

REDUNDANCY GUIDANCE FOR ADVISORS

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1) Is this a real redundancy situation?

The legislation says that redundancy occurs when

- an organisation closes down
- part of an organisation closes down
- the requirement for particular work reduces or disappears.

In real terms most redundancy situations that arise from the ending of grants or because of reduced funds, will fall under the third option.

A post is not redundant if the employer immediately engages a direct replacement.

Sometimes employers create redundancy situations as they see this is the only solution to resolving an employment problem. They may actually convince themselves there is a redundancy. Check that the employer genuinely needs to delete the post and does not want to just dismiss a particular employee. This could be unfair, unless they have gone through the proper disciplinary process.

Employers must note that they will have to justify any dismissal (usually on the grounds of redundancy) of employees on **fixed term contracts** of one year or more and provide them with a written statement of reasons, even though it arises as a result of the expiry of the contract. Employees on fixed term contracts of two years or more are also entitled to statutory redundancy payments.

2) What does the contract say about redundancy?

In every case of action to be taken against employees, the first step is to check what the contract says about it.

Some contracts say nothing about redundancy. Others will refer to it and may provide for a contractual redundancy payment entitlement greater than the statutory minimum.

3) Is there a Redundancy Policy in place? **[No? go to section 5]**

Yes - It must at least follow **the statutory requirements [see page 13]**.

Even if there is nothing written down, there may be a **customary arrangement or agreed procedure** in place particularly if there have been previous redundancies. A precedent of how staff are to be treated may already be set.

If an organisation does not follow its policy or arrangement, the redundancy dismissal may be unfair. **[See section 17 on avoiding unfair redundancy].**

4) Is the Redundancy Policy attached to the employment contract?

The policy must be carefully followed.

Any **variation** must be agreed with individual employees.

Employment contracts should be carefully checked for references to notice, redundancy, consultation periods or redundancy pay. **[go to section 6]**

5) What if there is no Redundancy Policy in place?

The organisation must at least follow the **statutory requirements** **[see page 13]**.

Encourage the organisation to develop a policy for the future, but not to attach it to the employment contract so that it can be updated easily.

[A model policy is on page 21.]

6) Are the Management Committee or Trustees involved in the process?

The MC are legally responsible for the organisation and all its actions and must therefore be the ones:

- to make the decision about redundancy
- to identify who will be made redundant and
- to take an active part in the process of redundancy dismissal or to make sure that the senior management of the organisation is undertaking the redundancy process properly.

The MC should be aware that not following a proper redundancy process could lead to an unfair dismissal claim in the employment tribunal.

7) Have all means of avoiding the redundancies been considered?

This includes:

- not filling other vacant posts

- reducing the number of temporary or relief workers used
- delaying the filling of vacant posts to help balance the books
- reducing hours of work – but only possible where all the workforce are in agreement as it would involve a change in the employment contract of each employee
- finding funding from elsewhere.

However, it is important to ensure that the organisation continues to deliver its services effectively and fulfils its various contractual obligations with funders, etc.

8) Have affected employees been consulted individually?

Employees have a right to be **consulted individually**, no matter how many staff are being made redundant, no matter whether they are members of a trade union or not.

It is a legal requirement for employers to follow a standard dismissal procedure - the **Statutory Dispute Resolution Procedures** [see page 11] - that includes writing to the employee [see section 9 below] with the reasons for the redundancy, meeting with the employee (accompanied by a union representative or colleague), and allowing them to appeal against the decision made [see section 14 below].

The Employment Tribunal considers the need to have **at least 2 meetings with individuals with at least a 2-week gap between them**. The first meeting would follow the sending out of written notification to the individual that they are likely to be made redundant and explaining the process that will be followed. Not until a second meeting (at least) has taken place should notice be given [see section 13 below].

Employers should respond reasonably to requests from employees to meet, which may mean providing more than 2 meetings.

9) Has the employer written to each affected employee with the reasons for the proposed redundancy?

The **written statement** provided to the employee at the start of the consultation period should include:

- the reason for the redundancies
- the proposed method of selecting the employees who may be made redundant (if applicable) [see section 11 below]

- an explanation of the consultation process – the Statutory Dispute Resolution Procedures etc.
- information on how redundancy pay will be determined.

10) Is there a recognised Trade Union or are more than 20 employees to be made redundant?

[No? go to section 11]

Yes - If 20 or more employees are to be made redundant, the employer must consult with any recognised trade union or with employee representatives in an attempt to **avoid or minimise** the need for redundancies as soon and as fully as possible (even if the affected employees are not members of the union).

The employer must **provide in writing** to the representatives:

- the reason for the redundancies
- the numbers and descriptions of the employees
- the total number of employees affected
- the selection method proposed
- the manner in which the dismissals are to be carried out taking into account any agreed procedure
- and the proposed method of calculating redundancy payments.

This **consultation period** with the representatives should be no less than 30 working days before any notice of redundancy is served (90 working days where there are to be more than 100 redundancies).

If 20 or more employees are to be made redundant, the employer must also give the Department of Trade and Industry (DTI) written notification of large-scale redundancies and give copies of the notice to the representatives.

An organisation that has a Recognition Agreement with a trade union will need to consult with the trade union regardless of the number of employees to be made redundant.

11) Are the selection criteria fair?

If the redundancy situation arises from reasons other than end of funding for a particular post, the organisation will need to carry out a selection process in order to identify which employees are to be made redundant.

The organisation should first establish the selection criteria and how they will be applied.

The criteria should be **fair and objective** and not dependent on the opinions of individuals.

Examples of selection criteria include:

- end of contract or funds
- work performance – but needs to be supported by a detailed appraisal system to provide sufficient objective evidence
- disciplinary records/absence records – but only if the records are completely accurate and are fairly used
- level of skill or qualification – but must be seen to be relevant to the future of the organisation.

The employer must be able to show that they chose a particular individual for redundancy rather than others, by applying the selection criteria to each individual in the 'pool' of employees facing redundancy.

Staff on maternity leave, or staff who are pregnant must receive **equal treatment** with all other employees.

12) Has the employer considered if the affected employees can be redeployed?

It is important to give careful consideration to whether a suitable job is available elsewhere in the organisation that may need to be offered to the redundant employee. The organisation may go through a matching exercise to determine how much match there is between the employee's existing job and the vacant job, particularly essential if the organisation wants to present the vacant job as '**suitable alternative employment**' as defined in legislation.

A **matching exercise** should compare pay, status, hours of work, location, working environment, areas of work, skills, knowledge, and levels of responsibility. Job descriptions and person specifications should be included.

Assimilation will occur when a vacancy is very similar to a job to be made redundant. The organisation will determine this by comparing the two job descriptions and person specifications and assessing similarity on the basis of a 90% or more match that will be decided at the start of the redundancy process.

Where the vacancy is not so similar as to justify assimilation, but there is a 70%-89% match, the employee could be invited to a **redeployment** interview. The aim would be to establish whether, with a reasonable amount of training if necessary, the employee is able to undertake satisfactorily the tasks detailed in the job description for the alternative post. Also it will establish whether the employee considers the post to be a suitable alternative and is willing to accept it.

The percentage matches suggested above could be lowered, for example, to 75% and above for assimilation and 50%-69% for redeployment.

All **offers** can be made throughout the consultation process and notice period. They must be **in writing**, made before the end of the notice period, and must provide detail showing how the new employment differs from the old.

If the difference between the redundant job and the alternative is negligible, refusal by the employee to accept the offer of 'suitable alternative employment' could be unreasonable and employees may lose their entitlement to redundancy pay. However the basis of the employee's rejection will be on subjective grounds which will be difficult for the employer to counter.

Voluntary sector organisations may be reluctant to go down the route of not paying redundancy pay should an offer be turned down, particularly as the test in an Employment Tribunal would be whether or not the employee considered the offer 'suitable alternative employment'. The employee is entitled to turn down an offer that they consider as unsuitable (for example, a part-time post where they are currently working full-time).

However it is safer for the organisation to make an offer of other employment and have it turned down rather than fail to offer and end up in the Employment Tribunal with a claim of unfair redundancy dismissal.

The **new contract** must take effect within 4 weeks from the old contract ending and the employee has a statutory right to a **trial period** of 4 weeks, which can be extended by agreement in writing for retraining purposes. Trial periods are for both the employee and employer to decide whether this is indeed suitable alternative employment.

If the employee works beyond the trial period, the employee will be considered as having accepted the new employment and will lose their redundancy entitlement.

13) Following the consultation period, has the Statutory Dispute Resolution Procedure been followed and notice given?

Following the consultation period and the Statutory Dispute Resolution Procedure meeting **[see page 11]**, if the decision is to make the employee redundant, then **notice** must be given.

The statutory minimum notice periods after an employee has worked for one month, is one week for the first 2 years of service, then an additional week for each completed year of

service, up to a maximum of 12 weeks for 12 years or more continuous service.

If the employee's **contract or statement of terms and conditions** of employment gives a longer notice period than the statutory minimum set out above, then that would be the employee's contracted right.

14) Does the affected employee know that they can appeal?

The employer must allow the employee to **appeal** against the decision to make her or him redundant.

The appeal can be on the grounds that they feel that they have been unfairly selected for redundancy; or that the redundancy process has not been carried out properly; or that a job they considered suitable has not been offered to them.

15) What other assistance could be given to affected employees?

Payment in lieu of notice could be offered so that they do not have to work out their notice period, but this depends on whether it is necessary for them to complete project work.

Employee's earnings could be **protected** should they accept another post at a lower grade.

All employees regardless of length of service, could be granted **time off with pay** during the notice period **to seek work or retraining**. Employees who have been continuously employed for at least 2 years, must be allowed reasonable time off to look for another job or to arrange training.

If the organisation could afford it, then affected employees may be provided with access to **career counselling**, help with making job applications, interview techniques and advice on benefits.

16) Is the correct redundancy payment being made?

An employee who is made redundant with a length of continuous service of **at least 2 years** (including those on fixed term contracts) and who is under the age of 65 is entitled to receive as compensation from her/his employer statutory redundancy payments. **The new Employment Equality (Age) Regulations come into force in October 2006 and will**

remove the upper age limit of 65 for statutory redundancy pay.

The amount of payment is dependant on the **average weekly wage up to a maximum statutory limit** of £290 per week (from 1 February 2006). This figure increases each year.

For each year of service up to a maximum of 20 years, eligible employees are entitled to:

- for each year of service at age 18 or over but under 22 - half a week's pay. **The lower age limit (18) for calculating statutory redundancy pay will be removed with the age discrimination regulations, which come into force in October 2006;**
- for each year of service at age 22 or over but under 41 - one week's pay;
- for each year of service at age 41 or over but under Normal Retirement Age or if there is no Normal Retirement Age 65 - one and a half weeks' pay. For employees aged between 64 and 65, the cash due is reduced by one twelfth for every complete month by which the age exceeds 64. **However the age discrimination regulations not only removes the upper age limit of 65 for statutory redundancy pay but also removes the tapering of redundancy pay after the age of 64.**

Many contracts of employment will provide for larger payments to be made to employees in the event of a redundancy. An employer should check what **the contract or statement of terms and conditions** of employment states in relation to redundancy payments.

Ex-gratia payments are payments that employers are under no obligation to make and employees do not expect to receive. However, employers must be aware that this type of payment could set a precedent.

17) How can the employer avoid unfair redundancy?

It is important for the employer to follow any contractual procedures if at all possible and in any event to comply with statutory minimum requirements.

If things go wrong, it is important for the employer to try and salvage what they can. An Employment Tribunal will consider breaches of procedure and failures to keep to the statutory minimum requirements but they will also look at whether the organisation acted fairly and reasonably. If a tribunal concludes that an employer tried to act fairly and reasonably it is likely

that this will affect any compensation given to the employee. More importantly, if an employee feels they have been treated fairly they are less likely to bring a claim of unfair treatment.

Consultation and openness are the key issues. Right up until the dismissal an employee can be given information about the situation and be asked about alternatives. If the employer is trying to retrieve a situation then it is important that any suggestion made is taken seriously and explored. This will require a further meeting to report the outcome and that notes of all meetings are taken.

Another retrieval strategy may be to get the employee to sign a **compromise agreement**. This is an agreement whereby an employee signs away his or her right to bring a complaint to an Employment Tribunal. Usually, an additional payment will be needed to 'compromise' the dispute. The employer will need to take further legal advice about this course of action.

STATUTORY DISPUTE RESOLUTION PROCEDURES

Step 1: statement of grounds for action and invitation to meeting

- The employer must set out in writing the circumstances that leads them to contemplate dismissing (or taking disciplinary action against) the employee.
- The employer must send a copy of the statement to the employee and invite the employee to attend a meeting to discuss the matter.

Step 2: meeting

- The meeting must take place before action is taken (except in the case where the disciplinary action consists of suspension).
- The meeting must not take place unless:
 - the employer has informed the employee what the basis was for including in the statement (under Step 1) the ground or grounds given in it, and
 - the employee has had a reasonable opportunity to consider their response to that information.
- The employee must take all reasonable steps to attend the meeting.
- After the meeting, the employer must inform the employee of the decision and notify them of the right to appeal against the decision if they are not satisfied with it.

In a redundancy situation for example, if the decision is to make the employee redundant, the employer will issue the redundancy notice letter at this stage. The employee will then be appealing against the decision to make her/him redundant.

Step 3: appeal

- If the employee does wish to appeal they must inform the employer.
- If the employee informs the employer of their wish to appeal, the employer must invite them to attend a further meeting.

- The employee must take all reasonable steps to attend the meeting.
- The appeal meeting need not take place before the dismissal or disciplinary action takes effect.
- After the appeal meeting the employer must inform the employee of the final decision.

STATUTORY REQUIREMENTS

- The organisation must write to the employee with the reasons for the redundancy (part of the Statutory Dispute Resolution Procedures).
- The organisation must meet with individual employee/s (part of the Statutory Dispute Resolution Procedures).
- The organisation must allow the employee to appeal (part of the Statutory Dispute Resolution Procedures).
- Consultation with representatives of a trade union if recognised, or employee representatives are a statutory duty if more than 20 employees are to be made redundant.
- If 20 or more employees are to be made redundant, the employer must also give the Department of Trade and Industry (DTI) written notification of the redundancies and give copies of the notice to the representatives. Failure to notify is a criminal offence.
- Length of notice (following consultation) must be at least one week for employees who have been in post for less than 2 years but more than 1 month. Notice periods increase by 1 week for each subsequent year of service up to a maximum of 12 weeks for 12 years or more continuous service. Contractual notice may be longer than the statutory period.
- Any offers of 'suitable alternative employment' must be made within this notice period, and the new contract of employment must take effect within 4 weeks from the old contract ending.
- The employee must be given a trial period of 4 weeks in the alternative job, which can be extended by agreement in writing for retraining purposes.
- The organisation must make statutory redundancy payments to employees with continuous service of at least 2 years and who are under the age of 65. It is calculated using an average weekly wage up to a maximum statutory limit of £290 per week (2006 figure, increased in February each year), with one week's pay for each year of service up to a maximum of 20 years. Employees under the age of 22 but over the age of 18 receive half a week's pay for each year of service. Employees over the age of 41 and under the normal retirement age or age 65 receive one and a half weeks' pay for each year of service. Employees aged between 64 and 65, the cash due is reduced by one twelfth for every complete month by which the age exceeds 64.

NB: The Employment Equality (Age) Regulations come into force on 1st October 2006 states that the lower age limit of 18 and the upper age limit of 65 will be removed for statutory redundancy pay. The tapering of redundancy pay after the age of 64 will also be removed.

- Employees with at least 2 years' continuous employment are entitled to take reasonable time off with pay during the notice period to seek work or retraining.

OTHER POSSIBLE REQUIREMENTS/GOOD PRACTICE

- There should be at least 2 consultation meetings with individual employees with at least 2 weeks between them.
- Length of notice should be specified in the contract and/or policy – this must be followed (unless it is less than the statutory requirement). It is often the case that employees are found to be on one month's notice and this should be followed, unless it is less than the statutory requirement.
- Contracts may offer payment in lieu of notice – such pay is taxable.
- You may wish to offer payment in lieu of notice even though it is not specified in the contract – in this case the payment can be made without tax deducted.
- Redundancy payments may be specified in the contract and/or policy – these should be followed (unless they are less than the statutory requirement).
- Terms and conditions may state that all employees regardless of length of service may be given the right to time off with pay during the notice period to seek work or retraining. This provision is more generous than the statutory provision of a minimum of 2 years' service in order to qualify.

WHERE TO GO FOR FURTHER INFORMATION

- **PEACe – LVSC’s Personnel, Employment Advice and Conciliation Service**
peace@lvsc.org.uk
www.lvsc.org.uk
[Redundancy guides and a model policy](#) are available to download from the Employment and HR Advice section of the LVSC website.

Helpline for CVS & 2nd Tier Advisors in London:

020 7700 8218 Monday to Friday

Helpline for referrals and all other groups based in London:

020 7700 8147 Wednesday & Friday

- **ACAS (the Advisory, Conciliation and Arbitration Service)**
www.acas.org.uk
The [advisory booklet on redundancy handling](#) can be downloaded from their website.

Helpline for employers and employees on all aspects of employment legislation:

08457 474747 Monday to Friday 8am to 6pm

Textphone 08456 061600

- **DTI (Department for Trade & Industry)**
<http://www.dti.gov.uk/employment/index.html>
Various [guides on redundancy arrangements](#) can be downloaded from their website.

DTI Enquiry Unit:

020 7215 5000

email: dti.enquiries@dti.gsi.gov.uk

Redundancy Payments Offices and Insolvency Payments

Helpline:

0845 1450004

SAMPLE LETTER OF CONSULTATION NOTIFICATION

This is an example of the sort of letter that could be used and would inevitably have to be altered to fit the circumstances of each situation.

It is representative of the type of letter that would be issued at the beginning of the consultation period, before a final decision on redundancy has been made.

Date.....

Dear A N Other

I am extremely sorry to have to let you know that, following a substantial reduction in our grant aid the Management Committee of XYZ are considering making the post of..... redundant.

A total of posts are affected.

The posts have been selected for potential redundancy because they are directly funded by the grant aid that is to be cut. The project will not be able to continue without this funding remaining in place.

We are considering all possible ways of avoiding redundancy including, if we are able, to offer you a suitable alternative job. The next step is to consult with you, to listen to any alternative proposals, suggestions or comments you might want to make.

We would like to invite you to a consultation meeting about your potential redundancy. The meeting will be with and will take place at..... You can bring a trade union representative or work colleague with you to this meeting. The suggested date for the meeting is..... Please let me know if this is possible for you within 5 days of the date of this letter.

Following this consultation meeting, you will be invited to a second meeting which will take place at least 2 weeks after the first meeting. Again you can bring a union representative or work colleague with you.

This second meeting may bring the consultation period to a close and a decision will be made as to whether or not the redundancy will go ahead.

If you have any queries or need help or support, please do speak to, your trade union representative or me.

Yours sincerely

On behalf of the Management Committee

SAMPLE LETTER OF REDUNDANCY

This is an example of the sort of letter that could be used and would inevitably have to be altered to fit the circumstances of each situation.

It is representative of the type of letter that would be issued after the consultation period has been completed and Step 2 of the Statutory Dispute Resolution Procedure (the meeting, or second meeting as advised by PEACe) has taken place.

The employer must give a reasonable length of time (such as 10 working days) for the affected employee to let them know if they want to appeal.

Date

Dear A N Other

I am extremely sorry to have to tell you that, following a substantial reduction in our grant aid and a subsequent period of consultation, the Management Committee of XYZ have decided to make the post of redundant.

As the Management Committee of XYZ is unable to offer you any suitable alternative employment, we are hereby giving you notice that your employment with XYZ will terminate on

Under your contract of employment you are entitled to one months' notice.

You are entitled to take reasonable time off during your notice period to undertake training or seek work.

On your last day of employment you will receive a cheque for the following amount: -

[Example calculations]

Statutory Redundancy Pay:	
4 years x £290 (one week's pay)	£1120
TOTAL:	£1120

Redundancy pay will not be subject to income tax or national insurance contributions.

In addition you will receive at the end of, paid into your bank account in the normal way, any holiday pay or salary payments owing to you, which will have income tax and national insurance contributions deducted.

You have a right to appeal against the decision to make the post redundant. Please let me know if you wish to appeal within.....

The Management Committee of XYZ would like to wish you well for the future and to thank you for the contribution you have made during your employment.

Yours sincerely

On behalf of the Management Committee

Model Redundancy Policy

Note: *It is important that the model policy be considered carefully, and if necessary altered before being adopted by an organisation. Once adopted there is an obligation on the organisation to follow the policy.*

If the implications of the policy are not fully considered or the organisation does not have the management resources to follow the policy, adopting it may cause serious problems in the future. Any policy must be workable and practicable while staying within the statutory minimum. Consultation with staff and training of management and staff are vital if everyone is to understand and operate the policy.

1. Principles

- 1.1 It is the aim of The Association to maintain and enhance the efficiency and financial sustainability of the organisation which will, as far as possible, safeguard the current and future employment of The Association's employees.
- 1.2 However, The Association is grant aided and funding may not be guaranteed. It is also recognised that there may be changes in service or organisational requirements which may affect staffing needs. In such circumstances The Association will seek to minimise the effect of redundancies through the provisions made in this policy.
- 1.3 The Association is committed to ensuring that this policy does not discriminate directly or indirectly on grounds of race, colour, ethnic or national origin, religion or belief, sex, sexual orientation, marital status, disability, age, trade union membership and activity.
- 1.4 Part-time staff and those working under fixed-term contracts, shall under no circumstances be singled out for selection on different criteria to those applied to (*comparable*) full-time staff.

Note to 1.4: *While the Part-time Workers Regulations 2000 and Fixed-term Employees Regulations 2002 state the 'comparable' factor, good practice would be to treat all employees equally under this policy. For details of these regulations see <http://www.dti.gov.uk/er>*

- 1.5 This policy will be reviewed from time to time to ensure that it

reflects changing organisational needs.

2. Application

This section details the process to be undertaken where changes in funding, service or organisational requirements may affect staffing needs.

2.1 Preventative Measures

2.1.1 Where the need for redundancies has been identified, and in order to avoid these, one or more of the following measures may be taken:

- (i) consideration will be given to a salary freeze for a specified period
- (ii) consideration will be given to suspending advertising and recruitment
- (iii) consideration will be given to discontinuing temporary labour
- (iv) consideration will be given to the likely effects of natural wastage
- (v) consideration will be given to existing workloads and overtime levels
- (vi) consideration will be given to job-sharing, part-time employment and/or other flexible arrangements
- (vii) consideration will be given to discontinuing the engagement of consultants.

Any such measure will need to ensure that it does not adversely affect service delivery & development; or causes The Association to default on contracts; or fail its obligations to funders; or prevents The Association from recruiting personnel to help avert or prevent the conditions which give rise to the problem.

2.1.2 The Association will seek voluntary redundancies wherever possible. The category of employees will be made known and volunteers will be sought at least 15 days before any compulsory notices are issued.

2.2 Compulsory Redundancy

2.2.1 Selection criteria

2.2.1.1 When selecting staff for redundancy, the following objective criteria will be taken into account. This list is not exhaustive and is not necessarily in order of priority:

- loss of contract based work or funding for the post
- length of service
- attendance and disciplinary records
- appraisal/review records
- relevant experience, qualifications, capability and adaptability
- further social criteria relevant to affected employees such as poor employment prospects due to physical disability, age, etc.

2.2.1.2 No employee will be selected for redundancy for any of the following reasons:

- union-related reasons
- health and safety-related reasons
- for asserting a statutory right
- maternity-related reasons
- for carrying out the function of or standing as an employee representative
- on grounds of sex, race, religion or belief, marital status or (without sufficient justification on operational grounds) disability.

2.2.1.3 Where The Association plans to make 20 or more employees redundant, it will follow a formal consultation process in line with the relevant legislation in force at that time.

Note to 2.2.1.3: *If the Association has a recognition agreement with a trade union, there will need to be a section on consultation. If you are planning to make 20 or more employees redundant, you will need to allow staff to elect representatives for consultation purposes and you will need to follow a formal consultation process. Contact PEACe for a model redundancy agreement and for advice on this.*

2.2.2 Suitable Alternative Employment

2.2.2.1 Employees under notice of redundancy shall be informed of all actual and expected vacancies at The Association during the period of their notice.

2.2.2.2 For each vacancy available at that time, The Association will determine whether any of the employees declared redundant should be assimilated into the vacant post, or offered a redeployment (ring-fenced) interview for it. Records of this marking process will be kept for 6 months.

Assimilation

- 2.2.2.3 **Assimilation** will occur when a vacancy is very similar to a job to be made redundant. The Association will determine this by comparing the two job descriptions and person specifications and assessing similarity on the basis of 90% or more match that will be decided at the start of the redundancy process.
- 2.2.2.4 Where only one employee has met the criteria for assimilation for a vacant post that employee will be slotted into that post.
- 2.2.2.5 Where more than one employee is eligible for assimilation to a particular post, then the employees will each be invited to an interview. In such cases this is no longer an assimilation but a redeployment and interviews take place as stated in 2.2.2.7. Employees may have a union representative, or a work colleague of their choice, present at the interview in an advisory capacity.

For example:

An organisation's funding for a project came to an end and the posts affected were deleted and several members of staff were made redundant.

Two members of staff working on the project had exactly the same job description, which had been assessed as being a 75 per cent match to a new post that had been created in the organisation.

Each employee was invited to attend a redeployment interview and the organisation selected the most suitable candidate for the vacancy as stated in 2.2.2.7. The successful candidate was slotted into the post. The other member of staff was made redundant.

Redeployment

- 2.2.2.6 Where the vacancy is not so similar as to justify assimilation, but there is a 70%-89% match, the employee will be invited to a **redemption** interview. The employee may have a union representative, or a work colleague of their choice, present at the interview in an advisory capacity.

Note: The percentage match suggested in 2.2.2.3 and 2.2.2.6 above are for guidance only. You can lower these, for example, to 75% and above for assimilation, 50%-69% for redeployment.

2.2.2.7 The purpose of the interview is to:

- (i) establish whether, with a reasonable amount of training if necessary, the employee is able to undertake satisfactorily the tasks detailed in the job description for the alternative post. This will be done by:
 - considering the employee's complete work experience to date (whether paid or voluntary);
 - the skills s/he has acquired over time, and
 - whether these constitute at least 90% of the essential requirements for the vacant post.
- (ii) to establish whether the employee considers the post to be a suitable alternative and is willing to accept it.

2.2.2.8 Where two members of staff are equally successful in applying for the same post, the post can be offered to both as a job-share, if an additional alternative post cannot be found.

2.2.2.9 Where an employee under notice of redundancy is to be redeployed, The Association will use its best endeavours to provide retraining which is compatible with the work and business of The Association so far as is reasonably practicable, having regard to both the cost of retraining and the requirement for the employee to carry out the duties of the redundant post during the notice period.

General Recruitment

2.2.2.10 Where a vacancy is not so similar as to justify **assimilation** or **redeployment**, The Association at their discretion, shall be entitled to invite staff to apply for any suitable alternative post. The employee will be shortlisted and interviewed prior to other applicants for the post.

2.2.2.11 A member of staff who is successful in being assimilated to, redeployed or in applying for an alternative post, shall have her/his redundancy notice withdrawn, subject to 2.2.3 below.

Note to 2.2.2 above: For further guidance on assimilation or redeployment, phone the PEACe Helpline.

2.2.3 Trial period

- 2.2.3.1 Redundancy rights will not be lost if the staff member or The Association decides after a trial period of up to 4 calendar weeks, from the date at which the new job was taken up, that the new job or the staff member's performance in that post is not suitable.
- 2.2.3.2 In such case either party may terminate or give notice and on termination the staff member shall be treated as though s/he has been made redundant on the date the old job ended.
- 2.2.3.3 The trial period shall be extended for up to 3 months for the purpose of training for the new post, provided that the trial period and terms and conditions of appointment applying after training are agreed in writing prior to the commencement of the new job.

2.3 Appeals

- 2.3.1 Staff to be made redundant are entitled to appeal against this decision if they feel that the selection criteria has been unfairly applied in their case.
- 2.3.2 Staff who have not been offered suitable alternative employment following the interview process outlined in 2.2.2 above, are also entitled to appeal against this decision.
- 2.3.3 Staff wishing to appeal are entitled to be accompanied at the appeal hearing by a trade union representative or a work colleague of their choice.
- 2.3.4 Appeals must be submitted within ten working days of the decision in either of the above being communicated to the employee.
- 2.3.5 In order to hear any complaints under 2.3.1 and 2.3.2 above, The Association will set up an Appeal Panel made up of the Board's Chair and two other Board members (or Staffing Committee if one exists), none of whom should have been previously involved with the specific case to be heard. The Panel's decision will be based either on unanimous agreement or majority vote.
- 2.3.6 The Panel shall be called within ten working days of the appeal being submitted. The decision of the Panel is final and shall be communicated to the employee within five working

days of the Appeal Hearing.

2.4 Employee's Entitlements

- 2.4.1 Staff may opt for redundancy if they are in a post whose termination would enable The Association to avoid a compulsory redundancy and if their voluntary redundancy is accepted by The Association.
- 2.4.2 Volunteers for redundancy will be entitled to, in addition to the provisions outlined in 2.4.6 (i)-(iii) below, two month's gross salary and a one-off contribution from The Association of 10% of their annual salary towards their pension.

***Note to 2.4.1-2:** You are not obliged to offer voluntary redundancy, but it may be a useful option to consider in some instances. In order to attract volunteers, you will need to enhance any redundancy package offered under compulsory redundancy, but anything you do offer needs to be compatible with what the organisation can reasonably afford.*

- 2.4.3 Staff members to be made redundant shall be informed as soon as possible, in a private meeting with the Director, of their potential redundancy and will be entitled to at least 30 day's notice before it takes affect. This notice period will increase by one additional week's notice for 5 or more years of continuous service, up to a maximum of 12 weeks (84 calendar days) notice.

***Note to 2.4.3:** You can give longer than 30 days as the minimum. This may help to focus the Board's mind on taking decisions in good time. It is always preferable to withdraw a redundancy notice if, for example, additional funds are secured or the situation changes, rather than leaving situations unresolved until the very last moment.*

- 2.4.4 Staff affected are encouraged to contribute to the consultation process with their own ideas for preventative measures or possible alternative employment with The Association.
- 2.4.5 Staff to be made redundant are entitled to an appeal as set out in 2.3 above.
- 2.4.6 Without prejudice to any entitlement to salary in lieu of notice payable under clause 2.4.12 below, staff with two or more years continuous employment with The Association, at the date their notice of redundancy becomes effective, shall

receive statutory redundancy payments, calculated as follows:

- (i) one week's pay for each complete year of service up to the age of 41;
- (ii) One and a half week's pay for each complete year of service over the age of 41;
- (iii) pro-rata of (i) and (ii) for any incomplete years of service
- (iv) an additional contribution of 3% of gross annual salary towards pension.

For calculating (i)-(iii) above, a week's pay is based on the maximum weekly rate of pay in force at the time or the employee's normal rate of pay, whichever is lower.

Note to 2.4.6: (iii) & (iv) above are an example of how the statutory minimum can be enhanced a little by The Association. The current statutory maximum weekly pay is £290 as from 1 February 2006, increased by the government each year in February. If an employee earns less, then their redundancy pay would reflect their normal weekly pay.

2.4.7 Staff with less than two year's continuous employment with The Association, at the date their notice of redundancy becomes effective, are not eligible for redundancy payment as detailed in 2.4.6 above.

2.4.8 Payment in respect of outstanding accrued holiday entitlement shall be made if it is not reasonably practicable for such holiday entitlement to be taken during the notice period. Holiday time taken up to the annual allowance but not earned shall not be deducted.

Note to 2.4.8: The WTR state that any accrued leave not taken must be paid upon termination of employment; an employer is not entitled to deduct holiday taken above the accrued entitlement unless the contract states so. Even where this provision is in the contract, it is good practice not to claw it back in the case of redundancy.

2.4.9 Staff over the normal retirement age ("NRA") at the date their notices of redundancy become effective are not eligible for a redundancy payment under clause 2.4.6 above.

Note to 2.4.9: The final draft age discrimination regulations, which are expected to come into force in October 2006 will remove the upper age limit of 65 for statutory redundancy pay. Therefore this clause will need to be removed.

2.4.10 During their notice period staff are entitled to a maximum of 5 working days without loss of pay to attend interviews/training.

Note to 2.4.10: *Under the law relating to redundancy, employees with 2 or more years' continuous service are entitled to reasonable time off with pay. Five days is an example of what constitutes a reasonable provision that applies to all employees. You are of course entitled to offer more.*

2.4.11 During the period of notice, and by mutual agreement, the employee may be allowed to leave The Association without loss of entitlement. Agreement by The Association will be considered in each case and will depend on whether the request is made on reasonable grounds. An offer to commence alternative employment by an alternative employer during the notice period, where failure to commence will result in the offer being withdrawn, shall constitute reasonable grounds.

Note to 2.4.11: *According to the law on redundancy you are entitled to refuse such a request. However, good practice suggests flexibility on this, at the discretion of the employer.*

The Management Committee (*Board*) will aim to develop a contingency plan to deal with either the closure of The Association or some other event that would lead to multiple redundancies. This plan might include, but will not be limited to placing a percentage of the total payroll in reserve each year until said time when there are sufficient funds to handle such an emergency.

For further advice, contact the PEACe Helpline, Wednesday and Friday on 020 7700 8147

PEACe, May 2006
LVSC's Personnel, Employment Advice and Conciliation Service

The material in this document does not give a full statement of the law, nor does it reflect changes after May 2006. It is intended for guidance only and is not a substitute for professional advice. No responsibility for loss occasioned as a result of any person acting or refraining from acting on the basis of this material can be accepted by the author or by LVSC.