

Redundancy handling



booklet

inform

advise

train

work
with you

Acas can help *with your employment relations needs*

Every year Acas helps employers and employees from thousands of workplaces. That means we keep right up to date with today's employment relations issues – such as discipline and grievance handling, preventing discrimination and communicating effectively in workplaces. Make the most of our practical experience for your organisation – find out what we can do for you.

We inform

We answer your questions, give you the facts you need and talk through your options. You can then make informed decisions. Contact us to keep on top of what employment rights legislation means in practice – before it gets on top of you. Call our helpline **08457 47 47 47** or visit our website www.acas.org.uk.

We advise and guide

We give you practical know-how on setting up and keeping good relations in your organisation. Look at our publications on the website or ask our helpline to put you in touch with your local Acas adviser. Our Equality Direct helpline **08456 00 34 44** advises on equality issues, such as discrimination.

We train

From a two-hour session on the key points of new legislation or employing people to courses specially designed for people in your organisation, we offer training to suit you. Look on the website for what is coming up in your area and to book a place or talk to your local Acas office about our tailored services.

We work with you

We offer hands-on practical help and support to tackle issues in your business with you. This might be through one of our well-known problem-solving services. Or a programme we have worked out together to put your business firmly on track for effective employment relations. You will meet your Acas adviser and discuss exactly what is needed before giving any go-ahead.

Contents

1	Introduction	3
2	Redundancy	4
	Avoiding redundancies	5
	Establishing a redundancy procedure	6
	Contents of a redundancy procedure	7
	The advantages of a redundancy procedure	8
	The procedure in operation	8
	Small firms	9
3	Consultation	10
	The advantages of consultation	10
	Consultation – legal requirements	10
	Consultation – good practice	11
	Consultation with individuals	12
	Disclosure of information – legal requirements	12
	Further areas for consultation – good practice	12
	Failure to consult	13
	Protective award	14
	Rights of employees’ representatives	14
4	Selection criteria	16
	The importance of objectivity	16
	Unfair selection for redundancy	16
	Statutory disciplinary and dismissal procedures	18
	Non-compulsory selection criteria	18
	Compulsory selection criteria	19
	Application of selection criteria	20
	Appeals procedure	21
5	Assistance in finding other work	22
	Suitable alternative work	22
	The offer	23
	Trial period	23
	Time off to look for new work, or for training	24
	Additional assistance	25

6

Appendix 1**26**

Redundancy agreements: a checklist

26

7

Appendix 2**30**

Redundancy payments: an outline

30

8

Appendix 3**32**

Statute law and redundancy: an outline

32

Notes**34****Sources of advice and further information****37****Acas publications****38****Acas training****39****Acas addresses****Back cover**

Introduction

The growth of British industry requires constant review of products and methods of work, and the successful application of new technology. Our ability to maintain competitiveness in world markets depends on this. It is inevitable, however, that redeployment of labour and redundancies will sometimes be necessary. A poorly thought out approach to change can result in a level of uncertainty which damages company performance and, should redundancies be unavoidable, may lead to financial and emotional costs to the individuals affected.

The aim of this booklet is to provide guidance for employers, trade unions and employee representatives on how best to handle redundancies. The booklet emphasises the importance of planning labour requirements to avoid or to minimise the need for redundancies; the benefits of establishing an agreed procedure for handling redundancies; and the need for fairness and objectivity when selecting members of the workforce for redundancy. The booklet considers the practicability of offering redundant employees

alternative work, counselling or other assistance. It is hoped that the booklet will act as an aid to improved employment relations practice by ensuring that the need for redundancies is minimised, and that where they are unavoidable, decisions are made in a fair and consistent manner.

To help differentiate between the extensive legal provisions and good employment relations practice, the statutory requirements relating to redundancy including consultation, unfair selection, alternative job offers and time off to look for work or to arrange training are in **bold type**. Good practice and the relevant decisions of employment tribunals remain in normal type.

This booklet is not, however, a guide to current law on redundancy¹. In particular, it is not intended to give advice on the rights of employees when businesses are transferred or sold. Guidance on these legal requirements can be found in Department of Trade and Industry legislation booklet. *A guide to the 2006 TUPE Regulations for employees, employers and representatives* at www.berr.gov.uk.

Redundancy

Key points

- What is meant by redundancy?
- Avoid redundancies
- Establish a redundancy procedure

Redundancy has two different meanings for the purposes of UK employment law. One to establish entitlement to redundancy payments and one for the right to be consulted.

For entitlement to redundancy payments, under the Employment Rights Act 1996, redundancy arises when employees are dismissed because:

- the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was so employed; or
- the employer has ceased, or intends to cease, to carry on the business in the place where the employee was so employed; or
- the requirements of the business for employees to carry out work of

a particular kind has ceased or diminished or are expected to cease or diminish; or

- the requirements of the business for the employees to carry out work of a particular kind, in the place where they were so employed, has ceased or diminished or are expected to cease or diminish.

For the purposes of the right to be consulted, which applies when an employer proposes to make 20 or more employees redundant in one establishment over 90 days or less, the law defines redundancy as:

“dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related.” This definition might include, for example, a situation where dismissals are not related to the conduct or capability of the

individuals but are part of a reorganisation where there is no reduction in the overall numbers employed because the employer has recruited new staff.

If an employer is thinking of dismissing an employee on the grounds of redundancy, and the employee is not being consulted under any collective redundancy arrangement, they must follow a statutory dismissal procedure.

The main steps may be summarised as follows:

Step 1

Write to the employee notifying them of the reason for the redundancy, and invite them to a meeting to discuss the matter.

Step 2

Hold a meeting with the employee to discuss the redundancy – at which the employee has the right to be accompanied. Notify the employee of the decision and the right to appeal.

Step 3

Hold an appeal meeting (if the employee wishes to appeal) at which the employee has the right to be accompanied – and inform the employee of the final decision.

If these steps have not been taken and the employee makes a claim to

an employment tribunal the dismissal will be ruled automatically unfair and the employee may be subject to compensation. For further information see the *Acas Code of Practice – Disciplinary and grievance procedures* at www.acas.org.uk.

Avoiding redundancies¹

Management is responsible for deciding the size and most efficient use of the workforce. By carefully developing a strategy for managing human resources, disruption to company performance can be minimised, job losses avoided or reduced and the process of change eased. Effective human resource planning can help to determine existing and future staffing needs. In turn this can lead to an improvement in job security for employees and to the avoidance of short-term solutions which are inconsistent with longer-term needs.

Management is advised to consult recognised trade unions or employee representatives about the staffing implications of any measures designed to improve efficiency. It is important to ensure that these are fully understood by all concerned and that uncertainty about future employment is minimised. Where they exist this could be done through a joint consultative committee, works council or other similarly

representative body, to discuss such matters as staffing levels, company expansion or rationalisation plans. Such a committee would normally meet regularly and consider information on the company's current performance, trading position and future plans to enable trade union or employee representatives to monitor the need for changes in the size of the labour force.

It is also good practice to provide appropriate information for individual employees. This is particularly important where there are no recognised trade union or employee representatives.

Establishing a redundancy procedure

Employers normally deal with redundancies in one of the following three ways:

- **An *ad hoc* approach** whereby there are no formally established arrangements, with the practice varying according to the circumstances of each redundancy
- **A formal policy** setting out the approach to be adopted by management when faced with making redundancies. In such cases the agreement of trade

union or employee representatives with the contents of the policy will not have obtained

- **A formal agreement** setting out the procedure to be followed when redundancies have to be considered. The contents of such a procedure will be the result of negotiation and agreement between management and trade union or employee representatives.

There may be occasions when the circumstances of a particular redundancy can be met by an *ad hoc* approach. However, in the interests of good employment relations it will be prudent to consider the establishment of a formal procedure on redundancy. The initiative for this will normally lie with management but they should aim to secure the involvement of trade union officials, employees and their representatives. If possible, the procedure should be drawn up at a time when redundancies are not imminent so that the parties can contemplate the long-term consideration rather than being preoccupied with immediate issues. Employers should ensure that the procedure is made known to all employees. One way in which this might be achieved is to include details in the company handbook.

As a minimum, all employers are advised to establish a formal policy on redundancy as this will help to ensure that employees are aware before redundancies occur of the procedure to be followed. Whichever approach is adopted it should be a reasonable one and every attempt made to adhere to it. Failure to follow appropriate and reasonable procedures could lead to employers being liable for claims of unfair dismissal even if they have potentially good grounds for dismissal.

Contents of a redundancy procedure

Full and effective consultation is recommended when drawing up a redundancy procedure. This will do much to allay unjustified fears and suspicions, avoid the thought that the main reason behind the agreement is that redundancies are imminent and allow trade union or employee representatives to contribute their views and ideas.

Depending on the size and nature of the company, the contents of a formal procedure on redundancy would normally contain the following elements:

- an introductory statement of intent towards maintaining job security, wherever practicable
- details of the consultation arrangements with any trade union or employee representatives (see chapter on consultation, p10)
- the measures for minimising or avoiding compulsory redundancies
- general guidance on the selection criteria to be used where redundancy is unavoidable (see chapter on selection criteria, p16)
- details of the severance terms²
- details of any relocation expenses, details of any hardship or appeals procedures and
- the policy of helping redundant employees obtain training or search for alternative work.

The measures for minimising or avoiding compulsory redundancies may include:

- natural wastage
- restrictions on recruitment
- retraining and redeployment to other parts of the organisation (see chapter on assistance in finding other work, p22)
- reduction or elimination of overtime

- introduction of short-time working or temporary lay off³ (where this is provided for in the contract of employment or by an agreed variation of its terms)
- seeking applicants for early retirement, or voluntary redundancy and
- termination of the employment of temporary or contract staff⁴.

The advantages of a redundancy procedure

For management, a redundancy procedure provides a joint agreement for avoiding or minimising redundancies and for carrying out redundancies when they are inevitable. It reduces both the likelihood of conflict and the possibility of misunderstanding. It also facilitates better planning and assists the process of change, for example in the introduction of new technology.

For employees and their trade unions, the advantage of an agreed procedure is that it will help to ensure fair treatment. An agreement giving details about retraining, transfers and redeployment demonstrates the company's commitment to continued employment and concern for the welfare of its employees. It is likely to

reduce the fear of the unknown and increase the sense of stability and security of employment. It gives the trade union an opportunity to influence management policy by reaching agreement on the measures to be followed to avoid or minimise redundancies.

The procedure in operation

In order to ensure that the procedure can be applied flexibly to different redundancy situations, it will be necessary to include some room for manoeuvre. This will be particularly true in the choice of selection criteria and in the design and implementation of measures to avoid redundancies. It is especially important to ensure that the balance of skills and experience within the remaining workforce is appropriate to the company's future operating needs.

Any agreed change to a redundancy procedure should be made known to all employees and incorporated in the procedure. Agreement with trade union or employee representatives should be sought before there is any departure from an agreed procedure and, where possible, the procedure should specify the circumstances in which departure may be considered necessary. Where provision is made for the procedure to be applied

flexibly to take account of changing economic circumstances, this should also be specified. The procedure should be reviewed from time to time to ensure that it is operating fairly.

Where an employer is seeking to effect redundancies on less advantageous terms than those that previously applied, the employer is strongly advised to obtain the agreement of individual employees to the consequent changes in their contracts. Reliance cannot always be placed on a collective agreement with the trade unions to make these changes.

Small firms

The principles of good practice given in this chapter, and throughout the booklet, apply to all employers regardless of size of organisation. The detailed arrangements, however, will necessarily differ to take account of variations in circumstances. Small firms, in particular, may adopt a policy or agree a procedure that simply consists of an intention to consult individual employees, paying particular attention to ways of avoiding or minimising redundancy, and to adopting a fair and objective basis for redundancy selection. This will allow management (and employee representatives where

appropriate) some flexibility in deciding the best course of action when a redundancy becomes imminent.

A checklist of items to be considered for inclusion in redundancy agreements is given in appendix 1.

Consultation

Key points

- Begin consultation as early as possible
- Allow for longer than the statutory period of consultation, wherever practicable
- Utilise the knowledge of employee representatives to make better decisions

The advantages of consultation

The purpose of consultation is to provide as early an opportunity as practicable for all concerned to share the problem and explore the options. It can stimulate better cooperation between managers and employees, reduce uncertainty and lead to better decision making. When faced with a redundancy situation, trade union or employee representatives or individual employees may be able to suggest acceptable alternative ways of tackling the problem or, if the redundancies are inevitable, ways of minimising hardship. The employer will then be in a better position to decide whether the needs of the business can be met in some way other than by dismissal.

Consultation – legal requirements

Apart from the good employment relations benefits of consultation, employers who propose to dismiss as redundant 20 or more employees at one establishment over a period of 90 days or less have a statutory duty to consult representatives of any recognised independent trade union, or if no trade union is recognised, other elected employees⁵. Employee representatives may be elected solely for the purpose of consultation about specific redundancies or they could be part of an existing consultative body. Detailed requirements are laid down in regulations for electing employee representatives in situations where the employer does not recognise a trade union.

For further information see the Department of Trade and Industry booklet (now the Department for Business, Enterprise and Regulatory Reform (BERR) *Redundancy consultation and notification* at www.berr.gov.uk/employment/.

Employers are required to consult with the ‘appropriate representatives’ of any of the employees who may be affected (directly or indirectly) by the proposed dismissals or by any measures taken in connection with those dismissals.

The consultation should include ways of avoiding the dismissals, reducing the number of employees to be dismissed, and mitigating the effects of dismissals. Consultation must be undertaken by the employer with a view to reaching agreement with appropriate representatives on these issues. This duty applies even when the employees to be made redundant are volunteers. Failure to comply with the consultation requirements could lead to a claim for compensation, known as a protective award (see p14).

Consultation should begin in good time and must begin:

- at least 30 days before the first dismissal takes effect if 20 to 99

employees are to be made redundant at one establishment over a period of 90 days or less

- at least 90 days before the first dismissal takes effect if 100 or more employees are to be made redundant at one establishment over a period of 90 days or less.

A European directive gives employees the right to be informed about the business’ economic situation and to be informed and consulted about employment prospects and about decisions which may lead to substantial changes in work organisation or contractual relations, including redundancies and transfers.

The directive was introduced in stages and applies to businesses with 100 or more employees from April 2007 and to businesses with 50 or more employees from April 2008.

Consultation – good practice

In all organisations, regardless of company size and the number of employees to be dismissed, employers should consult with appropriate trade unions or employee representatives as soon as practicable and as fully as possible. Employers should consult at an early enough stage to allow

discussion as to whether the proposed redundancies are necessary at all.

The consultation process should precede any public announcement of the redundancy programme and the issue of notices of termination. Such notices may be issued once consultations have begun but only after sufficient meaningful consultation has taken place.

Consultation with individuals

Employers should ensure that employees are made aware of the contents of any agreed procedure and of the opportunities available for consultation and for making representations. Case law has shown that dismissals have been found to be unfair where a union has been consulted but not the individual. It is therefore best practice that individuals who are to be made redundant are consulted, irrespective of the size of the company or the length of service of the employee. They are more likely to react in a constructive way following consultation and may be able to suggest alternatives to redundancy. Employers must also follow the statutory dismissal procedure (see p5).

Disclosure of information – legal requirements

Employers have a statutory duty to disclose in writing to the appropriate representatives⁶ the following information concerning proposals for redundancies so that they can play a constructive part in the consultation process:

- the reasons for the proposals
- the numbers and descriptions of employees it is proposed to dismiss as redundant
- the total number of employees of any such description employed at the establishment in question
- the way in which employees will be selected for redundancy
- how the dismissals are to be carried out, taking account of any agreed procedure, including the period over which the dismissals are to take effect
- the method of calculating the amount of redundancy payments to be made to those who are dismissed.

The information may be handed to local employee representatives or may be sent by post to an address notified to the employer or, in the case of a trade union, to the address of the union's head or main office.

Further areas for consultation – good practice

In addition to those areas outlined above and in the interests of good employment relations practice, matters on which employers may seek to consult and, where appropriate, negotiate will usually cover.

- the effect on earnings where transfer or down-grading is accepted in preference to redundancy
- how the selection of employees for redundancy will be applied – for example, will it be appropriate for selection to operate across the organisation as a whole or on a departmental basis?
- arrangements for travel, removal and related expenses, where work is accepted in a different location
- whether a redundant employee may leave during the notice period, or postpone the date of expiry of notice, without losing any entitlement to a statutory redundancy payment
- any retention of company benefits where an employee is made compulsorily redundant and
- any extension of the length of the statutory trial period in a new job (see p23).

Furthermore, negotiation might also cover special arrangements for the transfer of apprenticeships. Only as a last resort should apprentices be treated as part of the labour force for the purposes of redundancy selection.

Failure to consult

There may be special circumstances making it not reasonably practicable to meet fully the statutory requirements for consultation or disclosure of information. Each case is judged on its particular facts but in all circumstances employers must do all they can reasonably be expected to do to meet the requirements.

Where an employer fails in any way to comply with the requirements to consult about proposed redundancies, a complaint may be made to an employment tribunal. A complaint may be made by either an appropriate trade union, or, in cases where no trade union is recognised, an elected employee representative of affected employees or where there is no appropriate trade union or other elected employee representative, by any employee who has been or may be dismissed. The complaint must be lodged either before the last of the dismissals takes effect

or within three months after the last of them. In exceptional circumstances the tribunal can allow a longer period for a complaint to be lodged.

An Acas conciliator may assist in reaching a solution whether or not an application has been made to an employment tribunal. If a settlement is not reached and the tribunal finds the union's complaint justified, a protective award may be made in favour of the employees concerned.

Protective award

A protective award requires employers to pay employees their normal week's pay for a period of time called the 'protected period'. The tribunal has the discretion in fixing the length of that period, depending upon what is just and equitable and taking account of the seriousness of the employer's default. The maximum length of the protected period is 90 days in all cases where 20 or more are to be made redundant.

The protected period begins either on the date on which the first of the dismissals takes effect, or on the date of the tribunal award – whichever comes first.

Rights of employees' representatives⁷

Representatives of employees have particular rights and protections which enable them to carry out their functions properly. The rights of trade union members, including officials, are contained in separate legislative provisions, but are essentially the same as those of other elected representatives, and include time off for duties in relation to redundancy information and consultation.

Legislation⁸ concerning elected representatives provides that:

- Employers must allow representatives access to affected employees and to provide them with accommodation and facilities if necessary
- Representatives and candidates for election have a right to reasonable time off with pay to carry out their functions and for training in connection with those functions
- Representatives and candidates for election have a right not to be subjected to dismissal or any detriment because of their status or activities. The dismissal of an elected representative or candidate for election will be automatically unfair if it is wholly

or mainly related to the employee's status or activities as a representative

- Any employee is unfairly dismissed if the main reason for the dismissal is that he or she took part in an election of employee representatives for collective redundancy purposes. An employer may not subject an employee to any detriment on the ground that he or she participated in an election of such a representative.

A complaint may be made to an employment tribunal by elected representatives or, where appropriate, candidates for election, concerning these rights. An Acas conciliator may assist in reaching a solution whether or not an application has been made to an employment tribunal.

Selection

criteria

Key points

- Agree the selection criteria with employee representatives
- Be objective, fair and consistent
- Establish an appeals procedure

The importance of objectivity

As far as possible, objective criteria, precisely defined and capable of being applied in an independent way, should be used when determining which employees are to be selected for redundancy. The purpose of having objective criteria is to ensure that employees are not unfairly selected for redundancy.

Examples of such criteria are attendance record, experience and capability. The chosen criteria must be consistently applied by all employers irrespective of size.

Unfair selection for redundancy

An employee dismissed for reasons of redundancy will be found to have been unfairly

dismissed if he or she was unfairly selected for redundancy:

- for participation in trade union activities, for membership or non-membership of a trade union and in respect of trade union recognition or derecognition
- for carrying out duties as an employee representative or candidate for election for purposes of consultation on redundancies or business transfers
- for taking part in an election of an employee representative for collective redundancy purposes
- for exercising or seeking to exercise the right to be

- accompanied at a disciplinary or grievance hearing
- requesting flexible working arrangements
 - for taking action on health and safety grounds as a designated or recognised health and safety representative, or as an employee in particular circumstances
 - for taking part (or proposing to take part) in consultation on specified health and safety matters or taking part in elections for representatives of employee safety⁹
 - for performing or proposing to perform the duties of a occupational pension scheme trustee
 - for performing or proposing to perform the duties of a workforce representative for the purposes of the Transnational Information and Consultation of Employees Regulations 1999
 - for taking lawfully organised industrial action lasting eight weeks or less (or more than eight weeks in certain circumstances)
 - for asserting a statutory employment right
 - on maternity-related grounds or in relation to other rights for working parents (for example adoption leave and paternity leave)
 - by reason of his or her refusal or proposal to refuse to do shop work or betting work on Sundays (England and Wales only)
 - for a reason relating to rights under the Working Time Regulations 1998
 - for a reason relating to rights under the National Minimum Wage Act 1998
 - for a reason relating to rights under the Maternity and Parental Leave etc Regulations 1999
 - for making a protected disclosure within the meaning of the Public Interest Disclosure Act 1998
 - for a reason relating to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000
 - for a reason relating to the Fixed-term Workers (Prevention of Less Favourable Treatment) Regulations 2002
 - for a reason relating to the Tax Credits Act 2002.

It should be noted that a redundancy dismissal may also be found to be discriminatory under employment equality legislation where selection was on grounds of sex, marital status, race or disability, sexual orientation, age or religion or belief. Furthermore dismissal may also be considered unfair where the reason or principal reason is redundancy but the circumstances apply equally to other employees who have not been selected. Employers need to show that in selecting a particular employee they had compared him or her in relation to the agreed selection criteria with those others who might have been made redundant and that, as a result, it emerged that the employee was fairly selected. A claim for unfair selection may also arise where the employer has failed to undertake a reasonable search for alternative work throughout the organisation.

Particular care should be taken to ensure that selection criteria are not directly or indirectly discriminatory on grounds of age, sex, race, disability, sexual orientation, or religion or belief. For example, selecting part-timers for redundancy may amount to indirect discrimination against women. In such circumstances employers must show that the selection is justifiable, for example by showing that it is not practicable to fit part-timers who are

predominantly female into revised shift patterns. Selection of women for redundancy on the grounds of pregnancy will also be considered automatically unfair.

Non-compulsory selection criteria

Voluntary redundancy

One acceptable method is for employees to volunteer to be considered for redundancy and for the employer to select from the list of volunteers those employees who are to be dismissed¹¹. This avoids the need for compulsion, with a less demoralising and disruptive effect on the workforce. It is not uncommon to offer enhanced redundancy payments as an incentive to attract people to leave. In situations where the number of volunteers exceeds requirements, employers should be alert to the potential reaction of some employees not selected and consider in advance how best to deal with this.

A further important consideration concerns the imbalance in the remaining skills and experience which may be created by accepting those employees who volunteer for redundancy and which might restrict the continued efficient operation of the company. The volunteers may include some people who might be

expected to contribute most to future success. One way of overcoming such difficulties would be to gain agreement to confine applications to selected categories. In practice, many agreements confirm management's right to decide whether a particular employee should be allowed to leave.

Early retirement

Early retirement¹² can also be an expensive method. Whereas voluntary redundancy involves a one-off payment, early retirement usually involves a longer-term financial commitment in the form of a pension. Furthermore, where jobs are specialised, early retirement may lead both to some problems of replacement, even in times of high unemployment, and to deficiencies in skills and experience.

Early retirement does, however, have some advantages. It can be an acceptable alternative to redundancy for employees and trade unions and thus have a less detrimental effect on workforce morale. It can also leave the company with a better balanced age structure although employers should bear in mind that a large exodus of older employees could mean that there might be no natural retirement for some time. This could in turn lead to poor career prospects for those who remain if there is little future employee turnover.

Compulsory selection criteria

Where voluntary redundancy or early retirement have not produced suitable volunteers, employers, in consultation with trade union, or employee representatives, should consider the criteria to be used when enforcing redundancies. Where any agreed list of criteria is not exhaustive, this should be stated. It is important that criteria used in redundancy selection are used in an objective way, and applied consistently.

Some of the selection criteria commonly used include:

- skills or experience
- standard of work performance or aptitude for work
- attendance or disciplinary record.

Objective selection based on skills or qualifications will help to ensure the retention of a balanced workforce appropriate to the future needs of the business. Formal qualifications and advanced skills should be considered but not in isolation. It may be appropriate for other aptitudes to be taken into account.

The standard of work performance or aptitude for work of those to be selected may be an important consideration. However, case law

shows that there should be some objective evidence to support selection on this basis, for example by reference to the company's existing appraisal system.

If attendance or disciplinary records¹³ are to be used as a basis for redundancy selection, it will be necessary to ensure that they are accurate. Before selecting on the basis of attendance it is important to know the reasons for and extent of any absences. This is particularly important when considering sickness absence. Employers should look carefully at the duration of the spells of sickness; for example, whether an employee has had one continuous lengthy bout of sickness or whether the absences were of a more intermittent nature but over a longer period.

Absences relating directly to an employee's disability should be discounted when using attendance as a selection criteria. Managers and employee representatives should adopt a consistent approach and have clear rules setting standards about discipline, absence, timekeeping and holidays.

Whatever selection criteria are chosen, care needs to be taken to ensure that they are neither directly nor indirectly discriminatory on grounds of race, sex or disability, sexual orientation, age, religion or belief.

Application of selection criteria

In seeking to agree selection criteria, the most important consideration for the future viability of the company, is to maintain a balanced workforce after the redundancies have been carried out. Specific skills, flexibility, adaptability and an employee's approach to work may be the most relevant considerations to the future success of the business.

The drawing up of criteria, however, is not enough to guarantee fair and reasonable selection. Even though the criteria may satisfy the test of objectivity, the selection will still be unfair if they are carelessly or mistakenly applied. Employers will need to demonstrate that there has been comparative analysis of the information relating to all in the unit of selection if qualitative criteria are used.

In addition, selection criteria should be reasonably applied in the light of the circumstances of the individual. **The Disability Discrimination Act 1995 makes it unlawful for an employer to treat a disabled person less favourably because of a reason relating to their disability, without a justifiable reason. Employers are required to make reasonable adjustments to working conditions or the workplace where that would help to accommodate a particular disabled person.**

Employers should take account of this legislation when considering the dismissal of a disabled person.

Appeals procedure

Management is also advised to consider the establishment of a redundancy appeals procedure to deal with complaints from employees who feel that selection criteria have been unfairly applied in their case. This can be achieved by involving a more senior member of management or by setting up a committee of management and trade union or employee representatives, to consider individual grievances and any subsequent remedies. An advantage of such a procedure is that complaints about selection for redundancy may be resolved internally and thus reduce the likelihood of complaints to employment tribunals.

Assistance in

finding other work

Key points

- Offer suitable alternative work
- Consider other ways of helping employees
- Consider establishing a counselling service

Employers should consider whether employees likely to be affected by redundancy can be offered suitable alternative work. Where alternative work is available within the employer's own organisation or with an associated company, the employee should be given sufficient details to enable him or her to decide whether to accept or not.

The search for alternative employment should extend, if possible and appropriate, throughout the group of which the company forms a part.

Suitable alternative work

It is up to the employee to decide whether the alternative work is suitable. However, an employer should be aware that the following factors may influence their decision:

Pay

- Wherever possible, earnings should be protected against a fall in the current rate of pay. Alternatively, there may be opportunities for employees to earn more (eg by productivity bonuses)

Status

- Any loss of status may be eased by allowing the employee preferential treatment should the original job become available again following an upturn in business

Location

- The employer should consider the degree of disruption likely to be caused by a change of location and any additional expense incurred. Any increase in travelling

time should be considered in relation to the age, health and domestic circumstances of the employee

Working environment

- This may be especially important for those employees who suffer a health complaint or physical disability

Hours of work

- Any change in an employee's hours of work, for example in shift patterns, may be considered unsuitable if it fails to take account of the individual's personal circumstances.

An employer may also consider the possibility of retaining the employee in a temporary capacity until permanent vacancies arise. This is particularly appropriate where vacancies arise regularly.

The offer

Employment tribunals have held that it is the employer's responsibility to show that an offer of an alternative job has been made. Any offer should therefore be put in writing, even where the employer believes that it may be rejected. **The offer should show how the new employment differs from the old and by law must be made before the employment under the previous**

contract ends. The offer must be for the new job to start either immediately after the end of the old job or after an interval of not more than four weeks.

Employees who unreasonably refuse an offer of suitable alternative employment may lose any entitlement to redundancy pay. Unreasonable refusal may arise where the differences between the new and old jobs are negligible or where the employee assumes rather than investigates the changes that a new job might involve in, for example, travelling time or working conditions. Refusal may be reasonable if the new job would cause domestic upheaval, for example if there was a considerable change in working hours or a need to move house. In deciding whether to accept an offer of alternative employment it will be sensible for employees to bear in mind the availability of other employment should they refuse the offer.

Trial period

An employee who is under notice of redundancy has a statutory right to a trial period of four weeks in an alternative job where the provisions of the new contract differ from the original contract. The trial period begins when the previous contract has ended and ends four weeks

after the date on which the employee starts work under the new contract.

The effect of the trial period is to give the employee a chance to decide whether the new job is suitable without necessarily losing the right to a redundancy payment. The four week trial period can be extended for retraining purposes by an agreement which is in writing, specifies the date on which the trial period ends and sets out the employee's terms and conditions after it ends. If the employee works beyond the end of the four week period or the jointly agreed extended period any redundancy entitlement will be lost because the employee will be deemed to have accepted the new employment. Employers should communicate this to the employee when the alternative job offer is made.

The employer should also use the trial period to assess the employee's suitability. Should the employer wish to end the new contract within the four weeks for a reason connected with the new job, the employee will preserve the right to a redundancy payment under the old contract. If the dismissal was due to a reason unconnected with redundancy, the employee may lose that entitlement.

Time off to look for new work, or for training

Employees who are under notice of redundancy and have been continuously employed for at least two years, qualify for statutory entitlement to a reasonable amount of time off to look for another job or to arrange training. The employer does not have to pay more than two-fifths of a week's pay, regardless of the length of time off allowed. Where possible, employers should extend such assistance to all employees who are affected by redundancy. The time off which is agreed must be allowed before the expiry of the period of notice¹⁵.

Further, optional measures may include:

- contacting the local Jobcentre which provides a free service for bringing together employers with vacancies and people looking for work. Jobcentre staff can also give details of training opportunities available. For larger scale redundancy programmes, it may prove helpful for employers to discuss with Jobcentre staff the possibility of providing facilities on site for interviewing redundant employees
- contacting other local employers with a view to canvassing for any

vacancies which may be offered to the redundant employees and

- giving redundant employees first option of re-employment should there be an upturn in business.

Redundancy can be a traumatic experience for employees, especially for those who have worked for many years in a stable environment. Some employees will have special difficulties to contend with even though they may have received payments in excess of the statutory minimum. Where practicable, employers should consider cases of hardship and, where possible, seek ways of helping them.

Additional assistance

It is good practice to give redundant employees as much information as possible to help them at this difficult period of their working lives. Such information may include:

- the financial effects of redundancy on the individual (redundancy pay, pension payments and state benefits)

- how to complete application forms and present themselves at job interviews
- the importance of discussing the implications of redundancy with their family as early as possible
- how to search for appropriate vacancies in the press and follow up opportunities and
- the importance of being prepared to consider a wide range of alternative jobs.

In addition, where resources permit, employers may consider whether to help redundant employees by individual counselling, Counselling is a skilled task and it is sensible to use a trained counsellor or welfare officer to carry out the interviews, ideally before redundancies take effect. Where it is not practicable to employ a trained counsellor, personnel managers may be given appropriate training for the task. Where possible, some support and advice should remain available to redundant employees after their dismissals.

Appendix 1

Redundancy agreements: a checklist

The following paragraphs are provided as a checklist for employers and employee representatives of the areas commonly covered in redundancy agreements. Each organisation is unique and every agreement should be tailored to meet the circumstances of the case. It is provided only to illustrate good practice but can be used as a basis for drawing up a redundancy agreement.

Preamble

Redundancy agreements normally begin with a statement of intent by both parties towards maintaining security of employment, wherever practicable.

For example:

It is the policy of Company X by careful forward planning to ensure as far as possible security of employment for its employees. However, it is recognised that there may be changes in competitive conditions, organisational requirements and technological developments which may affect staffing needs. It is the agreed aim of the Company and the Trade Union(s) to maintain and enhance the efficiency and profitability of the Company in order to safeguard the current and future employment of the Company's employees. The Company, in consultation with the Trade Union(s), will seek to minimise the effect of redundancies through the provision of sufficient time and effort to finding alternative employment for surplus staff. Where compulsory redundancy is inevitable the Company will handle the redundancy in the most fair, consistent and sympathetic manner possible and minimise as far possible any hardship that may be suffered by the employees concerned.

Consultation

The following areas are usually covered:

- a commitment to keep local trade union/employee representatives informed as fully as possible about staffing requirement and any need for redundancies
- the period(s) of consultation agreed (which may exceed the minimum required by law)
- information on which employee representative(s) will be consulted and a commitment to consider any alternative proposals with a view to reaching agreement on ways of avoiding dismissals, reducing the number of employees to be dismissed and how to mitigate the effect of the dismissals
- disclosure of information required by law:
 - the reasons for the proposals
 - the numbers and descriptions of employees it is proposed to dismiss as redundant
 - the total number of employees of any such description employed at the establishment in question
 - the way in which employees will be selected for redundancy
 - how the dismissals are to be carried out, including the period over which the dismissals are to take effect
 - the method of calculating the amount of redundancy payments to be made to those who are dismissed
- additional areas on which to consult, for example:
 - the effect on earnings where transfer or down-grading is accepted in preference to redundancy
 - arrangements for travel, removal and related expenses where work is accepted on another site owned by the Company
 - arrangements for reasonable time off with pay to seek alternative work to to make arrangement for training
 - assistance with job seeking
 - arrangements for the transfer of apprenticeships.

Measures to avoid or to minimise redundancy

Included in this paragraph will be details outlining how every effort will be made to reduce the number of possible redundancies, for example by:

- natural wastage
- restricting the recruitment of permanent staff
- reducing the use of temporary staff
- retiring all employees at the normal or default retirement age
- filling vacancies from among existing employees
- reducing overtime by as much as production requirements will permit
- reducing the hours of work, for example, by the operation of short-time working
- training, re-training or redeploying employees for different work for which there is a requirement either at the same or at a different location.

Selection criteria

If, having taken any of the above steps, the number of employees still exceeds requirements, details should be given about how employees will be selected for redundancy, and by whom. For example, selection may be based on:

- the skills, experience and aptitude of the employee
- the standard of work performance
- the attendance or disciplinary record of the employee
- voluntary redundancy and/or early retirement.

It is usual to include a statement giving a commitment to a fair, consistent, objective and non-discriminatory selection procedure.

Assistance with job seeking

An acknowledgement should be included recognising the statutory right of employees to time off to look for work or arrange for training for new employment. Any intention of the Company to provide further facilities should also be included.

Counselling

Larger companies may wish to provide facilities for a counselling service on site to give those employees who are to be made redundant the following:

- financial advice
- guidance on how to find another job
- advice on completion of application forms
- guidance on attending interviews.

Severance payments

Details should be provided about how severance pay will be calculated and how commission, overtime payments, accrued holiday pay and time of in lieu not taken will be paid.

Appeals and hardship

The procedure for dealing with the right of appeal and cases of hardship should be explained.

Review and termination

Details should be given about regular review of the agreement and the procedure for terminating it.

Appendix 2

Redundancy Payments: an outline¹⁶

Who qualifies for a redundancy payment?

A payment is due only if the worker is an employee with at least two years' continuous service.

Who does not qualify for a redundancy payment?

The following groups of employees do not qualify:

- merchant seamen, former registered dock workers engaged in dock work (covered by other arrangements) or share fishermen
- crown servants, members of the armed forces or police services
- apprentices who are not employees at the end of their training
- a domestic servant who is a member of the employer's immediate family.

What are the payments?

For each complete year of service up to a maximum of 20, employees are entitled to:

- for each year of service under 22 – half a week's pay
- for each year of service at age 22 but under 41 – one week's pay
- for each year of service at age 41 or over – one and a half weeks' pay.

An employer should give an employee a written statement of how the redundancy payment is calculated.

What is a week's pay?

A week's pay is that which the employee is entitled to under his or her terms of the contract at the 'calculation date'. The 'calculation date' is the date on which the employer gives the employee the minimum notice to which he or she is legally entitled. If the pay varies (eg: through piece-work), the amount of the week's pay is averaged over the 12 weeks prior to the 'calculation date'. There is a maximum statutory limit (£330 from 1 February 2008) on the amount of a week's pay that may be reckoned. This figure is reviewed annually. Employers may, pay in excess of the statutory minimum.

How does an employee claim a payment?

There is no need for the employee to make a claim unless the employer fails to pay or disputes the employee's entitlement. Should there be a failure to pay, the employee must make a written request to the employer or to an employment tribunal within six months of the date the job ended¹⁷.

What if the employer cannot pay?

If the employer has cash-flow problems so serious that making the redundancy payment would damage the business, arrangements can be made by the Department for Business, Enterprise and Regulatory Reform (BERR) to pay the employee direct from the National Insurance Fund. The employer is expected to pay back the payment as soon as possible, if necessary in instalments. If the employer is insolvent, the payment is again made by BERR and the employer's share recovered from the assets of the business.

Is statutory redundancy pay taxable?

A statutory redundancy payment is not taxable but the employer may set it against tax as a business expense.

Appendix 3

statute law and redundancy: an outline

(i) *Redundancy consultation and notification provision* are contained in Section 188-198 of the Trade Union and labour relations (Consolidation) Act 1992 as amended by Section 34 of the Trade Union Reform and Employment Rights Act 1993 and the Collective Redundancies and Transfer of Undertakings (protection of Employment) (Amendment) Regulations 1995 (SI 1995 No 2587), and 1999 (SI 1999 No 1925).

(ii) *The provisions relating to the rights of non-trade union elected representatives (for the purposes of the statutory requirement to consult over redundancies) and candidates for election not to be subjected to dismissal or detriment and to have reasonable time off with pay* are contained in the Employment Rights Act 1996. Similar provisions relating to the rights of representatives of independent trade unions are contained in the Trade Union and Labour Relations (Consolidation) Act 1992. Further provisions on rights for representatives, candidates for

election and anyone taking part in the process are contained in the Collective Redundancies and Transfer of Understandings (Protection of Employment) (Amendment) Regulations 1999.

(iii) *The provisions relating to the right not to be unfairly dismissed (because of unfair selection for redundancy)* are contained in the Employment Rights Act 1996 and the Trade Union and Labour Relations (Consolidation) Act 1992.

(iv) *The provisions relating to time off to look for work or to make arrangements for training* are contained in Section 52 of the Employment Rights Act 1996.

(v) *The statutory redundancy payments scheme* is administered under Part XI of the Employment Rights Act 1996¹⁶.

(vi) *The provisions relating to employment rights on the transfer of an undertaking* are contained in the

Transfer of Undertakings (Protection of Employment) Regulations 2006.

(vii) *The provisions relating to the standard dismissal and disciplinary procedures* are contained in the Employment Act 2002 (Dispute Resolution) Regulations 2004.

(viii) *The regulations relating to the national default retirement age of 65 and the right to request to work beyond 65* are contained in the Employment Equality (Age) Regulations 2006.

Notes

1. The various legal provisions relating to redundancy are outlined in Appendix 3. See also BERR legislation leaflet Redundancy consultation and notification.
2. Employers should note that in addition to any redundancy payment entitlement, **employees who are dismissed on grounds of redundancy should be given the period of notice, or payment in lieu of notice, to which they are entitled under statute and their contracts of employment.**
3. Employees who have been laid off or put on short-time working either for four consecutive weeks or for any six weeks in a 13 week period can give their employer written notice that they intend to claim redundancy pay. Within stipulated time limits, employees should also terminate their employment by giving one week's notice (or the minimum period of notice as required by their contracts of employment).
4. The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 which came into force on 1 October 2002, provide that employees on fixed-term contracts should not be treated less favourably than comparable permanent employees, on the grounds that they are fixed-term employees, unless this treatment can be objectively justified. Dismissal or selection for redundancy purely because of fixed-term status is likely to amount to less favourable treatment. Fixed-term contracts are contracts where it has been agreed at the outset that the contract will end when a specified date is reached or on the completion of a specified task or when a specified date is reached or on the completion of a specified task or when a specified event does or does not occur.
5. **Employers also have a statutory duty to notify the Department for Business, Enterprise and Regulatory Reform if they propose to make 20 or more workers redundant at one establishment over a period of 90 days or less.** Employers may notify by letter or use form HR1, obtainable from any Redundancy Payments Office, Jobcentre, or Unemployment Benefit Office. For further guidance on the statutory provisions, see *Redundancy consultation and notification* on www.berr.gov.uk/employment/.

6. See page 10 'Consultation – legal requirements' for further explanation concerning 'appropriate representatives'.
7. See BERR website *Union membership and non-membership rights*.
8. See the Trade Union and Labour Relations (Consolidation) Act 1992 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1995 and the Employment Rights Act 1996. Also see DTI legislation leaflet PL833 *Redundancy consultation and notification*.
9. See the Health and Safety (Consultation with Employees) Regulations 1996.
10. Further information on tackling age discrimination can be found in *Age and the workplace: Putting the Employment Equality (Age) Regulations 2006 into practice* at www.acas.org.uk.
11. Note, however, that an employee leaving in anticipation of redundancy, but before being given notice will not be regarded as redundant and therefore will be unable to claim a redundancy payment. (See **Secretary of State for Employment v Greenfield** EAT 147/89).
12. Where employees have actually elected to retire early in the context of projected redundancies, this might be construed as resignation or termination by mutual consent. In these circumstances the employees may not be entitled to received redundancy pay. (Court of Appeal – **Birch and Humber v University of Liverpool** (1985). For a full report see *Industrial Relations Law Report* Vol 14, No 4, April 1985.)
13. See Acas Advisory Booklet *Managing attendance and employee turnover*, and Acas Advisory Handbook *Discipline and grievances at work*.
14. The statutory rules governing continuity of employment are complex. For further guidance see the BERR website *Rules governing continuous employment and a week's pay*.

15. For further guidance on the amount of time off, payment for time off and how to make a complaint see *Redundancy entitlement – statutory rights: a guide for employees* on www.berr.gov.uk/employment/.

16. **The statutory redundancy payments scheme is administered under Part XI of the Employment Rights Act 1996.** For more comprehensive guidance see *Redundancy entitlement – statutory rights: a guide for employees* on www.berr.gov.uk/employment/.

17. An Acas conciliator may assist in reaching a settlement of such a claim, whether or not an application has been made to an employment tribunal.

18. The Acas role in conciliation is set out in Section 11 of the Employment Rights (Dispute Resolution) Act 1998.

Sources of advice and *further information*

Small Business Service

Impartial advice about starting and running a business
Tel 0845 600 9006
www.businesslink.org

Acas Advisory Service

A network of advisers on diversity in employment. Visit the 'contact us' section of the Acas website for the address of your local Acas office.
www.acas.org.uk

Department for Business, Enterprise and Regulatory Reform

Wide range of information on workplace issues
www.berr.gov.uk

Equality and Human Rights Commission

In October 2007, the Commission for Racial Equality (CRE), the Disability Rights Commission (DRC) and the Equal Opportunities Commission (EOC) combined to form the Equality and Human Rights Commission (EHRC). The EHRC brings together the work of the CRE, DRC and EOC and also takes on responsibility for the other aspects of equality: age, sexual orientation and religion or belief, as well as human rights. Go to www.equalityhumanrights.com for further information.

Equality Direct

A confidential helpline service on all aspects of equality in the workplace
Tel 08456 00 34 44
www.equalitydirect.org.uk

Acas Publications

Book time with your Employment specialist

Whether you need to know how to write a contract of employment, how much holiday you are entitled to or about the latest employment legislation, our range of booklets and leaflets give practical information and advice for both employers and employees on employment matters.

You can choose from our handbooks offering comprehensive guidance to the modern workplace or our *Getting It Right* pocket guides, providing vital checklists to help employers in small firms run their business.

View and order online at www.acas.org.uk or call Acas Publications on 08702 42 90 90.

Other Acas material that might be of interest includes:

Advisory booklet – *Managing attendance and employee turnover*

Advisory handbook – *Discipline and grievances at work*

Employment Equality *Regulations Guidelines – Age and the workplace – a guide for employees*

Acas Training

Our training is carried out by experienced Acas staff who work with businesses every day. They will show you the value to your business of following good practice in employment matters and how to avoid the common pitfalls. We also run special training sessions on new legislation.

Look at the Acas website for up-to-date information about all our training or if you want to book a place online.

Training sessions are specially designed for smaller companies and our current programme includes:

- Managing discipline and grievances at work
- Managing absence at work
- Dealing with bullying and harrassment at work
- Employing people: an overview
- The written statement and contracts of employment
- New employment legislation.

We also have free online learning to help you – just go to www.acas.org.uk and click on **e-learning** to look at the topics covered.

Information in this booklet has been revised up to the date of the last reprint – see date below.

Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

Acas aims to improve organisations and working life through better employment relations. We provide up-to-date information, independent advice, high quality training and we work with employers and employees to solve problems and improve performance.

We are an independent, publicly-funded organisation and many of our services are free.

March 2008

Acas main offices

Acas National

Brandon House,
180 Borough High Street,
London SE1 1LW

East Midlands

Lancaster House, 10 Sherwood Rise,
Nottingham NG7 6JE

East of England

Acas House, Kempson Way, Suffolk
Business Park, Bury St. Edmunds,
Suffolk IP32 7AR

London

22nd & 23rd Floors, Euston Tower,
286 Euston Road, London NW1 3JJ

North East

Cross House, Westgate Road,
Newcastle upon Tyne NE1 4XX

North West

Commercial Union House,
2-10 Albert Square, Manchester M60 8AD

Pavilion 1, The Matchworks, Speke Road,
Speke, Liverpool L19 2PH

Scotland

151 West George Street, Glasgow G2 2JJ

South East

Cygnus House, Ground Flooe, Waterfront
Business Park, Fleet, Hampshire GU51 3QT

Suites 3-5, Business Centre,
1-7 Commercial Road, Paddock Wood,
Kent TN12 6EN

South West

The Waterfront, Welsh Back,
Bristol BS1 4SB

Wales

3 Purbeck House, Lambourne Crescent,
Llanishen, Cardiff CF14 5GJ

West Midlands

Apex House, 3 Embassy Drive,
Edgbaston, Birmingham B15 1TR

Yorkshire & Humber

The Cube, 123 Albion Street,
Leeds LS2 8ER

www.acas.org.uk

Helpline

08457 47 47 47

08456 06 16 00
for Minicom users

08456 00 34 44
for questions on managing equality in the workplace

08702 42 90 90
for ordering Acas publications



INVESTOR IN PEOPLE