

# Managing a redundancy process

A Guest Article by Richard Linskell  
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### Impact of the credit crunch

As a result of the recent credit crunch, many sectors are already starting to notice a downturn in business, or at least more difficult trading conditions. This may, in due course, impact on profits, leading many businesses to consider whether they need to make redundancies.

Implementing redundancies can be one of the most difficult tasks which a manager faces. Not only will this be an emotionally charged process, but there is also a wealth of legal issues that need to be tackled. The purpose of this article is therefore to set out some practical advice on the steps which employers need to take before making any employee redundant.

The starting point is to note that redundancy is often used euphemistically to cover any situation that is not gross misconduct. In fact, the statutory definition of redundancy is very precise and covers the following situations:

- where the employer needs fewer employees to do the same (or less) work;  
or
- where the business is closing down completely or moving to another location.

Before deciding to make an employee redundant, you should consider whether redundancies can be avoided by freezing recruitment, reducing overtime or taking other measures to address the situation, such as temporary redeployments (with consent, where appropriate). If it appears that redundancies may be unavoidable, a number of procedural steps must be taken *before* reaching a final decision, failing which any subsequent dismissal is likely to be unfair.

This article does not deal with the additional procedural requirements that must be followed where 20 or more employees are at risk of being made redundant at the same establishment, in particular the obligation for collective consultation. If it is likely that this number of redundancies will be required, you should seek specific advice.

### Selection

If an employee holding a unique post which is no longer needed is to be made redundant, selection will usually not be necessary and that employee may be made redundant, subject to following the statutory minimum dismissal procedure (details of which are set out below).

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However, if there are to be redundancies from amongst a number of employees doing the same or similar jobs (known as a “selection pool”), you must act fairly in choosing who is to be made redundant.

This will involve using fair criteria that are as objective as possible. This is often done by way of a matrix in which points are awarded to employees for a range of criteria, and the selection is based on the number of points scored. The criteria adopted should, as far as possible, not merely reflect a personal opinion but should be capable of being verified.

Factors that are commonly used in such a matrix include:

- absence record/timekeeping
- conduct
- disciplinary record
- performance, particularly if this can be accurately measured
- skills.

Length of service (last in, first out) was commonly used in redundancy situations but it is now rarely used, partly because it is a blunt instrument in deciding what skills the company needs going forward and now also because employers risk breaching age discrimination legislation (by advantaging older employees)

Once you have decided which selection criteria to adopt, it would be worthwhile inviting all employees in the selection pool to a meeting to warn them of the potential redundancy situation. Warning of the impending redundancies is one factor an employment tribunal can take into account when assessing the fairness of an employer’s actions. At this meeting employees should also be invited to make comments on the proposed selection criteria. Following this, the employees should be marked against the selection criteria. This should preferably be done by two managers so as to minimise the subjective opinions of one person.

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### The statutory dismissal procedure

Employers must currently follow the statutory minimum dismissal procedure whenever contemplating dismissing any employees and this applies to redundancy situations as much as conduct or ill-health dismissals; a failure to follow the procedure will render any dismissal automatically unfair with a resulting uplift of between 10-50% in any compensation awarded (this still applies although, in the recent Queen's Speech, the government announced its intention to repeal the statutory procedures). To follow the statutory dismissal procedure an employer needs to:

- write to the employee to explain the circumstances leading them to contemplate dismissing them, namely the redundancy situation
- invite the employee to a meeting to discuss this
- write to the employee to inform them of the decision to dismiss whilst also offering a right of appeal.

### Consultation

It is absolutely essential that an individual redundancy consultation process be followed in all cases *before* the final decision to dismiss is taken, even if that decision seems obvious or inevitable. This involves seeking the employee's views about the proposed redundancy rather than just meeting with them to notify them of the decision.

You should initially meet informally with the employee to notify them that they have been "provisionally" selected for redundancy subject to hearing any comments they may have. You should explain:

- why the redundancy is taking place
- why they have been selected (with reference to the selection criteria if there was a pool for selection)
- what the proposed redundancy package might be (if appropriate).

A letter inviting the employee to a formal consultation meeting should be handed over at the meeting, thus complying with step (1) of the statutory procedure above. The employee is not normally expected to comment in detail at this stage as they are expected to have time to consider what they have been told.

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At the formal consultation meeting, which will normally take place two to five days later and at which the employee may be accompanied by a work colleague or an authorised trade union representative, the employee should be given the opportunity to make any comments or ask questions regarding the proposal, the process or any other aspect. Due consideration should be given to any comments made or questions raised, adjourning the meeting if appropriate to investigate.

The consultation meeting is always one of the most difficult aspects of the process, particularly where the employee is personally known to the employer. This consultation process can also often possess a slightly surreal air in which the employer pretends not to have made a decision (which has, in reality, been taken) and the employee is expected to provide comments and alternative proposals to redundancy proposals which he or she knows are wholly futile. However, that is how the law currently stands and it is important not to circumvent the procedure because you think it is fairer to the employee. Employers who do so risk being subject to unfair dismissal claims or entering lengthy correspondence with a solicitor for the employee and being forced into making a larger redundancy payment.

### Alternative employment

As part of the redundancy process, it is important to consider whether there is any alternative employment available, even if what is available may not seem suitable because, for example, it involves a reduction in status or pay. It is also prudent not to recruit shortly before redundancies to avoid redundant employees arguing that they should have been given the opportunity to apply for a recently filled post. If alternative employment is available, it does not have to be on the same terms and conditions although if the alternative post is at a lower salary, you could consider keeping the employee on their existing salary and freezing it until the salary for the new position catches up (often known as "red circling").

### Termination

If there is no alternative to redundancy, you should make sure that the employee is provided with the correct notice period and statutory redundancy payment (which is based on age, length of service and salary). Write setting out the decision clearly and notify the employee of their right to appeal against the decision within a reasonable time frame. If the employee chooses to appeal, the appeal should so far as possible be heard by someone independent of the process who is more senior.

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### Useful tips

There are several phases of an individual redundancy project. These include the following.

#### Stage 1: Preparation

- Always assess whether redundancy is necessary before starting the process.
- Identify your time frame and prepare the appropriate documentation.

#### Stage 2: Selection (pools and criteria)

- When defining the selection pool, consider employees in other parts of the organisation who may be doing work of a similar type and should therefore form part of the selection pool.
- It is important to use criteria aimed at selecting the best individuals needed to sustain the business in the future. Challenging and scrutinising the criteria and the data used will help to ensure that it is fair, robust and non-discriminatory.

#### Stage 3: individual consultation

- Explain why the individual has been selected.
- Look for alternative employment.
- Beware of and plan for the meetings – they will take up time and resources!
- Remember to write to the employee to invite him or her to at least one further meeting to discuss the redundancy proposal. Also remember to allow the employee to be accompanied by a colleague or trade union representative.

#### Stage 4: Notice of redundancy and appeals

- Always remember to write to the employee to inform them of the dismissal and allow them a right of appeal (at which, again, there is a right to be accompanied).

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### Stage 5: Termination processes

- All employees with more than two years' service qualify for a statutory redundancy payment. Remember to provide the employees with written particulars of how the statutory redundancy payment has been calculated as it is a criminal offence not to do so.

The above contains general guidance only and specific advice should be sought before taking action based on any of the contents.

*Richard Linskill*  
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If you would like more information on any of the points covered in this Guest Article, please contact **TCii** on **020 7099 2621**.