



Best practice redundancy agreement

It is best to draw up a formal procedure well in advance of any potential redundancy situation – to allay fears and enable fairness and consistency. The Advisory Conciliation and Arbitration Service (ACAS) advises branches (and employers) to ensure such a procedure is in place and that it includes at least the headline elements set out in this factsheet.

We've also included negotiation points or favourable clauses from existing agreements, to help branches negotiate a new agreement or renegotiate elements of an old one. (Where clauses are not referenced, they constitute ACAS guidance). Unfortunately, no guidance is given in the national NJC agreement, the Green Book or the SJC, the Red Book and all agreements have to be negotiated locally. The Scottish Government has given a commitment to no compulsory redundancy in connection to measures arising out of public service reform. Whilst this is not binding on Scottish local government it is persuasive as the funding settlement is supposed to reflect government policy. The agreement outlined here offers a starting point for negotiations on each clause, subject to individual local circumstances.

Ensure the document is reviewed regularly and any changes are consulted upon. If any part of the procedure is to be applied flexibly in the face of changing economic circumstances then this should be specified.

An introductory statement of intent towards maintaining job security, wherever practicable

It is the policy of _____ Council 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 external conditions, organisational requirements and technological developments which may affect staffing needs, amongst others. It is the agreed aim of the council and the trade union(s) to maintain and enhance service delivery in order to safeguard the current and future employment of the council's employees and to provide an efficient and effective service for local residents. The council, 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 council will handle the redundancy in the most fair, consistent and sympathetic manner possible and minimise as far as possible any hardship that may be suffered by the employees concerned.

Details of the consultation arrangements with any trade union or employee representatives

The council will make every effort to keep trade union officials as fully informed as possible, as early as possible, about staffing requirements and any need for redundancies (UNISON).

The consultation will precede any (unannounced) decision to terminate employment on the grounds of redundancy. Consultation will proceed upon the basis of securing agreement from trade unions, on the redundancy and associated proposals, and not be a process of simple information sharing (UNISON).

In order to ensure adequate and effective consultation periods and to heighten the quality of decision making and allay employee anxiety, the council will consult trade union representatives in excess of the statutory minimum consultation periods by _____

The statutory requirements are:

- 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

(or, the council will offer the maximum consultation regardless of the number of employees affected).

The council will make available all financial and management information relevant to the redundancies, both before and after their announcement (UNISON).

As early in the process as possible, an appointed officer of the council and a representative of the trade unions will act as the central points of contact between the two parties (UNISON).

The council commits to genuinely 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.

The council will disclose the following, as required by law, at the earliest opportunity:

- 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.

In addition, the council will also consult on, as a minimum:

- arrangements for travel, removal and related expenses where work is accepted on another site owned by the council
- arrangements for reasonable time off with pay to seek alternative work to make arrangement for training
- assistance with job seeking
- arrangements for the transfer of apprenticeships.

The council recognises the right – and encourages all employees who are at risk of redundancy to use the entitlement – to be represented by their trade union rep or a workplace colleague.

Consultation with the appropriate recognised trade unions will take place even when those being made redundant are volunteers and regardless of whether they are members of the union (Salisbury DC).

Individual consultation will also take place with those employees who are under threat of redundancy. Individual consultation will include discussing ways of avoiding the redundancy, the possibility and practicalities of redeployment and any other relevant issues (Salisbury DC).

The periods of consultation with individuals and trades unions may run concurrently with the individual period of notice of the employees concerned. Consultation will, however, begin before individual notices are issued (Salisbury DC).

The measures for minimising or avoiding compulsory redundancies

Every effort will be made by the council to reduce the number of possible redundancies. The council will explore, in detail, each of the following alternative mechanisms:

- natural wastage
- restricting recruitment
- reducing the use of agency staff
- retiring all employees at the normal or default retirement age
- retraining and redeployment (see below) to other parts of the organisation
- filling vacancies among existing employees
- reducing or eliminating overtime
- introducing short-term working or temporary lay off (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 (see next page)
- terminating the employment of temporary, agency or contract staff

Redeployment

In practice, no vacancies will be advertised until employees at risk of redundancy have been considered for redeployment into that vacancy.

Suitable alternative employment is defined as a post which provides similar earnings (at levels above or below the employee's present grade – UNISON), has similar status, has similar weekly working hours, has similar or acceptable duties, is within the employee's capability and does not involve unreasonable additional inconvenience to the employee (Salisbury DC).

An employee who refuses any offer of reasonable alternative employment will still be dismissed as redundant but will (not) forfeit (half) their entitlement to a redundancy payment (UNISON – substitute 'not' or 'half' as appropriate after negotiation. The employer has the legal right not to pay any redundancy payment if a reasonable offer of alternative employment is refused – providing the employment offered is a reasonable offer).

Agreements often follow detailed procedures on the HR mechanisms involved in redeploying staff. These will be relevant to local circumstances and existing procedures/capacity. Example procedures, which often form part of existing HR mechanisms and exhibit a fair and consistent approach, can be obtained by emailing j.hoskin@unison.co.uk. They often involve an application process, differing mechanisms for redeployment within or out of service, interview, skills audits, retraining and trial periods.

Voluntary redundancy

Consultation will commence with the appropriate trades unions at the earliest opportunity. In defining the categories of employees from whom it is prepared to accept volunteers, the council will apply fair and objective criteria. Applications will then be invited from all relevant employees. A closing date will be applied. (UNISON)

If an employee expresses an interest in accepting this option, he/she should be provided with an estimate of benefits from the finance department. (Falkirk Council)

If enough volunteers are not forthcoming from the defined categories of employees then the council may extend the invitation for volunteers to other areas of the council after consultation with the trade unions. (UNISON)

It may be appropriate to consider whether other employees within the relevant service, other than those identified, should be offered voluntary severance in order to create a vacancy into which displaced employees could be redeployed. (Falkirk Council)

General guidance on the selection criteria to be used where redundancy is unavoidable – compulsory redundancies

Although unlikely in today's climate, stronger branches may still like to attempt to negotiate a no (compulsory) redundancy guarantee – as with Dundee CC.

Only after taking the steps above, in meaningful consultation with trade unions at every stage and if the number of employees still exceeds requirements, will employees be selected for redundancy.

The selection criteria will be based upon fair, consistent, objective and non-discriminatory grounds and may include the following:

- self selection – certain posts are clearly identifiable, as that particular work will cease
- standard of work performance – objective evidence must be used to support selection on these grounds. Evidence may be obtained from appraisal and related documentation
- disciplinary record – only current warnings will be taken into account
- attendance record – documentary evidence of above average non-certified sickness absence (not related to a disability), unauthorised absence or poor timekeeping will be required. Valid documentary evidence will include attendance records

- capability and/or potential for adaptability and suitability for retraining for redeployment. Valid documentary evidence will include capability warnings, records of capability related meetings, training records and appraisal documentation
- other measurable and objective criteria appropriate to the particular circumstances as agreed with the relevant trades unions.

All selection criteria will be applied in a reasonable, fair and objective manner in accordance with the council's diversity and equality policy. (Salisbury DC) It is vital to ensure there is no direct or indirect discrimination in the agreed criteria, which should reflect the requirements of the equality legislation and public sector equality duties. The council is committed to ensuring the equitable implementation of equal pay and equalities policy and to ensuring that the most able, not necessarily the longest serving, are retained for the efficient delivery of services. The council will not adopt a last in, first out mechanism for selecting employees for redundancy, nor will it consider downgrading staff in their existing roles (either in terms of pay or by reducing the hours of part-time staff). (UNISON)

Applied properly, the most fair, consistent and objective mechanism for selection incorporates a points system whereby a score is awarded for agreed selection criteria. Example procedures are available by emailing j.hoskin@unison.co.uk.

UNISON's bargaining information support advises:

In the past, selection criteria were often quite simple (for example, last in, first out) but now they are often on the basis of a point-scoring system or matrix. The scoring system should be open and fair, and workers are entitled to know their own score, the evidence on which it was based, and to appeal against the score.

Criteria might be skills based – for example, operating certain machinery – or performance based. ACAS gives an example of using skills, experience and aptitude, standard of work, attendance and disciplinary record. It is important that objective criteria are used to measure these. Each factor will be graded – for example, five points for 'consistently exceeds objectives' and one point for 'fails to meet objectives' – and the individual factors may be weighted – for example, standard of work x3, attendance x1. The total number of points for each person then determines who is made redundant.

Discretionary arrangements under LGPS

Negotiation point: The new LGPS Regulations of 2007 retain the discretion for employers to enhance service up to a maximum of 10 additional years (refer to the Redundancy and the LGPS factsheet within the toolkit).

Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006

Negotiation point: The 2006 regulations allow employers to give up to 104 weeks pay in compensation for early termination of employment.

There are similar provisions in the Scottish LGPS (The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2009)

Severance terms

The number of weeks to be paid, as a minimum, will be based on age and length of service in line with legislation applicable at the time.

The employee will be free to decide if leave is taken during the notice period or if pay in lieu for each complete day of untaken leave is taken. The calculation for a day's pay is given below (UNISON):

$$\frac{\text{Annual salary} \times 7}{365 \quad 5}$$

Negotiation point: The Civil Service Compensation Scheme includes the following provisions:

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| ● Compulsory early severance | One month's earnings for each year's service, up to a maximum lump sum of three years final pensionable earnings |
| ● Flexible early severance | 2-4 weeks earnings for each year of service, up to a maximum lump sum of two years final pensionable earnings |
| ● Approved early retirement from age 55 | Pension paid before pension age without reduction for early retirement |
| ● Flexible early retirement from age 50 | A lump sum compensation of 3/80 of final pensionable earnings multiplied by a notional service enhancement plus an annual compensation payment until pension age |

Notice

Employees who are declared compulsorily redundant will be given notice in line with their contract of employment.

The council will exercise its discretion sympathetically in permitting identified redundant employees to leave the council's service before the expiry of the notice period. Entitlement to redundancy pay and added years (if applicable) will be recalculated accordingly. No compensation (subject to leave entitlement) will be made for the unexpired period of notice unless the council does not require the employee to work out his/her notice. In such circumstances compensation will be calculated up to the end of his/her notice period. (Salisbury DC)

Appeals procedures

Employees have the right to appeal against dismissal through redundancy.

Employees will be informed of the reasons for their proposed dismissal on the grounds of redundancy, together with the criteria used for selection. The employee will also be given a copy of the company's redundancy procedure and informed of their right to appeal. (Pennine Housing)

An appeal can be based on the grounds that the selection for redundancy was unfair or that the reason for dismissal was not redundancy (Salisbury DC) or that adequate consultation was not carried out (UNISON).

The appeal must be sent in writing to the head of personnel and training within 10 working days of receipt of written notification of the redundancy. (Salisbury DC)

At any subsequent hearing the employee may be accompanied by a trade union representative. (UNISON)

The outcome of the appeal will be conveyed in writing to the person concerned within five working days of the meeting. (Pennine Housing)

Appeals from employees will be considered and determined by a panel of three heads of service outside of the employee's service area. (UNISON)

Trade unions have the right to appeal to the chief executive when proper consultation mechanisms have not been adhered to as outlined in other parts of this agreement. A written response to all grievances will be provided within a reasonable time scale after due consideration to the facts – within the principle of maintaining harmonious industrial relations. (UNISON)

Counselling

As a minimum the council will make available the following in a redundancy situation, if requested by the employee:

- financial advice
- guidance on how to find another job

- advice on completing application forms
- guidance on attending interviews

Assistance to redundant employees

The council will give all reasonable help to staff made compulsorily redundant and this will include:

- reasonable paid time off to look for other work or to arrange for training for new employment
- unpaid time off to undertake training for alternative employment outside of the council
- information on all current vacancies within the council
- estimates of their redundancy pay and, where applicable, their superannuation benefits
- time off with pay to make appointments with:
 - a bona fide financial adviser to discuss investments and income
 - the Benefits Agency to discuss state benefits
 - the local job centre to discuss employment and retraining, including Job Club or similar meetings.

Requests for time off should be made in the first instance to the relevant line manager and will not be unreasonably refused. (Salisbury DC)