

CM | MURRAY

The Little Book of
Redundancy



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Welcome

We wanted to give our clients and friends an easy-to-read summary of the key issues regarding redundancies, to help them understand the rules and negotiate the procedures which apply under English law.

This booklet sets out the edited highlights and we hope you find it helpful. If you have any feedback or suggestions for the booklet, we would be very pleased to hear from you.

Very best wishes

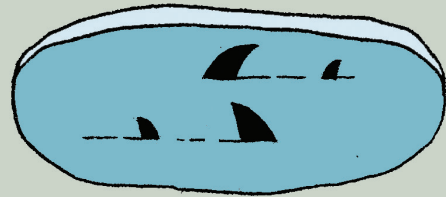
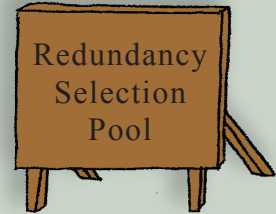
The CM Murray Team.

This booklet is only a brief overview of English redundancy law, and is for general purposes only. We would be pleased to help you with specialist legal advice for specific circumstances. Information is correct as of April 2016.

What is redundancy?

In summary, a redundancy occurs when an employer:

- **Closes** down their **business** (or intends to do so) or
- **Closes** down a particular **workplace** (or intends to do so) or
- Has a **reduced requirement** for employees to carry out the **particular work** for which they have been employed.



What rights usually apply?

In addition to contractual rights, an employee dismissed for redundancy is also likely to have **statutory rights** including, for example:

- **A statutory redundancy** payment (after 2 years' service), calculated using a formula, of up to £14,370 (with effect from 6 April 2016, subject to annual reviews)
- **Unfair dismissal** normally after 2 years' service if e.g. the employee is not genuinely redundant, or is wrongly selected, or a fair consultation procedure has not been followed. Usually loss-based compensation may result of up to the lower of the employee's annual salary or the maximum award which is £78,962 (with effect from 6 April 2016, subject to annual reviews)

- **Discrimination claims** if the employee has been selected for redundancy because of sex, marital status, pregnancy or maternity, race, disability, religion or belief, sexual orientation, gender reassignment or age. There is no minimum service requirement. Loss-based compensation with no maximum limit, plus injury to feelings compensation, may result
- **Whistleblowers** also have protection against unlawful selection or other detrimental treatment. Again, there is no minimum service requirement and loss-based compensation applies, with no maximum limit, plus injury to feelings compensation.

Contractual rights often apply...

Employees are entitled to **notice of termination**; this is normally set out in their contract.

Employees must receive at least **minimum notice** (or payment in lieu) of 1 week per year of service up to a maximum of 12 weeks. This overrides any lower notice in the contract.

Accrued pay and benefits, outstanding holiday and business expenses should be paid to the termination date.

But they're not always what they seem...

Some employers have an **enhanced redundancy scheme** providing more generous redundancy payments; whether it is contractual depends on the circumstances.

Is a bonus due? This will usually depend on the contractual wording, which often says it is discretionary and payable only if the employee is in employment and not under notice.

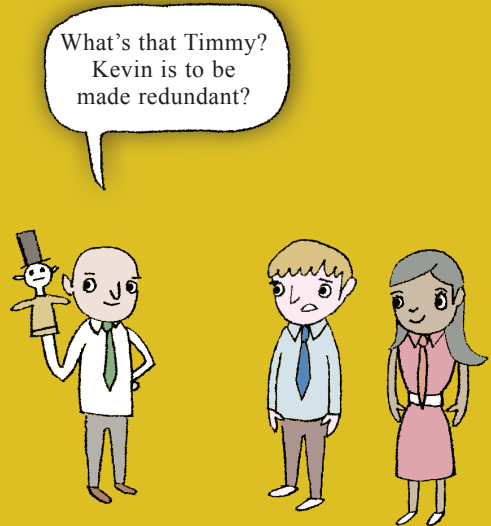
Stock options and share schemes are subject to their plan rules: some allow limited vesting for redundant employees; others forfeit all rights.

Fair redundancy dismissal

For a dismissal to be fair, an employer must show:

- The position is **genuinely redundant**, including that the employee is the right person to be selected for redundancy following a proper selection process and
- A **fair procedure** and proper consultation has been **followed before taking the decision to dismiss**.

An employee with the requisite qualifying period of service can claim unfair dismissal. No minimum service is needed in certain circumstances e.g. dismissal for pregnancy or trade union membership.



Redundancy selection

(i) Identify the pool

A **redundancy selection process must be followed** to choose the employees to be made redundant.

The employer should **identify the “pool”** of employees at risk of redundancy, having regard to:

- all employees who are doing **like** or **similar work**
- all employees whose jobs are effectively **interchangeable** and
- whether the pool needs to be **agreed** with the union or employee **representatives**.

(ii) Apply objective criteria

The employer then needs to **identify the objective selection criteria** it will apply to the employees in the pool; e.g. performance review scores, skills or relevant experience.

Selecting on the basis of sex, marital status, pregnancy or maternity, race, disability, sexual orientation, gender re-assignment, religion or belief, or age would be **discriminatory**, as well as **unfair**.

Selecting the employee because they have raised a whistleblowing complaint would also be unlawful and unfair.

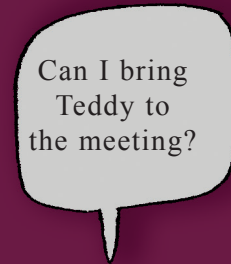
It's good to talk: Consultation, not sham

During the consultation process, an employer should **consult** fully with the employee about their redundancy otherwise the redundancy may still be unfair.

Consultation meeting(s) should cover:

- The **reason** for the proposed redundancy
- An **explanation** of the selection process
- **Points the employee wishes to raise**
- **Solutions** to avoid the redundancy and
- Any **suitable alternative** roles for the employee.

Consultation should take place **before** the employer takes the **final decision to dismiss** otherwise this could result in the process being a "sham" and the dismissal being unfair.

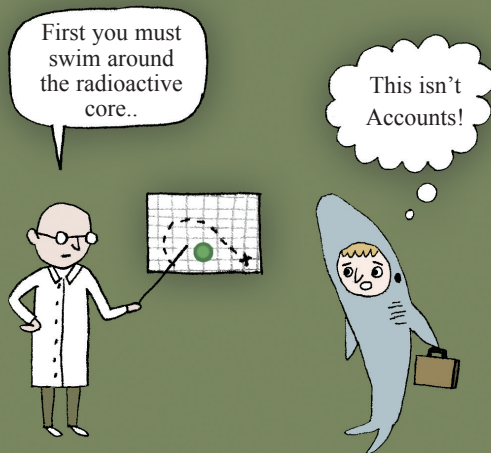


Suitable alternative roles

During the consultation process an employer must look for **suitable alternative roles** for the employee in the business until the employee's **employment terminates**; the dismissal may otherwise be unfair.

Unreasonable rejection by the employee of suitable alternative employment may affect their statutory redundancy payment. An employee who decides to take an alternative role has a **trial period of 4 weeks** to "test" the role.

Redundant employees on **maternity** leave have an automatic right to any suitable vacancies.



Procedure please!

The ACAS Code of Practice on Disciplinary and Grievance Procedures specifically does not apply to redundancy dismissals.

In addition to the other procedural steps already outlined, employers should follow principles established by case law and best practice to avoid a dismissal being procedurally unfair, including:

- Writing to the employee, setting out why they are at risk of redundancy and providing them with a copy of the selection criteria and their own score sheet

- Fully consulting with the employee about the redundancy process through individual consultation meetings; the employee should be given the right to be accompanied by a work colleague or trade union representative and
- Notifying the employee of the outcome of the consultation meetings and that they have the right of appeal.

Employers should also refer to procedures included in their Staff Handbook.

Failure to follow a fair procedure could result in an unfair dismissal finding and compensation being payable.

Collective redundancies

Where an employer is planning large scale redundancies, it must undertake **collective consultation** with trade union representatives or elected employee representatives.

Consultation must occur before the redundancy dismissals take place:

- 30 days prior consultation where 20-99 redundancies are planned or
- 45 days prior consultation where 100 or more redundancies are planned

within a 90 day period.

Failure to consult can result in an **award of up to 90 days'** actual pay per redundant employee. A formal notice must also be sent to the UK Government within 30 or 45 days (as appropriate) before the dismissals otherwise a conviction and fine may result.



It sometimes helps to settle...

Employers often offer redundant employees a settlement agreement, to **waive employee claims** and offer an **enhanced package**.

The settlement agreement records the **terms and the payments** to be made to the employee.

Key features of a settlement agreement include:

- it must be in writing
- the employee must take advice from a qualified legal adviser on the terms and effect of the agreement and
- it becomes binding once signed (subject to limited exceptions).

It may be appropriate to offer the settlement agreement as part of a so-called '**pre-termination negotiation**'. Strict rules apply and legal advice should be sought.

But think carefully about how far...

Careful thought needs to be given in the settlement agreement to issues such as:

- amount of ex gratia payment
- accrued rights, tax, pension and payment dates
- shares and share options
- directorships
- agreed reference
- internal and external announcements
- confidentiality and avoiding disparagement
- legal fees contribution
- the extent of waiver of claims

Plus other issues related to the employee's individual position and rights.

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The team frequently handles cross-border matters for both individuals and corporates.”

Legal 500:

“CM Murray LLP led by the ‘incredibly effective’ Clare Murray, is frequently instructed to advise international subsidiaries in the UK, and has an excellent reputation for acting for senior executives. Bettina Bender is ‘extremely solution focused’, and David Fisher is ‘the epitome of professionalism’.”

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