

26 May 2020

Briefing Note

CECA Briefing:

Redundancy Procedure Guidance Notes

Executive Summary

This document is intended to give general advice and guidance and is not a definitive statement of the law on the particular subject. If in doubt, consult your trade association or professional advisor.

All CECA members are able to access the ACAS (Advisory Conciliation Arbitration Service) free helpline on 0300 123 1100.

Generic advice and other useful information including CIJC pay rates, holiday dates, and other information on the Working Rule Agreement is available on the CECA website. Please remember you will need to have registered to access the password-protected members' area of the website.

If you have any questions on this guidance, please contact CECA Employment Adviser Gerry Lean on 07778 809480 or e-mail gerrylean@ceca.co.uk.

Definition:

A redundancy occurs where a dismissal is wholly or mainly because:

The employer has ceased to carry out his business or intends to cease to carry out his business for the purposes of which the employee is employed;

The employer has ceased, or intends to cease, to carry on that business in the place where the employee was so employed;

The requirements of that business for employees to carry out work of a particular kind have ceased or diminished or are expected to do so;

The requirements of the business for employees to carry out work of a particular kind in the place where they were so employed have ceased or diminished or are expected to do so.

In the case (*Safeway Stores plc v. Burrell*), the EAT classified the correct approach for employers to follow to decide whether there is a genuine redundancy. The employer should apply a three-stage test comprising the following questions:

1. Was the employee dismissed?
2. Had the requirement of the employer's business for employees to carry out work of a particular kind ceased or diminished or were they expected to cease or diminish?
3. If the answer to (2) is 'yes', was the dismissal of the employee caused wholly or mainly by the cessation or diminution?

A dismissed employee, with two or more year's service, is entitled to a redundancy payment if he or she has been dismissed wholly or mainly because of redundancy. There will be a presumption that dismissal is because of redundancy unless the employer can prove otherwise.

It should also be noted that, when deciding on the employee's place of work for redundancy purposes, the tribunals and courts will take into account not just the contract of employment but also where the employee actually worked. This cannot be widened solely by the insertion of a mobility clause.

When a Redundancy Situation Arises

1. Hold a minuted meeting of directors/partners/managers to discuss the possible need for redundancies. Identify departments/areas and positions where it is necessary to make redundancies. (**NB:** This identification applies to positions not the person holding the post. You will not be able to identify the person until after the consultation interview.) Investigate the possibility of suitable alternative employment being available for employees eventually made redundant. Consider asking for volunteers for redundancy and whether enhanced terms will be offered. Ensure that volunteers are told that they must formally apply and that the company has a right to reject the application.
2. In the case of one or more redundancies from a specific group, a documented redundancy selection criteria and procedure should be agreed. An example of an assessment form is attached. Identify who will mark the assessments and hold a meeting with the assessors to ensure consistency of marking. Ensure that some members of higher management are not included in the selection process in order to conduct any appeal.
3. Check whether there is a recognised Trade Union or if not a staff association which can elect or act as employee representative. Where 20 or more jobs are identified as redundant within a 90-day period or less, you have a statutory duty to consult with a recognised Trade Union or other elected employee representatives. You may also have to notify the Department of Employment.
4. The first stage of the consultation process requires a meeting at which employees are advised of a possible redundancy situation. Prior to the meeting the employee must be advised in writing that his/her position is at risk of redundancy and by the way of good practice given the right to be accompanied at all meetings by either a work colleague or trade union official.
5. Once the employee's position has been identified as potentially redundant either from a pool or otherwise, a consultation meeting must be held. The employee should have explained to him or her the need for redundancies and the selection criteria that will be used if compulsory redundancies are necessary. Ask for any comments or suggestions that he/she may have. You must impress upon the employee that the decision in respect of selection for redundancy has not been taken. You should provide all employees affected with a copy of their own assessment criteria you propose to use.
6. Ensure the process of consultation is 'meaningful'. The process is not simply about telling the employee that he/she is to be made redundant. Effective consultation is a useful procedure for gathering information and may even negate the need for redundancy if employees are prepared to consider a reduced salary or hours as alternatives to losing their jobs. The consultation process should take a minimum of two weeks and involve at least two formal consultation meetings. Where 20 or more redundancies are being contemplated within a 90 day period longer consultation is required and specialist advice should be sought.
7. Arrange a minuted meeting with directors/partners/managers to consider the comments made by those employees being considered for redundancy. Investigate the possibility of suitable alternative employment taking into account any comments made by the employee at the consultation interview. This procedure, in larger Companies or groups should be documented by memoranda, meeting notes etc. Apply the selection criteria consistently and follow the agreed procedure.
8. Those employees who have been selected for redundancy should be advised of the decision and given the opportunity for further discussion. The employee should be provided with a copy of their own assessment and given the opportunity to comment on it. They are not entitled to see the assessments of others. They should be given the right of appeal against their selection for redundancy. At this second interview the employee should be told that he/she is to be made redundant. He/she should also be advised of the reasons for the redundancy and how the redundancy payment will be calculated. If the redundant employee is to be offered alternative employment; a 4-week trial period is allowed before the employee loses the right to a redundancy payment.
9. When implementing the decision you will need to consider whether employees are to work out their notice or receive payment in lieu. The notice period given must be in accordance with the terms and conditions of employment. (Contract of Employment, National Working Rule Agreement, Employment Legislation). As an employer you will be within your rights to ask the employees who are serving their notice period to report to work only when required.

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If, during the period of notice, an employee finds alternative employment and commences that employment with the express permission of his present employer, which should not be withheld unreasonably, then the balance of the notice period remaining from when he/she commences alternative employment, will not be payable although he/she will still be entitled to the redundancy payment.

10. When an employee is required to work his/her notice the employee is entitled to reasonable paid time off for the purposes of job hunting or to arrange re-training.

NOTES

- Do not declare redundancies of female employees who are on maternity leave. If you have no alternative but to declare a redundancy in this situation then you must offer alternative employment.
- To qualify for a redundancy payment an employee must be continuously employed for 2 years.
- Employers who recognise a Trade Union must consult that Union and not choose instead to consult elected representatives.
- Consultation must take place with representatives of all employees who may be affected by the redundancies, not just those whom the employer proposes to make redundant.

DRAFT LETTER 1 – EXAMPLE

(Consultation)

Dear _____

I am writing further to our discussions on [date] when I advised you that, due to (a reason) the company is having to consider making some jobs redundant and your own position is one of those at risk.

I must stress that you have not, at this stage, been declared redundant and the company has embarked upon a process of consultation with you, in order to try and avoid possible redundancy.

I would confirm that we have arranged for you to come into the office on [insert date] [time] when we can discuss possible ways in which redundancy might be avoided. I would welcome any suggestions you might have regarding this including your willingness to undertake work of a different nature if this were to be available. I must remind you that either a work colleague or trade union official may accompany you at the meeting if you wish.

A final decision regarding possible redundancy will not be taken until [insert date at least two weeks ahead]

Yours sincerely,

(If selection is to take place explain the basis of selection and give copy of 'blank' criteria etc.)

DRAFT LETTER 2 – EXAMPLE

(Consultation Follow Up)

Dear _____

I am writing further to our meetings earlier today when we discussed the fact that your job has been earmarked for redundancy and possible ways in which redundancy might be avoided.

Unfortunately neither of us have been able to identify any alternatives at this stage.

I acknowledge your willingness to be flexible and undertake work of a different nature but unfortunately there are literally no job vacancies within the company. I acknowledge your suggestion to however, after careful consideration I am afraid (amend this paragraph as appropriate)

As previously explained a final decision regarding redundancy will not be taken until [date] when I will contact you again. Should you have any further thoughts please feel free to contact me.

Yours sincerely,

DRAFT LETTER 3 – EXAMPLE

(Termination less than 2 years service)

Dear _____

I write further to our meetings on [insert date] and [insert date] when we discussed the possibility of your position with this company becoming redundant.

I very much regret that as we have been unable to find any alternative I must now confirm that your position is to become redundant.

You are hereby given notice of the termination of your employment and based on your length of service you are entitled to xx week's notice. Your employment with the company will end on [insert date]. You are also entitled to accrued holiday pay in the amount of £xx.

OR

Your employment is therefore terminated with immediate effect due to redundancy and based on your length of service you are entitled to x weeks notice. You will be paid £ xxx compensation in lieu of your notice entitlement. You are also entitled to accrued holiday pay in the amount of £xx.

As you have been with the company for less than two years you are not entitled to a redundancy payment.

I would remind you that you have right of appeal against the decision to declare you redundant and if you wish to appeal you should so by writing to me within 7 days setting out the grounds upon which you wish to appeal.

Finally may I say how much we regret having to take this action and thank you for your past services with the company and wish you every success in securing a suitable new job.

Yours sincerely,

DRAFT LETTER 4 – EXAMPLE

(Termination more than 2 years service)

Dear _____

I write further to our meetings on [insert date] and [insert date] when we discussed the possibility of your position with this company becoming redundant.

I very much regret that as we have been unable to find any alternative I must now confirm that your position is to become redundant.

You are hereby given notice of the termination of your employment and based on your length of service you are entitled to xx week's notice. Your employment with the company will end on [insert date]. You are also entitled to accrued holiday pay in the amount of £xx.

OR

Your employment is therefore terminated with immediate effect due to redundancy and based on your length of service you are entitled to x weeks notice. You will be paid £xxx compensation in lieu of your notice entitlement. You are also entitled to accrued holiday pay in the amount of £xx.

You are also entitled to a redundancy payment based on (y) complete years of service, your age (?) and average weekly earnings of (£x). This will provide a redundancy payment of (£xx) from which Income Tax will not be deducted.

I would remind you that you have right of appeal against the decision to declare you redundant and if you wish to appeal you should so by writing to me within 7 days setting out the grounds upon which you wish to appeal.

Finally may I say how much we regret having to take this action and thank you for your past services with the company and wish you every success in securing a suitable new job.

Yours sincerely,

REDUNDANCY PROCEDURE – SELECTION CRITERIA & ASSESSMENT

The Company's compulsory redundancy selection procedure is based on an assessment of the employee's relative capabilities, reliability, job performance, safety awareness and suitability for work that remains available.

Length of service must not be taken into account as this could give rise to a claim for "indirect" age discrimination.

EMPLOYEE'S NAME: POSITION:.....

Score: Weak 1, Below standard 2, Standard 3, Above Standard 4, Strong 5 (See definitions on separate page).

CATEGORY	SCORE 1-5	COMMENT
CAPABILITY		
QUANTITY OF WORK		
RELIABILITY		
QUALITY OF WORK		
SAFE AWARENESS		
ACCEPTANCE OF RESPONSIBILITY		
FORWARD PLANNING		
CONDUCT		
TOTAL (MAX 40)		

ASSESSED BY:..... DATE :.....

CHECKED BY:..... DATE:

ASSESSMENT DEFINITIONS

CAPABILITY - refers to ability, degree of supervision required and future potential.

1. Needs constant supervision. Cannot satisfactorily carry out all the tasks required.
2. Employee capable of carrying out the majority of tasks required without supervision.
3. Can satisfactorily cope with the normal work. Needs very little supervision.
4. Has a high level of ability satisfactorily copes with all tasks required without supervision.
5. Ability as '4' but has in addition, potential for future development/promotion.

QUANTITY OF WORK

1. Low achiever, output consistently below that of other employees in similar positions.
2. Occasional shortfall in Output
3. Maintains the output required for the position. Comparable to other employees.
4. High output, regularly exceeds requirements of the position.
5. Output as "4'but has, in addition, potential for future development/promotion.

RELIABILITY -(Attendance/Time keeping) Certified sickness or authorised absence to be ignored.

1. Losing at least a half day in every ten days.
2. Losing at least a half day in every twenty days.
3. Losing at least a half day in every thirty days.
4. Losing at least a half day in every fifty days.
5. Losing less than half day in every fifty days.

QUALITY OF WORK

1. No attention to detail. Constantly making errors.
2. Makes errors, work falls below standard on occasions.
3. Work satisfactory. Meets required standard by.
4. Consistently high standard of work.
5. Quality as '4' but has potential for future development/promotion.

SAFETY AWARENESS

1. Disregards safety. Has no safety awareness.
2. Often needs reminding of the safety aspects of the job.
3. Works safely. Has an awareness of safety requirements.
4. Works safely. Has a good knowledge of safety requirements.
5. Sets a good example by always working safely and implementing safety requirements.

ACCEPTANCE OF RESPONSIBILITY

1. Avoids responsibility.
2. Accepts some responsibility but needs guidance.
3. Accepts responsibility but not prepared to work on own initiative.
4. Accepts responsibility and works on own initiative but limited to tasks required.
5. As "4" but without limitation. Seeks extra duties on own initiative.

FORWARD PLANNING

1. Reacts to events. No forward planning.
2. Limited consideration of the advance needs of the work.
3. Able to think in advance of the needs of the job.
4. Good forward planner seldom has problems.
5. Highly pro-active plans well in advance.

CONDUCT - By reference to warnings recorded in personnel records in the last twelve months only.

1. Final written warning.
2. Written warning
3. Two oral warnings.
4. One oral warning.
5. No disciplinary warnings recorded.

Appendix C

How to calculate a week's pay?

The 'calculation date' for redundancy payment purposes is:

- The date on which the minimum notice required by the statute – usually one week a year of service up to a maximum of 12 weeks after 12 years expires.

An employee's 'week's pay' is the amount payable for a week's work under the contract of employment in force on the calculation date. Where the employee has normal working hours and the pay does not vary, for example with the amount of work done, this is simply the basic weekly wage or salary. Overtime earnings are not reckonable unless overtime is part of the contract; that is, it must be obligatory on the employer to provide the employee to work the overtime hours.

Where earnings under the contract vary because of piecework or productivity bonus arrangements, multiplying together the number of hours normally worked in a week and the average hourly earnings over the 12 complete weeks before the calculation date arrives at the week's pay. For the purposes of arriving at the average hourly earnings, only hours actually worked are taken into account, and any week in which no work at all is done is replaced by the next earlier week payable at premium rates. The premium is disregarded and the hours reckoned at the normal basic rate.

Where there are normal working hours, which vary from week to week because of a shift work system, and earnings vary as a result, a similar calculation is done but the average hourly earnings are multiplied by the average weekly hours over the same 12 weeks.

Where the employee has no fixed working hours the amount of a week's pay is the average weekly earnings in the 12 weeks before the calculation date, whatever the basis of payment (fixed rate, piece-work or commission).

NB. In many cases the employee will be earning in excess of the "statutory maximum" and therefore detailed calculations may not be required.

Redundancy Ready Reckoner

To use the table on the following page:

1. Read off the employee's age and number of complete years' service at the date when employment has ended or would have ended had notice been worked. The table will then show the number of weeks' pay the employee is entitled to.
2. Employees below the age of 18 do not qualify for a redundancy payment.
3. For employees aged 61 and over redundancy pay increases at 1½ weeks pay for every year of service up to 20 years service, which is the maximum. Therefore the scale does not change above age 61.
4. The statutory maximum for a weeks pay increased on the 6th April 2020 and currently stands at £538 per week.

Calculating Length of Service

Redundancy pay is calculated on complete years of service. Where employment is terminated without notice and a payment in lieu is made then the date the employment would have ended if statutory notice had been served is used to calculate length of "reckonable service". Statutory notice entitlement is one week per complete year service up to a maximum of 12 weeks after 12 years service.

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TO USE THE TABLE:

Read off the employee's age and number of complete years' service. The table will then show how many weeks' pay the employee is entitled to. (To calculate a weeks' pay, see Appendix 3).

Age	Service (years)	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
		18	1	1½	2															
19	1	1½	2	2½																
20	1	1½	2	2½	3															
21	1	1½	2	2½	3	3½														
22	1	1½	2	2½	3	3½	4													
23	1½	2	2½	3	3½	4	4½	5												
24	2	2½	3	3½	4	4½	5	5½	6											
25	2	3	3½	4	4½	5	5½	6	6½	7										
26	2	3	4	4½	5	5½	6	6½	7	7½	8									
27	2	3	4	5	5½	6	6½	7	7½	8	8½	9								
28	2	3	4	5	6	6½	7	7½	8	8½	9	9½	10							
29	2	3	4	5	6	7	7½	8	8½	9	9½	10	10½	11						
30	2	3	4	5	6	7	8	8½	9	9½	10	10½	11	11½	12					
31	2	3	4	5	6	7	8	9	9½	10	10½	11	11½	12	12½	13				
32	2	3	4	5	6	7	8	9	10	10½	11	11½	12	12½	13	13½	14			
33	2	3	4	5	6	7	8	9	10	11	11½	12	12½	13	13½	14	14½	15		
34	2	3	4	5	6	7	8	9	10	11	12	12½	13	13½	14	14½	15	15½	16	
35	2	3	4	5	6	7	8	9	10	11	12	13	13½	14	14½	15	15½	16	16½	
36	2	3	4	5	6	7	8	9	10	11	12	13	14	14½	15	15½	16	16½	17	
37	2	3	4	5	6	7	8	9	10	11	12	13	14	15	15½	16	16½	17	17½	
38	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	16½	17	17½	18	
39	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	17½	18	18½	
40	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18½	19	
41	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	19½	
42	2½	3½	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	
43	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	
44	3	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	
45	3	4½	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	
46	3	4½	6	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	
47	3	4½	6	7½	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	
48	3	4½	6	7½	9	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½	
49	3	4½	6	7½	9	10½	12	13	14	15	16	17	18	19	20	21	22	23	24	
50	3	4½	6	7½	9	10½	12	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½	24½	
51	3	4½	6	7½	9	10½	12	13½	15	16	17	18	19	20	21	22	23	24	25	
52	3	4½	6	7½	9	10½	12	13½	15	16½	17½	18½	19½	20½	21½	22½	23½	24½	25½	
53	3	4½	6	7½	9	10½	12	13½	15	16½	18	19	20	21	22	23	24	25	26	
54	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	20½	21½	22½	23½	24½	25½	26½	
55	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22	23	24	25	26	27	
56	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	23½	24½	25½	26½	27½	
57	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25	26	27	28	
58	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	26½	27½	28½	
59	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28	29	
60	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	29½	
61	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30	
62+	*	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30

* The same figures should be used when calculating redundancy payment for a person above age 62.