



CODE OF PRACTICE

HANDLING REDUNDANCY

Note: This publication is intended to provide general guidance only. It does not constitute legal advice and should not be relied upon as doing so.

Important Notice

Following the implementation of The Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005 on 1st March 2006, the '**Adjudicator**', referred to on pages 1 and 2 of this Code of Practice, has now been replaced in law by 'The Employment and Discrimination Tribunal' (**The Tribunal**).

The reference to a '**two-year qualifying period**' has been amended in law to a '**one year qualifying period**' by The Employment Protection (Guernsey) (Amendment) Law, 2005, which also came into force on 1st March 2006.

Following the implementation of Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 on 1st March 2006 (i.e. the 'forthcoming sex discrimination legislation' referred to on page 3) and the Maternity and Adoption Leave (Guernsey) Ordinance, 2016, effective from 1st April 2016, the list of inadmissible reasons for redundancy (page 3 of this publication refers), now includes the following:

- if the redundancy constituted an act of discrimination prohibited by any provision of Part II of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.
- under the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016 where 'the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer' where:
 - the employee was pregnant
 - any other reason associated with the pregnancy (unless incapable of adequately doing the work she was employed to do or she is unable to continue in contravention of a duty or restriction imposed by Guernsey law)
 - where the employee has given birth after 24 weeks of pregnancy

- where the employee has adopted a child within the meaning of the Ordinance
- where the employee took or sought to take; maternity leave, adoption leave, maternity support leave or adoption support leave or time off for ante-natal appointments, when entitled to do so under the Ordinance

Employees on basic or additional maternity/adoption leave to whom redundancy applies are entitled to be offered any suitable alternative vacancy. The new contract must be suitable and appropriate and conditions must not be substantially less favourable than the previous contract.

This notice is intended to provide clarification following legislative changes since the Code of Practice came into force. This notice does not form part of the Code which is reproduced below

Code of Practice

This Code is issued under Section 31 of the Employment Protection (Guernsey) Law, 1998.

Effect of Failure to Comply with the Code

A failure on the part of any person to observe any provision of the Code of Practice does not of itself render that person liable to any proceedings; but in any proceedings under this Law before an Adjudicator any Code of Practice issued under the Law shall be admissible in evidence, and if any provision of the Code appears to the Adjudicator to be relevant to any question arising in the proceedings, that provision shall be taken into account in determining that question.

Introduction

The aim of the Code of Practice is to provide practical guidance to employers, employees, trade unions and employee representatives on how best to deal with redundancy; and to assist in maintaining a climate of good industrial relations within organisations by ensuring decisions are made in a fair and consistent manner.

Its purpose is to help employers and trade unions as well as individual employees, wherever they are employed, regardless of the size of the organisation in which they work. In smaller establishments, it may not be practicable to adopt all the detailed provisions of this Code, but the features listed in **Section 10 - Small Firms** could be adopted and incorporated into a simple procedure.

1. The Legal Aspects

There are no statutory provisions in the Bailiwick that require employers to pay employees a redundancy payment or to notify employees that redundancies may occur. However, there may be a contractual agreement to provide redundancy pay and/or a specific notice of redundancy, and this should be honoured.

Despite there being no statutory provisions which deal specifically with redundancy, under the **Employment Protection (Guernsey) Law, 1998**, an employee may make a **complaint of unfair dismissal on the grounds of redundancy** (in most cases if they have been continuously employed for two years or more). Whilst redundancy is a potentially fair reason for dismissal under the law, the dismissal may be unfair unless the redundancy itself is genuine and the employer's procedure for handling that redundancy is fair and reasonable. In determining whether or not the employer's procedure is fair and reasonable in any unfair dismissal proceedings, the Adjudicator may admit this Code of Practice as evidence. **Therefore, employers should be careful to follow the guidelines of this Code in order to reduce the risk of any dismissal for redundancy being judged unfair.**

In addition, under the Employment Protection (Guernsey) Law, 1998, there are a number of inadmissible reasons for **selection** for redundancy which will render the dismissal unfair. Under the Law, an employee is unfairly dismissed for redundancy if the reason or principal reason for the dismissal is that the employee was redundant, but it is shown;

“(a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer; and

(b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was an inadmissible reason;”

The following are inadmissible reasons (automatically unfair reasons) for selection for redundancy under the Law: -

- relating to trade union membership or activity;
- because an employee is pregnant or for any other reason connected with her pregnancy;
- because the employee asserted a (relevant) statutory right;
- in connection with health and safety;
- a protected shop worker who is refusing to work on Sundays.
(This provision will apply on commencement of “The Employment Protection (Sunday Shop Working) Guernsey Law, 2001”).

Redundancies for the reasons specified above are **not subject to the two-year qualifying period** normally necessary to make a complaint of unfair dismissal.

It is also important that discriminatory selection criteria are avoided e.g. making all part-timers redundant may constitute indirect discrimination against women. If selection criteria are deemed to be discriminatory on the grounds of sex or marital status, an employee may have a claim under forthcoming sex discrimination legislation.

2. Preparing for Redundancy – Setting up a Redundancy Procedure

In the interests of good industrial relations, employers may wish to consider the establishment of a formal procedure for dealing with redundancy. A formal procedure will help to ensure that employees are aware before redundancies occur of the procedure to be followed.

In larger organisations, any redundancy procedure has usually been negotiated and agreed between management and trade union or employee representatives. If there is no union or employees' association, it is still recommended that the workforce is consulted when drawing up a redundancy procedure, so that ideas and concerns can be fully aired. If the organisation is smaller, employers should at least ensure that the procedure is known and understood by all employees.

It is important that any redundancy procedure is reasonable, and that it is reasonably followed, otherwise employers risk a complaint of unfair dismissal, even if there is a genuine redundancy situation.

3. Contents of the Redundancy Procedure

Any redundancy procedure should normally include: -

- confirmation that it is management's aim to maintain job security wherever possible;
- the consultation arrangements with employees, any trade union and/or staff association (see Section 8);
- any measures for minimising or avoiding redundancies (see Section 5);
- the selection criteria to be used where redundancy is unavoidable (see Sections 6 and 7);
- any contractual agreement on notice and/or redundancy pay.

4. Dealing with Redundancy - The First Stage - Is this a Genuine Redundancy?

For the purposes of the Employment Protection (Guernsey) Law, 1998, an employee is dismissed by reason of redundancy *"if the dismissal is attributable wholly or mainly to-*

- (a) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed; or*

(b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was so employed, have ceased or diminished or are expected to cease or diminish;"

Examples of a redundancy situation could include: -

1. a complete closure of the business;
2. a closure of a particular workplace or particular section of the workplace;
3. where work of a particular kind has ceased or diminished;
4. where fewer employees are needed to carry out work of a particular kind because of employee reorganisation, technology changes etc.

It is important to note that for the purposes of the definition of redundancy:

"the business of the employer together with the business or businesses of his associated employers shall be treated as one."

For the purposes of the Law, any two employers are to be treated as **associated** if:

"one is a company of which the other (directly or indirectly) has control; or both are companies of which a third person (directly or indirectly) has control."

In effect, a group of companies can be looked at as a whole when applying a redundancy selection procedure and a company may select employees for redundancy from any part of the group, whether or not there is a redundancy situation in each company.

If a genuine redundancy situation is apparent, measures which may avoid or minimise redundancy should be considered.

5. Minimising or Avoiding Redundancies

Measures which may avoid or reduce the need for redundancy dismissals could include the following: -

- consultation with any trade unions, staff associations and employees (see Section 8);
- natural wastage i.e. not filling vacant posts;
- restrictions on recruitment;
- filling vacancies from among existing employees;

- retraining and redeployment to other sections of the organisation;
- reduce or eliminate overtime;
- short-time working, job-share or part-time working;
- retire employees who have already exceeded the normal retirement age;
- reducing the employment of temporary employees;
- voluntary redundancy or voluntary early retirement package.

There may be employees who volunteer for redundancy or early retirement if these options are offered. If so, the employer will usually make the final decision whether or not to accept certain volunteers in order to ensure the organisation retains the critical skills base.

6. The Pool for Selection

If, having explored possible alternatives, a redundancy situation is inevitable, the employees who may be affected need to be clearly identified. If there is only one employee who is affected, this is a simple exercise. However, in most cases, there are a number of positions within the organisation where redundancies may occur and it is important to identify correctly which group(s) of employees constitute(s) the “pool for selection”. (The “pool for selection” is the group of employees from whom some of those who are to be made redundant are to be drawn).

It is important to consider whether other groups of employees are doing similar work to the “pool” that has been identified, and whether employees’ jobs are interchangeable. Consideration should also be given to whether there are other employees (e.g. from other companies in the same group who may work in different locations) who are doing similar work and should be included in the pool.

7. Establishing Selection Criteria

Once the pool for selection has been identified, a method for selecting those to be made redundant from that pool should be established. Any method of selection should be objective, fair and consistently applied.

Guidelines

1. Objective and verifiable selection criteria should be used e.g. records of attendance, efficiency and length of service, skills, experience, job knowledge, qualifications/training, effort, flexibility, adaptability/potential to undertake alternative work, timekeeping, disciplinary record and any other relevant factors important to the business.

2. Employees in the pool for selection (and where appropriate the trade union or staff association) should be properly consulted. Employees may have representations or explanations to make on how they score on the proposed selection criteria.
3. Any trade union or staff association should be kept informed of the situation e.g. why redundancies are necessary, the selection criteria to be employed and possibilities of alternative work etc.
4. In addition, there are a number of inadmissible reasons for selection for redundancy which will render the dismissal unfair – **see Section 1**. Certain selection criteria may also be considered discriminatory as well as automatically unfair e.g. if selecting a woman for redundancy because of poor attendance when the poor attendance is related to pregnancy.
5. It is also advisable to have an appeals procedure for dealing with complaints from employees who feel that the selection criteria have been unfairly applied in their case. Resolving such issues internally may also avoid or reduce complaints of unfair dismissal against the employer.

8. Consultation

Employees and (where appropriate) trade unions and staff associations should be consulted about redundancy before dismissal notices are issued.

The aim of consultation is to enable all those concerned in the redundancy to understand and share the problem they are facing. Consultation also enables suggestions and alternative options to be explored at the earliest opportunity, reduces uncertainty and promotes more positive dialogue between employer and employee.

Checklist for Consultation

1. If there is a trade union or employees' association, it should be consulted and kept informed of the situation.
2. Employees should be consulted over proposals to effect a redundancy when these proposals are still at the formative stage.
3. Employees should be given adequate information and time to comment or make representations prior to any decision to dismiss being taken.
4. Employers should thoroughly consider any representations from employees before making any decisions.
5. Notes should be kept of any meetings and discussions concerning redundancy.

Through consultation, employees may volunteer for redundancy, part-time work, short-time working, agree to take early retirement or may choose to seek work elsewhere,

thereby reducing the impact of redundancy on other workers. Employees may also have representations to make on how they score on the proposed selection criteria which may change the employer's ultimate decision (normally through appeals or a recognised grievance procedure). Consultation also gives the employee the opportunity to consider other vacancies in the organisation which the employer may have assumed that the employee would not accept.

Other practical considerations that can be discussed via the consultation process are the effect on salary, if an employee is to be downgraded or transferred in preference to redundancy, how the selection process will be applied, and travel and relocation expenses if work is to be accepted in a different location.

9. Consideration of Alternative Work

The employer must show that all reasonable steps were taken to avoid dismissals and consideration must be given to whether there is any alternative work that could be offered. Under the Law, for the purposes of redundancy:

“the business of the employer together with the business or businesses of his associated employers shall be treated as one”.

There may be alternative work available in another location or in a related company or business and this should be considered.

- Alternative work should be offered if this is available and suitable (even if the post available is considered to be of lower status and/or pay).
- Consider any known vacancies that will be available in the near future e.g. retirements, known resignations, staff reorganisations. (It may be possible to retain employees on a temporary basis until a vacancy arises, especially in organisations where vacancies arise regularly).
- Consider career breaks or unpaid extended holiday (during downturn in work etc).

10. Small Firms

It may not be practical for a small firm to apply the detailed redundancy procedures employed by larger organisations. However, the principles of a fair procedure should still be applied, albeit on a smaller, simpler scale. These principles are: -

- consulting with employees about redundancy situations well before final decisions are reached;
- ensuring that there is a fair and objective basis for redundancy selection;
- taking all reasonable steps to avoid or minimise redundancy e.g. offering alternative work if it exists.

Other Publications

Publications can be downloaded from the website on a wide range of employment relations matters including local employment legislation and best practice guidance on other employment related matters.

Contact Information

For further advice

- Check www.gov.gg/employmentrelations
- Email employmentrelations@gov.gg
- **Contact the Employment Relations Service**, Edward T Wheadon House, Le Truchot, St Peter Port, Guernsey, GY1 3WH
- **Call us on** 01481 732583