



# Redundancy

Your guide from ATL – the education union

Legal advice series



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# 01 Introduction

Redundancy has unfortunately become a fact of life for school/college staff in recent years. Inevitably, those facing this prospect are often anxious and need considerable support. It can be a particularly traumatic experience for employees who have worked in a stable environment for many years.

ATL works to protect individuals' jobs and to avoid compulsory redundancy wherever possible. ATL promotes good employment practices and offers advice, information, support and, where necessary, formal representation for members facing redundancy.

This booklet revises and supersedes the 2011 edition. It attempts to offer:

- a concise and accessible introduction to the law on redundancy
- a guide to the potential payments available
- a description of the procedure that schools/colleges should adopt when contemplating and/or implementing redundancies.

However, it should not be seen as a definitive or fully comprehensive statement of the law.

The booklet is divided into three parts:

- the legal principles
- redundancy payments
- model redundancy procedure.

## What is redundancy?

1. According to the definition in Section 139 of the Employment Rights Act 1996, redundancy arises where an employee is dismissed either:

- because the employer has ceased (or intends to cease) to carry on business
- or because the employer's requirements for employees to carry out work of a particular kind in the place where he or she is employed **have ceased** or **diminished** (or are expected to do so).

2. Some examples of redundancy situations include:

- an employer in financial difficulties needing to reduce costs
- a department is over-staffed
- duties are reorganised/restructured so the work can be carried out by fewer staff
- discontinuance of a subject or course
- two schools/colleges merge
- closure of a school/college.

## Challenging redundancies

3. Provided they have worked (whether full or part time), for two full years for their employer, employees who have been declared redundant are entitled to challenge their redundancy in the Employment Tribunals, claiming unfair dismissal. There is a strict time limit on any claim. This is **three months** (minus one day) from the date in which the employment is terminated.

4. Redundancy can be a legally fair reason for dismissal. But to satisfy the Employment Tribunals that a redundancy was indeed fair, schools/colleges would have to demonstrate that a genuine redundancy situation existed and also that they acted reasonably.

5. Experience has shown that Employment Tribunals, when assessing unfair dismissal

claims, will not normally go into detail regarding the rights and wrongs of the declaration of redundancies, eg by investigating how a redundancy situation arose or whether it could (or should) have been avoided by better management. In that sense, the employer does not have to go far to justify the redundancy; provided, of course, that there is a genuine redundancy and not a sham (eg where the employee is being directly replaced from outside). It is rare for a claim to succeed on the issue of whether a redundancy situation exists.

6. Any challenge is normally more realistic on the other ground, ie whether the employer has acted reasonably.

## The legal process

7. The law expects employers to observe five key principles:

- to warn the workforce of the possibility of redundancies as early as possible
- to consult recognised trade unions in good time where 20 or more staff are affected
- to establish objective criteria for selection of staff for redundancy
- to apply the criteria objectively so that fair selections are made
- to take reasonable steps to find alternative employment for displaced staff.

## A good redundancy procedure

8. A good redundancy procedure should aim to:

- consider alternatives to redundancy
- warn and consult the staff
- consult individuals
- select the proposed candidate(s) for redundancy fairly
- ensure the staff concerned have hearings and appeals
- minimise hardship for individuals as far as possible
- give appropriate notice of dismissal.

## Warnings

9. Schools/colleges should conduct a review of their staffing needs as soon as financial (and other appropriate) indications suggest a need to do so. If this review indicates that staffing reductions will be required, preliminary notification should be given to the staff. This can take the form of an initial meeting with all staff who might be affected to explain why redundancies are being contemplated and to warn of the possible repercussions. The local branch representative(s) of recognised trade union(s) should also be notified. Maintained schools should contact their local authority (LA).

## Consultation

10. According to the Acas booklet *Handling Large-Scale Redundancies*, good communication and consultation is the bedrock of every effective organisation. By giving employees and employee representatives the information they need about proposed changes within an organisation and asking for their views on the best way forward, employers can:

- have better discussions
- keep employees motivated and engaged
- protect the well-being of their employees
- help the business to survive and plan for the future.

11. ATL considers that meaningful consultations will normally involve the following:

- provision of financial information and discussion on this and any perceived need to reduce the staffing budget (there should be an opportunity to suggest alternative methods of budgeting and/or reducing expenditure)
- discussion on the proposed method of selecting staff for redundancy
- discussion on alternative employment
- enhanced redundancy payments or other inducements.

12. In ATL's view, consideration of consultation should normally comprise both written information and face-to-face meetings.

### Alternative strategies

13. The consultation process should explore in full any viable alternatives to redundancy. Depending on the circumstances, it may be relevant to consider the following strategies:

- economies in the non-staffing budget
- staff reductions due to natural wastage
- voluntary early retirement
- voluntary severance/redundancy
- voluntary transfer to part-time work or job share
- redeployment/retraining to other posts
- reviewing supply cover and/or casual appointments
- ways in which income could be generated.

14. The need for financial savings or staffing cuts should normally be seen as an issue for the whole school/college in the first instance, rather than a problem confined to a particular area of perceived over-staffing. Using staff flexibly (within reasonable limits) should maximise opportunities to avoid redundancy dismissals.

### Who is responsible for consultation?

15. The employer is responsible for consultation. In maintained schools, this lies with the governing body, with the involvement of the LA. As regards other schools, colleges and academies, the employer could be the governing body, proprietor, corporation or limited company.

16. Where ATL is recognised, its branch secretaries should be the formal contact for redundancy consultations. However, it may be appropriate for the school-/college-based representative to undertake consultation in their workplace instead depending on ATL's local assessment of the situation.

## Individual consultations

17. Employment Tribunal cases have emphasised the importance of employers consulting the individuals concerned. Dismissals have been found to be unfair where the union has been consulted but not the individual. It is, therefore, best practice that individuals who are to be made redundant are consulted.

18. This individual consultation should afford the employee the opportunity to meet with an appropriate member of management to discuss the situation before decisions are taken. This is irrespective of the size of the school/college, the employee's length of service or whether the employer is consulting formally with a recognised trade union. Simply informing the employee by letter is not good enough.

## Collective consultations

19. Under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992:

- An employer proposing to make redundant 20 or more employees at one establishment within a period of 90 days or less must undertake collective consultations ('establishment' is not specifically defined, but probably means an individual school/college).
- The consultations must begin **in good time**. There are legal minimums for the period of consultation, which should be:
  - at least 30 days before the first dismissal if 20-99 employees are to be made redundant at one establishment
  - at least 45 days before the first dismissal takes effect if 100 or more employees are to be made redundant at one establishment
  - the consultations must be held with either recognised trade union representatives or employee representatives (see below) elected by the workers affected; where there are both recognised union(s) and employee representatives, the employer may choose whom to consult.

20. Consultation must take place before the decision to dismiss and/or give notice of dismissal is taken, ruled the case of *Junk v Kühnel* 2005 IRLR 310.

21. The consultations shall include ways of:
- (a) avoiding the dismissals
  - (b) reducing the numbers of employees to be dismissed
  - (c) mitigating the consequences of the dismissal
  - (d) and shall be undertaken with a view to reaching agreement with the unions or employee representatives, as appropriate.
22. To effectively start the consultation process, the employer must disclose in writing to the representatives/union(s):
- (a) the reasons for the proposed redundancies
  - (b) the numbers and descriptions of employees proposed for redundancy
  - (c) the total number of staff of these descriptions employed
  - (d) the proposed method of selection
  - (e) the proposed method of carrying out the dismissals, taking account of any agreed procedures, including the period over which they are to take effect
  - (f) the proposed method of calculating redundancy payments
  - (g) the number of agency workers and the type of work they are doing.

23. This is normally done by the employer issuing a Section 188 notice. The majority of LAs, schools and colleges, recognising that this represents good management practice, are continuing their established practice of consulting with unions over all proposed redundancies. ATL believes that the continuance of these consultation arrangements must be encouraged.

## Rights of employees' representatives

24. The role of employees' representatives in redundancy is particularly important where the employer does not recognise trade unions, which is commonplace in independent establishments. Elected under the Information and Consultation of Employees Regulations 2004 (SI 2004/3426), they represent the interests of the affected employees.

Representatives have the following rights:

- Representatives and candidates for election have a right to reasonable time off with pay to carry out their functions
- Employers must allow representatives access to office equipment and other workplace facilities
- Representatives and candidates for election have a right not to be dismissed or subjected to detriment because of their status or activities – a dismissal in these circumstances will be automatically unfair (a complaint must be made to the Employment Tribunals within three months of the date on which the employment is terminated).

25. ATL representatives and candidates for elections who wish to be advised on these matters should contact their branch secretaries/regional officials or local office.

## Failure to consult – protective award

26. Schools/colleges should do all they can to ensure that they comply with the legal requirements to consult as set out in Section 188 (see paragraph 22). If they fail to do so, a claim may be made to the Employment Tribunals for a protective award. The claim must be commenced within three months of the date of dismissal.

27. If the claim is successful, the Employment Tribunals will order the employer to pay employees their normal week's pay for a protected period for a maximum of 90 days, depending on the seriousness of the employer's default. The protected period starts when the first of the dismissals take effect or from the date of the tribunal award, whichever is earlier.

28. Note, however, that where the employer is insolvent, it is possible to seek payment of the protective award from the Government's Redundancy Payments Office's National Insurance Fund. The payment is limited to eight weeks' pay, capped at the statutory weekly maximum (currently £479 per week).

## Selection criteria

29. The law does not oblige employers to adopt any particular criteria when determining who to select for redundancy, provided the criteria used is one broadly reasonable and objectively applied irrespective of the size of the school/college. Employment Tribunals will not replace the employer's judgement with its own assessment of which criteria ought to have been applied, but will assess the reasonableness of the selection(s) actually made.

30. The most commonly used criterion in schools/colleges is curriculum needs. ATL considers this should be applied following a skills audit of staff. We encourage our representatives to call for a skills audit to be conducted and scored fairly to ensure that any decisions based on these criteria are founded on an accurate picture of individuals' skills, experience, qualifications and employment record.

31. Care must be taken to ensure that selection criteria are not directly or indirectly discriminatory on the grounds of age,

disability, race, religion or belief, sex or sexual orientation, which are prohibited by the Equality Act 2010. In addition, selection of women for redundancy on the grounds of pregnancy will be considered to be automatically unfair. Nor is selection on the grounds of trade union membership permitted.

32. ATL advises against the use of attendance records as a criterion for selection. If an individual has an attendance issue, then it should be dealt with in the appropriate way. Furthermore, the use of such grounds can potentially be discriminating, eg for women staff members who have recently been on maternity leave or for individuals with a disability. Acas advises that where attendance is used as a selection criterion, absences “relating directly to an employee’s disability should be discounted”.

33. The number of years of relevant experience or relevant service has often been used as a ‘tie-break’ criterion. The latter may be referred to as last-in-first-out (LIFO). However, its use has been challenged as being age discriminatory against young staff. Case law suggests that LIFO should only be used subject to ensuring that it can be “objectively justified” and is non-discriminatory.

## **Making the selection**

34. It is clearly vital that selections for proposed redundancy are made, and are seen to be made, fairly and in accordance with stated objective criteria. ATL believes that this can best be achieved by entrusting the task to a small sub-committee. If it is undertaken by one person alone, for example, by the headteacher/principal, the issue of subjectivity can, rightly or wrongly, arise.

35. The sub-committee will need to apply the objective criteria, fairly, to the pool of employees at risk and nominate those at risk

of redundancy. In applying the criteria, care must be taken to avoid any discrimination (see paragraph 31). At this stage, employees should only be nominated for redundancy and no formal decision should be taken to dismiss (see paragraph 43).

## **Part-time employees**

36. Part-time employees must not be treated less favourably than full-time employees according to the Part-time Workers’ (Prevention of Less Favourable Treatment) Regulations 2000. Therefore, it is not permissible for an employer to decide to make redundancies as the basis of letting the part-time employees go first. It may also amount to sex discrimination as the proportion of women employees who work part time is significantly greater than male employees.

## **Fixed-term contracts**

37. The Fixed-term Employees’ (Protection of Less Favourable Treatment) Regulations 2002 make it unlawful for an employer to treat fixed-term contract staff less favourably than comparable permanent colleagues. This means, for example, that if there is a redundancy situation, the school/college cannot automatically select those who are on fixed-term contracts.

38. When a fixed-term contract expires and is not renewed, this is regarded as a dismissal. Whether the dismissal gives rise to an entitlement to a redundancy payment (after two years’ service) will depend upon the circumstances. For example, if there is a genuine diminution in the overall need for employees, this is likely to create a redundancy situation. Where, on the other hand, someone is employed on a fixed-term basis for a specific temporary need (such as covering for another who is on maternity leave) he or she is unlikely to be able to claim a redundancy payment.

## Bumping

39. The concept of 'bumping' is widely used in colleges. This refers to allowing staff to take redundancy from an unaffected area, which thereby creates a vacancy that those threatened with redundancy can apply for or be slotted into. Using bumping as a method of voluntary redundancy means that as many staff as possible are given the option of taking voluntary redundancy. However, it can have a negative effect if the staff members who need to be retained seek to leave. One option is for the employer in the first instance to offer a minimal redundancy payment to volunteers in unaffected areas, so that these staff members are not actively encouraged to leave.

40. On the positive side, the adoption of 'bumping' policies can mean that individuals who wish to depart can do so and those who wish to remain are able to stay. In any event, management will retain discretion as to which volunteers for redundancy are accepted.

## Ring-fencing

41. It is not uncommon for employers to adopt a ring-fencing policy, which provides that individuals at risk of redundancy are given priority of consideration for jobs for which they have the minimum requirements. For example, any pool of staff under threat of redundancy can first compete within that pool for the relevant posts. Any subsequent pools of staff who have related skills or experience, and are under threat of redundancy, are then joined by those from the first pool. This enables experienced staff to apply for posts on lower tiers in order to ensure that staff with the requisite skills and motivation can be retained.

42. This can be achieved by advertising posts internally only in the first instance, or by considering applications from displaced individuals before those from unaffected staff or external candidates.

## Hearings and appeals

43. Hearings should take place before formal decisions to dismiss are given to employees. In addition, the employee should be given an opportunity to appeal at a further hearing. Needless to say, those who take part in the original dismissal hearing should be ineligible to be a member of the appeal panel/committee. The employee should have the right to be accompanied/represented by a workplace colleague or union official.

## Alternative employment

44. Before dismissing a member of staff as redundant, an employer has an obligation to offer alternative work, if available. This obligation continues after notice is given, right up to the date on which employment is terminated. If the employer fails to do so, the Employment Tribunals may well find that the dismissal was unfair.

45. Where the employer offers an alternative post, the employee is entitled to a **trial period** of four weeks to decide whether to accept the new job or to leave as redundant (Section 138, Employment Rights Act 1996). If either the employer or the employee terminates the employment during or at the end of the trial period for a reason connected with the new job, the employee will be entitled to a redundancy payment under the old contract.

46. If an employee facing redundancy **unreasonably** refuses an offer of suitable alternative employment, the employer can legitimately refuse to make a redundancy payment. However, employees are entitled to decline an offer of alternative employment without being penalised if it differs significantly from their previous job. The following factors are relevant:

- job content and status pay
- hours of work

- location of workplace
- employee's personal circumstances (eg family commitments and health).

Whether a job is a suitable alternative is a question of fact. Members are advised to speak to ATL before turning down a post offered as a reasonable alternative.

## **Giving notice**

47. Staff made redundant are entitled to their full contractual period of notice.

48. Teachers employed under the terms and conditions of the Burgundy Book (ie maintained sector contracts) can only be made redundant at the end of a term and are legally entitled to receive two or three months' notice, depending on the time of year. Invariably, the contracts of those teaching in the independent sector stipulate that the employment can only be terminated, with notice, at the end of the term.

49. It is common for contracts of college lecturers to give an entitlement to three or four months' notice of termination of employment.

50. Generally, support staff do not have the same customary standard notice periods as teachers. They have only the basic statutory right to receive one week's notice for every year of continuous service, up to a maximum of 12 weeks. This notice can be given at any time.

51. Employees who have been given notice of redundancy are legally entitled (provided they have at least two years' continuous service with that employer) to reasonable time off, with pay, to look for work and to arrange training.

# 03 Redundancy payments

## Statutory redundancy payments

52. Statutory redundancy payments are currently based on three factors:

- age at termination of employment
- length of continuous service (counted in complete years), subject to a maximum of 20 years
- final gross 'weekly pay'.

53. The Government sets a statutory maximum for the calculation of 'a week's pay'. This figure is normally reviewed each year. The current sum from April 2015 is £479. Employees whose gross weekly pay is less than this will receive a statutory redundancy payment based on multiples of their actual weekly salary. Those who earn more than £479 per week (gross) will have the statutory maximum for a week's pay applied to them, unless their employer decides to enhance the payment, as many LAs do (see paragraphs 73 and 74).

54. The statutory redundancy payment is presently calculated as follows:

- For each complete year of service up to the age of 21 = 0.5 of one week's pay.
- For each complete year of service from age 22 to 40 = one week's pay.
- For each complete year of service from age 41 = 1.5 of one week's pay.

The statutory redundancy pay table on the following page may help to calculate the multiples of a week's pay to be used.

Alternatively, there is an online tool for calculating statutory redundancy pay at [www.gov.uk/calculate-your-redundancy-pay](http://www.gov.uk/calculate-your-redundancy-pay).

### Statutory redundancy pay table

Age	Service (years)																			
	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	
17*	1																			
18	1	1.5																		
19	1	1.5	2																	
20	1	1.5	2	2.5																
21	1	1.5	2	2.5	3															
22	1	1.5	2	2.5	3	3.5														
23	1.5	2	2.5	3	3.5	4	4.5													
24	2	2.5	3	3.5	4	4.5	5	5.5												
25	2	3	3.5	4	4.5	5	5.5	6	6.5											
26	2	3	4	4.5	5	5.5	6	6.5	7	7.5										
27	2	3	4	5	5.5	6	6.5	7	7.5	8	8.5									
28	2	3	4	5	6	6.5	7	7.5	8	8.5	9	9.5								
29	2	3	4	5	6	7	7.5	8	8.5	9	9.5	10	10.5							
30	2	3	4	5	6	7	8	8.5	9	9.5	10	10.5	11	11.5						
31	2	3	4	5	6	7	8	9	9.5	10	10.5	11	11.5	12	12.5					
32	2	3	4	5	6	7	8	9	10	10.5	11	11.5	12	12.5	13	13.5				
33	2	3	4	5	6	7	8	9	10	11	11.5	12	12.5	13	13.5	14	14.5			
34	2	3	4	5	6	7	8	9	10	11	12	12.5	13	13.5	14	14.5	15	15.5		
35	2	3	4	5	6	7	8	9	10	11	12	13	13.5	14	14.5	15	15.5	16	16.5	
36	2	3	4	5	6	7	8	9	10	11	12	13	14	14.5	15	15.5	16	16.5	17	
37	2	3	4	5	6	7	8	9	10	11	12	13	14	15	15.5	16	16.5	17	17.5	
38	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	16.5	17	17.5	18	
39	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	17.5	18	18.5	
40	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18.5	19	
41	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	19.5	
42	2.5	3.5	4.5	5.5	6.5	7.5	8.5	9.5	10.5	11.5	12.5	13.5	14.5	15.5	16.5	17.5	18.5	19.5	20.5	
43	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	
44	3	4.5	5.5	6.5	7.5	8.5	9.5	10.5	11.5	12.5	13.5	14.5	15.5	16.5	17.5	18.5	19.5	20.5	21.5	
45	3	4.5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	
46	3	4.5	6	7.5	8.5	9.5	10.5	11.5	12.5	13.5	14.5	15.5	16.5	17.5	18.5	19.5	20.5	21.5	22.5	
47	3	4.5	6	7.5	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	
48	3	4.5	6	7.5	9	10.5	11.5	12.5	13.5	14.5	15.5	16.5	17.5	18.5	19.5	20.5	21.5	22.5	23.5	
49	3	4.5	6	7.5	9	10.5	12	13	14	15	16	17	18	19	20	21	22	23	24	
50	3	4.5	6	7.5	9	10.5	12	13.5	14.5	15.5	16.5	17.5	18.5	19.5	20.5	21.5	22.5	23.5	24.5	
51	3	4.5	6	7.5	9	10.5	12	13.5	15	16	17	18	19	20	21	22	23	24	25	
52	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	17.5	18.5	19.5	20.5	21.5	22.5	23.5	24.5	25.5	
53	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19	20	21	22	23	24	25	26	
54	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	20.5	21.5	22.5	23.5	24.5	25.5	26.5	
55	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	21	22	23	24	25	26	27	
56	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	21	22.5	23.5	24.5	25.5	26.5	27.5	
57	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	21	22.5	24	25	26	27	28	
58	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	21	22.5	24	25.5	26.5	27.5	28.5	
59	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	21	22.5	24	25.5	27	28	29	
60	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	21	22.5	24	25.5	27	28.5	29.5	
61+	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	21	22.5	24	25.5	27	28.5	30	

### Example 1

55. A teacher is being made redundant from a school, where she has taught for 15 full years. She is 47 and her gross weekly pay is £500. Her entitlement to statutory redundancy pay is therefore 18 x one week's pay, ie 18 x £479 = £8,662 (on the basis of the current statutory maximum).

### Continuous service

56. In order to qualify for a redundancy payment, employees (full or part time) must have been continuously employed by their employer for a minimum of **two full years**.

57. Periods of absence as a result of sickness and maternity leave count as part of continuous service.

58. Similarly, employment on a succession of fixed-term contracts is defined as continuous, provided there is no break between them. Non-renewal of a fixed-term contract counts as a dismissal and can give rise to an entitlement to a redundancy payment (but note the provisos discussed in paragraph 38).

## The Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999

### Service in maintained education

59. The Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999 ('the Order') provides that where staff work for a succession of public sector and other specified employers, without a break, continuity is preserved in the calculation of redundancy payments. The Order covers England, Wales and Scotland, and there is equivalent legislation for Northern Ireland.

Employment covered under the Order includes:

- LA maintained schools (including voluntary-aided and foundation schools)
- city technology colleges
- maintained further education colleges
- universities and colleges funded by relevant agencies
- academies.

60. This means that, if a member of staff is made redundant by one of these employers, the length of service used in the redundancy payment calculation is based on all her/his continuous employment in any of them (provided there are no breaks between periods of employment).

### Example 2

61. A teacher is leaving teaching with a local authority on the basis of voluntary redundancy. She has been in her present post for four years, before which she taught with another LA for three years, having previously spent five years as a lecturer with an FE college. There were no breaks between these employments. The length of continuous service on which her redundancy payment is calculated aggregates all these periods, ie 12 years in total.

62. However, the corresponding effect of the Order is that, when a member of staff is made redundant by one of these employers but then takes up a post with another within four clear weeks (plus one day), he or she will not normally receive a redundancy payment because the previous service is carried forward into the new employment for redundancy purposes. This disallowance only operates if the following three conditions are satisfied:

1. He or she returns to the same employer or takes up a post with one of the other employers listed in the Order; **and**

2. the break between the two employments is less than four clear weeks plus one day; **and**
3. the offer of the new employment was made, either orally or in writing, **before the previous (redundant) post ended.**

63. Consequently, the entitlement to redundancy payment **stands** when:

- she/he is made redundant by an employer listed in the Order and straightaway takes up employment in an independent school/college (or vice versa); or
- the new post is with another employer listed in the Order, but it commences after a gap of more than four clear weeks plus one day (see below); or
- the new post starts within the four-week period, but is only offered after the termination of the previous job.

64. This latter proviso means that someone taking redundancy from a maintained school can, for example, accept casual, day-to-day supply work straight away after leaving the permanent post without jeopardising his or her redundancy payment, provided the work is offered after the previous contract has ended.

### Example 3

65. A maintained school declares a teacher redundant as from 31 August but in June the teacher obtains a post in a voluntary aided school starting on 1 September. The teacher will not now receive a redundancy payment, although they will be entitled to link these employments together as one period of continuous service for the purposes of calculating any redundancy pay in the future.

### Example 4

66. A teacher is made redundant as from 31 December. In November, she places her name on the LA's supply register for the spring term

and, on 7 January, is called to a school to cover for a teacher who is away sick. Her right to a redundancy payment is not affected, since she is offered this further contract of employment after her departure from the previous job.

### The four-week gap

67. Where, as explained above, the legislation requires a break in employment of more than four weeks, this means in practice a clear break of at least four weeks plus one day. Furthermore, for these purposes, employment terminating on a Friday, Saturday or Sunday is regarded as ending on the following Monday, which adds to the length of the necessary break between employment in some cases. Accordingly, the appropriate break in employment for employees who wish to preserve their redundancy payment is as follows:

Where the last day of service (LDS) falls on a:	The earliest date to begin the new employment is:
Monday	5th Wednesday after the LDS
Tuesday	5th Thursday after the LDS
Wednesday	5th Friday after the LDS
Thursday	5th Saturday after the LDS
Friday	5th Wednesday after the LDS (since the previous contract is deemed to continue until the Monday after the LDS)
Saturday	
Sunday	

68. ATL members who need further advice on re-employment or the implications of the Order should contact their regional official or ATL's London office.

## Redundancy payments — independent schools/colleges

69. Employment in an independent school/college does not count towards continuous service in maintained institutions. Nor, in most cases, are independent schools/colleges linked to each other for redundancy purposes. Consequently, each period of employment in an independent school/college will normally be regarded as separate.

### Example 5

70. A teacher is facing redundancy after a long career in teaching. She worked 10 years with a borough council, then moved to an independent school for five years, worked for a county council for the next four years, and has now been employed in a voluntary aided school for the past decade.

Her redundancy payment will be based on the most recent 14 years' service, because the period before this spent teaching in an independent school broke her continuity of employment in the maintained education sector. Her statutory redundancy entitlement at age 63, by reference to the statutory redundancy pay table, is therefore 21 x £479 (a week's pay) ie £10,059 on current figures. Even if she had not had this break in service, the 20-year maximum for redundancy payments would still have applied.

## Redundancy payments — re-employment via an agency

71. Some colleges dismiss staff and re-engage them through an agency. Where this happens, staff are likely to be regarded as self-employed or an agency employee, and the entitlement to redundancy pay from the college should not be affected.

## Enhancement of redundancy payments

72. Under Government regulations, public sector employers may disregard the normal statutory maximum for a week's pay (currently £479) when calculating redundancy payments, but they are not obliged to do so. The Teachers' (Compensation for Redundancy and Premature Retirement) Regulations 1997 give public sector employers discretion to use an amount up to the actual (gross) weekly salary if, as is often the case, this will result in a higher redundancy payment than the statutory sum. LAs, school governing bodies, colleges, and universities and colleges funded by the relevant agencies will have similar powers in this respect. ATL branch secretaries should be able to advise on their LA's general policy as far as this discretion is concerned.

73. Independent schools/colleges are not covered by the Regulations on redundancy payments. Consequently, they face no legal restrictions and some reward loyal service by offering enhanced redundancy payments, often using actual pay, rather than the capped statutory amount.

## Claiming a redundancy payment

74. In most cases, those made redundant automatically receive the appropriate payment from their employers. If, however, there is any dispute, a claim should be made in writing to the employer **within six months** of departure. Failure to observe this deadline could lead to the claim being judged out of time. Please note that this time limit is longer than the three-month deadline for any claim of unfair dismissal.

75. Members seeking further advice on any of the issues raised in this guidance note should contact their branch secretary or ATL's regional office.

## Severance payments (England and Wales only)

76. Employers can pay severance payments to teachers/lecturers who leave service up to a potential maximum of 104 weeks' pay.

77. Severance payments can be paid to maintained sector teachers leaving service either on grounds of redundancy or on grounds of the "efficient discharge of their employer's functions". They may be paid in addition to a redundancy payment or they may replace a redundancy payment (eg where the employer offers the teacher the choice of taking either redundancy or voluntary severance). However, if the employer pays both, the amount of the redundancy payment reduces the maximum sum payable as a severance payment. There is, therefore, no necessity for a redundancy situation to exist for a severance payment to be made; a severance payment can be a 'golden handshake'. In any event, the award of a severance payment is discretionary; it is not a matter of entitlement. It is for the governing body to decide: whether to offer severance as above; and the amount of the payment.

78. The cost is borne by the LA. However, governors are likely to abide closely by any policy on severance payments adopted by the LA, as the authority is entitled to recover from the school's budget any costs incurred if it has "good reason" to do so.

79. Note: unlike the position with redundancy payments, there are no legislative rules governing when a teacher who takes a severance payment may be re-employed.

## Voluntary redundancy packages in FE colleges

80. With goodwill, there are creative ways of enhancing the package of FE staff taking voluntary redundancy, particularly as some may cost the college a relatively small amount.

81. Such enhanced offers will give much-needed support to staff taking redundancy and demonstrate that an employer is being supportive. Examples of welcome enhancements might include:

- free training and courses
- use of college facilities (gym, hairdressing, car MOT services, etc)
- vouchers for training courses
- payment for/or towards retraining
- counselling services to help work through effects of life changes
- coaching sessions
- career advice from a third party, eg CV writing
- contact with local university for staff access to courses/training.

## Teachers' Pension Scheme – premature retirement arrangements

82. Those aged 55 or over at the date their redundancy takes effect are eligible to receive premature retirement benefits. However, this does not mean that they are entitled to claim premature retirement. Those aged between 55 and 60 can opt to retire with an actuarially reduced pension. For those who have not taken an actuarially reduced pension, they are presently entitled to receive their normal pension when they reach the age of 60, provided they were in service prior to 1 January 2007. Short of taking an actuarially reduced pension as above, for those

between the ages of 55 and 60, premature retirement (with or without enhancement) is a discretionary matter for employers to decide. It is not an automatic right.

83. Pension regulations provide that, when someone is granted premature retirement without actuarial reduction before the age of 60 (whether on grounds of redundancy or efficient exercise), the employer must pay a proportion of his or her pension for life. The proportion to be met tapers from 22.7% for those retiring at age 55, to 5.2% at age 59. ATL has found that, in view of the cost to employers, premature retirement has become less common than previously. However, as an alternative, employers may, at their discretion, offer severance payments (see paragraphs 76-79).

84. Decisions as to whether you should be granted premature retirement and whether any enhancement should be given, are essentially a matter for the governing body of the school. However, in view of the substantial cost, governors will inevitably be cautious in the exercise of this discretion. Premature retirements and any enhancements are met from the LA's central budget only if the LA agrees in writing. Individual LAs should have their own policies as to the extent to which they will fund premature retirements.

## **Premature retirement – teaching staff**

85. For staff granted premature retirement on grounds of redundancy, there may be a separate, indirect abatement (reduction) of the monies payable. If a teacher receives pension enhancement of service in excess of six and two-thirds' years, in addition to a redundancy payment, the Premature Retirement Compensation Regulations stipulate that the enhancement lump sum paid at retirement must

be reduced by 30% of the redundancy payment for each year over the six and two-thirds. If this abatement is greater than the enhancement lump sum, the enhancement pension is reduced (in accordance with the tables produced by the Government Actuary's Department) for as long as it remains in payment.

86. In view of these abatement regulations, many LAs (when granting pension enhancement) offer teachers the option of receiving either maximum enhancement with the subsequent abatement, or enhancement restricted to six and two-thirds' years with no abatement. In practice, the first option provides larger continuing pensions, whereas the latter results in a greater lump sum. The decision is entirely up to the individual concerned, but it should be borne in mind that the larger continuing pension is inflation-proof and provides a more generous contingent survivor's pension. However, it should be noted that since employers now have to bear the cost of paying a proportion of premature retirement pensions for life, few employers are now offering pension enhancement at all.

87. Detailed advice on all aspects of premature retirement is available in ATL's series of pension factsheets, *Understanding the Teachers' Pension Scheme*, available from ATL's publications despatch line (tel: 0845 4500 009).

## **Actuarially reduced benefits**

88. If your employer is not prepared to award you premature retirement on the grounds of redundancy, you are eligible to claim your pension benefits on an actuarially reduced basis if you are aged 55 or over. If you are under the age of 55 at the time of being made redundant, you may claim actuarially reduced benefits once you reach 55, provided you were made redundant on or after 30 March 2000. If you do not wish to claim your benefits

at the time of your redundancy or at age 55, you may claim them at any time between age 55 and 60. The later you claim your benefits, the smaller the actuarial reduction.

## Preserved pension benefits

89. If you are not awarded premature retirement and do not take actuarially reduced benefits, your pension benefits will be preserved and you should claim them when you reach age 60. Prior to being put into payment, both your pension and lump sum will be increased to take account of the rise in the Consumer Price Index from the date on which you left the Teachers' Pension Scheme. Further information about preserved benefits is contained in factsheet three in ATL's series, *Understanding the Teachers' Pension Scheme*.

## Taxation

90. Termination payments awarded when an employee leaves employment (whether redundancy or severance payments, or enhanced pension lump sums) are not normally liable to tax unless they form part of an overall termination package that, excluding any pension lump sum based on accrued service, exceeds £30,000. Where the termination payment is more than £30,000, the excess over this limit is liable to tax at the employee's marginal rate.

### Example 6

91. A teacher is taking premature retirement from a school on the grounds of redundancy at age 58. She receives:

- a statutory redundancy payment of £5,000
- an enhanced redundancy payment (based on her actual salary) of £12,000
- a pension lump sum (based on her reckonable service) of £20,000
- an enhancement lump sum (from her employer) of £5,000.

The teacher is, therefore, receiving a total termination package of £42,000. However she should not be liable to tax on this payment since the lump sum based on her accrued pension entitlement (here £20,000) is discounted before the £30,000 limit is applied.

## Local Government Pension Scheme

92. The retirement age for staff in the Local Government Pension Scheme is 65. However, there are presently several circumstances in which staff may have an entitlement to take their pension earlier. Significantly, if they are aged 55 or over at the date redundancy takes effect, they are (presently) entitled to receive their pension.

## Insolvency of the employer

93. In recent years, there has been an increase in the number of employers who have become insolvent, which has affected independent schools. If your employer is formally insolvent and cannot pay you your redundancy entitlement, you may apply to the Government's Redundancy Payments Office for a redundancy payment. You must have taken reasonable steps to retrieve the money owing from your employers or the legal entity that has taken over its affairs, such as the liquidator, receiver or trustee.

94. The rate at which redundancy pay is paid is at the statutory level (currently a maximum of £479 per week), which may be lower than contractual entitlements.

95. Further information can be obtained from the insolvency website, at [www.insolvency.gov.uk](http://www.insolvency.gov.uk) and from the Redundancy Payments Office on 0845 1450 004.

# 04 Model redundancy procedure

## Statement of intent of the school/college

It is the intention of the school/college to provide reasonable security of employment for its employees. However, there may be occasions when it is necessary to reduce the workforce, leading to redundancies.

A redundancy situation arises when the requirements for employees to carry out work of a particular kind in a place where they are employed have ceased or diminished, or are expected to do so.

The school/college will always seek to avoid the need for compulsory redundancies. Should redundancies become inevitable, they will be handled in a fair, consistent, transparent and sympathetic manner. In order to minimise the impact of such reductions, the procedure set out below will be followed.

## Consultation

Where it appears that redundancies may be necessary, the school/college will convene a meeting of staff of the area(s) or, as appropriate, of the individual(s) affected to explain the position.

Individuals affected by the proposals will be consulted at the earliest opportunity, regardless of the number of staff affected.

Where the proposals for potential redundancies affect 20 or more staff, the school/college will also undertake collective consultations with appropriate representatives.

Appropriate representatives for collective consultations are:

- where a trade union is recognised to represent the group of staff affected, reps of that trade union

- where there is no recognised union, representatives of the employees affected elected for this purpose.

The consultations will begin in good time and prior to any selection of individuals for redundancy. In any event, the consultation will begin at least 30 days before the first of any notices of dismissal for redundancy is issued.

The consultation will be undertaken with a view to reaching agreement and will include ways of:

- avoiding the redundancies
- reducing the number of employees to be dismissed
- mitigating the consequences of any dismissals.

At the outset of the consultations, the school/college will notify the individuals affected and the appropriate representatives in writing of:

- the reason(s) why the need for redundancies has arisen
- the numbers and descriptions of employees proposed for possible redundancy
- the total number of employees of these descriptions
- the proposed method of selection for redundancy
- the procedure for carrying out any dismissals, including the timescale to be used
- the proposed method of calculating redundancy payments
- the number of agency workers and the type of work they are doing.

The timescale will allow the appropriate representatives time to consider proposals, seek views and make representations, depending upon the particular constraints of the circumstances.

The management will consider these and the consultations will include alternatives to redundancy. These will, whenever appropriate, include the following:

- consideration of alternative cost-saving measures
- the reduction of staff numbers by natural wastage and/or the restriction of recruitment or overtime
- voluntary reductions in hours or consideration of job-sharing
- considerations of redeployment to suitable alternative posts, with retraining where appropriate (where the employer operates other education establishments, these may be in its other workplaces)
- consideration of individual requests for voluntary redundancy or early retirement.

## **Selection for redundancy**

Following the consultations, the school/college will set the criteria for selection of staff to be proposed for redundancy and any weightings of factors to be applied. The criteria to be used will be reasonable, objectively measurable, transparent and non-discriminatory. Curriculum needs will normally be the main selection criterion, but the selection criteria may include, among other factors, relevant skills, qualifications, aptitudes, knowledge and experience. Length of employment may be used as a supplementary factor alongside other criteria.

Whenever appropriate, the staff in the affected area(s) will be invited to contribute to a skills audit to ensure that information held about individuals for any application of the selection criteria, such as their skills, qualifications, aptitudes, knowledge, experience and employment record, is up to date.

'At-risk' staff will then be assessed against the selection criteria by the appropriate manager/panel, to determine those who should be proposed for termination of employment.

The school/college will then write to each employee concerned, setting out the reasons why they have been identified for proposed redundancy, and inviting them to a meeting to discuss the circumstances and make any personal representations before any decision is made. At least five working days' notice of this meeting will be given. The employee will be informed that he or she can be accompanied and/or represented by a trade union rep or workplace colleague.

Within five working days of this meeting, the affected employee(s) will be informed in writing of the outcome. If the employee has been selected for redundancy, the letter will:

- inform them of the circumstances leading to the decision to make redundancies
- set out a summary of the action taken by the school/college and an account of the selection processes used
- explain why the employee has been selected for redundancy
- set out details of their entitlement to a redundancy payment and any other benefits
- notify them that they can appeal against the decision in accordance with the appeals procedure as follows.

## **Appeals**

Employees facing the proposed termination of their employment on grounds of redundancy may appeal in writing, within 10 working days of receipt of written confirmation of redundancy as set out in the previous paragraph, stating their grounds of appeal.

The appeal will be heard by a committee or panel of individuals who have not been involved in the selection or discussion process. At least five working days' written notice of the time and place of the appeal will be given to the employee who will be permitted to be accompanied and/or represented by a trade union rep or workplace colleague.

Within five working days of the appeal, the employee will be given written notice of the outcome, with reasons for the decision.

## Notice of termination

If the employee does not appeal in accordance with the appeals procedure as above, or if the outcome of the appeal is to confirm the proposed redundancy, the school/college will then give the employee formal written notice of termination on grounds of redundancy.

The notice given to the employee will be either his or her contractual or statutory entitlement to notice, whichever is the longer.

## Alternative employment

The school/college will take all reasonable efforts to redeploy staff facing potential redundancy, both during the process of consultation, hearings and appeals as above and during the employee's period of notice.

The school/college will take all reasonable steps to notify staff who are at risk of redundancy of suitable alternative vacancies. Wherever practicable, staff who have expressed a preference for alternative work will be invited to apply for available vacancies.

The school/college will give prior consideration to applications from staff who are at risk of redundancy for vacancies, before considering other applications. Where appropriate, training will be provided to employees to enable them to undertake the post's full range of duties.

Where an offer of alternative employment involves a change in the type of work or the terms of employment, the employee is entitled to a trial period of four weeks in the new post to enable both the employee and the school to assess the individual's suitability. This may be extended by agreement. Where an individual transfers to a different post, their continuity of service is maintained.

If, during the trial period, either the school/college or the employee gives notice that the new post is not considered suitable, the employee will be regarded as having been dismissed on grounds of redundancy at the date of the termination of the original contract.

The school/college will enable an employee under notice of dismissal on grounds of redundancy to take reasonable paid time off to find alternative employment, including for attendance at interviews, or to arrange training.

## Redundancy payments

Staff who have at least two years' continuous employment with the employer are entitled to a redundancy payment. The redundancy payment is a multiple of the employee's final week's actual (gross) pay. The payment is calculated according to the employee's number of full years of continuous service (up to a maximum of 20 years), and their age on the date of termination, as follows:

- For each complete year up to the age of 21 = 0.5 of one week's pay.
- For each complete year between age 22 and 40 = one week's pay.
- For each complete year at age 41 and over = 1.5 of one week's pay.

Where an employee is eligible for a redundancy payment, the school/college will provide a written statement of how the proposed payment has been calculated.

Found this helpful? ATL has lots of other resources – all free to members – that you might be interested in:

Part-time working

Product code: PE31

The rights of fixed-term employees

Product code: PE22

Job sharing

Product code: PE09

Finished with your copy? Why not pass it on to other colleagues who might find it useful.



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