

REDUNDANCY - FACT SHEET

(Sussex Police Membership)



ABOUT THIS FACT SHEET

In this Fact Sheet we have tried to show what the process, contained in Force Policy, is when it comes to redundancy and also how the law applies. The Law is important but you have to keep in mind that Employment Law is very biased towards the Employer, so protections while they exist are not as good as maybe they could be. In addition, the law is often complicated. A Fact Sheet like this cannot contain all the detail you would find in a legal textbook. What it does is set out what should happen if you are made redundant and explain the law in simple terms to help you decide whether you should seek further advice – which you should always do before any legal challenge. You are a member of Unison and you have the backing and support of the Union in every aspect of the process, which includes legal help and guidance where necessary. The Branch is here to help and guide you and you should always ask the Branch Officer or Steward allocated to your issues for help when you need it.

WHAT IS REDUNDANCY

Redundancy is a form of dismissal. Many of the general rules about when dismissals are fair, apply to redundancies.

The law says that redundancy is a potentially fair reason for the Force to dismiss an individual. As with other forms of dismissal, for a redundancy dismissal to be lawful the Force must have followed a fair procedure before laying an individual off. The Force must use fair and objective criteria when selecting individuals for redundancy. It is unlawful to select an individual for redundancy because of their sex, race, sexual orientation, disability, age, religion or belief or because they are a trade union member. The Force should also meet with an employee to explain why they have been selected for redundancy, explore any other employment options and allow the employee to appeal any redundancy decision.

When they make staff redundant the Force is also expected to follow legal rules that are slightly different to when they dismiss individuals for other reasons, such as misconduct or poor performance. For example, many employees who are made redundant will be entitled to redundancy pay. The Force must also consult the Union before making groups of workers redundant. These rights do not apply to other types of dismissals.

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THE LAW CONCERNING REDUNDANCY.

Redundancies take place when any employer reduces their workforce. This may be because a workplace is closing down or because fewer people are needed for work of a particular kind.

It will not normally be a redundancy if the Force immediately takes on someone else to do your job. In such situations you could have a case against the Force, even though they have told you are redundant.

This does not automatically stop the Force from taking on any new staff. They are also free to take on someone to do a completely different job in your workplace, or someone to do your job but in a different workplace.

Another reason for Redundancy is a move of workplaces. An employer can require you to move workplaces if that is in your contract of employment (Mobility Clause). If it is and you refuse to move you may not get redundancy pay. In Sussex Police most if not all contracts will specify a "base station", which means that you are contracted, except for the odd time now and then, to work from a specific place. This means that a change of work location in Sussex Police might place you into a Redundancy scenario. Certainly, if you are placed into a Collaborated Unit you may be required to work in Surrey which could mean that you would again be in a redundancy scenario. On the other hand, your contract may say that in a redundancy situation you should be offered a chance to move. In that instance the Force should make you that offer before offering that post to other staff. You should seek further advice if either of these situations affects you.

Even if an existing member of staff is given your job, you can still be made redundant legally, provided there is an overall loss or reduction of the types of jobs available. This means that the Force can normally reshuffle their workforce after making some people redundant as long as they are genuinely reducing the size of their workforce.

It has to be said that in other sectors of the Union and at a time when the economy is in trouble and redundancies common an Employer may be tempted to get rid of you if your face doesn't fit and call it a redundancy. The Branch has never known Sussex Police to adopt this action but if you think that you have been dismissed and the real reason isn't redundancy, you should take advice. It is possible that you may be able to win some

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compensation at an employment tribunal. However, if the Force is genuinely reducing the size of the workforce then it will most likely be a redundancy.

RULES FOR THE FORCES MAKING PEOPLE REDUNDANT

If the Force wants to make people redundant, they have to follow a series of legal requirements. In brief, they:

- must follow a redundancy dismissal procedure during which they must tell you the reasons for the redundancy and explore any alternative job opportunities.
- must give notice of redundancies and consult formally with the workforce where they are considering making more than 20 employees redundant over a period of 45 days.
- will have to pay redundancy pay to most staff who have worked for more than two years.
- must not choose who gets made redundant on the basis of their sex, race, disability, age unless objectively justified, sexual orientation, transgender status, religion or belief, pregnancy or trade union membership.

If they don't follow these requirements, they may not be able to make the redundancies or may have to pay compensation to people who have been treated unfairly.

REDUNDANCY POLICY/PROCESS

In Sussex Police the Union expects HR to follow the agreed Organisational Change Guidelines. These are not policy but have been followed in the main by the Force for a number of years as we have gone through substantial change.

The policy includes the requirement to hold Group and Formal 1-1 consultations with you. The Group consultation is best practice but the Formal 1-1 consultations are part of the legal process. Redundancy dismissals may be unfair where the Force has consulted with the union or employee representatives, but not spoken with the individual.

The group consultation discharges their responsibilities to consult with you when considering making you redundant. At that meeting a briefing will be given to demonstrate

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to you the reasons for the redundancies, some of the rationale behind it and look to you to provide any alternative proposals you may have to achieve the same savings or restructure.

This is also part (along with the Union briefing), of ensuring that the consultation is meaningful, which is required by Law.

After completing the group consultation process they will be a need to meet with you both formally and informally to discuss the reasons for the redundancy, why you have been selected and to consider the impact of the situation on you alone and determine whether there is another job you can do.

You have the right to be accompanied at the Formal meeting by a trade union official or a colleague. If the Force does not meet you then your dismissal may be unfair legally and you may be entitled to compensation.

The agenda for consultation must include ways of avoiding redundancies or of reducing the numbers affected. Where a workplace is closing down, the Force should also consult on the reasons for the closure. Agreement does not have to be reached as a result of the consultation but the Force must consult “in good faith”, that is, with a view to reaching agreement. Some information must be disclosed to the representative body including:

- the reasons for the redundancies
- the numbers and descriptions of those affected
- the proposed method of selecting those to be made redundant, e.g. ‘last in, first out’ (the method must not be discriminatory, for example by selecting jobs that are predominantly done by women)
- If 20 to 99 employees are to be made redundant, consultation must last at least 30 days.
- If 100 or more employees are to be made redundant at one establishment over a period of 90 days or less, consultation must last at least 45 days.

This consultation can make a difference. It at least makes management pause for thought. In the past colleagues have been able to suggest ways of avoiding redundancy altogether.

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VOLUNTARY REDUNDANCY

This is a subject that is often raised at consultation meetings and is also a subject which the Union puts onto the table at the briefings we have with the Force.

Sussex Police policy varies from Surrey Police Policy here, in that they do not usually offer any Voluntary Redundancy. They may in certain circumstances and in particular projects decide to offer it but that is rare and the cost implications to the Force are one of the main reasons why they try to avoid doing this.

Nevertheless, it is a valid alternative proposal to bring forward in consultation and needs careful consideration.

Individual notices of redundancy must not be issued until there has been sufficient consultation in line with these requirements. A complaint that the Force has failed to consult properly or that redundancy notices have been issued before consultation ends can be made to an employment tribunal by the trade union or the employee representatives.

If the tribunal finds that a complaint is justified it can make a protective award, which will require the Force to pay the employees their normal pay for the period covered by the protective award (that is, the 30 days or 45 days consultation period depending on how many redundancies are happening).

SELECTING PEOPLE FOR REDUNDANCY

When a number of staff are being selected for redundancy, the Force must ensure that the basis for selection is fair and does not discriminate, otherwise you could take an unfair dismissal case to an employment tribunal.

People being made redundant cannot therefore be selected on grounds of sex, race, disability, age unless objectively justified, sexual orientation, transgender status, religion or belief, pregnancy or trade union membership.

The Force can take these into account:

- skill and capability (sometimes this can lead to the particularly stressful process of people having to re-apply for their jobs)

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- attendance record
- conduct record
- any agreed existing procedure
- type of work needed to be done by those remaining.

Employees are entitled to know what factors have been used in the selection process.

ALTERNATIVE EMPLOYMENT AND WORK HOURS

If the Force is considering making you redundant they have some responsibilities to help you find alternative work.

They should consider whether employees who are likely to be affected by redundancy can be offered suitable alternative employment within the organisation.

If the Force wishes to change the terms of your contract – for example by changing your working hours or patterns of attendance, or by changing your pay or other terms and conditions of your employment – the change will only be lawful if you or the union agree to it. An unauthorised, one-sided variation is a breach of your contract of employment.

THE OFFER OF ANOTHER JOB.

This is called a suitable reasonable alternative (SRA) in redundancy law.

If the Force through the consultation process offers you an alternative job, you will need to think carefully. If you turn it down you may no longer be legally redundant, and would be in the same position as if you had just resigned.

If you tell the Force you are not interested in any other alternative offer and the Force therefore does not make one, then you will not be taken to have unreasonably refused a suitable offer and will be entitled to a redundancy payment.

Any offer made to you must set out the main terms of the new job in enough detail to show how it differs from the old one and the starting date must be made clear.

You will lose your redundancy rights if:

- the Force offers you a new job before your current contract expires and it starts within four weeks,

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and

- the Force makes the offer in writing and the job is suitable for you.

You can turn down a job that is clearly unsuitable, but you can also try it out to see if it suits you. However, there are also rules about this.

You can agree to try the replacement job out for a four-week trial period. (This period can be extended if you are being re-trained, but there must be an agreement in writing.)

If at the end of the trial period you are still in the job, then you lose any rights to a redundancy payment. In law you have accepted the new job.

If you reject the new job before the end of the trial period because it turns out to be unsuitable, or for good personal reasons, your redundancy will be considered to have started the day your old job ended.

However, if you say the new job is unsuitable but the Force says it is, the Force may refuse you your redundancy rights. So you should take advice before you walk away from an alternative job offer.

UNREASONABLE REFUSAL OF A SUITABLE OFFER.

The Force must prove both that an offer was suitable and that you unreasonable refused the offer. In law there is very little case law which helps to determine what is and is not reasonable. It very much depends on the situation of the individual case, as is often the case in Employment Law. However, “suitability” tends to mean objective job related factors such as pay, status, hours and location.

A reasonable refusal depends more on the employee’s individual circumstances, such as domestic factors or health. Other factors that may make it reasonable to refuse include extra traveling time and expense, childcare responsibilities, the status of the job in relation the one being made redundant.

It is not for an Employer or even the Employment Tribunal to impose its own view on whether the refusal of the offer was reasonable. Nor is the test on whether a reasonable employee would have accepted the offer. The refusal must be looked at from the viewpoint of the particular employee concerned. Does that person have good reasons for refusing the particular job offer, even if that may not be shared by others! Moreover, an employee’s desire to take advantage of their redundancy rights does not necessarily defeat a claim if the alternative has been given proper consideration.

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If the Force says you have left a suitable job and is refusing you redundancy pay, you will need to make a claim in an employment tribunal and show them why the job was unsuitable. If the tribunal finds that you have refused a suitable offer of alternative employment you will lose your right to a redundancy payment.

TIME OFF TO LOOK FOR WORK OR FOR TRAINING

If you are made redundant you will usually have a right to reasonable paid time off during your normal working hours to look for another job or to make arrangements for training.

To qualify for this, you must have worked continuously for the Force for two years or longer on the date when your notice expires.

The law says that you are entitled to reasonable time off. It is not easy to define this and if there were a dispute it could only be settled in an employment tribunal. Anything that is clearly a sensible and realistic attempt to find work or appropriate training is likely to be fine.

You should be paid your normal pay for any time off, but there is an upper limit on how much the Force has to pay which is two-fifths of a week's pay. Indeed, this is one thing you might want to ask for when you first discuss redundancy with the force through your Line Manager.

REDUNDANCY PAY

You can also use the redundancy pay calculator to work out your minimum redundancy pay at www.gov.uk/calculate-your-redundancy-pay.

Sussex Police have agreed with the Union to pay an enhanced payment greater than the Statutory payment.

In the case of Statutory redundancy pay only the first 20 years of employment be counted. There is also a maximum amount for a week's pay, which goes up in April each year.

For 2014/15, a week's pay is capped at £464. The first £30,000 of your redundancy pay will be tax-free, but any more money you are paid may be taxed.

The Sussex Police payment is calculated as follows.

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Redundancy payment is calculated by multiplying a week's BASIC pay (no allowances etc.) by the number of years completed local government service according to the following,

- Half a week's pay for each year of service up to age 21.
- One week's pay for each year of employment between 22 and 40.
- One and half weeks' pay for each year of employment aged 41 or over.

The maximum number of years' continuous service that can be counted is 20yrs, counting backwards from the date of redundancy.

The resulting figure from this calculation (the Statutory figure) is then enhanced by 1.5.

PENSIONS

Under the local government pension scheme (LGPS), if you are 55yrs old or over and you are made redundant you will also have to take compulsory retirement. This means that you will receive your pension as if you have retired.

You will need to obtain a pension estimate from the pension service at West Sussex County Council – 01243 642148

BENEFITS (DSS)

Employees who lose work through Redundancy are normally entitled to Jobseekers Allowance (JSA), if they meet the qualifying conditions and have paid enough N.I. contributions.

To be entitled to JSA, individuals must show that they are capable of work, available for work and actually seeking work.

Don't be shy about this, it's money you're entitled to. Receiving benefits also pays your national insurance contributions, which can have an impact on your eventual state pension. You'll be asked to declare any savings, including your redundancy payment, so that your benefit start date can be determined and you're not overpaid, yet this is usually the day after your redundancy notice period ends.

The main out-of-work' benefit is Job Seekers Allowance (JSA) and there are two versions of this, contribution-based JSA and income-based JSA. Which you get will depend on your circumstances.

CONTRIBUTION-BASED JSA: To get this you need to have been paying national insurance for two years, but anyone can claim it for up to six months.

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INCOME-BASED JSA: This is based on your household income so any insurance cover, savings or redundancy payments are taken into consideration. If you get this version you can claim it for longer than 6 months; indeed, you can claim until you get a new job

Simply call up Jobcentre Plus on 0800 055 6688 to find out how to make a claim or claim on line at .. www.gov.uk/jobseekers-allowance/how-to-claim .. as it can take several weeks, sometimes months to get the payments sorted.

If you're in need of emergency cash in the short term then ask about a Short-term Advance (where money you'll be due is paid early, but obviously you don't then get it again later).

CONCLUSION

Redundancy brings many pressures; worries over mortgage payments, fears of finances falling apart, the stress of job-finding or strain on a relationship (though some may feel the joy of release from a miserable job!).

Don't let it take hold and stop you moving on to another job, career change, training or even taking time out. By preparing beforehand you can batten down the hatches and hopefully bounce back quicker and stronger.

This guide doesn't just apply for those who've been given notice or heard rumours. Cuts in public spending and its consequences mean it's sensible for everyone to take a moment to think how they'd be affected, and put a contingency plan in place if possible.

The threat of redundancy may be more likely in these times of Austerity as the Police Service adjusts to less available money and an ever changing landscape of criminal activity.

It's never a bad idea to have plans in place should you lose your job and Police Staff jobs are no longer the secure employment they used to be. Budget and make sure you know where you'd stand if it did happen and you'll save yourself the panic if your job did then become uncertain.

FURTHER READING AND HELP –

www.citizensadvice.org.uk/work/work-comes-to-an-end/redundancy/your-situation-after-redundancy/

www.turn2us.org.uk/Benefit-guides/Facing-redundancy/Are-you-being-made-redundant

www.gov.uk/redundant-your-rights/overview

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UNISON - UNISON is the UK's largest public services union. We represent members, negotiate and bargain on their behalf, campaign for better working conditions and pay and for public services. To find out more about joining UNISON, call free on 0800 171 2194 or visit www.unison.org.uk/join

ACAS - (Advisory Conciliation and Arbitration Service) ACAS give information and advice on employment rights to both employers and employees. You can call the ACAS helpline on 0300 123 1100, Monday – Friday, 8am – 8pm and Saturday, 9am – 1pm. If you have a hearing or speech impairment you can contact ACAS using Text Relay on 18001 0300 123 1100.

UNISON's charity "There For You" offers financial and general advice for members who are having problems at work or at home. They also offer grants and financial assistance to members who are struggling with financial difficulties. You can find out more at www.unison.org.uk/get-help