

PERSONNEL MEMORANDUM 13

MANAGING REDUNDANCIES GUIDANCE

Scope and Purpose of PMs

1. PMs set out personnel procedures for managers to apply or give guidance on people-related issues. Managers should make themselves aware of the content of PMs and use them for future reference.
2. FDMs/ Conservators/Heads of Branches and Business Units should ensure that their managers see new PMs and discuss these, where appropriate, at management meetings

Purpose of PM 13

3. The PM provides managers with guidance on managing redundancy situations, including consultation with staff/ Unions and selection.

Background

4. A new Redundancy Agreement has been concluded with the Trade Union Side. The Agreement is available on the Personnel Intranet site and will be incorporated in the Staff Handbook. The main changes in the Agreement are to the selection criteria, the introduction of different ways of defining the unit of redundancy, and new guidance on consultation with Trade Unions.

Action

5. This PM will be used by managers and Personnel staff involved in potential redundancy situations.

Contacts

6. Contact:
 - Fiona Wright in Personnel Policy for policy advice;
 - Kathleen Burt, David Taylor, Jean Lindsay in Personnel Services, or local Personnel Officers, for advice on specific redundancy cases.

W J Anderson
Director Personnel
27 November 2002

PERSONNEL MEMORANDUM 13

GUIDANCE ON HANDLING REDUNDANCY SITUATIONS

1. The principles of the Commission's redundancy procedures are set out in the Departmental Redundancy Agreement. This guidance sets out advice to Personnel staff and managers on handling redundancies. Personnel staff will be involved in co-ordinating redundancy exercises and the selection of staff.

2. Redundancy is defined by statute- in the *Employment Rights Act 1996*- and care must be taken in many areas, e.g. in defining the unit of redundancy, consultation, selecting staff for redundancy and in offering suitable alternative work to avoid dismissals. Failure to follow procedures or to consult fully with Trade Unions and the individual staff affected could lead to a claim of 'unfair' dismissal.

Planning

3. Redundancies may take up to 9 months to complete, including a full notice period. Attempting to complete the process in a significantly shorter period could result in:

- ❑ the Commission being liable to pay Compensation in Lieu of Notice;
- ❑ a legal challenge to the validity of the redundancies on the grounds that the procedures, such as Trade Union consultation or consultation with individuals, or options for re-deployment, have not been properly undertaken;
- ❑ unfair selection.

Statutory Position

4. Redundancy is defined by statute in 4 different ways. The legal definition is set out in the Redundancy Agreement. This includes the following references:

- ❑ '**Place of work**' means the physical location where the individual normally carries out his/her job.
- ❑ '**Work of a particular kind**'. In the Commission, this will generally mean the range of work that can reasonably be done by the 'occupational group'. For example, if an individual is recruited as an 'AO' this usually would mean any of the different types of duties performed by these staff within the Commission, similarly for Forest Officers, Civil Engineering type jobs etc. The implication of the legal definition is that care should be taken not to define the unit of redundancy and, therefore, the selection for redundancy:
 - ◇ too narrowly where staff, in fact, have been accustomed to interchanging and carrying out different roles; or
 - ◇ too widely, where the FC could lose staff carrying out different jobs to the ones that are actually surplus.

It could be unreasonable, for example, to say that only AOs used to doing a certain type of work will constitute the unit, rather than all AOs in the particular area.

On the other hand, a compulsory redundancy situation can exist where there is a surplus in a particular narrow specialism, for example, in a specific scientific or technical field.

5. What are known in redundancy law as *'bumping redundancies'* are possible. This happens, for example, where staff reductions have to be made at one location, but an individual at another location is the one made redundant (or 'bumped'). This can happen in the FC if the unit of redundancy is wider than one geographical location. As long as there is a clear 'causal' link with the surplus situation, then the individual 'bumped' is clearly entitled to a redundancy payment. However, the links between the posts must be seen to be reasonable.

6. The other situations where redundancies could clearly occur using the statutory definition are where a whole office may be closing, a particular type of work is ceasing, or the location of the work is moving.

7. It follows that redundancy does not exist where:

- ❑ job reductions take place but there are other suitable jobs available to which the individual could be transferred (within the limits of mobility) or different jobs for which he/she is willing to be re-trained;
- ❑ job reductions are needed but they are capable of being absorbed by natural wastage or cost-effective voluntary severance or other measures within a reasonable period.

Personnel Role

8. Personnel staff should be consulted in any situation where there are doubts about whether or not a redundancy situation exists. One of the Personnel roles is to ensure that options for redeployment have been fully explored before redundancies are declared, as well as assisting with selecting for redundancy.

Cost Issues

9. Redundancy is expensive for the Commission (usually involving 5 figure sums) and all the measures set out in the Agreement must be thoroughly explored by managers and personnel staff before notices of redundancy dismissal are issued. It is important to look beyond the immediate, short-term situation for re-deployment options. Other job opportunities may arise in the medium term, for example, not long after a notice of dismissal would expire.

10. It is cheaper for the Commission to allow a relatively short period of a 'surplus' to run when there is an option for re-deployment in the foreseeable future. Even a transfer involving a change of location and transfer expenses can be much cheaper than severance. Re-training will, in most cases, be much cheaper than severance and imaginative options should be considered for re-deployment. Do not assume that people cannot be re-trained for other roles- even very different ones.

11. Personnel Officers must also maintain contact with Government Departments, Agencies and NDPBs in the locality both before and during the notice period to check on options for transfer.

Consultation

12. The law requires consultation with Trade Unions, and with the individual employees involved. In 2001, the organisation lost a Tribunal case, partly because the Tribunal took the view that there has been inadequate consultation with the Trade Unions and the individuals affected before embarking on the redundancy exercise. The initial contact should be with the Departmental Trade Union Side Secretary at Silvan House, who is responsible for ensuring

that other representatives are informed and for deciding on the most appropriate point of contact for consultations.

13. Under the Trade Union and Labour Relations (Consolidation) Act 1992, an employer must consult with representatives of employees within a certain time-scale when it is considering 20 redundancies from the same establishment. Consultation has to take place within a 90-day period, and dismissals should not take effect within this period (though notice of redundancy can be issued). In the FC, it is our policy to consult in all cases and as early as is feasible.

There are two stages for formal consultation in the Agreement:

Stage 1: where managers are aware that redundancies are possible, early discussions will focus on how to avoid redundancies. Even when redundancies are only one of a number of options, you should comply with the need to consult Trade Unions.

Stage 2: where the redundancies proceed, this stage involves providing the Trade Unions with specific information specified by the law (Redundancy Agreement paragraphs 17-19)

14. Parallel consultation with individual staff must take place. In other words, it is not enough to consult Unions alone on plans and reasons for redundancies. Dismissals can be found to be unfair when individuals who have been selected for redundancy have not been kept fully informed. Ideally, information about impending redundancies should be given to the staff at the same time at which it is provided to Trade Unions. You should be prepared to supplement information provided in 'all staff' meetings with individual interviews with staff likely to be affected. Remember, also, that not all staff are Trade Union members and planning for communications with individuals needs to reflect this. It is a management role to ensure effective communications for all staff involved are in place.

15. You should consider the timing of meetings in which you are going to provide important information. It may be better to time these earlier in the week so that staff or Unions can come back and ask questions the next day, rather than leave concerns until the following week.

16. Formal representations from the Trade Unions and individuals should be considered and replied to. If suggestions or proposals are rejected, it should be made clear why they are being rejected.

Transfer to Another Job

17. An individual cannot unreasonably reject re-deployment to a suitable alternative job as part of management's efforts to avoid redundancies. For example, no member of staff can refuse another suitable post within daily travelling distance of their home- this is the minimum mobility requirement for all staff in the Civil Service. (Refusal would mean that the individual would no longer legally be eligible for a redundancy payment). In the kind of transfer which simply involves transfer to another job within the occupational group (e.g. another AO post for an AO), there is no need for a trial period in the new job and no right of appeal against re-deployment. However, staff must be given the appropriate training for the new job and allowed a reasonable time to adjust to the new duties.

18. However, where a notice of redundancy has already been issued and re-deployment is then considered, for example, because a post has become vacant, it is important to obtain the individual's agreement in writing to the re-deployment. If accepted, there is no trial period in the new job but the usual requirement for training and allowing time to adjust apply.

19. A job that involves a change in hours of attendance or substantial travel difficulties could be challenged legally if it creates a 'constructive dismissal' or a breach of contract. If there is any doubt about the suitability of the job Personnel staff will advise and guide managers. The individual has to be consulted.

Moving Staff to a New Location

20. In Pay Band 5 and above there is a wider mobility clause in the contract of employment. Personnel Services should be involved in advising about any proposal to compulsorily move a mobile employee to another office that would involve a change of home. Although there is a contractual mobility obligation in the Civil Service, employers are required to act reasonably in making offers of alternative work in other locations. This will vary on a case by case basis and will take into account the individual's history of work locations whilst employed by the Commission or Civil Service and their personal circumstances. Advice should be sought from Personnel Services, who may have to seek legal advice. Part-time staff are currently non-mobile regardless of pay band though this may need to be reviewed on grounds of equity of treatment.

21. Any individual- whether mobile or non-mobile- can be transferred to a post within reasonable daily travelling distance from their home. This generally means a journey of about one-hour each way. This does not necessarily exclude consideration of longer journeys, particularly where he/she is already travelling for longer than one hour. It is also legitimate to request that an individual who usually travels to work by car makes the new journey by car and apply the 'reasonable' test on that basis.

22. Personnel staff should be consulted in difficult cases. For example, what is 'reasonable' travel for a member of staff with few domestic responsibilities or one who is able-bodied, may be unreasonable for one with difficult domestic circumstances or who is disabled. A common sense and fair approach should be adopted.

Transfer to a Different Discipline or Type of Job

23. In some situations there may be the possibility of offering transfer to a completely different type of job, along the lines of what was previously defined as 're-grading' e.g. from

- a technical job to an administrative job;
- one scientific specialism to another;
- an administrative to a technical or field based post.

These are just a few examples- it is clearly not possible to give guarantees to individuals, but keep an open mind about possible solutions for re-deployment.

24. If the notice of redundancy has already been issued, this type of transfer (involving a completely different occupational group) can only be achieved by mutual consent. Staff who accept this type of re-deployment, whether before or after a notice of redundancy has been issued, must be given a trial period of up to 3 months in the new job. During this time they reserve any right to the redundancy if the notice of dismissal notice had already been issued. Once a trial period has been satisfactorily completed the individual should be asked to confirm in writing that they agree the re-deployment and withdrawal of the notice of redundancy. If the trial period is not satisfactory, and there are no other job options, the notice of dismissal will become effective again.

25. It is preferable that management explores all options for re-deployment before redundancy notices are issued; though options for re-deployment can and should be actively considered during the notice period.

Redeployment to a Job in a Lower Pay Band

26. A move to a job in a lower pay band can only be made with the full agreement of the individual since this represents a fundamental contractual change. Staff would retain their existing pay on a mark time basis (if it is above the maximum of the new lower pay band) until the maximum of the new 'pay band' catches up, as long as this can be achieved in a reasonable period (to avoid equal pay problems). Pension entitlements on retirement in this situation will need to be explored with Pensions, Silvan House.

Use of Alternative Working Patterns

27. Use of a different working pattern on a voluntary basis may reduce a surplus. A more flexible approach to how the work in the unit is carried out (smart working') could also help in maximising all the options for voluntary re-deployment e.g.

- part time working or other flexible working patterns
- job sharing
- term time working
- offering additional flexibilities under existing flexi-time systems
- reducing habitual overtime working by other staff.

Changing contractual hours of work can only be achieved by agreement with an individual.

Disabled Staff

28. Do not make unwarranted assumptions about the ability of disabled people to undertake some types of work. You should consider:

- whether the alternative job can be adapted to meet the individual's needs i.e. a 'reasonable adjustment';
- the use of any special equipment that would help the individual carry out the duties of the job.

Disabled staff are protected by the Disability Discrimination Act 1995 which makes it unlawful to select a disabled person for redundancy by reason of their disability. Advice can be obtained from the Departmental Equal Opportunities Officer on how this applies in practice.

Staff On Maternity Leave

29. It is illegal to select a woman for redundancy because she is on maternity leave, is pregnant or has given birth. The position of staff on statutory maternity leave (currently 18 weeks) also needs to be considered carefully since there exists a statutory right of return to work at the end of this period. Personnel, Silvan House should be asked for advice.

Staff on Fixed Term Contracts

30. Staff on a fixed term contract should not be selected for redundancy through early termination of their contract unless this can be objectively justified under the Fixed Term Employees Regulations 2002. (Seek advice from Personnel, Silvan House). However, if a

fixed term appointment is due to end within the next 6 months, for example, then that may avoid a redundancy situation being declared in the first place.

The Unit of Redundancy

31. The Agreement allows flexibility to suit the needs of different redundancy situations, though consultation must take place with the Trade Union involved to reach agreement on the unit of redundancy. Refer to the legal definition of redundancy if you are in doubt as to whether there may be problems with the unit proposed. A unit will be usually be a group of staff doing the same kinds of jobs in one unit or over a wider geographical area.

Compulsory Redundancy Selection Criteria

32. Consultation with the TUS must take place to reach agreement on the criteria for selecting staff for redundancy and this should be done early enough to allow meaningful consultation. However, a selection form is shown at **Annex 1** and this will be suitable for most redundancy exercises. This form could also be used to determine the selection of staff for voluntary redundancy, where a number of staff have volunteered.

33. This form will enable decisions about selection to be defended if challenged, providing the information used about individuals' performance etc can be shown to be objective and relevant.

34. The aim of selection is to ensure, as far as possible, a balanced and effective workforce that is appropriate to the future needs of the Commission.

35. The criteria on the selection form are objective and capable of being applied in a consistent and transparent way. The evidence used in the selection (e.g. PMS forms) will be documented along with the selection form. Care should be taken that the application of the criteria does not adversely and unintentionally affect a particular group either directly or indirectly (for example, older or younger employees or disabled staff). Criteria must not be designed or applied with the sole aim of getting rid of a particular member of staff, which will almost certainly result in an unfair selection procedure.

36. This selection form requires a 'rating' for each individual against several factors. The factors are 'weighted' to reflect their relative importance when deciding the future needs of the FC. If it is proposed to change this selection form, including the weighting, seek advice from Personnel staff first.

Making the Selection: Who should be involved?

37. This will be always be a joint process between at least two managers that know the group of staff well and a Personnel Officer (either locally based or from Silvan House), who will be able to source much of the information, such as absence records. In any case, it is essential that it is a joint process to ensure fairness and objectivity. The group involved in the selection should meet to review and agree the selection. The selection should be approved by the Head of Division, Territorial Director, CE FR, Chief Conservator or BU Manager.

38. The selectors can 'validate' the process of selection by asking the following questions:

- are the judgements we have made objective and would they be seen to be objective?
- are there records available that will be or have been used to support the assessments made and could be produced for the individual if requested?

- would the basis of the selection be understood by an Employment Tribunal in the event of challenges?

39. All selection forms need to be retained after the redundancy exercise has been completed.

Disclosure of Information

40. Staff selected for redundancy may ask to see the rating form and this should be provided on request. Forms relating to other individuals cannot be disclosed.

Notification to Staff

41. This should be made quickly after selection decisions have been taken. Staff should be informed individually and sensitively, face to face, before a redundancy notice is issued, preferably by the local manager involved in the selection process. Personnel staff will advise on the content of the letter e.g. rights of appeal, both internal and external.

Appeals

42. Internal appeals should be considered quickly after they have been lodged. The Director General or Chief Executive FE consider appeals, but may ask Director Personnel to appoint an Appeal Panel of two staff, one of whom will be a Personnel Officer. Neither Panel Member should have been involved in the selection process and must not be a line manager of anyone in the selection group. Panel Members will be staff of at least Pay Band 3 level, but in all cases will be at least 2 pay Bands above the Pay Band of the appellant. Appellants have the right to be accompanied by a Trade Union representative or workplace colleague.

43. The aim should be to consider the appeal in full within 14 days of it being lodged and this must include provision for an oral presentation. The criteria used for selection are not subject to appeal unless it is claimed that they constitute unfair discrimination. An appellant should be given a copy of the selection form in respect of him/herself and any other information, such as personal records, that were relevant to the selection (but excluding information about other individuals).

Staff aged over 60

44. One difference in the new redundancy agreement is that once a redundancy situation has been declared, staff cannot be selected solely on the basis of their age. It is worth remembering that for staff selected for redundancy over the minimum retirement age (60) with at least 20 years' service, there are no financial advantages in being made redundant (retirement benefits only). For staff over 60 with less service there may be a small financial compensation payment.

CILON

45. Compensation in Lieu of Notice can be paid when it is not possible to give staff the required period of notice. It has two elements: the salary to which there would have been a contractual entitlement if the individual had worked their full notice and compensation for pension benefits which would have accrued during the full notice period. CILON cannot be made where the individual:

- leaves the Commission voluntarily, even on compulsory terms;
- leaves voluntarily before the end of the notice period;

- ❑ requests an earlier leaving date.

46. Both elements of the CILON payment are liable for tax and National Insurance.

Redundancy Compensation Calculation

47. Advice should be sought from Pensions, Silvan House.

Support for Staff with Notice of Redundancy

48. Managers, as representatives of the FC, should take practical steps to help those facing redundancy. By arranging outplacement support, the FC can demonstrate concern for the welfare of staff losing their jobs. Usually the cost of these services is low compared with overall redundancy costs. Staff are, as a minimum, allowed reasonable time off with pay to look for alternative work, attend interviews or make arrangements for re-training. However, local managers with the help of Personnel staff, should look at all options for helping to source resettlement/counselling support, which aims to help staff into alternative work, if this is what they want. Services offered by companies can include:

- ❑ CV writing
- ❑ Information on training/re-training opportunities
- ❑ Help with job applications
- ❑ Career advice
- ❑ Small business start-up advice

Many of the companies offering these services will arrange on-site services. The relevant cost centre will meet the costs.

W J Anderson
27 November 2002



RESTRICTED MANAGEMENT

REDUNDANCY SELECTION FORM

Selection Criteria Details

1.
2.
3.
4.
5.
6.

This is the matrix for use in ensuring the fair selection of staff when a redundancy situation has been announced. It should always be used with the assistance of a Personnel Officer, who should be involved in all redundancy exercises, and should draw on objective evidence for selection e.g. performance appraisals, absence records, disciplinary records. Only objective evidence can be used to select staff i.e. that which could be presented to an Employment Tribunal if necessary.

The application of the matrix should also be used in a common sense way- for example by not adding criteria that are irrelevant or those that could have an unfairly discriminatory effect on any one individual or group.

The scoring for any individual selected for redundancy may be disclosed on request to that individual. Scorings for other individuals CANNOT be disclosed to him/her since this would breach Data Protection law.

Put the names of staff in the unit of redundancy across the top row, and insert the points in each category using the guidance on scoring that follows for each section. Remember to apply the weightings before inserting the points in the summary table.

Summary Matrix/Name								
Section 1 <i>Overall standard of work performance</i>								
Section 2 <i>Technical/Job-Related/Professional Expertise/Knowledge</i>								
Section 3 <i>Adaptability and Responsiveness to Change</i>								
Section 4 <i>Attendance</i>								
Section 5 <i>Disciplinary record</i>								
Section 6 (optional)								
TOTAL POINTS: ALL SECTIONS								

Section 1: Overall Standard of Work Performance

The categories in this section do not equate directly with the 3 box PMS system, because it is necessary to differentiate in greater detail for redundancy purposes. However, the information given in PMS reports and performance discussions that have been held with the individual provide the basis for scoring this section. Consider the quality of the work of the individual and the full range of skills/competencies required for the job, including people management skills.

Overall performance is of the best and frequently falls into 'top performer' category	5
Overall performance often exceeds the demands of the role.	4
Fully effective, meeting all normal requirements of the role.	3
Fully effective in most areas, but some shortcomings are displayed in aspects of the role.	2
Fails to meet requirements in significant parts of the role.	1
Weighting x3 applied (e.g. 5 score =15 points)	

Section 2: Technical/Job-Related/Professional Expertise/Knowledge

This category relates to the usual knowledge and expertise that is needed to function in the role effectively. Consider not only what the person has acquired (and this can include professional or technical qualifications relevant to the role) but how far he/she has been proficient at keeping this up to date.

Has acquired and applies a high level of job-related, technical, or professional knowledge/expertise and uses their own initiative to keep this up to date.	5
Has acquired and applies the required level of technical, job related or professional knowledge/expertise and updates this sufficiently.	3
Has not acquired/fails to apply the required technical, job related or professional knowledge/expertise.	1
Weighting x 2 applied (e.g. 1 score = 2 points)	

Section 3: Adaptability and Responsiveness to Change

Adapts to work related changes with ease or initiative and tends to provide a lead or support for colleagues	5
Shows willingness when confronted with change, even if support or reassurance may be needed	3
Struggles with change or shows unwillingness to adapt to it	1
Weighting x 2 applied (e.g. 3 score = 6 points)	

Section 4: Attendance Record (review record over last 3 years)

The first step is to obtain the most recent annual average for the FC. This can be obtained from Personnel Policy Branch.

The sickness record for the last 3 years for each individual should be obtained from Personnel staff. Produce an annual average for each person by dividing the total for the 3 years by 3 and compare this with the most recent FC figure average.

Sickness absence records should be checked by Personnel staff involved if the following points are relevant:

- Absence directly related to pregnancy is excluded e.g. high blood pressure relating to pregnancy or morning sickness would be excluded but other non-pregnancy illnesses during the period of pregnancy would be included (e.g. colds, flu).
- Absences arising from a long term, serious illness, now causing no absences, may be discounted.
- Disability. There is no specific and legal obligation under the Disability Discrimination Act to disregard absences that are related to a disability. On the one hand, automatic inclusion could constitute discrimination because employers are required to make 'reasonable adjustments' to aid the employment of disabled individuals and this may mean accommodating higher sick leave. On the other hand, disregarding absences of significant duration can amount to more than a 'reasonable adjustment' and may disadvantage other staff in the selection process. Personnel will advise whether there is objective justification for including/excluding the absence.
- BMI should be consulted if there is any doubt about whether an absence is related to a disability under the DDA or to pregnancy.

Excellent, no absences or only 1-2 days each year on average	5
Better than average attendance in comparison with the FC average	4
Attendance is similar to the FC average (within 1 day either way)	3
Higher absence record than FC average (but within margin of 5 days)	2
Considerably higher than FC average (more than 5 days higher)	1
Weighting (x1) 2= 2 points	

Section 5: Disciplinary Record (covers misconduct but not performance)

For items marked * consider 'live warnings' where shelf life has not expired

No disciplinary record	5
Informal disciplinary discussion to address problems	4
Noted Verbal warning *	3
Written Warning *	2
Formal action with more serious penalty (in last 3 years)	1
Weighting (x 1) e.g. 1 score = 1 point	

Optional Section 6: Specialist Knowledge/Qualifications

This is an optional factor- use only where items can be identified significant to the role that is additional to the expertise and knowledge covered by Section 2- in other words do not 'double score' the same factors. The weighting of this section could be changed where the knowledge and/or qualifications are of great importance for future business needs but seek Personnel advice before doing so. If professional qualifications are considered, use those that have a clear impact in the role, now or in the future.

Has specialist knowledge, or educational or professional qualifications which are of considerable value to the FC or unit and are in short supply	5
Has some specialist knowledge, or qualifications, of value to the FC or unit	3
No particular area of specialist knowledge/qualifications in comparison with other staff	1
Weighting x 2 (e.g. 3 score = 6 points)	

Personnel Division November 2002