



Redundancy - A Brief Guide

As a consequence of the recent Coronavirus pandemic and the resultant economic impact, many Northern Ireland businesses will be faced with a reduction in work and may struggle to return to pre-pandemic levels of trade. Consequentially many businesses will face tough decisions in respect of maintaining their workforce levels.

While the Coronavirus Job Retention Scheme (CJRS) and furlough scheme is a clear alternative to reducing workplace numbers, this is likely only a short-term solution. When the economic curtain is drawn back on the post-pandemic landscape it is inevitable that redundancy will play some unwelcome part in the economic recovery for many.

This is a brief guide to redundancy in Northern Ireland and what it will mean for employers. This guidance should be read in conjunction with our redundancy flow charts (Appendix 1 & 2 of this guide) which will assist you in understanding some of the procedural requirements of the redundancy process. It is worth noting that all redundancies are context specific and you should always seek specialist advice before proceeding with a redundancy process.

What is redundancy?

Redundancy occurs when an employer is faced with a diminished requirement for employees to do work of a particular kind at a particular location. The statutory definition of the circumstances that would constitute a redundancy situation can be summarised as the following:

- The complete closure of a business;
- Closure of one or more sites or relocation to a new site;
- A reduction in the need to do work of a particular kind.

The above definition can be met by various business scenarios such as restructuring, outsourcing, the use of new technologies or the financial constraints placed upon a business such as the trading implications associated with the current pandemic.

What is a collective redundancy?

Specific rules apply in respect of collective redundancies. A collective redundancy is where an employer contemplates dismissing 20 or more employees at one establishment within a period of 90 days. In such circumstances the employer has added statutory obligations to comply with. A failure to comply with these statutory requirements can lead to Tribunal claims for a protective award.

The primary obligations in a collective redundancy relate to the requirement to inform and consult with employee representatives in respect of the redundancy and any process to be applied. Employee representatives are in the first instance representatives of any recognised trade union. In the absence of a recognised trade union, the relevant representatives are those who have been elected for the purposes of the consultation or otherwise.

The collective consultation must be meaningful and be designed to explore avoiding, reducing or mitigating the redundancies. In Northern Ireland the consultation period must last for a period of 90 days (where 100 or more employees are being dismissed) or 30 days in any other case (these



consultation periods differ slightly in the rest of the UK). The employer must also provide details of the redundancy to the Department for Economy (see appendix 2).

What are the first steps?

The first step that a business should take is to ascertain whether there is actually a redundancy situation, what areas or roles are affected and what reduction of employees is required in each area or role. This will usually require an analysis and forecasting of the Company finances, available work and the likely impact on employee requirements going forward. While Courts will rarely interrogate the business rationale for a redundancy, they can do so where they believe the redundancy is not genuine. It is therefore advisable that the reasoning for the redundancy is well documented. The employer should also consider alternatives to redundancy and explore these possibilities (see below).

Following a determination of the roles and numbers affected, the business should then begin to adopt a plan for the redundancy process. This will include identifying any relevant selection pool and developing a redundancy procedure. The redundancy procedure should incorporate all the statutory requirements for a dismissal and have a fair and reasonable process for the selection of redundant employees.

What is the selection pool?

The selection pool should contain all the relevant employees who are risk of being selected for redundancy and to whom the selection criteria will be applied. The employer will have discretion over the extent of the section pool, however the inclusion (or exclusion) of employees in the pool will need to be fair and reasonable. Although it is not a necessity, a selection pool should generally include those employees who do the kind of work that has diminished. Narrow pools are more likely to be scrutinised by the Courts in an assessment of whether the selection pool was unfair and unreasonable.

Although a pool containing a single individual can be considered fair and reasonable this is usually in the context of a very specific role. The starting point for determining a selection pool is to identify the type of work which is diminishing and the employees who carry out that type of work. It should include those employees on long term leave or family related absence. The employer will also need to consider employees who roles are interchangeable, those who do similar work and potentially even those at other locations as being reasonably included in the pool.

How do I develop a selection criteria?

Employers should develop a selection criteria which, where possible, incorporates objective and measurable elements that are not subjectively dependent on the those making the selection decision. Single selection criteria should not be used and the selection criteria should incorporate multiple criteria in a scoring matrix that can be independently verified.

The employer should not use any criteria (or apply criteria in a way) that could be considered directly or indirectly discriminatory and should take advice on their proposed selection criteria. Selection criteria normally includes a scoring matrix of elements such as performance and ability, attendance, disciplinary record and length of service. Employers can give a weighting to particular criteria where this can be justified. Consideration should be given to using two people to score the selection pool, especially where it is not possible for the scoring to be totally objective (i.e from personnel files and



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documented records etc). The selection criteria should avoid allowing subjective opinion and judgement into the process as this would likely be open to criticism.

What process should be followed?

While there is no set way on how to conduct a redundancy process, there are certain requirements that an employer will have to include within that process. These differ slightly for small and collective redundancies and our attached flowcharts (appendix 1 &2) set out a potential structure for both of these type of redundancy situations. In essence, a small scale redundancy process must incorporate the statutory dismissal process and also facilitate any requirement to inform and consult employees. Although some collective redundancies do not require the statutory process it is good practice to follow this anyway.

The usual core principles should be applied as they would in any other termination of employment. This includes incorporating the 3-step statutory dismissal procedure. The essence of the statutory procedure requires an employer to advise the employee they could be potentially dismissed, to hold a meeting prior to the termination and to afford the employee the right of appeal.

The structure of a redundancy process is usually more involved than any other termination given the potential number of employees and the requirement to consult (either individually or collectively). The employer should consult on matters of process and outcome such as mitigation, selection criteria, provisional selection and suitable alternatives roles. As well as consulting, the employer should follow up in writing where appropriate, especially where this is required as part of the statutory dismissal procedure.

What alternatives to dismissal should an employer consider?

The employer will need to show that throughout the redundancy process they have reasonably considered and assessed alternatives to redundancy. This includes alternatives that have been considered by the employer prior to and during the process and also those suggested by the employee during consultation. Typical alternatives to redundancy may include the following: reducing agency staff; recruitment ban; overtime ban; short time and lay off; voluntary redundancy; unpaid leave; pay freezes; or pay cuts. The employer should be prepared to show that they had considered alternatives and why such alternatives are not feasible to avoid redundancy. It should be noted that where an employer accepts expressions of interest for voluntary redundancy, this will be a termination by the employer and a full and proper procedure (including the 3 step Statutory procedure) should be followed.

The availability of the CJRS scheme could also be considered an alternative to redundancy. If the scheme is still operational and employees are agreeable to be furloughed then employers should be cautious about making redundancies during this period. A Tribunal may consider a redundancy termination to be unfair during a period when the CJRS scheme was available to an employer as an alternative to redundancy.

Considering suitable alternative roles

The employer also has to make reasonable efforts to source and offer any suitable alternative roles that are available for employees facing redundancy. This may extend to suitable roles within other related businesses and the employer should document its search for suitable roles up until the date of termination. The employer should notify the employee of any relevant information on vacancies that



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allows them to make an informed choice in respect of suitability. Employees on family related leave such as those on maternity or shared parental leave have added protection and should be offered any suitable roles first. The employer should carefully document this process as a failure to offer a suitable alternative role will often make the termination unfair. Where multiple employees express an interest in an alternative role the employer may have to undergo an interview process.

Employees have the right to a 4-week trial period following notice of their termination in any proposed alternative role to assess suitability. In the event that an employee unreasonably refuses a suitable alternative role they may forfeit their right to a redundancy payment. The law surrounding the statutory trial process is complex and advice should be sought prior to considering this option.

Employers may also consider 'bumping' where an alternative role is not available. In such circumstances the employee selected for redundancy is given a role that was not at risk and the individual carrying out that role is made redundant instead. Employers should be cautious of 'bumping' and take specific advice.

What payments are redundant employees entitled to?

Any employee with service of two years or more will be entitled to a statutory redundancy payment. Under the statutory scheme the employee will receive a week's pay for every completed year of service that they were not below 22, a week and a half pay for every completed year of service they were not below the age of 41 and a half a week's pay for other completed years of service up to a maximum of 20 years. The calculation of a week's pay will be subject to the statutory maximum at the time of the redundancy and this is currently £560. A table for working out the number of weeks redundancy entitlement is available on the Labour Relations Agency's website at:

<https://www.lra.org.uk/sites/default/files/2019-03/Redundancy%20Pay%20Table.pdf>

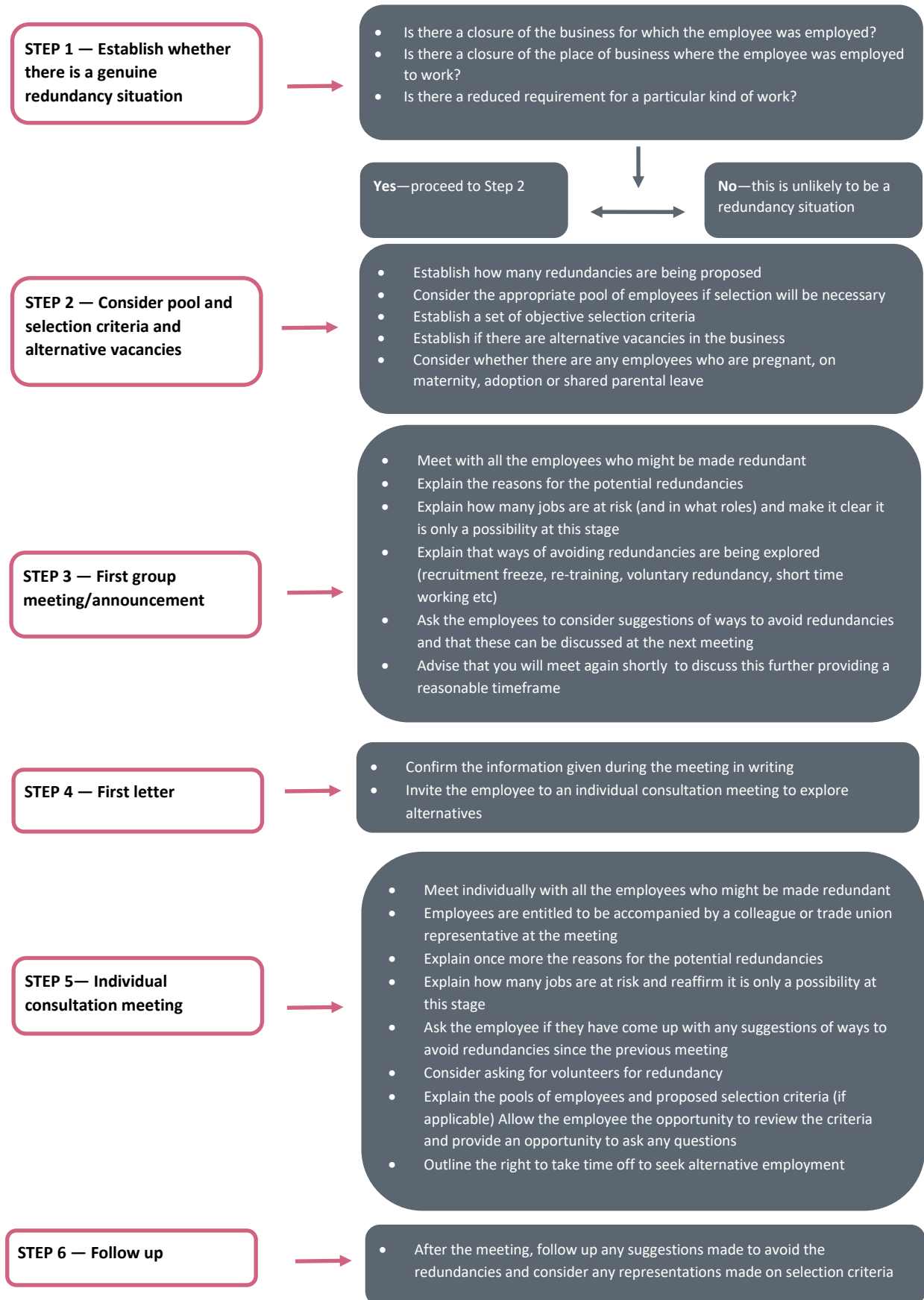
Employees who have been employed for a month or more will be entitled to notice depending on their length of service (up to a maximum of 12 weeks). Employees may also have accrued but untaken annual leave to the date of termination. The employee may also have more generous redundancy and notice entitlements under the terms of their contract. Once a decision to make an employee redundant has been made the employer should provide written details of the redundancy payment and any other payments due.

Time off to seek alternative employment

Employees with two or more years' service are entitled to reasonable paid time off to look for work or arrange training during their notice period. The employee will only receive 40% of their normal pay for periods of time off to seek work or training.



Appendix 1: Redundancy Process for less than 20 employees





Appendix 1: Continued

STEP 7 — Scoring

- Score each potentially redundant employee using the selection criteria
- Ideally at least two managers should conduct the scoring to ensure the scores are objective

STEP 8—Second letter

- Write to the employees that have provisionally been selected for redundancy to invite them to a meeting to discuss their selection
- Employees are entitled to be accompanied by a colleague or trade union representative at the meeting
- Ensure the letter sets out the reasons for the redundancy and for provisionally selecting the employee and summarise the consultation to date. Provide the employee with a copy of their scores
- Explain no final decision has been made at this stage, however that a potential outcome of this meeting could be the termination of employment on the grounds of redundancy. Allow the employee a reasonable opportunity to consider this information before holding the meeting

STEP 9 — Individual Meeting

- Consult with each employee individually about their scores, the proposal to select them for redundancy and the terms of the redundancy
- Consider any comments from the employee, particularly in relation to their scores
- Discuss details of any alternatives and why they are not possible (if any have been identified). Discuss suitable alternative roles that are available
- Take a detailed record of the meeting

STEP 10 — Individual Meeting

- Write to each selected employee (on the same terms as the second letter above) and arrange a follow up meeting to confirm that they have been selected for redundancy
- Explain your consideration of alternatives to redundancy and alternative roles and why these are not suitable
- Go through the redundancy package with the employee
- Advise employee of their right to time off to seek other employment
- Take a detailed record of the meeting and confirm the right of appeal and that they will receive a letter to confirm the decision

STEP 11 — Dismissal letter

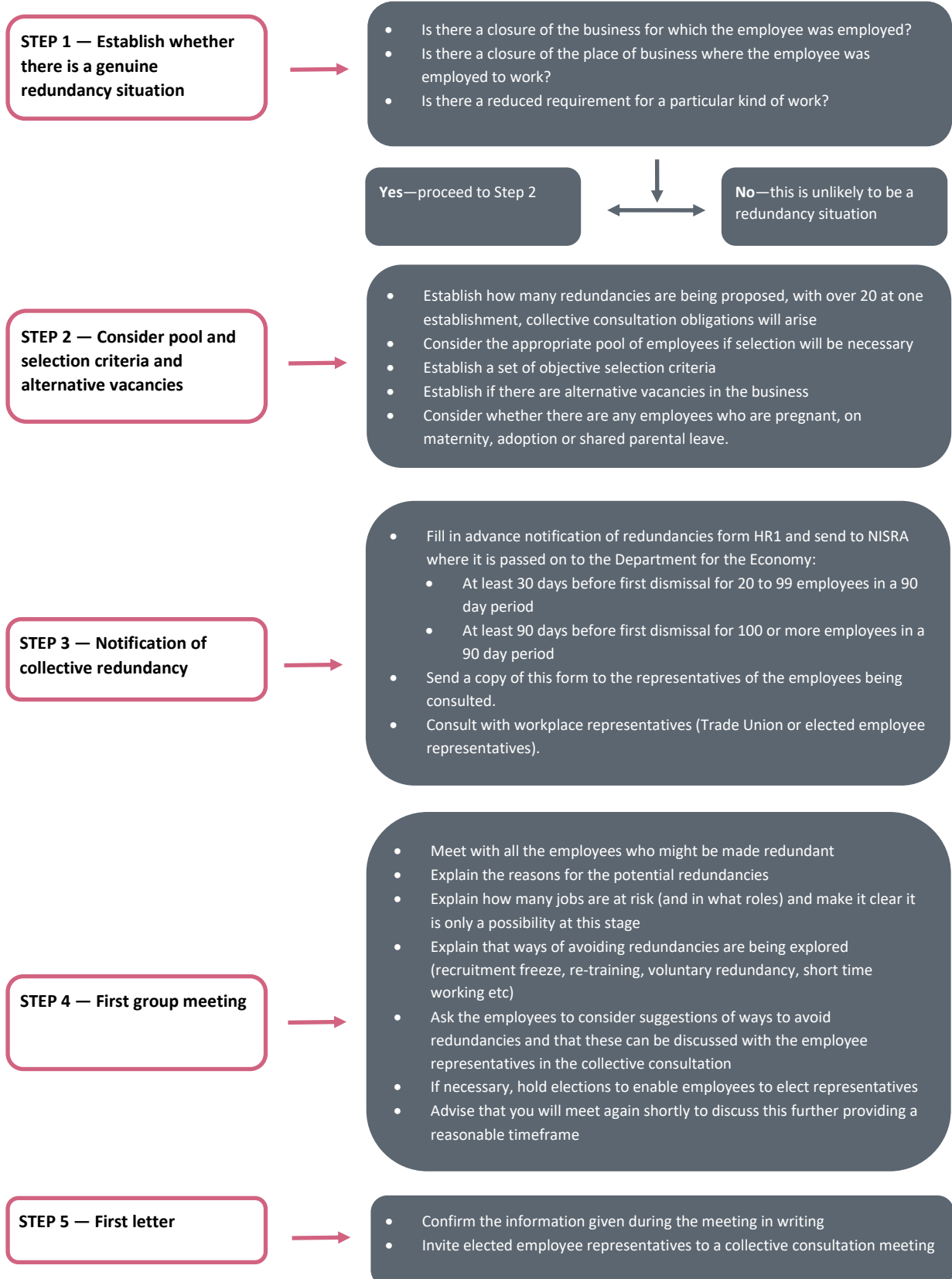
- Confirm the decision of redundancy to the employee and specify the last date of employment
- Give a detailed explanation of the calculation of the redundancy payment and any other payments to be made
- Advise the employee of the right to appeal, explaining how to appeal the decision and the time limit for doing so

STEP 12 — Appeal

- If the employee appeals the decision, invite them to attend a meeting to hear the appeal. Where possible, the meeting should be held by someone senior to the person who conducted the previous meetings
- The employee is entitled to be accompanied by a colleague or trade union representative
- Take a detailed record of the meeting
- Following the meeting write to the employee confirming the outcome of the appeal and that the decision is final



Appendix 2: Redundancy Process for more than 20 employees





Appendix 2: Continued

STEP 6 — Collective Consultation

- Meet with all the employee representatives and provide the statutory information in writing
- Explain once more the reasons for the potential redundancies
- Explain how many jobs are at risk and reaffirm it is only a possibility at this stage
- Consult with the elected representatives on the ways and means of avoiding the representative if they have come up with any suggestions of ways to avoid redundancies and mitigating their consequences
- Consider asking for volunteers for redundancy
- Discuss the pools of employees and proposed selection criteria (if applicable)
- Outline the right to take time off to seek alternative employment for affected employees

STEP 7 — Follow up

- After the meeting, follow up any suggestions made to avoid the redundancies and consider any representations made on selection criteria

STEP 8 — Scoring

- Score each potentially redundant employee using the selection criteria
- Ideally at least two managers should conduct the scoring to ensure the scores are objective

STEP 9 — Second letter

- Write to the employees that have provisionally been selected for redundancy to invite them to a meeting to discuss their selection.
- Employees are entitled to be accompanied by a colleague or trade union representative at the meeting
- Ensure the letter sets out the reasons for the redundancy and for provisionally selecting the employee and summarise the consultation to date
- Explain no final decision has been made at this stage and that a further meeting will be arranged if their selection for redundancy is confirmed
- Allow the employee a reasonable opportunity to consider this information before holding the meeting

STEP 10 — Individual Meeting

- Consult with each employee individually about their scores, the proposal to select them for redundancy and the terms of the redundancy
- Consider any comments from the employee, particularly in relation to their scores
- Discuss details of any available alternatives and why they are not possible (if any have been identified). Discuss suitable roles that are available
- Take a detailed record of the meeting

STEP 11 — Individual meeting

- Write to each selected employee (on the same terms as the second letter above) and arrange a follow up meeting to confirm that they have been selected for redundancy
- Explain your consideration of alternatives to redundancy and alternative roles and why these are not suitable
- Go through the redundancy package with the employee
- Advise employee of their right to time off to seek other employment
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Appendix 2: Continued

STEP 12 — Dismissal letter

- Confirm the decision of redundancy to the employee and specify the last date of employment
- Give a detailed explanation of the calculation of the redundancy payment and any other payments to be made
- Advise the employee of the right to appeal, explaining how to appeal the decision and the time limit for doing so

STEP 13 — Appeal

- If the employee appeals the decision, invite them to attend a meeting to hear the appeal. Where possible, the meeting should be held by someone senior to the person who conducted the previous meetings.
- The employee is entitled to be accompanied by a colleague or trade union representative
- Take a detailed record of the meeting
- Following the meeting write to the employee confirming the outcome of the appeal and that the decision is final