employee wishes to be redeployed into a post which is more than one pay band lower than their current substantive post, this will not be deemed to be a 'suitable alternative post' and therefore pay protection will not apply in these circumstances.

Redeployment due to performance related capability or disciplinary issues will result in no pay protection being provided. Advice should be sought from the relevant Workforce Department, in such situations.

Where a redeployment results in an employee moving their base and this results in excess travel or car parking expenses, these expenses will only be payable during the four-week redeployment trial period. This may be extended up to a maximum of twelve weeks, should the trial period be extended to provide the employee with training or re-training.

## **11. EQUALITY IMPACT ASSESSMENT STATEMENT**

The Trust is committed to ensuring that, as far as is reasonably practicable, the way it provides services to the public and the way it treats its employees reflects their individual needs and does not discriminate against individuals or groups.

The Trust has undertaken an Equality Impact Assessment (EQIA) and received feedback on this procedure and the way it operates. The Trust wanted to know of any possible or actual impact that this procedure may have on any groups in respect of gender (including maternity and pregnancy as well as marriage or civil partnership) race, disability, sexual orientation, Welsh language, religion or belief, transgender, age or other protected characteristics.

The assessment found that there was no impact to the equality groups mentioned and this procedure will have a positive impact on all of the 'protected characteristic' groups where appropriate the Trust will make plans for the necessary actions required to minimise any stated impact to ensure that it meets its responsibilities under the equalities and human rights legislation.

## **12. GETTING HELP**

Further information and support is available from the Trust's Workforce and OD Department.

## **13. RELATED POLICIES**

- Managing Attendance at Work Policy
- Disciplinary Policy
- Capability Policy
- Respect and Resolution Policy
- Retirement Policy

- Redundancy and Security of Employment Policy

For redeployments which are associated with organisational change, please refer to the NHS Wales Organisation Change Policy.

## **14. APPENDIX 1: MANAGERS CHECKLIST**

When meeting with an employee to consider them for a trial redeployment period you will need to discuss the following:

### **DETAILS OF THE REDEPLOYMENT OPTIONS**

- Job Description / Person Specification
- Skills / competencies required
- The Department and work team
- Full time or part time etc.
- Working arrangements
- Arrange an informal visit to the area

### **DETAILS OF THE PERSON BEING CONSIDERED FOR REDEPLOYMENT**

- Collection of Information Form/Application form and employment history, experience, skills, etc
- Health problems / limitations or adjustments
- Occupational Health advice and confirmation post is suitable
- Any other reasons for redeployment (non-health) or important managerial issues e.g. disciplinary warnings, NMC/HPC

### **ANY PRACTICAL ISSUES OR IMPACT ON POTENTIAL REDEPLOYMENT OPPORTUNITIES**

- Training needs and how to meet these
- Pay protection
- Phased return to work
- Trial period – length, funding, objectives, mentor, competencies, extension, what happens at the end i.e. formal review
- When can they start?

## 15. APPENDIX 2 – REASONABLE ADJUSTMENTS

### EQUALITY ACT 2010

The Equality Act 2010 came into force on 1st October 2010. The Act brings together a number of existing anti-discrimination laws and introduces changes that give individuals greater protection from unfair discrimination. It sets out the characteristics that are protected by law and the behaviour that is unlawful. The protected characteristics are (in alphabetical order):

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion and belief
- Sex
- Sexual orientation

Under the Act people are not allowed to discriminate, harass or victimise another person because they have any of the protected characteristics. There is also protection where someone is perceived to have one of the protected characteristics or where they are associated with someone who has a protected characteristic. The Act changes and extends certain concepts and definitions and recognises 6 forms of discrimination: direct; indirect; discrimination by perception; discrimination by association; harassment and victimisation.

The Equality Act 2010 Statutory Code of Practice on Employment provides a detailed explanation of the provisions of the Act relating to discrimination in employment and work-related activities. The Code may be downloaded from the Equality and Human Rights Commission's website at [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

The following sections are taken from the Statutory Code of Practice on Employment (Chapters 2 and 6) and provide information on the protected characteristic of Disability and the legal duty to make reasonable adjustments.

### DISABILITY

Only a person who meets the Act's definition of disability has the protected characteristic of disability. In most circumstances, a person will have the protected characteristic of disability if they have had a disability in the past, even if they no longer have the disability.

The Act says that a person has a disability:

'If they have a physical or mental impairment which has a long-term and substantial adverse effect on their ability to carry out normal day-to-day activities'.

Physical or mental impairment includes sensory impairments such as those affecting sight or hearing. Long-term means that the impairment has lasted or is likely to last for at least 12 months or for the rest of the affected person's life. Substantial means more than minor or trivial.

Where a person is taking measures to treat or correct an impairment (other than by using spectacles or contact lenses) and, but for those measures, the impairment would be likely to have a substantial adverse effect on the ability to carry out normal day to day activities, it is still to be treated as though it does have such an effect.

This means that 'hidden' impairments (for example, mental illness or mental health conditions, diabetes and epilepsy) may count as disabilities where they meet the definition of the Act.

Cancer, HIV infection and multiple sclerosis are deemed disabilities under the Act from the point of diagnosis. In some circumstances, people who have a sight impairment are automatically treated under the Act as being disabled.

Progressive conditions and those with fluctuating or recurring effects will amount to disabilities in certain circumstances.

For more on the concept of disability, see Appendix 1 of the Statutory Code of Practice on Employment. Guidance on matters to be taken into account in determining questions relating to the definition of disability is also available from the Office for Disability Issues: <http://www.officefordisability.gov.uk/docs/wor/new/ea-guide.pdf>

## **DUTY TO MAKE REASONABLE ADJUSTMENTS**

The duty to make reasonable adjustments requires employers to take positive steps to ensure that disabled people can access and progress in employment. This goes beyond simply avoiding treating disabled workers, job applicants and potential job applicants unfavourably and means taking additional steps to which non-disabled workers and applicants are not entitled.

The duty applies to employers of all sizes but the question of what is reasonable may vary according to the circumstances of the employer. Part 2 of the Statutory Code has more information about good practice in making reasonable adjustments in different work situations.

Discrimination against a disabled person occurs where an employer fails to comply with a duty to make reasonable adjustments imposed on them in relation to that disabled person.

The duty to make reasonable adjustments comprises three requirements. Employers are required to take reasonable steps to:

Avoid the substantial disadvantage where a provision, criterion or practice applied by or on behalf of the employer puts a disabled person at a substantial disadvantage compared to those who are not disabled.

Remove or alter a physical feature or provide a reasonable means of avoiding such a feature where it puts a disabled person at a substantial disadvantage compared to those who are not disabled.

Provide an auxiliary aid (which includes an auxiliary service) where a disabled person would, but for the provision of the auxiliary aid, be put at a substantial disadvantage compared to those who are not disabled.

The duty to make reasonable adjustments applies in recruitment and during all stages of employment, including dismissal.

Provision, criterion or practice

This is not defined by the Act but should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements or qualifications including one-off decisions and actions.

## **EXAMPLE**

An employer has a policy that designated car parking spaces are only offered to senior managers. A worker who is not a manager, but has a mobility impairment and needs to park very close to the office, is given a designated car parking space. This is likely to be a reasonable adjustment to the employer's Car Parking Policy.

## **SUBSTANTIAL DISADVANTAGE**

The Act says that a substantial disadvantage is one which is more than minor or trivial. Whether such a disadvantage exists in a particular case is a question of fact, and is assessed on an objective basis.

The purpose of the comparison with people who are not disabled is to establish whether it is because of disability that a particular provision, criterion, practice or physical feature or the absence of an auxiliary aid disadvantages the disabled person in question. Accordingly, and unlike direct or indirect discrimination, under the duty to make reasonable adjustments there is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled persons.

## **WHAT IF THE EMPLOYER DOES NOT KNOW THAT THE WORKER IS DISABLED?**

For disabled workers already in employment, an employer only has a duty to make an adjustment if they know, or could reasonably be expected to know, that a worker has a disability and is, or is likely to be, placed at a substantial disadvantage. The employer must, however, do all they can reasonably be expected to do to find out whether this is the case. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.

The Act does not prevent a disabled person keeping a disability confidential from an employer. But keeping a disability confidential is likely to mean that unless the employer could reasonably be expected to know about it anyway, the employer will not be under a duty to make a reasonable adjustment. If a disabled person expects an employer to make a reasonable adjustment, they will need to provide the employer, or someone acting on their behalf, with sufficient information to carry out that adjustment.

If an employer's agent or employee (such as an occupational health adviser, a Workforce officer or a recruitment agent) knows, in that capacity, of a worker's or applicant's disability, the employer will not usually be able to claim that they do not know of the disability and that they therefore have no obligation to make a reasonable adjustment. Employers therefore need to ensure that where information about disabled people may come through different channels, there is a means, suitably confidential and subject to the disabled person's consent, for bringing that information together to make it easier for the employer to fulfil their duties under the Act.

## **TAKING REASONABLE STEPS**

The following are some of the factors which might be taken into account when deciding, what is a reasonable step for an employer to have to take:

- Whether taking any particular steps would be effective in preventing the substantial disadvantage
- the practicability of the step
- the financial and other costs of making the adjustment and the extent of any disruption caused
- the extent of the employer's financial or other resources
- the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and
- the type and size of the employer

Ultimately, the test of 'reasonableness' of any step an employer may have to take is an objective one and will depend on the circumstances of the case.

The Act does not permit an employer to justify a failure to comply with a duty to make a reasonable adjustment. However, an employer will only breach such a duty if the adjustment in question is one which it is reasonable for the employer to have to make.

If an employer does not comply with the duty to make reasonable adjustments, they will be committing an act of unlawful discrimination.

## **REASONABLE ADJUSTMENTS IN PRACTICE**

Chapter 6, Sections 6.32 to 6.35 of the Statutory Code of Practice on Employment provides information on good practice in carrying out reasonable adjustments, including examples of adjustments that would be considered reasonable for the purposes of the Act.