Bargaining over Collective Redundancy

UNISON Bargaining Support Group

Including avenues for challenging and mitigating proposals, alongside a wide range of model materials to tackle both fire and rehire strategies and general redundancy employer plans

UNISON
the public service union

1. Introduction

The potentially devastating effect of redundancy on the lives of staff plainly makes it one of the highest priority areas for the union.

In responding to any redundancy proposals, organising and campaigning to strengthen the bargaining hand of negotiators is clearly a vital component and should form a major element of strategy from the outset.

Accordingly, this guide offers an outline of the issues in developing a strong organising and campaigning strategy, but the general guidance on these topics are dealt with extensively elsewhere and therefore the guide offers links to that material.

However, this guidance focuses principally on the key bargaining points at stake over the different stages of the dismissal process. It is intended to assist negotiators who are faced with proposals from employers to:

- Dismiss staff as collectively redundant outright;
- Dismiss and re-engage staff on inferior terms and conditions.

The principal aims of the guide are to help negotiators:

- Mount well founded challenges to employers with a view to preventing or reducing dismissals;
- Obtain improvements to the terms of redundancy where they cannot be prevented.

The broad structure of the guide is as follows:

- A step-by-step outline of the dismissal process, with advice on what information should be sought from the employer and the challenges that may be open to negotiators at each stage;
- A set of appendices offering template material that can be adapted to local use in navigating through the process;
- A model procedural agreement that sets the objectives for negotiations;
- A checklist of bargaining steps showing the key actions for achieving those objectives.

In dealing with dismissal and re-engagement situations, the guide draws out the differences with outright redundancies in their implications for unfair dismissal, but goes on to show the same requirements that should be enforced on employers during collective consultation. The following sections on challenging the financial justifications to hit cost savings that will frequently accompany a drive to dismiss staff and re-engage them on new terms, alongside the alternatives that can be proposed to avoid dismissal and re-engagement, are equally valid as responses to outright redundancies. However, later sections on the selection process for redundancy and achieving the best redundancy terms are less relevant to dismissal and re-engagement because such proposals generally affect a very wide section of the workforce and re-engagement avoids redundancy payments for the employer.

Redundancy proposals often sit within wider plans for workforce reorganisation and UNISON's guidance on these wider issues can be found on this link.

UNISON's bargaining guidance is constantly evolving, seeking to draw on the experience of negotiators in delivering successful results for members. Therefore, if you feel the guidance would benefit from amendment or new material, please contact the Bargaining Support Group on bsg@unison.co.uk

The content of this guidance is as follows:

2. Gathering key information on proposals

On occasions, union reps can pick up an intention from employers to impose collective dismissals, redundancies or restructuring involving a reduction in headcount, informally or through preliminary discussions. In these circumstances, it is important that union reps establish quickly what the employer is proposing and the rationale for the decision. This will enable negotiators to begin to assemble the kind of challenges set out on the following pages.

Where a recognition agreement is in place, it will often explicitly refer to redundancy as a subject to be brought before the joint negotiating committee (as per UNISON's model recognition agreement). Where the scope of recognition is defined in broader terms, it may still offer a basis for arguing for discussions early in any process.

Where the union is recognised, the ACAS Code of Practice on Disclosure of Bargaining Information in England, Scotland and Wales, and the LRA Code of Practice on Disclosure of Bargaining Information in Northern Ireland, outline what information MUST be provided for collective bargaining. Redundancy is specifically referenced under its "conditions of service" category.

However, unfortunately the first signal of employer intentions will often come in the form of a notice in compliance with section 188 of the Trade Union and Labour Relations Consolidation Act 1992 or section 216 of the Employment Rights (Northern Ireland) Order 1996.

This demands that where proposed redundancies exceed 19 employees in one establishment, elected employee representatives must receive the following in writing:

- 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 by the employer at the establishment in question;
- The proposed method of selecting the employees who may be dismissed;
- "Suitable information" about its use of agency workers, which can include their numbers, location and roles;
- The proposed method of carrying out the dismissals, taking account of any agreed procedure, including the period over which dismissals are to take effect;
- The proposed method of calculating any redundancy payments, other than those required by statute, that the employer proposes to make.

To support UNISON negotiators a model letter is provided in Appendix 1 to prompt employers to provide full disclosure.

An employer must also submit an HR1 Advance Notice of Redundancy form to the Insolvency Service and **send a copy to union reps** when it is making proposals for redundancy, which sets out the following:

- The establishment where redundancies are proposed;
- The timing of redundancies;
- The method of selection for redundancy;
- The total number of employees and possible number of redundancies split by occupational group (specified as manual, clerical, technical, professional, managerial, apprentices/trainee, under 19 years old, other, total);
- The reasons for redundancy (specified as lower demand for products or services, completion of all or part of a contract, transfer of work to another site or employer, introduction of new technology/plant/machinery, changes in work methods or organisation, other, insolvency);
- The names of reps who will be consulted.

Further information can also be sought on the basis of this ACAS or LRA advice on the general approach that employers should adopt in handling redundancy proposals:

> "Not providing enough information often leads to frustration and mistrust and can sometimes mean the consultation is invalid."
>
> "You should aim to provide the right level of detail for staff to understand your proposals. The information should not be so long or complex that a specialist is needed."

In meeting legislative requirements for providing information, the employer must treat union reps as the elected representatives of the workforce where they recognise the union. Where a union is not recognised, the employer must establish appropriate procedures for election of the employee representatives who will receive the information.

Branches should have clarity over who is named to receive the statutory information where the union is recognised and consider how members within an employer where there is no recognition may be supported to become the employee reps in elections organised by the employer.

3. Challenging dismissals as “unfair”

Where staff meet the criteria for protection against “unfair dismissal,” employers have to be able to show that they have:

- What is legally defined as a “fair reason” for dismissal;
- Followed the legal definition of a “fair procedure” to reach dismissal.

In England, Scotland and Wales, unfair dismissal protection is afforded by the Employment Relations Act 1996 to staff legally defined as an “employee,” rather than a “worker” (which can be the designation of some types of staff[1]), where they have worked the qualifying period of two years’ continuous service with the same employer.

In Northern Ireland, the Employment Rights (Northern Ireland) Order 1996 applies, which continues to set the qualifying period at one year.

The legislation on which unfair dismissal is based treats redundancy as a separate category to dismissal and re-engagement. However, the collective consultation legislation outlined subsequent to the following section defines dismissal and re-engagement as a form of redundancy and therefore requires treatment of staff to follow the same pattern.

Challenging reasons for dismissal

A dismissal is usually classified as fair in law if an employee has been dismissed for one of the following reasons:

- A reason relating to an employee’s conduct;
- A reason relating to an employee’s capability;
- A redundancy situation;
- A statutory duty or something prohibiting an employee’s continued employment;
- Some other substantial reason.

[1] The sometimes complex tests for defining an employee and a worker are set out in UNISON’s bargaining guide on different forms of contract across pages 8 and 9 https://www.unison.org.uk/contract-types-and-negotiating-more-secure-work/

Legislation defines dismissal by reason of redundancy as when it is wholly or mainly attributable to:

- the fact that the employer has ceased or intends to cease:
    - to carry on the business for the purposes for which the employee was employed; or
    - to carry on that business in the place where the employee was so employed; or
- the fact that the requirements of the business:
    - for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish; or
    - for employees to carry out work of a particular kind in the place where the employee was employed by the employer have ceased or diminished or are expected to cease or diminish.

In the case of proposals brought forward for dismissal and re-engagement, employers are likely to seek to classify the reason as falling under “some other substantial reason,” since this category includes dismissals on the basis of “a sound business reason.”

However, it is unusual for this dimension of the law to offer a viable challenge. Tribunals would not normally seek to substitute their judgement for the employer’s over the economic justification for redundancies.

The most likely basis for a legal challenge would be where an employer can be seen to use an alleged redundancy situation to disguise another reason for dismissing the employee.

Using redundancy in this way may be tempting for an employer where the real reason is “automatically unfair” under employment law, such as for the following reasons:

- Pregnancy, including all reasons relating to maternity;
- Family, including parental leave, paternity leave (birth and adoption), adoption leave or time off for dependants;
- Acting as an employee representative;
- Acting as a trade union representative;
- Acting as an occupational pension scheme trustee;
- Membership of a trade union;
- Being a part-time or fixed-term employee;
- Having been engaged in whistleblowing;

In the context of collective redundancies, it may be unlikely that such automatically unfair reasons would apply to all staff, but rather the employer may attempt to incorporate individuals that they have other motives for dismissing within a redundancy situation. Vigilance for this tendency is captured within the section on the following pages outlining the criteria for a fair and transparent selection process for redundancy.

Any doubts about whether the reason put forward for dismissal would be regarded as “fair” in legal terms should be raised with the relevant regional officer, who can consider if there are grounds for seeking legal advice.

Where a dismissal by means of redundancy is deemed to be “unfair” an employment tribunal (or industrial tribunal in Northern Ireland) can make an order for reinstatement or an order for compensation. Such compensation would normally encompass a basic award in line with statutory redundancy payment and possibly further payment that can take account of such factors as loss of wages from after termination, future loss of earnings, benefits in kind and pension rights.

Challenging the process for dismissal

In any reasonably large-scale proposal, the process for dismissals will be defined by the collective consultation regulations enshrined in Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 for Britain and Article 216 of the Employment Rights (NI) Order 1996 for Northern Ireland.

These regulations state that:

- Where an employer is proposing to dismiss between 20 and 99 staff in one “establishment” within a 90-day period, they must open consultation at least 30 days before the first of the dismissals takes effect;
- In Britain, where an employer is proposing to dismiss 100 or more staff in one “establishment” within a 90-day period, they must open consultation at least 45 days before the first of the dismissals takes effect;
- In Northern Ireland, where an employer is proposing to dismiss 100 or more staff in one “establishment” within a 90-day period, they must open consultation at least 90 days before the first of the dismissals takes effect.

These regulations clearly make the definition of an “establishment” an important point of contention with employers. Employers will sometimes be keen to define an establishment in narrow terms, such as individual geographic locations, to avoid consultation obligations. Such a scenario may be particularly likely in dealing with a contractor operating across multiple locations.

The definition of an establishment can be complex, since it may be dependent on a multitude of factors specific to local circumstances. Therefore, where a branch feels that an employer is seeking to manipulate the definition to avoid consultation obligations, they should refer cases to the region to judge whether it may be necessary to seek legal advice.

Where the right does apply, the law makes it clear that the consultation conducted by an employer must be genuine and meaningful, while proposals are still at a formative stage. To meet the criteria of genuine and meaningful consultation, serious consideration must be given to:

- Ways of avoiding the dismissals;
- Reducing the numbers of employees to be dismissed;
- Mitigating the consequences of the dismissals.

In order to meet this requirement, it may be necessary to go beyond the minimum number of days laid down by legislation. As ACAS guidance states: “It is not necessary for the parties involved to reach agreement for the consultation to be complete. As long as there has been genuine consultation ‘with a view to reaching agreement,’ an employer can end the consultation. This should be done only when they can demonstrate that they have listened and responded to the views and suggestions raised.”

The case of R v British Coal Corporation and Secretary of State for Trade and Industry ex parte Price and others [1994] IRLR 7299 added further clarification that consultation should be conducted so far as possible by:

- Consulting when the proposals are still at a formative stage;
- Providing adequate information on which to respond;
- Giving adequate time to respond;
- Conscientious consideration in response to the consultation.

If an employer fails to comply with the collective consultation procedures, it may be possible to bring a complaint before a tribunal that results in a “protective award” of up to 90 days’ pay for each employee, if brought within three months of dismissal.

Where employers are proposing to make less than 20 staff redundant in one establishment, they are not required to follow a legally defined minimum period for consultation, however, they are still required to follow a fair and “reasonable” process.

Therefore, negotiators should argue for use of the same consultation timetable as that applied to 20 or more redundancies to ensure that “fairness” is properly observed.

And employers should continue to be reminded that the criteria for genuine and meaningful consultation is that they give serious consideration to ways of avoiding the dismissals, reducing the numbers of employees to be dismissed and mitigating the consequences of the dismissals.

Alongside any collective consultation, the employer has to conduct individual consultation. This encompasses employees who are potentially affected by the redundancy situation and not just those who are at direct risk of redundancy.

Challenging the process adopted by the employer as “unfair” is most likely to be viable where there is a flagrant breach of the minimum legal timescales with no reasonable justification, a clear failure to provide the information demanded by legislation or an obvious breach of meaningful consultation, such as issuing redundancy notices before discussions have taken place.

The model letter in Appendix 1 of this guide reminds employers of their responsibilities in following a fair consultation process.

Ms Marcia Lewis v Caerphilly County Borough Council: 1600263/2021 and 1600979/2021 was a case that dealt with an employer, who sought to unilaterally reduce an employee’s annual leave entitlement from 33 to 28 days leave.

When she refused to accept, the council served a notice to terminate her employment and offered re-engagement on the less favourable terms.

In ruling on the case, the employment tribunal found the employee’s contract of employment contained an implied term that gave the claimant a lifetime protection for her annual leave entitlement.

This prevented the employer from its attempt to ‘fire and re-hire' UNISON’s member.

The council could not exercise the right it would otherwise enjoy to terminate the contract for the purposes of removing the claimant's entitlement to 33 days annual leave.

The council had failed to give the three months’ notice required by the employee’s contract to terminate it, so the dismissal was ineffective.

Consequently, her entitlement to 33 days annual leave continued to apply.

Shortly afterwards, local UNISON reps were able to use the case in order to negotiate an uplift of annual leave entitlement for 8,400 staff from 28 days to 33 days.

In February 2024 the government published a draft code of practice on dismissal and re-engagement, which is expected to come into force later in 2024.

The code repeats many of the themes for fair consultation that apply to general dismissal legislation, but some of its more notable elements that may be useful to emphasise to an employer are as follows:

Legal status / effect of Code

- A tribunal can increase any award it makes by up to 25%, if the employer has unreasonably failed to comply with a matter to which this code applies.
- It is also worth keeping in mind for our members that a tribunal can also reduce any award by up to 25%, where it is the employee who has unreasonably failed to comply with the code.

General considerations for information-sharing and consultation

- Who an employer must consult with depends on the circumstances of a matter. For all employees who are part of a recognised trade union, the employer should provide information to and consult with that trade union.
- Where there is a recognised trade union, the employer must first exhaust all avenues under the agreed collective bargaining procedure. The employer must do this before making a direct offer to employees, if that offer relates to a matter falling within the scope of the collective bargaining agreement.

Information to be provided by the employer

Section C of the new Draft Code of Practice points out what information employers should provide during a fire and rehire exercise, and when that information should be provided.

- Information should be provided as early as reasonably possible.
- Employers should share as much information regarding the proposals as reasonably possible with a view to enabling employees and/or their representatives to understand the reasons for the proposed changes, and to be able to ask questions and make counter-proposals.

- In particular, the employer should consider what information could be provided about:
    - What the proposed changes are (including what the proposed new and/or revised terms will look like);
    - Who will be affected by the proposed changes;
    - The business reasons for the proposed changes;
    - The anticipated timings for the introduction of the proposed changes and the reasons for those;
    - Any other options that have been considered; and
    - The proposed next steps.
    - The employer should explain its reasons for any refusal to provide information as fully as reasonably possible.

Consultation

- The employer should continue to consult for as long as reasonably possible in good faith, with a view to reaching an agreed outcome. A longer consultation period is likely to allow for more in-depth discussion and a deeper understanding of the rationale for the proposals and the nature and intensity of any objections. This will facilitate a more thorough exploration of alternative options and increase the likelihood of an agreed outcome being reached.

Raising the prospect of Dismissal and Re-engagement

- The threat of dismissal should not be used as a negotiating tactic to put undue pressure on employees in circumstances where the employer is not, in fact, envisaging dismissal as a means of achieving its objectives.
- The employer should contact Acas for advice before raising the prospect of Dismissal and Re-engagement.

4. Challenging financial justifications

Utilising accounts and budgets

The core justification put forward for redundancy or dismissal and re-engagement proposals will frequently be financially driven on the basis of an alleged cost saving needed to remain viable.

In order to challenge the case presented by the employer, it is vital to obtain key financial data, which usually lies within the latest annual accounts and current financial budgets.

Accounts will be available through the following public sources:

- For public sector organisations, the accounts will usually appear on the organisation's own website;
- For private companies, on the Companies House website;
- For charities, on the Charity Commission website;
- For co-operative or community benefits societies, on the Mutuals Public Register

Financial budgets will only usually be available directly from the employer.

Accounts can sometimes run to several hundred pages of detailed information. However, the key information for challenging employers is often found within just a few sections of the profit and loss statement, balance sheet and notes to the accounts.

Most importantly, it is possible to establish:

- From the profit and loss statement, the scale of profits (or losses);
- From the balance sheet, the level of assets held as cash or investments;
- From the notes to the accounts, the number of employees, the scale of employee costs, the composition of non-employee costs, the scale of any dividend payments to shareholders and the remuneration of directors.

Figures on total profits, profits per employee, dividends and director pay rises can all offer ammunition to challenge the employer over the necessity for redundancies.

Figures on the scale of employee costs and the composition of non-employee costs can offer some pointers to options for cutting costs through other methods than redundancy.

Figures on assets held as cash or investments can provide an indication of the organisation's ability to absorb a temporary downturn.

Financial budgets will often revolve around the same key forms of information, but a further dimension to consider in forecasts are the assumptions that underpin them and whether they paint an unduly pessimistic picture.

If you require assistance in obtaining or analysing an organisation's latest accounts, contact Bargaining Support on bsg@unison.co.uk.

The economic case can also focus the employer's attention on the likely damaging consequences of redundancies on the remaining workforce, against which any claimed cost savings have to be weighed. Recent studies have found that significant stress on remaining staff causes increasing sickness absence due to the impacts on mental and physical health.

5. Putting forward alternative measures

Through analysis of accounts, but probably more likely through engagement with members experienced in the areas targeted for redundancy, it may be possible to develop viable proposals for cutting non-staff costs as a way of averting redundancies or dissuading an employer from dismissal and re-engagement.

However, where tackling staffing costs is an unavoidable measure, reps will need to consider whether members would support implementation of alternative ways of cutting costs, particularly if such measures can facilitate achievement of a no-compulsory redundancy agreement (a template for a Job Protection Agreement that establishes no compulsory redundancies is set out in Appendix 5).

Alternative measures may include some of the following options:

- Establishing a voluntary redundancy or early retirement scheme;
- Limiting the refilling of posts when staff leave the organisation and placing restrictions on recruitment;
- Reducing the use of temporary, agency or casual staff;
- Reducing or eliminating overtime;
- Reducing working hours;
- Limiting pay rises or increments;
- Moving staff into other roles through suitable alternative employment and redeployment schemes;
- Promoting voluntary unpaid leave (possibly including career breaks);
- Promoting forms of flexible working that reduce costs, such as home working or job sharing.

Considerations in advocating these measures are set out below. A suggested template for setting out a counter proposal to the employer is available in Appendix 2.

Voluntary redundancy

It should be noted that in order to offer voluntary redundancy, there has to be a genuine redundancy situation in the legal terms outlined earlier in this guide. Therefore, anyone who comes forward and has an application accepted for a voluntary scheme has been dismissed, rather than resigned.

In seeking a voluntary redundancy scheme, negotiators should consider pressing for the following points:

- Availability of the scheme for all staff across the entire organisation rather than solely the areas where proposals for redundancy have been identified. This will ensure that the maximum number of redundancies are achieved through voluntary means and reduce the chances of discrimination that can accompany limiting the scheme to a section of the workforce.
- Clear communication to staff setting out the availability of voluntary redundancy and its terms through individual letters / email, alongside specification of the closing date and application form.
- Clear specification of qualification criteria that are objective and non-discriminatory, with central consistency checking of assessments drawn from different managers.
- Where an employee's application is accepted, notification of the outcome in writing and a meeting with the relevant manager to agree the timing of redundancy as well as confirm notice, holiday and pay arrangements.
- Where an employee's application is rejected, notification of the outcome in writing with an opportunity to discuss the outcome with the relevant manager and lodge an appeal that is assessed by senior management not involved in the original decision.
- Enhanced statutory redundancy pay, which is ensured of complying with the Equality Act 2010 in Britain by mirroring key categories of statutory entitlement to avoid the possibility of any challenge.

  Under the statutory scheme, any employee who has two years of continuous employment is entitled to minimum redundancy pay as follows:

  - 1.5 weeks' pay for each year of work after their 41st birthday
  - 1 week pay for each year of work after their 22nd birthday
  - Half a week for each year of work before their 22nd birthday

  The limit for weekly pay is £643 (£669 in Northern Ireland). The maximum total amount of statutory redundancy pay is capped at 20 years and currently stands at £19,290 (£20,070 in Northern Ireland).

  An enhanced redundancy package can ensure that it does not go beyond permissible age-related differentiation by:

  - Using the same age bands as those used in the statutory scheme, and
  - Calculating the amounts due to employees in the different age bands in the same proportions as are used in the statutory scheme.

Therefore, alternatives for enhancing payment while observing these rules are as follows[2]:

- Using higher multipliers than those used in the statutory scheme, as long as a single multiplier is used across all age categories (a commonly used multiplier is double, taking the figures to one week's pay, two weeks' pay and three weeks' pay respectively);
- Increasing the limit on a "week's pay" (it is not uncommon for schemes to remove the limit and use actual pay throughout)
- Multiplying the payments due by a defined number that applies across all age categories.

Any British scheme that aggravates age discrimination and does not mirror the statutory scheme's structure would require "objective justification" if challenged under the Equality Act 2010 in Britain or the Employment Equality (Age) Regulations (NI) 2006 in Northern Ireland.

A number of examples of enhanced redundancy schemes that have been achieved in the public sector are set out in the "Improving notice and pay rights" section of this guide.

Early retirement

In contrast to voluntary redundancy schemes, employees who volunteer to take early retirement are usually classified as having resigned and therefore are not entitled to redundancy pay.

Occupational pension scheme rules can vary, but the minimum age for taking pension benefits is usually 55. Retiring at that point usually involves accepting a reduced level of benefits in terms of lump sums or annual payments.

However, older staff are frequently higher earners by virtue of their length of service and so an early retirement scheme can offer a further method to reduce paybill costs without turning to redundancies.

Therefore, negotiators may wish to consider pressing for the following points:

- A communications push by the employer that highlights availability of the early retirement scheme while clearly showing staff the consequences for their pension entitlement,
- A review of early retirement terms to improve its attractiveness for staff in terms of the age at which it can be taken and the scale of reduction in normal pension entitlement.

[2] In the case of local government employees, payments are also constrained by the specific rules of
The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006
The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2003
The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998

The consequences for pensions of taking redundancy are set out in detail through the UNISON Knowledge Base pensions page - https://www.unison.org.uk/get-help/knowledge/pensions/

In local government, early retirement enhancements are subject to the constraints set out in regulations covered in the “enhanced terms” section of this guide.

Changing terms and conditions

Some alternatives put forward to reduce or avoid redundancies can involve changes to the terms and conditions of staff. For example, if staff were to reluctantly accept a temporary reduction in working hours. Any arrangement should include regular joint reviews with the trade unions with a view to reverting back to establish terms and conditions as soon as it is practicable to do so.

In circumstances where a temporary change to terms and conditions has been agreed, employers will usually need to obtain employee consent.

Sometimes contracts include a general flexibility clause, but tribunals generally only allow these to permit minor or administrative changes, while substantial changes would need a much more explicit contract clause.

The employer should confirm any changes made to the contract in writing, including the temporary nature of any changes that are meant to last only as long as the consequences of the pandemic are felt by the organisation.

Generally, if an employer imposes changes upon employees’ terms and conditions without the employee’s consent, they will be acting in breach of contract. However, in most cases, continued performance by an employee of their contractual duties without protest, after the altered terms and conditions have been imposed, will be deemed to be implied acceptance of the new terms and conditions. Therefore, the original breach of contract will have been waived.

Agreeing to measures such as a freeze on pay or increments is one of the least palatable of options, since unless the employer can be persuaded at a later stage to make a catch-up payment, the impact on pay packets will be felt in perpetuity.

Suitable alternative employment and redeployment

Avoiding redundancy can be greatly assisted by a thorough system for matching at-risk staff to suitable alternative employment.

Suitable alternative employment is normally defined in terms of similar pay and conditions to an existing role, alongside an assessment of the job content in relation to an employee's skills and experience. One of the key concepts in defining whether a role is a suitable alternative is that the terms are not "substantially less favourable" for the employee.

Any suitable alternative employment system should establish that:

- Once staff are identified as at-risk of redundancy, any current and new vacancies are brought to the attention of those staff;
- Any new vacancy is ring-fenced to give at-risk staff first consideration in appointment to the vacancy, with an evaluation of the job content completed to enable highlighting of suitable roles to staff judged to match the vacancies;
- Where any member of staff at risk of redundancy is on maternity, adoption or shared parental leave, any suitable alternative employment available will be offered to them first, in accordance with legal requirements. From 6 April 2024, this right is extended in England, Scotland and Wales (Northern Ireland is yet to adopt corresponding legislation) to a woman who has told their employer they are pregnant until 18 months after the birth. This also applies 18 months from an adoption placement and 18 months from birth for any parent who has taken more than six weeks continuous shared parental leave;
- Where the numbers seeking a role judged to be suitable alternative employment exceeds the number of posts available, interviews will be held that score applicants against the appropriate job description.

Employees have the right to at least a four-week trial period if they accept a new role, though a longer period can be agreed where significant retraining is required.

It should be made clear to employees that if they turn down an offer for a role that can be regarded as suitable alternative employment without a valid reason, they are liable to lose their right to redundancy pay. If they take up a trial period, they retain the right to turn down unsuitable work and receive redundancy pay, but they can lose that right if they work beyond the specified trial period.

Negotiators may wish to consider seeking a longer trial period for staff (for instance, the National Assembly for Wales makes trial periods available for up to 12 weeks) and where an alternative role is on a slightly reduced rate of pay, put in place at least two year's pay protection.

Alongside, a system for making suitable alternative employment available to at-risk staff, it may also be beneficial to consider a redeployment register.

Redeployment does not offer the same guarantees to staff of avoiding work that is "substantially less favourable", but it does not carry the risk of losing the right to redundancy pay if they decide to turn it down.

A redeployment register should relate to vacancies that are not judged to form suitable alternative employment for any at-risk staff or roles that have been rejected by at-risk staff.

Such vacancies should be brought to the attention of at-risk staff, who should be given first option on whether to apply, alongside a guarantee of discussions on whether training may be feasible to allow a member of staff to take up the role.

Pay protection is liable to be an important point for cushioning any redeployment to a lower graded position. Two years is a common basis for pay protection, but other types of agreement have been established, such as at Robert Gordon University, where pay is frozen at its level immediately prior to the redeployment until the highest rate for the "new" position "catches up." If the new rate has not caught up after four years from the date of the employee starting in the redeployed post, the maximum pay point on the grade for the new post is applied.

6. Enforcing an objective and fair process for redundancy selection

Where, despite efforts to avoid or reduce redundancies, proposals move on to selecting staff for redundancy, the crucial steps in any process are establishing the set of staff who may be made redundant and establishing the criteria through which staff will be selected for redundancy from this group.

The set of staff who are at risk of being made redundant, often referred to as the "selection pool," can vary in size greatly, from anyone working for an organisation to a specific departments or role within the organisation.

Selection pool

The law is not very prescriptive about how employers define the selection pool. In general, all employers must show is that they have:

- Thought carefully about who should be in the pool;
- Not discriminated, or acted unlawfully in some other way, such as by targeting trade union reps;
- Used a pool that was not so unreasonable that no reasonable employer would have chosen it.

If the selection pool is not organisation wide, the pool usually relates to a group of employees identified as undertaking a similar type of work or at a particular location where a drop in requirements hits.

The HR1 Advance Notice of Redundancy form referred to previously forces an employer to show this information to some degree by specifying occupations and locations.

In *Mogane v Bradford Teaching Hospitals NHS Trust [2022] EAT 139*, the Employment Appeal Tribunal ruled that a nurse was unreasonably selected for redundancy and unfairly dismissed because of the absence of consultation on the criteria used for defining the selection pool. The trust had defined a selection pool of one person using the nearest termination date of staff on fixed term contracts without any meaningful consultation on the decision.

Selection criteria

The criteria for selection from this group of staff must be fair and objective, using consistently applied job related criteria, backed by evidence where possible. It should be non-discriminatory on grounds of any protected characteristic i.e. age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity. Care should also be taken that there is no discrimination on the grounds of trade union membership, part-time or fixed-term contract status.

ACAS sets out the typical selection criteria as follows:

- Skills;
- Experience and aptitude;
- Standard of work;
- Attendance;
- Disciplinary record.

The transparency and objectivity of criteria can be aided by a scoring system. For instance, the level of skills may be graded high, medium or low, with three points awarded for high skills down to one for low. Similarly, certain factors can be weighted to give them greater prominence. For example, the standard of work score may be doubled if it is regarded as more important than any other factor.

Objectivity will be further strengthened If the grading is linked to factual records rather than a manager's judgement. For instance, standard of work may be judged against performance appraisal records over a three-year period.

Employers should have a central process for consistency checking scoring against criteria where multiple managers are making separate judgements, to try to minimise the effect of different managers making different subjective assessments.

These measures can improve fairness, but negotiators should be wary that many of the standard criteria carry hidden dangers of discrimination if they are not used carefully.

For instance, where experience is judged by length of service, this can constitute indirect age discrimination. However, employers can seek to defend its use with an "objective justification" if they can show it is "a proportionate means of achieving a legitimate aim." In this case, they may argue that retention of experienced staff is a legitimate business aim, though they are more likely to succeed where length of service is one criterion amongst many.

More explicitly length-of-service-related criteria, such as the "last in, first out" system, are even more likely to be discriminatory in terms of age and potentially gender if used as a sole criterion.

Attendance can form one of the most problematic of criteria. Particular care should be taken to avoid including any absence due to reasons linked to disability, pregnancy or maternity because of the clearly discriminatory nature of their inclusion. However, there is a danger that attendance criteria act as a punishment for sickness in general and therefore any inclusion may be best focused solely on where no satisfactory explanation for non-attendance has been provided.

Equally, care should be taken that if disciplinary records are part of the criteria, this should be limited to cases of where disciplinary actions have been upheld.

Ensuring the selection process is fair can be assisted by demanding a revision of the equality impact assessment of the redundancy proposals to evaluate how redundancies have fallen across the groups with protected characteristics. For instance, there may be evidence of unfair discrimination on the basis of race when redundancies take place and sight of the equality impact assessment at this stage can draw out any signs of discrimination.

Negotiators should challenge any proposal where there is evidence that child/caring difficulties have unfairly influenced the employer or where the redundancy relates to maternity. UNISON is currently campaigning for protection for pregnant workers and new mothers from redundancy to be extended to six months after return to work.

There is no statutory requirement for an appeals procedure, but negotiators should argue that, in accordance with ACAS recommendations, an appeals process is necessary for fairness and that appeals should go to senior managers who have not had a direct role in the original decision over who should be selected for redundancy.

Once the selection criteria have been applied, an employer must write to an employee who has been provisionally selected warning of the risk of redundancy and invite them to a consultation meeting.

Before the meeting, the employer must provide details of selection criteria used and individual scores. The employer must also provide an explanation of the scoring method, in order to give the employee a genuine opportunity to challenge the decision.

Employers do not need to provide the scores of other employees.

All good redundancy procedures allow at-risk employees to be accompanied to redundancy consultation meetings by a union rep or co-worker, although there is no statutory right to be accompanied. However, the statutory right does kick in for any grievance meeting arising out of the redundancy process.

Once again, employers have considerable leeway in how they approach the selection process, but blatantly unfair and discriminatory processes can and should be challenged.

7. Improving notice and pay rights

Basic regulations

Consultation over redundancies must finish before the employer can give notice of dismissal to any employees.

Employees must receive at least the statutory minimum notice as set out below:

- One week's notice for staff employed between one month and two years;
- One week's notice for each year if employed between two and 12 years;
- 12 weeks' notice if employed for 12 years or more.

Employers can make a payment in lieu of notice for the period if such a clause is in the contract of employment.

Any employee who has two years of continuous employment is also entitled to minimum redundancy pay as follows:

- 1.5 weeks' pay for each year of work after their 41st birthday;
- One week's pay for each year of work after their 22nd birthday;
- Half a week's pay for each year of work before their 22nd birthday.

The current limit for weekly pay is £643 (£699 in Northern Ireland). The maximum period that can be taken into account is 20 years and therefore the maximum total payment currently stands at £19,290 (£20,070 in Northern Ireland).

Where staff wages change from week to week, calculation is based on the average weekly pay for the previous worked 12 weeks from the date the employee was made redundant (weeks where no work was carried out are not included).

Where employees have reduced their hours in the previous 12 months as a measure to avoid redundancy, payment still has to be calculated on their salary immediately prior to the reduction in hours taking effect. Similarly, furloughed staff must have their redundancy payment based on their full normal pay.

Where employees operate on a term-time contract, a week's pay is based on the actual amount earned for a week's work. Therefore, if an employee receives £20,000 a year for 39-weeks work and 5.6 weeks leave, they may receive that salary in equal monthly instalments across the year, but their weekly pay is £20,000 divided by 44.6 (i.e. £448.4), not £20,000 divided by 52 (i.e. £384.61).

The number of years that goes into the calculation is based on continuous service.

A break in continuous service can occur where:

- The employee has previously received a redundancy payment;
- There was a break between contracts of over seven days (running from Sunday to Saturday) which was not as a result of redundancy;
- There was a break of over four weeks after redundancy before re-employment.

Staff who are TUPE transferred to a new employer are protected from a break in continuous service.

The Employment Rights Act 1996 allows service with an "associated employer" to count toward continuous service as long as the rules above on breaking the period are observed.

In the NHS, for example, the Redundancy Payments (National Health Service) (Modification) Order 1993 (SI 1993/3167) allows trusts to be treated as associated employers (in Northern Ireland the legislation is the Redundancy Payments (Health and Personal Social Services) (Modification) Order (Northern Ireland) 1994).

Similarly, the Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order 1999 allowed local government, schools, colleges, "new" universities police authorities and academies to be treated as associated employers (in Northern Ireland the legislation is the Redundancy Payments (Health and Personal Social Services) (Modification) Order (Northern Ireland) 1994).

The redundancy payment has to be made before an employee's final pay day unless a written agreement is signed to state otherwise.

However, re-engagement within four weeks of redundancy enables an employer to escape making a redundancy payment and therefore a dismissal and re-engagement policy will be designed to fulfil this criterion for avoidance.

Staff on notice are legally entitled to "reasonable" paid time off to look for other work or to arrange for training for new employment. The employer does not have to pay more than 40% of a week's pay for such time off, therefore employers commonly allow two days.

ACAS states that any letter giving notice of redundancy should contain the following information:

- The notice period;
- The leaving date;
- The redundancy due;
- The calculation used to determine redundancy pay;
- The pay due for any other reason (such as outstanding holiday pay);
- The method and timing of payment;
- The appeal process.

Many of the terms set out above, covering notice period, redundancy pay and time off will be set out in an employer's redundancy policy and may exceed the legal minimums.

Current tax legislation allows the payment of up to £30,000 without any deduction of tax or National Insurance contributions.

In the event that an employer becomes insolvent, staff entitlements are outlined on this link

https://www.gov.uk/your-rights-if-your-employer-is-insolvent/what-you-can-get

Enhanced terms

As set out in this guide's section on voluntary redundancy, it is possible to bargain for an enhanced redundancy package, but care should be taken to avoid aggravating age-related differences and so at minimum a scheme should:

- Use the same age bands as those used in the statutory scheme, and
- Calculate the amounts due to employees in the different age bands in the same proportions as are used in the statutory scheme.

Therefore, alternatives for enhancing payment while observing these rules are as follows:

- Using higher multipliers than those used in the statutory scheme, as long as a single multiplier is used across all age categories (a commonly used multiplier is double, taking the figures to one week's pay, two weeks' pay and three weeks' pay respectively);
- Increasing the limit on a "week's pay" (it is not uncommon for schemes to remove the limit and use actual pay throughout)
- Multiplying the payments due by a defined number that applies across all age categories.

In the case of local government employees, payments are also constrained by the specific rules of the following regulations.

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

The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2003

The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998

In England and Wales, the regulations permit authorities to vary the week's pay above the statutory figure to actual weekly pay and pay a discretionary lump sum up to the value of 104 weeks' pay (these are the same terms that can be used for enhancing early retirement payments). Scotland and Northern Ireland regulations carry similar terms.

It may be important to note where employers are seeking to erode them, that enhanced terms can become contractual by "custom and practice".

The following table offers examples of where higher rates have been achieved through different methods of adapting the statutory scheme.

Employer	**Redundancy terms**
London Borough of Haringey	No cap on weekly pay and an additional week is granted per completed year of service
Norfolk County Council	Lower earners are assisted by lifting the weekly pay figure to the statutory maximum if their wage falls below it
Environment Agency	Applies two weeks' pay for each year worked under the age of 22, three weeks between 22 and 41, four weeks at age 41 or older
Darlington Council	A multiplier of 1.73 is applied to redundancy payments, using actual week's pay for all staff
East Hertfordshire Council	Doubles the statutory weeks of pay for each year of service worked
Dorset police staff	Applies two weeks of pay for each year of service worked
NHS Agenda for Change staff	A month's pay for each year of service, calculated on the larger of 4.35 times a week's pay or 1/12th of the annual salary, up to maximum of 24 years
Warwick University	30 weeks' basic pay for all staff who have completed two years' service

In addition to bargaining for improved payment rates, negotiators may consider pressing for payments to be made available for employees after one year's service rather than the statutory two.

Exit payments

Payments on leaving employment were further complicated when the government introduced legislation restricting exit payments on 4 November 2020.

This legislation formed part of its intention to bring in regulations that would enable:

- Recovery of exit payments for any employee who returns to the public sector within 12 months;
- Imposition of an absolute cap on the value of any exit payment set at a maximum of £95,000;
- New reduced limits on calculating all exit payments.

The initial legislation only applied to the exit payment limit of £95,000 and the following important exceptions applied for devolved authorities:

- Payments made by a relevant Scottish authority, as defined in s 153B(5) of the Small Business, Enterprise and Employment Act 2015;
- A relevant Welsh exit payment, as defined in s 153B(6) of the 2015 Act;
- Payments made by Northern Irish authorities which wholly or mainly exercise devolved functions.

The £95,000 limit covered these forms of payment:

- Redundancy payments;
- Any pension top-up to enable early retirement;
- Any payment made as part of an agreed exit settlement between the employer and the employee.

However, in less than four months the government had reversed its position and revoked the exit payment legislation from 13 February 2021.

The advice issued by the government on the revoking of the regulations made these statements to employees and employers in relation to any restriction that had been enforced on a redundancy between 4 November 2020 and 12 February 2021

“If you have been directly affected by the cap whilst it was in force, you should request from your former employer the amount you would have received had the cap not been in place by contacting your employer directly. Employers are encouraged to pay to any former employees to whom the cap was applied the additional sums that would have paid but for the cap”.

“In light of the withdrawal of the Regulations, employers are encouraged to pay to any former employees who had an exit date between 4th November 2020 and 12th February 2021 and to whom the cap was applied, the additional sums that would have paid but for the cap. Given that the cap has now been disapplied, it is open to employers to do so and HM Treasury’s expectation is that they will do so.”

8. Organising and campaigning to strengthen negotiating position

As in the case of all bargaining, the ability of the union to persuade employers to make concessions on all the issues set out above will be influenced by the scale of internal and external support that can be brought to bear behind the position taken by negotiators.

UNISON's "5 Phase Plan to Win" sets out the 5 phases of successful strategic organising campaigns to support bargaining aims. The full planning template and guide is available to all UNISON activists via the UNISON Organising Space at organisingspace.unison.org.uk. However, the key steps in the context of redundancy proposals can be summarised as follows:

Phase 1 - Research and development

- Identify who has the power to withdraw or change the proposal and what are their influences and interests.
- Establish a clear picture of union membership within the areas under threat of redundancy and more widely across the organisation.
- Identify activists within the areas under threat of redundancy who can play a leading role in planning activity and engaging with colleagues.
- Draw up a list of external organisations that have an interest in the consequences of redundancies and may form suitable allies. These will normally be drawn from the following groups:
    - Service users;
    - Community groups;
    - Media;
    - Public authority bodies with responsibility for overview and scrutiny;
    - Elected officials such as councillors, and MPs;
    - Commissioning bodies where the proposed redundancies are within contractors they have appointed.

Phase 2 – Base Building

- Set up a thorough, regular system for gathering the views of staff about the proposals put forward by employers and the union's possible responses.
- Meet with affected staff to agree UNISON's position and campaign goals. Recruit more members and build the highest possible level of support for UNISON activity.
- Meet with members to emphasise the importance of a contact or steward in every affected workplace and department and ask them to nominate a colleague to take on the role. Ensure appropriate training is organised via the Regional Education Organiser and ensure all activists are networked and fully engaged in organising and bargaining activity.

Phase 3 – Launch campaign

Following phases 1 & 2, the union is in a strong position to launch the campaign inside and outside of the workplace in support of UNISON's bargaining aims, including:

- Workplace activity which is supported by the membership and will incrementally increase the pressure on the employer and the confidence of members to participate. For example, member meetings, sticker or leafletting days, a petition or collective grievance, social media activity, member rallies, marches and public meetings.
- Community and political activity. Engage the potential allies identified in phase 1, in activity that will exert pressure on the employer, in terms of their interest in the consequences of redundancies, which will usually revolve around:
    - Damage to the standard of service delivered to the local community;
    - Economic damage to the local community (studies suggest that over half of worker income is spent on the local economy)
    - The human cost – what it means to the lives of workers and their families.

Phase 4 – Resolve the issue or escalate to dispute

Ideally, bargaining goals can be achieved following the pressure exerted in phase 3. Otherwise the purpose of phase 4 – having failed to secure a satisfactory resolution at an earlier stage - is to escalate the campaign both inside and outside the workplace and bring multiple pressures to bear simultaneously until they create a crisis for the employer which exceeds the cost of settling the dispute.

Stage 4 should not be reached without prior discussion and agreement with your relevant regional centre. The strategy and tactics will be planned and developed based on phase 3 progress, scale of target and ambition of bargaining aims – but success will require a plan of escalating action – to test and build the participation and resolve of members while incrementally increasing pressure on the employer / decision maker.

Advice must be sought from the regional organiser who will be able to draw in the support of national departments, such as the relevant service group, Private Contractors Unit, Bargaining Support Group or Labour Link, where necessary. Moves toward industrial action and UNISON's process for taking that route is set out within the UNISON Industrial Action Handbook.

Phase 5 – Win, celebrate, review and sustain.

The purpose of phase 5 is to achieve the bargaining goals, promote and celebrate the win and ensure sustainability of membership, organisation, activism, participation, and confidence. A thorough review of key lessons and future recommendations must be undertaken to inform future organising and bargaining strategies.

Further detail is outlined in the **5 Phase Plan to Win guide and template**, which is available as one of the resources of the Organising to Win series.

UNISON activists can access the resources via the Organising Space – UNISON's online space for activists. Visit the Organising to Win tile at OrganisingSpace.unison.co.uk or contact your Regional Organiser for guidance and support.

UNISON staff can access the resources via the Organising to Win page on Pearl and can contact the National Strategic Organising Unit for guidance and support.

Had an organising win? Let's learn the lessons and celebrate! Send a summary to WIN@unison.org.uk and we'll be in touch.

Appendix 1 - Model letter in response to proposed redundancies

Dear [Name],

Advance Notice of Proposed Redundancies

I am writing in response to your letter dated [date] providing notice under S188 of the Trade Union and Labour Relations (Consolidation) Act 1992 [replace with Article 216 of the Employment Rights (NI) Order 1996 for Northern Ireland] of [x] possible redundancies at the [Name of Employer].

Please note that UNISON is the 'appropriate representative' under the terms of the legislation for [name of employer].

UNISON is opposed to any compulsory redundancies amongst our members and will take all necessary steps to defend any of our members whose jobs may be at risk of compulsory redundancy. We will be consulting with them over your proposals and the apparent threat to their jobs. UNISON is very disappointed to receive this notice and aims to work towards minimising the proposed redundancies.

You have confirmed there must be a [30, 45 or 90] day consultation period, which UNISON considers to be a minimum and during this time meaningful consultation must take place about ways of:

1. Avoiding the dismissals;
2. Reducing the numbers to be dismissed;
3. Mitigating the consequences of any dismissals with a view to reaching agreement with the recognised unions.

As per the legislative requirements, we have received [amend this section to highlight any inadequacy in the information received if necessary]:

- 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 by the employer at the establishment in question;
- The proposed method of selecting the employees who may be dismissed;
- "Suitable information" about its use of agency workers, which can include their numbers, location and roles;
- The proposed method of carrying out the dismissals, taking account of any agreed procedure, including the period over which dismissals are to take effect;
- The proposed method of calculating any redundancy payments, other than those required by statute, that the employer proposes to make.

However, in order to facilitate meaningful consultation on the proposals we also request the following:

- Financial accounts for the last financial year and financial budgets for the current financial year, which display:
    - A detailed breakdown of non-staffing costs;
    - An assessment of cost savings that can be achieved through limiting the refilling of posts when staff leave the organisation and placing restrictions on recruitment / reducing the use of temporary, agency or casual staff / reducing or eliminating overtime / promoting forms of flexible working that reduce costs, such as home working or job sharing / promoting voluntary unpaid leave and career breaks.
    - The scale of cash / investment assets and government support schemes that can be drawn upon to tide the organisation over the pandemic downturn.
- Details of the voluntary redundancy and early retirement scheme to be made available;
- Details of suitable alternative employment and redeployment procedures to be made available for at-risk staff, including salary protection arrangements;
- An equality impact assessment of the proposals;
- Copies of any proposed 'at risk' letter;
- The original staffing structure and proposed revised staffing structure;
- Any proposed selection pool and selection criteria for redundancy;
- A schedule of meetings during the consultation period.
- Proposed new terms and conditions of employment and the estimated cost savings of those terms to the organisation [In cases where the employer is trying to impose dismissal and re-engagement].

I look forward to hearing from you.

Yours sincerely

Appendix 2 – Framework for a counter proposal

In some cases, redundancy proposals will not be linked to a targeted cost saving, but simply to a decline in demand for particular services due to such factors as automation or re-organisation. In these circumstances, it may be possible to utilise financial results set out in section 4 of this guide to argue that there is no case for compulsory redundancies and only the most painless measures set out in section 5 of the guide can be justified, such as offering voluntary redundancy or early retirement.

However, many drives to impose redundancies or dismissal and re-engagement will be based on the claimed need to achieve a specified cost saving. The scale of that alleged cost saving can be challenged through the analysis set out in section 4 of this guide. However, where negotiators feel that it's necessary to offer an alternative path to achieve cost savings, the table below may offer a useful template. The union may not always be in a position to accurately judge the value of proposals, but an approximation may prompt the employer to offer a more detailed breakdown of the cost impact.

Targeted saving	Value	Timetable
Total		
Non-pay costs (seek a breakdown from the employer of major categories that can be utilised in consultation with staff for views on feasible options for reductions)		
Staff costs (what options staff are prepared to accept is a matter for negotiators to consult on, but the broad options are as below) • Establishing a voluntary redundancy or early retirement scheme; • Limiting the refilling of posts when staff leave the organisation and placing restrictions on recruitment; • Reducing the use of temporary, agency or casual staff; • Reducing or eliminating overtime; • Reducing working hours; • Limiting pay rises or increments; • Moving staff into other roles through suitable alternative employment and redeployment schemes; • Promoting voluntary unpaid leave (possibly including career breaks); • Promoting forms of flexible working that reduce costs, such as home working or job sharing.		

Appendix 3 – Statutory redundancy calculator

This grid shows the number of week's pay payable to employees according to their age and number of years in continuous service under the statutory redundancy pay scheme.

Age	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
17	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
18	1	1½	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
19	1	1½	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
20	1	1½	2	2½	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
21	1	1½	2	2½	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-
22	1	1½	2	2½	3	3½	-	-	-	-	-	-	-	-	-	-	-	-	-
23	1½	2	2½	3	3½	4	4½	-	-	-	-	-	-	-	-	-	-	-	-
24	2	2½	3	3½	4	4½	5	5½	-	-	-	-	-	-	-	-	-	-	-
25	2	3	3½	4	4½	5	5½	6	6½	-	-	-	-	-	-	-	-	-	-
26	2	3	4	4½	5	5½	6	6½	7	7½	-	-	-	-	-	-	-	-	-
27	2	3	4	5	5½	6	6½	7	7½	8	8½	-	-	-	-	-	-	-	-
28	2	3	4	5	6	6½	7	7½	8	8½	9	9½	-	-	-	-	-	-	-
29	2	3	4	5	6	7	7½	8	8½	9	9½	10	10½	-	-	-	-	-	-
30	2	3	4	5	6	7	8	8½	9	9½	10	10½	11	11½	-	-	-	-	-
31	2	3	4	5	6	7	8	9	9½	10	10½	11	11½	12	12½	-	-	-	-
32	2	3	4	5	6	7	8	9	10	10½	11	11½	12	12½	13	13½	-	-	-
33	2	3	4	5	6	7	8	9	10	11	11½	12	12½	13	13½	14	14½	-	-
34	2	3	4	5	6	7	8	9	10	11	12	12½	13	13½	14	14½	15	15½	-
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

Appendix 4 - Model redundancy procedure

This model procedural agreement is provided as a template that can be adapted to local circumstances and put forward to an employer as the basis for dealing with any proposals that raise the possibility of job losses. The agreement seeks a “no-compulsory redundancy” clause, which if achieved makes later sections on redundancy selection and payments unnecessary. However, they are included in the event that the employer is unwilling to agree to excluding compulsory redundancies. Sections for insertion of relevant local details are shown in brackets.

A separate Job Protection Agreement specifically to establish no compulsory redundancies for a fixed period is set out in Appendix 5.

A model policy covering redundancy avoidance specifically for academy trusts can be found on this link

REDUNDANCY PROPOSAL PROCEDURAL AGREEMENT BETWEEN [NAME OF EMPLOYER] AND [UNISON BRANCH]

1. General principles

1.1 This document sets out the procedure to be followed when any proposals for organisational changes are put forward that may lead to the loss of jobs.

1.2 Both parties recognise that discussion on any such proposals should begin at the earliest possible opportunity through the joint negotiating committee.

1.3 No compulsory redundancies shall be imposed on staff, but both parties are committed to discussing all other options for achieving organisational change where it has been shown to be necessary.

OR

Both parties are committed to discussing all options for achieving organisational change where it has been shown to be necessary and making every effort to avoid imposition of any compulsory redundancies.

2. Sharing information

2.1 In accordance with legislation, union reps will be provided in writing with:

- 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 by the employer at the establishment in question;
- The proposed method of selecting the employees who may be dismissed;
- Information on the numbers, location and roles of agency workers;
- The proposed method of carrying out the dismissals, taking account of any agreed procedure, including the period over which dismissals are to take effect;
- The proposed method of calculating any redundancy payments, other than those required by statute.

2.2 This information will be provided regardless of the number of proposed job losses.

2.3 In accordance with legislation, union reps will also receive a copy of the HR1 Advance Notice of Redundancy form.

2.4 In order to hold a genuine and meaningful consultation that gives serious consideration to ways of avoiding the dismissals, reducing the numbers of employees to be dismissed and mitigating the consequences of the dismissals, all information necessary for facilitating a joint consideration of achieving these goals shall be shared.

2.5 It is recognised that in order for employers and union reps to assess options thoroughly, the following information is likely to be necessary:

- Financial accounts for the previous financial year and financial budgets for the current financial year, which display:
    - A detailed breakdown of non-staffing costs;
    - An assessment of cost savings that can be achieved through limiting the refilling of posts when staff leave the organisation and placing restrictions on recruitment / reducing the use of temporary, agency or casual staff / reducing or eliminating overtime / promoting forms of flexible working that reduce costs, such as home working or job sharing / promoting voluntary unpaid leave and career breaks.
    - The scale of cash / investment assets and government support schemes that can be drawn upon to tide the organisation over the pandemic downturn.
- An equality impact assessment of the proposals;

3. Timetable

3.1 The consultation period on proposals for less than 20 redundancies within a period of 90 days shall run for at least [45] days.

3.2 The consultation period on proposals for 20 redundancies or more within a period of 90 days shall run for at least [90] days.

3.3 A schedule of meetings shall be established over the consultation period and consultation shall not conclude until a thorough exploration of all issues identified has been completed.

4. Alternative measures

4.1 In seeking to avoid or reduce redundancies, consideration will be given to the following measures:

- Establishing a voluntary redundancy or early retirement scheme;
- Limiting the refilling of posts when staff leave the organisation and placing restrictions on recruitment;
- Reducing the use of temporary, agency or casual staff;
- Reducing or eliminating overtime;
- Moving staff into other roles through suitable alternative employment and redeployment schemes;
- Promoting voluntary unpaid leave (possibly including career breaks);
- Promoting forms of flexible working that reduce costs, such as home working or job sharing.

4.2 Any voluntary redundancy scheme established will observe the following rules:

- Availability of the scheme for all staff across the entire organisation;
- Clear communication to staff setting out the availability of voluntary redundancy and its terms through individual letters / email, alongside specification of the closing date and application form;
- Clear specification of qualification criteria that are objective and non-discriminatory, with central consistency checking of assessments drawn from different managers;
- Where an employee's application is accepted, notification of the outcome in writing and a meeting with the relevant manager to agree the timing of redundancy as well as confirm notice, holiday and pay arrangements;
- Where an employee's application is rejected, notification of the outcome in writing with an opportunity to discuss the outcome with the relevant manager and lodge an appeal that is assessed by senior management not involved in the original decision;
- Enhancements to statutory redundancy payments through the following adjustments to the calculation of entitlement:
    - Doubling the number of weeks' pay applicable under the statutory scheme for each year of continuous service;
    - Utilising actual week's pay even where it exceeds the weekly limit of the statutory scheme;
    - Making payments available to staff with one year's service.

4.3 If an early retirement scheme is established, the following steps will be taken:

- A communications drive will highlight the availability of the early retirement scheme for staff while clearly showing staff the consequences for their pension entitlement;
- A review of early retirement terms will be conducted to consider improving its attractiveness for staff in terms of the age at which it can be taken and the scale of reduction in normal pension entitlement.

4.4 If a suitable alternative employment system is established, the following steps will be taken:

- Once staff are identified as at-risk of redundancy, any current and new vacancies will be brought to the attention of those staff;
- Any new vacancy will be ring-fenced to give at-risk staff first consideration in appointment to the vacancy, with an evaluation of the job content completed to enable highlighting of suitable roles to staff judged to match the vacancies;
- Where any member of staff at risk of redundancy is on maternity, adoption, shared parental leave, or in the case of a pregnant woman until 18 months after giving birth, an adoptive parent within 18 months from an adoption placement or a parent who has taken more than six weeks continuous shared parental leave within 18 months from birth [remove this section on 18 months protection in Northern Ireland as it does not yet apply], any suitable alternative employment available will be offered to them first, in accordance with legal requirements;
- Where the numbers seeking a role judged to be suitable alternative employment exceeds the number of posts available, interviews will be held that score applicants against the appropriate job description;
- A trial period of up to [12 weeks] will be permitted for the suitability of the role to be considered by both parties.

4.5 If a redeployment register is established, the following steps will be taken:

- Once staff are identified as at-risk of redundancy, vacancies that are not judged to form suitable alternative employment or such roles that have been rejected by at-risk staff will be lodged to the register;
- At-risk staff will have first option on whether to apply and will be entitled to discussion with the appropriate manager over whether training may be feasible to allow take-up of the role.
- Where the redeployed role is at a lower salary than the employee's former role, pay protection will apply for two years.

5. Selection process

5.1 In identifying the group of staff who may face redundancy, appropriate consideration will be given to whether redundancies should be selected from across the whole organisation or a specific part of the organisation in terms of staff undertaking a similar type of work or working in a particular location.

5.2 The criteria for selection from this group of staff will be fair and objective, using consistently applied job related criteria, backed by evidence where possible. The criteria be non-discriminatory on grounds of any protected characteristic or automatically unfair reason.

5.3 All staff identified as at-risk of redundancy will be entitled to be accompanied by a union rep to any meeting concerning their redundancy situation.

5.4 All staff will have the right to appeal against their selection and have their case heard by a senior manager who was not party to the original decision.

5.5 Staff given notice of redundancy shall receive the following information:

- The notice period;
- The leaving date;
- The redundancy due;
- The calculation used to determine redundancy pay;
- The pay due for any other reason (such as outstanding holiday pay);
- The method and timing of payment;

5. Signatories

This agreement comes into force on:

Date:……..

This agreement will be reviewed on:

Date:……..

SIGNED ……. for [Employer Name]

DATE ……..

SIGNED …….. for [UNISON Branch]

DATE ……..

Appendix 5 - Model job protection agreement

JOB PROTECTION AGREEMENT

1. Definition of terms

1.1 In this agreement: -

the Employer	refers to [Name of employer]
the Union	refers to [Name of UNISON branch]
Staff	refers to [staff within the bargaining unit]

2. Commencement Date

2.1 The Job Protection Agreement commences on [commencement date].

3. Objectives and General Principles

3.1 The objective of this agreement is to secure a fixed period in which the employer will not undertake compulsory redundancies.

3.2 The fixed period for this agreement is set out at clause 5 and can be altered as set out at clauses 6 and 7.

3.3 The employer and the union both agree on the following general principles:

- It is recognised that growing concerns around job security are an added pressure for staff, which can increase stress and have a negative impact on morale.
- It is recognised that compulsory redundancies have a far-reaching effect not only on former staff and their families, but the communities in which they live and the services they use.
- It is accepted that compulsory redundancies can have ‘hidden costs’ such as increasing workloads on remaining staff and increasing pressure on other public services.

3.4 The union recognises the employer's responsibility to plan, organise, and manage staff in order to achieve the best possible results in pursuing its aims and objectives, in accordance with statutory responsibilities. This may include future workforce reorganisation.

3.5 The employer recognises the union's responsibility to represent and protect the interests of its members including lobbying against future workforce reorganisation which is viewed as a detriment to the union's members.

3.6 The employer and the union accept that the terms of this agreement are binding in honour upon them but do not constitute a legally enforceable agreement.

4. Job Protection Agreement

4.1 This agreement seeks to:

- Recognise the hard work and dedication of staff.
- Relieve anxieties staff may have regarding job security.
- Create a stable foundation from which to deliver quality public services.

4.2 The employer and the union agree to signing the Job Protection Agreement and therefore, the employer will not undertake any compulsory redundancies from the date of its commencement.

5. Sunset Clause

5.1 The Job Protection Agreement will, unless there has been mutual agreement for early termination or extension, end on [end date].

6. Variations

6.1 The Job Protection Agreement can be varied at any time with the consent of both parties.

7. Early termination or extension of agreement

7.1 The Job Protection Agreement can be terminated or extended by the consent of both parties at any time.

8. Signatories

This agreement comes into force on:

Date:……..

This agreement will be reviewed on:

Date:……

Signed:…….. For [Employer Name]

Signed:…….... For [UNISON Branch name]

Appendix 6 - Checklist of bargaining steps

As soon as proposals are first raised by employers, seek the maximum information on their plans to gain as much time as possible in beginning to assemble a response
↓
When formal notification takes place, ensure the union receives the legally required Section 188 information (Article 216 in Northern Ireland) / HR1 form and the planned consultation period meets the legal minimum
↓
Challenge any manipulation of “establishment” definitions that seek to escape collective consultation requirements
↓
Drive home to employers the ACAS (LRA in Northern Ireland) requirements for what meaningful consultation must cover during the consultation period and consider seeking an extension to the period above the legal minimums
↓
Demand additional information set out in this guide’s Appendix 1 model letter to enable meaningful consultation to take place
↓
Utilise the consultation period to challenge any financial justification put forward by the employer, referring to the Bargaining Support Group (bsg@unison.co.uk) for assistance in analysing accounts if necessary
↓
Consider alternative cost saving measures that preclude the need for redundancies or dismissal and re-engagement and put forward a counter proposal as per Appendix 2
↓
Organise members and activists across the affected workforce, develop a recruitment drive and establish regular engagement with staff over employer proposals and possible union responses

↓
Consider whether campaigning can draw in the support of external organisations with an interest in redundancies because of their impact on service standards, the local economy and community
↓
Ensure that that any criteria for selecting staff for redundancy are clear, objective and avoid discrimination
↓
In ensuring a fair process is observed, guard against any employer attempt to sweep up individuals that they have other motives for dismissing within a redundancy situation
↓
Enforce redundancy notice and pay rights, utilising legal minimums as a baseline to press for improved terms

Appendix 7 – Related guidance

General guidance

Dismissals

Redundancy

Workforce Reorganisation

Local Government guidance

Facing Redundancy in Local Government

UNISON Fighting Redundancies in Local Government - A Branch Guide

LGPS Redundancy

Education template

Model redundancy avoidance policy