**REDUNDANCY TRIAL PERIOD**

An essential part of the [redundancy process](https://www.questcover.com/resource-centre/hr-guides/exit-management/) is trial periods.  They apply where the person at risk is given the opportunity to trial working in a different role so that both parties (employer/employee) can decide whether the role is suitable or not.

There are two types of trial periods for this purpose; the statutory trial period and the common law trial period.

So what’s the difference and how do the two work in practice?

**STATUTORY TRIAL PERIOD (STP)**

[Section 138 of the Employment Rights Act 1996 (ERA)](https://www.legislation.gov.uk/ukpga/1996/18/section/138) sets out the rules for STPs.  The STP can be for up to four weeks and is very strict in that if you fall outside the rules, the employee loses the right to receive a redundancy payment.

For the STP to apply you must have terminated the employee’s employment first.  The trial period commences at the end of the current contract and ends four calendar weeks later.  If the employee decides the role is not suitable within the four week trial period the original dismissal stands and s/he is still entitled to a redundancy payment.

The STP cannot be extended unless it is for the purpose of retraining and this must be done by agreement and in writing specifying the new end date.

More than one alternative role can be offered and a separate a trial period will apply for each one.

**COMMON LAW TRIAL PERIOD (CLTP)**

The CLP is basically a more informal arrangement and one which falls outside the auspices of section 138 of the ERA.  It is more often than not the case that employers will use the CLTP without even realising it.

Employers tend to appoint employees into alternative roles before terminating the employment in line with STP procedure.  If this is the case then it does not fall within the STP requirements.  It is akin to a variation to contract.  There is a lot more flexibility with CLTP as the four weeks need not be adhered to.

It is advisable that in either case the terms of the trial are set out in writing with clear start and end dates as it is not just as simple as jumping from one to the other as was demonstrated in the 2007 case of [Optical Express Ltd v Williams (EAT)](https://uk.practicallaw.thomsonreuters.com/7-376-4006?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1).  Ms Williams lost her right to claim redundancy pay as she failed to give notice within the four trial period.  An employment tribunal found in her favour and held that she was entitled to a common law trial period.

The Employment Appeal Tribunal (EAT) disagreed; it said, *that there is a "very sensible, comprehensible, and straightforward statutory system" under section 138 of the Employment Rights Act 1996 whereby employees can undertake a trial period in a new job (with the same employer) following a redundancy. Where there is an express offer and acceptance of a section 138 trial period, there will not be a common law trial period running alongside as "the terms of section 138 are utterly clear".  Thus, if the employee does not wish to continue in the new job, they must give notice within the trial period in order to remain eligible for a redundancy payment.*