

4th November 2010

REDUNDANCY GUIDE



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CONTENTS

Clause

1.	Introduction	3
2.	Redundancy Situation and Fair Procedure	3
3.	Fair Procedure.....	3
4.	Selection Procedure	4
5.	Starting the process off.....	5
6.	Offers of Suitable Employment.....	6
7.	Statutory Redundancy Pay and Notice Pay	7
8.	Compromise Agreements	7

1. Introduction

- 1.1 Where businesses are considering reducing the workforce, it is important to consider what legal obligations arise. This is because affected employees may be able to bring legal claims arising from any dismissals. Such claims could potentially be very expensive. Therefore, it is important to plan such intended reorganisations carefully, and consider what is required at each stage.
- 1.2 Where an Employer proposes to dismiss as redundant 20 or more employees at a single establishment within a period of 90 days or less then the Employer is obliged to inform and consult with appropriate representatives of affected employees. This Note does not deal with this obligation but it is important to bear this in mind as separate claims can arise as a result of any failures in this regard.

2. Redundancy Situation and Fair Procedure

- 2.1 Dismissal can be described as being a redundancy if it is wholly or mainly attributable to:
- 2.1.1 the fact that the employer has ceased or intends to cease to carry on business; or
 - 2.1.2 the fact that the requirements of the business for employees to carry out work of a particular kind or the work in the place where the employees are employed, has ceased or diminished or is expected to cease or diminish.
- 2.2 Where Employers are planning a restructure, it is important to consider if this definition can be met in respect of any proposed job losses. The employer risks claims of unfair dismissal if it cannot demonstrate that the above definition is met in respect of any dismissals.
- 2.3 Whilst an Employer may have a genuine redundancy situation and although redundancy is a potentially “fair reason” for dismissal, this is not in itself sufficient to satisfy the unfair dismissal legislation. In order for the dismissal to be fair, the Employer must have acted reasonably in all the circumstances. This means that the Employer must have followed a fair procedure in dealing with the redundancies.

3. Fair Procedure

- 3.1 The Employer should first consider whether it is bound by any internal redundancy procedures. These could be set out in a staff handbook, in contracts of employment or in an agreement with a union.
- 3.2 Irrespective of whether the Employer must comply with an internal redundancy procedure, the Employer must act reasonably when dealing with redundancy dismissals. When considering the question of reasonableness, the Employment Tribunal and case law have laid down the following principles:
- 3.2.1 as much warning as possible of a redundancy should be given (to give the employee the opportunity to consider alternative solutions and seek alternative employment);

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- 3.2.2 where there are a number of employees affected, fair and objective selection criteria should be used; further, the criteria for selection should not depend solely on the opinion of the person making the selection, but should be criteria which can be objectively checked;
- 3.2.3 the employer must ensure that the selection is made in accordance with those criteria and must consult with the employee; and
- 3.2.4 the employer must ascertain whether there is any suitable alternative employment which can be offered.

4. Selection Procedure

- 4.1 If an employee were to bring a claim in the Tribunal following their dismissal by reason of redundancy, the Tribunal is entitled to know:
 - 4.1.1 who made the decision to select;
 - 4.1.2 what information was taken into account; and
 - 4.1.3 upon what criteria the information was assessed.
- 4.2 The Employer must ensure that it uses the appropriate selection pool. Clearly, if the Employer is closing down its business or a particular place of work the question of the “pool” for selection will not normally arise since all of the employees will be potentially redundant. However, in other cases the Employer will be faced with issues of selection. The Employer must ensure that it uses the correct selection pool. This may be a particular grouping of employees or a department. The Employer should analyse which employees are actually performing the sort of work for which the Employer’s needs have diminished. This analysis may cut across job titles and departments. The question of the “pool” is important since if employers dismiss employees without giving consideration to this issue any subsequent dismissal will more than likely be unfair. It may be the case that only a particular role is going to disappear. However, Employers should consider whether actually a Tribunal may find that the “pool” should have been wider than this. Careful consideration should be paid to actual job content and it would be advisable to consider drawing up job descriptions and other documents to evidence the thought processes and the proposal.
- 4.3 Before considering the question of any compulsory redundancies, it is good practice for employers to seek volunteers. If employers do seek volunteers it is important to reserve the right to reject volunteers since automatically accepting volunteers may lead to an imbalanced work force or lead to the loss of employees with particular skills.
- 4.4 The Employer must also ensure that the selection criteria are objective and non-discriminatory. Possible factors which could be used as a reasonable basis for selection include:
 - (i) Performance.
 - (ii) Ability.

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- (iii) Attendance records (provided absences for reasons related to a disability and time off for maternity or parental leave are not taken into account).
 - (iv) Productivity.
 - (v) Critical skills to be retained in the business.
 - (vi) Last in first out/length of service.
- 4.5 Care should be taken in using last in first out or length of service as the sole criterion as this is likely to offend the Age Discrimination Regulations.
- 4.6 In applying the selection criteria, it is important that a manager with a sufficient level of knowledge of the employees concerned should carry out the selection. It is also good practice, and may assist the Employer in demonstrating fairness, that an independent and more senior manager carry out a review of the scoring. Affected employees should also be given access to their provisional scores and be afforded an opportunity to comment on them in advance of final decisions being taken (see below).

5. Starting the process off

- 5.1 On a practical level it is often a good idea to gather all your employees together for an initial group meeting and go through the business reasons behind the redundancies. Understanding the business reasons behind the redundancies will help your employees come to terms with the process. Be personally engaged in the process. Explain why it has not be possible to avoid redundancies.
- 5.2 Q & A's work wonders – Make life easier for yourself by preparing a set of “standard” Questions and Answers to the sorts of questions that you know employees are likely to raise. Many of the affected employees will have the same or similar questions. It can be reassuring to have responses in writing and written responses can help to avoid the “rumour mill” and misunderstandings.
- 5.3 Following the initial meeting you will move to individual consultation. Individual consultation involves:
- (i) Giving as much warning as possible of impending redundancies;
 - (ii) Consulting with individual employees about the proposed redundancy situation and how it affects that employee;
 - (iii) Consulting with individual employees about the proposed selection criteria and their application to the employee;
 - (iv) Considering any suitable alternative employment; and
 - (v) Taking into account the individual employee's personal circumstances as appropriate.
- 5.4 Careful thought needs to be given to the timing of the individual consultation process particularly where the Employer is also undertaking collective consultation. In particular, it will normally be inappropriate to commence individual consultation until the Employer has

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carried out sufficient collective consultation with appropriate representatives. If the Employer commences individual consultation too early, this may prejudice the collective consultation process.

- 5.5 In terms of individual consultation, this process should be carried out before the Employer has made any final decisions about individual redundancies. Only after sufficient individual consultation should the Employer make their final decisions and issue notices of termination. It is advisable that there should be a minimum of two individual consultation meetings. The Employer should inform individual employees that they have the right to be accompanied at each of the above meetings by a union representative or work colleague.
- 5.6 Notes should be taken by the Employer at the meetings to record what is discussed. These notes can be particularly important in the event of a subsequent employment tribunal claim by the employee.
- 5.7 Following the consultation meetings and in the event that a decision is taken to dismiss the employee, a letter can then be sent to the employee confirming their dismissal by reason of redundancy and setting out appropriate arrangements for their notice period, and any practical issues arising.

6. Offers of Suitable Employment

- 6.1 The Employer should take steps to identify suitable alternative employment. This should be offered to the employees whom it is proposed be made redundant. This would include considering employment in all other companies within the group, and at other premises/locations.
- 6.2 The employee must be given sufficient information about the alternative job, including the financial prospects of the position, to allow the employee to make an informed decision. It is dangerous to assume that an employee would not be interested in a position, just because it is at a more junior level.
- 6.3 If an employee:
- (i) accepts an offer of suitable alternative employment; or
 - (ii) unreasonably refuses an offer of suitable alternative employment.

an employer will not be liable to pay the employee a statutory redundancy payment. This will however only be the case where statutory conditions for an offer and acceptance are met.

- 6.4 An employee is entitled to a statutory trial period whenever the terms and conditions of the new contract differ wholly or in part from the terms of the old contract. If an employee terminates the contract or gives notice to terminate it at the end of the trial period he is treated as having been dismissed on the date at which the original contract came to an end. Similarly if an employee is dismissed for a reason relating to the trial period, for example because a new role is unsuitable the employee is treated as having been dismissed with effect from the end of the original contract. In both cases, the employee returns his right to a redundancy payment.

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7. Statutory Redundancy Pay and Notice Pay

- 7.1 According to the Employment Rights Act 1996, the right to claim a redundancy payment depends upon the employee completing a minimum of 2 years' continuous employment.
- 7.2 The statutory calculation of redundancy pay is based upon each employee's age, gross weekly salary (subject to a weekly maximum) and number of years' service. This payment is made free of tax.
- 7.3 In addition, each employee will be entitled to receive notice of termination of employment. The Employer may require the employee to work their notice, or alternatively may make a payment in lieu of notice.
- 7.4 It should be noted that an employee under notice of dismissal for redundancy has a statutory right to a limited amount of time off work to seek new employment or to make arrangements for re-training.
- 7.5 It is possible to provide that a "loyalty bonus" will be paid to those employees who remain until the closure of the business to avoid the workforce "drifting away" before the proposed closure date (if appropriate). Such loyalty bonus is likely to attract normal deductions for tax and national insurance.
- 7.6 In addition to a statutory redundancy payment, an employee may also have an entitlement to a contractual or an enhanced redundancy payment. This may be provided for individual contracts of employment or alternatively within the staff handbook or a collective agreement with a union. Non-statutory redundancy payments are taxable to the extent that they exceed £30,000.

8. Compromise Agreements

- 8.1 Even if the Employer observes the above procedures there is a risk that employees who are made redundant may bring claims in the Tribunal. Therefore, in order to deal with this risk, it is possible to enter into a legally binding agreement (known as a Compromise Agreement). Providing that the necessary formalities are observed, the Employer can then obtain protection against statutory employment claims.
- 8.2 The possibility of entering into a Compromise Agreement should therefore be actively considered, particularly where employees are receiving payments over and above statutory redundancy payments. The employee will have to be independently and separately advised and the employer normally contributes a nominal sum of money as a contribution towards the employee's legal costs.

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About Us

Blue Sky Law is an experienced firm of employment solicitors who provide clear legal solutions to your problems. We deal with the full range of employment law issues.

Practical advice and support

We don't deliver legal advice in a vacuum. We always ensure that the advice and support that we provide is of real practical benefit. We will help to identify your objectives and will work closely with you to achieve these.

Friendly and personal service

Research shows that clients are often put off calling lawyers because they are seen as remote and unapproachable. We aim to change all that. Our approach is always down to earth. We appreciate that legal issues can seem complex and can be stressful and we always aim to minimise these effects. Many of our clients have already established long term relationships with us. This enables us to really get to know our client's businesses and add value.

Cost effective

Our size enables us to be cost effective.

Our basis of charging is simple and straightforward and we always ensure that this is explained fully. We will agree fixed fees in advance where possible or provide realistic estimates of costs.

We are always up front and realistic about costs

Our people

Lee works with both businesses and individuals dealing with the full range of employment law issues. He has many years of experience in the field of employment law and frequently represents clients in the Employment Tribunal. Lee is an experienced speaker on employment law issues and has contributed articles to HR journals and publications including personnel today and Employment Law Brief. He is a freelance lecturer on employment law matters at BBP Professional Development.

Lee is a member of the Employment Lawyers Association.

Examples of Lee's experience include:

- successfully negotiating an exit package for a senior executive leaving a large UK Bank
- advising a manufacturing company on the HR aspects of closing a site
- obtaining an injunction on behalf of a corporate client to prevent an ex-employee using a database which had been unlawfully taken
- defending a national charity from claims of constructive dismissal and whistle blowing
- advising a care homes business on defending allegations of whistle-blowing and sexual harassment

When he is not at work Lee can be found undertaking a number of hobbies including daydreaming of a career as a travel writer.



Lee Jefcott - Partner

Awena Parry – Assistant Solicitor

Awena has a first class honours degree in law from Manchester University where she was also awarded the R G Lawson Law Prize. After completing her degree, Awena studied the Legal Practice Course at BPP Law School Manchester.



Awena qualified as a solicitor in September 2009 after completing her training contract at a Manchester City Centre practice, and joined Blue Sky Law as an assistant solicitor upon her qualification.

Awena deals with corporate, commercial, and employment law matters at Blue Sky Law including:-

- Drafting documentation to include employment and consultancy contracts; directors' service agreements and staff handbook/policies.
- Advising on disciplinary issues including termination of employment.
- Dealing with Employment Tribunal claims.

In her spare time Awena enjoys attending gigs and festivals and is also a regular attendee at local networking events.

Awena was previously a social secretary on the Manchester trainee solicitors committee and has provided volunteering services to the Junior Lawyers Division by providing telephone advice to young lawyers.

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