

Challenging Redundancies In Higher Education

A UCU Briefing Document

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Part I

Introduction

Introduction

The following document has been produced by UCU's Higher Education Committee to provide guidance for branches/local associations (LAs) when faced with either the threat or the reality of redundancy.

UCU remains firmly opposed to, and has clear policy to oppose redundancies up to and including the use of industrial action. The intention of this briefing is to enable local branches/ LAs to challenge redundancies and nothing contained within it should be read as being contrary to our overall policy of opposition to redundancies.

While advice has been available in the past, and both former unions had policy on the subject, changes to the law in recent years, a changed economic environment, a willingness of employers to consider compulsory redundancies and a growing recognition of the rights of fixed-term and hourly paid staff make it necessary to radically revise and update what had previously been provided.

In the past it was comparatively rare for 'tenured' and permanent staff to face redundancy, and when that happened it was relatively easy both to challenge employers and to mount local and national campaigns.

However, that situation is changing, not least because of the introduction of 'open-ended' contracts that purport to be non fixed-term but offer no greater security to our members. Employers continue to treat holders of such contracts as automatically at risk of dismissal if a particular funding stream comes to an end.

Even now, the threat to make significant redundancies in a mainstream department is usually regarded by branches as sufficient to prompt a very high level campaign including (the threat of) industrial action and consideration of an academic boycott. Yet at the same time, and on a very regular basis, members and non-members whose work is linked to external research funding (both fixed-term and 'open-ended' contract staff) or who are hired on hourly paid contracts lose their jobs – or are threatened with losing their jobs – without much of a fuss being made.

Part of the reason is that many of these staff are not in the union; but a more important factor is a persistent perception on the part of management, Principal Investigators, Heads of Department, and, it must be admitted, rank and file members, that this insecurity is inevitable and simply 'goes with the territory'. UCU is committed to dismantling these stereotypes, and these guidelines are accompanied by proposals which are designed to regularise the conditions of research staff and to improve those of part-time and hourly paid staff.

One of the implications of the greater recognition of the rights of fixed-term staff and those funded on fixed-term external funding is that employers need to realise that they can no longer automatically assume that such staff will be first in the queue for redundancy.

Of course it is vital to recognise that UCU's fundamental position is to oppose redundancies in principle, and to seek always in practice to reduce their number and to mitigate their effects. It remains our position that no member should voluntarily participate in redundancy committees or assist in drawing up criteria for redundancy – notwithstanding the requirement that we be consulted and kept informed at all stages. In this regard the third appendix should be seen as a means of redundancy avoidance. It is certainly not to be interpreted either as condoning redundancy or a form of participation in that process.

The structure of the guidelines is as follows:

- 1 The **legal framework** (pp 8-21), begins with a definition of what redundancy is and with a reminder that even where employees volunteer to go, they are still legally regarded as having been dismissed for reasons of redundancy. Redundancy relates to work, not to the people doing the work: the test for redundancy is whether the employer requires fewer (or no) workers to do work of a particular kind. In this section particular attention is also drawn to equality issues – the need, in particular, to carry out impact assessments of any proposed redundancies to ensure that they do not unfairly target particular groups.
- 2 A section on **the use of negotiation** to challenge redundancies (pp.23-27) emphasises that there are many alternatives to job loss – various forms of redeployment can be looked at, and independent analyses carried out on the supposed financial or other grounds for redundancy. Branches and LAs are strongly encouraged to explore all of these and make use of the specialist knowledge provided by Regional Officials and Head Office staff.
- 3 Whether or not negotiation is successful, it is often important to look at the possibility of mounting a local or national **campaign** (pp.29-40). There are two stages to campaigning: **persuasive action** (pp.30-35) and **demonstrative action** (pp.35-40). While the guidelines set out a wide range of tactics under both of these headings, local actions will usually be selective, depending on the circumstances and needs. The guidelines should not be taken as a list that has to be fully worked through on every occasion.

Whilst this advice is offered to UCU branches/LAs it is important to work co-operatively with other staff unions wherever possible and appropriate.

Six appendices are attached:

Appendix 1 - Managing fixed-term and hourly paid contracts

Appendix 2 – Model redeployment policy

Appendix 3 – UCU model HE Redundancy Avoidance agreement

Appendix 4 – Research management for the avoidance of redundancy

Appendix 5 – Glossary

Appendix 6 - References

The model redeployment policy (appendix 2), redundancy avoidance agreement (appendix 3) and research management document (appendix 4) were submitted to the national employers by the joint union side of JNCHES (EIS, GMB, UCU, Unison, Unite) during the 2009 pay negotiations.

HEC commends this set of guidelines to branches and LAs. It is recognised that the situation is fluid and it is intended that these guidelines will be revised from time to time in light of legal developments and local experiences.

Part II

What is a Redundancy and the Legal Framework

What is a Redundancy?

The references in this section and the next refer to legislation as it applies to England, Wales and Scotland. Northern Ireland has its own legislation although provisions are similar. Please refer to your Regional Office for further guidance.

A redundancy is a potentially lawful dismissal which is defined in Section 139 of the Employment Rights Act 1996 as:

'An employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to-

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
- to carry on that business in the place where the employee was so employed, or

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 employed by the employer,

have ceased or diminished or are expected to cease or diminish.'

If the employer is claiming that a dismissal is for reason of redundancy then the circumstances must fit the definition set out above.

The test for redundancy is whether the employer requires fewer (or no) workers to do work of particular kind and not just whether the work itself has ceased or diminished.

It does not matter whether employees have "volunteered" or been selected against their wishes. If the circumstances above are met it will be a redundancy dismissal. There must, however, be a dismissal in the legal sense. So genuine volunteers who leave employment by mutual agreement to take advantage of a generous voluntary severance package are not deemed to have been dismissed; on the other hand, indicating to your employer that you want to be considered for redundancy but technically the employer dismisses you, is a dismissal for these purposes. The distinction can be a fine one.

Legally an employer does not have to show that there is any economic justification for deciding to make redundancies, or that they are having financial problems, although recent case law does make it a requirement to consult on the reasons for a closure where closure and dismissals are inextricably linked (*UK Coal Mining Limited v NUM and Others*[2007¹]).

It is also worth noting that sometimes employers will try to create artificial redundancy situations even where it is not true to say that they require fewer employees to carry out work of a particular kind. Such tactics need to be monitored and challenged.

¹ See http://www.employmentappeals.gov.uk/Public/Upload/06_0397+07_0141fhRCRN.doc

Redundancies may arise in Higher Education as a result of, for example:

- Department closures or mergers of departments
- Re-organisation/restructuring
- Re-classification of posts
- Work being divided among fewer employees
- Relocation
- Decreased student numbers
- Bumping (when an employee leaves voluntarily even though their post is not under threat, allowing an employee whose post is under threat of redundancy to move into the vacated post. The reason for the dismissal will still be regarded as a redundancy).
- Ending of a fixed-term contract (for more details on this see the section on fixed-term and hourly paid contracts at Appendix 1).

Redundancy must not be confused with 'capability'. Dismissal for reason of capability is potentially lawful and may apply if an employee is not capable of carrying out the duties for which he or she is employed. Capability is defined as a physical or mental attribute and therefore success must be within the power of the employee to achieve. This rules out, for example, staff deemed to be 'incapable' for failing to achieve a publication or obtain a grant for funding. The decision to dismiss must follow a process where the employee is given every opportunity to improve. A capability process has stages and includes, but is not limited to, additional training in the role and evaluation of workload (with possible adaptation of the post or revision of targets). Real examples of redundancy being conflated with capability include a researcher refused work on a different project at the end of a contract (with the manager asserting that he had concerns about the researcher's performance), or a fixed-term lecturer refused work on a revised version of the course that they had been teaching the previous year because a manager thought they were not 'up to standard'.

Redundancy - The Legal Framework

These notes have been prepared to provide an overview of the current legal position on redundancy and are provided for guidance only. They should not be taken to be a definitive statement of the law. In all cases of threatened redundancies, local officers should seek advice from their Regional Office. The references in this section and the next refer to legislation as it applies to England, Wales and Scotland. Northern Ireland has its own legislation although provisions are similar.

Notification and Consultation

Collective Redundancies

The relevant law is found in the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A, sections 188 et seq).

The legislation requires employers to provide information and consult whenever they are proposing to dismiss as redundant 20 or more employees at one establishment within a 90 day period. However, from April 2013, this will no longer include fixed-term contracts which are coming to an end at the end of their term. However, we should be seeking collective consultation rights for all staff through local agreements (see UCUHE178 and UCUHE182 for more information). It is recognised that that the 'establishment' is the whole University or HE Institution. Therefore the employer should not try to avoid their obligation to consult by holding that the 'establishment' is a school, department or faculty.

These are known as collective redundancies and the requirement to consult applies even if the employer is confident that the eventual number of redundancies will be less than 20.

It is important to note that in the context only of collective redundancy consultation, a redundancy dismissal is given a special definition:

"...references to dismissal as redundant are references to dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related." (s 195 TULCRA 1992)

Consequently, the obligation to consult under s 188 applies to circumstances where the employer is re-organising/re-structuring the institution, or a part thereof, and intends to achieve this by issuing dismissal notices terminating existing contracts of employment, and offering re-employment on new contracts.

The duty to notify and consult the recognised trade union exists whether or not the recognised union has members who will be affected as long as those who are affected are members of the bargaining unit for which the union is recognised.

The notice of intended redundancies provided under the legislation is often referred to as a section 188 notice. The section 188 notice should be sent to the UCU Regional Official who covers the branch/LA.

Notification and consultation must take place if the employer is 'proposing redundancies' and case law has established that this is as soon as redundancy is an option – even if it is only one of various options.

The consultation should begin in 'good time', and in any event:

- If 100 or more employees at one workplace are to be dismissed then consultation must begin at least 45 days before the dismissals take effect (the 45 days applies from April 2013 and is a halving of the previous consultation period of 90 days).
- If 20 – 99 employees are involved then the consultation must start at least 30 days before the first dismissal takes effect.

These are minimum legal requirements however, and employers should not be waiting until these minimum time periods begin before entering into consultation. Employers who wait too long before involving the union – even if within the statutory limits – may breach their duty to consult if they make decisions about redundancies before consultation begins.

The courts have held that what is 'good time' will depend on the circumstances but it must provide time for the trade unions to respond to proposals and make counter-suggestions which can be properly considered.

Current case law has been quite helpful in the area of consultation in recent years.

The Court of Appeal in *Unison v Leicestershire County Council [2006]*² decided that a local authority 'proposes' dismissals when the relevant plan is devised by the Council officers, not when a plan is put to Council for formal decision. Consequently, the consultation process must begin before the formal decision is made by the local authority. Therefore, consultation should be starting before formal decisions are made. In chartered institutions, this should be before any redundancy committee is set up.

In *Cranwick Country Foods v GMB [2005]*³ the employer started negotiations after they had bought new premises to consolidate two production sites, which would lead to redundancies. The Employment Appeal Tribunal (EAT) held that consultation had not taken place in good time: the company should have started consultation with the union after the proposals to consolidate had been made and before the new premises had been bought.

A European case (*Junk v Kuhnel [2005]*⁴) has established that an employer cannot give individual notices of redundancy before the consultation process has been completed. The UK government has failed to make this clear in legislation although there is a clear requirement that employers must notify the Secretary of State of all proposed collective redundancies (HR1 form) before individual notices of dismissal have been given. They have also amended their guidance which now clearly states: 'The employer must begin the process of consultation in good time and complete the process before any redundancy notices are issued'.

² See <http://www.bailii.org/ew/cases/EWCA/Civ/2006/825.html>

³ See <http://www.employmentappeals.gov.uk/Public/Upload/UKCAT022505692005.doc>

⁴ See <http://www.bailii.org/eu/cases/EUECJ/2005/C18803.html>

For the purposes of consultation the employer must inform the union representatives in writing of:

- the reasons for the proposals;
- the numbers and descriptions of the employees whom it is proposed to dismiss as redundant;
- the total number of employees of any such description employed by the employer at the workplace;
- the proposed method of selecting the employees who may be dismissed;
- the proposed method of carrying out the dismissal, with due regard to any agreed procedure, including the period over which the dismissals are to take effect;
- the proposed method of calculating the amount of any redundancy pay.

This is set out in Section 188(4) of TULR(C)A. This information should be sent to the relevant Regional Official.

In *UK Coal Mining Limited v NUM and Others* [2007]⁵ the then President of the EAT decided that contrary to all previous decisions on this point, Section 188 did require an employer to consult over the reasons for, in that case, the closure of a pit rather than just limit itself to consulting over the reasons for dismissing individuals as a result of the closure of the said pit. It would therefore be reasonable to assume that the same arguments could be used about the closure of a department or, by analogy, the reasons for a reorganisation if that is likely to lead to redundancies.

In addition to the information that the employers are required to provide to you by law, you may wish to request further information to help your negotiations.

This could include:

- financial information, audits, contingency funds etc
- student projections
- previous student numbers (to show consistent demand)
- levels of research income
- vacancies
- projected turnover of staff
- equality impact assessments
- effect on staff-student ratios
- retraining and redeployment opportunities
- timetables and deadline
- copy of Form HR1
- notice entitlements

⁵ See http://www.employmentappeals.gov.uk/Public/Upload/06_0397+07_0141fhRCRN.doc

- early retirement provisions
- enhanced redundancy provisions

Employers are legally obliged to consult on ways of

- avoiding the dismissals
- reducing the number of employees to be dismissed
- mitigating the consequences of dismissal

and these elements should therefore form the agenda of any consultative meetings.

Consultation must also be meaningful. Employers must consider a union's representations, and respond to them. And Section 188(2) of TULR(C)A requires consultation to be carried out with a view to reaching agreement.

If the employer indicates at the beginning of the consultation that the redundancies cannot be avoided or their numbers reduced, no matter what the trade union propose, they are likely to be in breach of the law and will not have adequately consulted.

In *R v British Coal ex parte Price [1994]* the High Court held that fair consultation must include:

- consultation when the proposals are still at a formative stage
- adequate information on which to respond
- adequate time in which to respond
- conscientious consideration of the response

Representatives of recognised trade unions have the right to additional paid-time off for consultations over collective redundancies. Where part-time members are involved, UCU should seek payment for any time spent on consultations falling outside normal working hours. Reps also have the right to access employees, to the necessary accommodation and facilities and to not suffer any detriment as a result of carrying out these duties.

When the consultation process is complete may be a matter of debate between the employer and the trade unions but must not be before:

- the statutory period of consultation is complete AND
- the employer has provided all the necessary information to the trade unions AND
- there has been time for meaningful consultation – this should provide time for trade unions to consult their members and feed back to the employer and for the employer properly to consider the trade union response.

Remedies for failure to consult (collective redundancies)

A trade union can complain to a tribunal about the failure to consult (within 3 months of the date of the last dismissal) and if the claim is successful the tribunal can make a protective award which is a sum of money paid to each employee who has been dismissed. Such an award can be made to all such dismissed employees– it is not limited to trade

union members. It is not payment for damages but is punishment on the employer for breaching their duty to properly consult. The maximum award that can be made is 90 days' pay to each affected employee (which is not offset against redundancy payment) and the award will have to be paid even if the employer believes that consultation would have made no difference to the outcome (the only exception is 'special circumstances' such as a sudden disaster).

The collective consultation obligations are in addition to the employer's obligation to ensure that any dismissal is fair. The employer should follow a fair procedure with each employee, including informing the individual that a redundancy exercise has commenced and that they have been provisionally selected for redundancy, explaining the reasons for that selection and giving them the opportunity to question their selection.

Individual redundancies

The legal right of trade unions to be notified and consulted only applies to collective redundancies but UCU should seek agreement that the employer will so consult in the event of any redundancies including those of fixed-term contract staff.

Notwithstanding the above, where there are less than 20 potential redundancies within a three month period, or where the redundancies relate to staff on fixed-term contracts at the end of the contract term, the employer is still legally required to ensure that the dismissal is fair (in legal terms).

At the very minimum we would expect to see:

- Written reasons for the proposed redundancy
- Face to face meeting with affected staff to discuss options
- The right to be accompanied by a trade union representative at any meeting
- A robust application of redundancy avoidance measures
- The right to appeal against the decision to dismiss

The following sections apply to both collective and individual redundancies.

In relation to both the establishment of the redundancy pool and proposed selection criteria you should seek advice from your Regional Office on the appropriate responses to any information you receive from the employer.

The Redundancy pool

Before the employer can apply any selection criteria, they must decide on the pool of employees from which those to be made redundant will be selected. This is the role of the employer, not the trade unions.

In determining the pool the employer must look at who is doing work of the particular kind that they wish to cut or reduce. They cannot simply define the redundancy pool as those who are on fixed-term contracts or whose posts are funded by fixed-term funding unless those employees are the only employees carrying out work of that particular kind.

Selection for redundancy

Once a pool has been established the employer will need to establish a method of selecting staff from that pool for redundancy. This too is the role of the employer, not the trade unions.

Notifying the trade union about the proposed method of selecting the employees who may be dismissed is a requirement of the legislation and must be included in the Section 188 notice.

An employer has wide scope to decide what selection criteria are used but the case of *Williams v Compair Maxam Ltd [1982]*⁶ established that the union should be consulted on selection criteria (which should be objective) and ensure that the criteria are properly applied.

However, it is important that the union does not engage with the employer in any way regarding the selection criteria lest the employer should take such engagement as implicit agreement to the selection criteria.

The criteria must not be discriminatory on the grounds of sex, race, disability, trade union membership and activity, sexual orientation, religion or belief, age or nature of contract e.g. because an employee is on a part-time or fixed-term contract.

The usual rules on discrimination apply to both direct and indirect discrimination and any selection process proposed should be subject to equality impact assessments.

Unfair selection for redundancy could lead to a claim for unfair dismissal.

Offers of suitable alternative work

An employer should offer 'suitable alternative work' to potentially redundant employees if it is available.

'Suitable alternative work' is work that is the same as, or not substantially different from, the previous work and must be suitable for the employee. There are no set criteria to determine what is 'suitable' but tribunals will look at pay, working hours, status, grade and location in determining suitability. Even if a reasonable period of training is necessary, work may still be regarded as suitable alternative employment.

Even if work is deemed suitable the employee can still reject it if there are reasonable grounds for doing so. Such grounds may be personal to the employee (e.g. location, domestic arrangements, health, lack of consultation).

⁶ http://www.bailii.org/uk/cases/UKCAT/1982/372_81_2201.html

Case law has established that a failure to offer suitable alternative work that is available is likely to render the dismissal unfair.

Employers must offer suitable alternative work, if available, to women who are pregnant or on maternity leave. A failure to do so could not only make the dismissal unfair, it could also leave the employer liable to a claim of sex discrimination.

Any offer must be made before the old contract ends and the new work must start within four weeks of the end of the original contract. However, if work is only available after 4 weeks, for example at the start of a new term after the summer break, employers should not try to use this to evade their responsibility to identify suitable alternative employment as an alternative to dismissal.

Refusing the offer of suitable alternative employment would mean the loss of a redundancy payment but employees have the right to a statutory trial period of four weeks in the new job if it differs from their previous job (this can be extended for the purposes of training). At the end of the period, if the work is deemed unsuitable, redundancy pay is still available.

Redeployment

As part of its duty to seek ways to avoid redundancies the employer may also offer redeployment opportunities.

The term 'redeployment' is often used to include offers of suitable alternative work but could also include offers of other posts which are not a match for the current post but which the employer and employee both believe could be undertaken by the employee, with training if necessary.

We would expect potentially redundant employees to be able to slot into suitable alternative employment without formalities, whereas redeployment in the wider sense may involve some sort of preferential interview to assess suitability for the post.

There is no obligation on the employee to take up an offer of redeployment and refusal would not mean the loss of redundancy payment if the work does not constitute suitable alternative employment as defined above.

However, the employer's refusal to offer someone a post to which they are appointable as an alternative to dismissal could lead to the dismissal being deemed unfair.

Looking for work

While under notice of redundancy, employees with at least 2 years' service have the right to reasonable time off with pay during working hours to look for alternative work. The amount of time off allowed is what is reasonable, but section 53 of the Employment Rights Act 1996 sets a maximum of 2 days' pay (40% of a week's pay) during the notice period. However, local agreements can improve upon this minimum requirement. If reasonable

time off is refused, the employee can bring a claim to an Employment Tribunal within 3 months of the date of request.

UCU branches/LAs should negotiate to ensure that all staff in a potential redundancy situation (whatever their length of service) have the right to paid time off to look for alternative work, as soon as the possibility of redundancy has been introduced, and that the amount of time should not be restricted to 2 days.

Statutory and enhanced redundancy pay

Section 135 of the ERA 96 provides for statutory redundancy pay for employees who have been continuously employed for at least two years at the date of the dismissal.

The provisions have been slightly amended following the implementation of the age regulations and are calculated as:

- a week's pay for each year the employee was aged up to 21;
- 1 week's pay for each year the employee was aged 22-40
- 1 week's pay for each year the employee was aged over 41.

A week's pay is by reference to the rate of pay at the time of redundancy.

Further, the maximum amount for a week's pay is capped at £450 (02/13) and the maximum number of years at 20.

Claims for redundancy pay can be made up to 6 months from the 'relevant date' (usually when the contract ends).

Employers can provide enhanced redundancy schemes. These may form part of the employee's contract (for example, if they are specifically referred to in the contract or are made as part of a collective agreement that forms part of the employee's contract) or they may not (for example, 'one off' schemes which are set up by the employer to deal with a particular situation but are explicitly excluded from forming part of employees' contracts).

In relation to age discrimination regulations it is not unlawful for an employer to amend the statutory scheme in the following ways:

- by increasing or removing the maximum for a week's pay
- by multiplying the amount for each band (so the ratios stay the same)

They can also multiply the total amount (either the amount calculated by reference to the statutory provisions or the amount amended by the application of either or both of the provisions above) by a figure of more than 1⁷.

Alternatively they could offer all staff the same formula irrespective of age (e.g. one month per year of service, although this could still indirectly discriminate) or could offer all staff an amount not based on age or length of service (e.g. everyone offered 18 months' pay).

⁷ Regulation 33 of the Employment Equality (Age) Regulations 2006

If the employer chooses to use another method that would or could be discriminatory in terms of age they would have to objectively justify it if challenged.

Redundancy payments of up to £30,000 (Dec 11) are tax free.

Calculation of length of service

All consecutive periods of employment at an institution must be counted in calculating whether an employee is entitled to redundancy pay and in calculating how much they are entitled to. It does not matter if the member of staff has changed departments or changed jobs within that period, as long as they have been working for the same institution. An employee may be regarded as having been continuously employed even where there is a gap between successive contracts. Whether or not service is regarded as continuous in such cases would have to be determined on a case by case basis.

For those in post-92 institutions, unbroken previous service in other post-92 institutions, FE colleges and some schools may count towards the overall length of service for the purpose of redundancy payments (Redundancy Payment (Local Government) Modification Order 1999 as set out in the national contract).

Staff who have been transferred to a new employer under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) will also have their service with their old employer preserved.

Pre-92 sector

Until relatively recently there were statutory provisions relating to redundancy under the model employment statutes in all chartered institutions (pre-92 Higher Education Institutions).

The model statutes, brought about by the commissioners' report in 1993 following the 1988 Education Reform Act, obliged chartered institutions to include procedures for redundancy in their own statutes.

Over the past few years, a number of HEIs have negotiated or imposed changes to their local employment statute – in some cases removing all its provisions to local procedures

Therefore, the first thing you need to do is to check whether or not your university is still covered by the model employment statute. If it is then you would next need to check to whom the statutes apply (in some HEIs it is only lecturing staff, in other HEIs statute provision is much wider covering all UCU membership) and see whether any of those threatened with redundancy fall within the remit. If you are in doubt as to who is covered speak to your Regional Office.

For those institutions still covered by the model statute if the university council/court decides that it is 'desirable' that there should be a reduction in the academic staff of the institution as a whole or of any faculty, school, department or other similar area by way of redundancy they must appoint a redundancy committee in accordance with the statute. It is the job of the redundancy committee to seek ways to minimise or avoid compulsory

redundancies, or, if this is unsuccessful, to recommend the requisite members of staff for dismissal and to report their recommendations to the council/court. Branches/LAs should ensure that, where applicable, the requirements of the statute are met and should challenge any procedural irregularities.

A challenge of any procedural irregularities can, ultimately, prevent redundancies taking effect until such time as the proper procedures have been followed.

Where staff under threat of redundancy are covered by the university statutes, one of the main focuses of the local campaign must be to lobby the university not to take the decision to establish a redundancy committee.

Under the statutes there will also be a group of staff – those employed before and not promoted since 20 November 1987 – who cannot be dismissed by reason of redundancy.

Post-92 Sector

The national contract covering staff in the post-92 sector provides for 3 months' notice of dismissal by the employer. However, some institutions might have local agreements which provide for a year's notice in the event of redundancy, either for all staff or only for staff who transferred to the national contract when it was agreed in the early 1990s. Some institutions, e.g. in Wales, will offer a longer notice period, so it is important that branches check members' contracts and do not rely solely on the information provided by the institution.

Employment Status

The rights in relation to redundancies – both collective and individual – apply only in cases of dismissals of 'employees'. Some employers will seek to deny employee status to individuals working at the institution – this is often true for sessional/casual/hourly paid staff.

There is no single legal definition of the term 'employee', but courts will look at a number of factors in determining whether or not the individual is an employee.

These fall into 4 main categories

- control: the extent to which the employer decides what tasks the individual does and how they do them
- integration: the extent to which the individual is part of the organisation
- mutuality of obligation: the extent to which the employer is required to offer the individual work and whether they are expected to do it
- economic reality: the extent to which the individual bears any financial risk

It is also worth noting that it is the circumstances that will determine the nature of employment – employers cannot simply state that the individual is not an employee to

escape their responsibilities. Nor can they merely issue a contract for services (rather than a contract of employment) to avoid their legal duties.

Discrimination

In relation to all policies and procedures relating to redundancies the employer has a legal duty not to discriminate in relation to:

- gender
- race
- disability
- transgender status/gender re-alignment
- religion or belief
- sexual orientation
- age

All such discrimination, whether direct or indirect, is unlawful (although there is provision for objective justification of indirect discrimination and, in the case of age, direct discrimination). Part-time and fixed-term staff have the right to be treated no less favourably than comparable full-time or permanent colleagues.

These duties will apply to:

- the decision to consider/make redundancies
- selection for redundancy
- any alternatives to redundancies, e.g. voluntary severance

The Public Sector Equality Duty

The public sector equality duty (replacing the separate duties relating to race, disability and gender) came into force in April 2011 and is supported by specific duties. England, Wales and Scotland have distinct specific duties. The equality duty does not apply to Northern Ireland where there is separate legislation. The duty covers age, disability, gender reassignment, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

The general equality duty requires public bodies to have 'due regard' to:

- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it, and
- Foster good relations between people who share a protected characteristic and people who do not share it.

The new legislation is silent on the need to undertake equality impact assessments, however, under the Act public bodies will need to understand the effect of their policies and practices on equality.

UCU believes that carrying out impact assessments – a practice that should be well established under the previous legislation – remains the best tool for demonstrating this 'due regard'. Branches / LAs should therefore continue to demand that impact assessments are carried out in relation to new and existing policies and in making decisions that affect staffing.

The purpose of the impact assessment is to analyse if decisions, policies or procedures have any direct or indirect discriminatory elements to them, consult with relevant stakeholders and then adapt policies and practices as necessary.

The decisions/policies that the employer should impact assess – *before any decisions are made* – to demonstrate their 'due regard' include:

- the decision leading to the potential for redundancies, e.g. shutting down of a course
- the decision to make staff redundant
- the selection criteria proposed
- policies to avoid redundancies
- the redundancy process itself

The decision to shut a particular course and make staff redundant may have a disproportionate impact on different groups of staff and students, e.g cuts to ESOL studies or women's studies.

Whilst UCU should not be agreeing to selection criteria for redundancy, we should insist on seeing the employer's impact assessment of any proposals it is making. Selection criteria could disadvantage groups of staff including disabled staff, women (because of caring responsibilities), staff of a certain age, fixed-term contract staff etc.

When negotiating policies to avoid compulsory redundancies it is also important that proposals are impact assessed before any agreements are made, to ensure no particular groups of staff are adversely impacted upon.

Local representatives also need to be aware of the potentially discriminatory impact of the redundancy process itself and to be alert to the fact that potential unfair dismissal claims may have a discriminatory angle.

If an employer does not comply with their statutory duty to have 'due regard' in relation to equality matters then the branch/LA should, in the first instance, write to the institution pointing out their legal obligations in this regard and demanding that the process be halted until such time as the relevant impact assessments have been undertaken. If you are not satisfied with the response you should initiate your formal complaints or disputes procedure. If you completely exhaust the official internal procedures and are still not satisfied with the progress in meeting the equality duty you could consider forwarding details of your complaint to the Equality and Human Rights Commission – the enforcement body for the equality duty. Take advice from your Regional Office before doing this.

Part III

Challenging

Redundancies –

Negotiating

Challenging Redundancies – Negotiating

It is important that UCU is involved in negotiations regarding all potential redundancies that are proposed by the employer – including potential redundancies at the end of a fixed-term contract.

We have the right to be consulted about potential redundancies and it is important that we engage with negotiations as early in the process as possible, with the aim of avoiding compulsory redundancies.

Such negotiations may take place under agreed procedures or through established committees.

We also need to be negotiating with our employers about avoiding redundancy situations arising – for example having clear policies on the rights of staff under organisational change, transferring staff to permanent contracts and re-examining the way in which staff resources are deployed.

Consultation Check-list

Once notification of potential redundancies has been given, the branch/LA should ensure that:

- the Regional Office is notified
- regular consultation takes place with the branch/LA for the purpose of avoiding redundancies and with a view to reaching agreement
- the employer agrees that the intention of the consultation is to seek agreement on the avoidance of any and all prospective redundancies, compulsory or otherwise
- consultation is undertaken in a timely way.
- consultation includes consultation, in order of priority, about ways of:
 - (a) avoiding the redundancies
 - (b) reducing the numbers of employees to be made redundant, including those to be offered voluntary severance/early retirement terms
 - (c) mitigating the consequences of redundancy, including agreeing appropriate terms to be offered for voluntary severance and early retirement
- consultation takes place irrespective of the numbers of employees affected by any proposed redundancy.
- the employer provides detailed reports on any and all prospective redundancies in the staff categories for which UCU is recognised across the whole university; this will include prospective redundancies of employees on fixed-term contracts.
- the employer undertakes equality impact assessments in relation to all equality strands for every prospective redundancy situation and the impact is taken into account in consultations

- that there is no unlawful discrimination (for example, on grounds of gender, race, disability, sexual orientation, religion or belief, age, part-time or fixed-term contractual status) in the process and methodology for avoiding redundancy, including ensuring that any terms or arrangements for voluntary severance/early retirement do not involve unlawful age discrimination
- that a financial impact assessment of any prospective redundancy is commissioned
- a 'whole institution' and 'whole person' approach is developed and maintained whereby the responsibility for avoidance of redundancy is taken and shared across the entire operations of the employer and the qualifications, skills and attributes of the individual prospectively redundant employee are considered in the round
- good practice in the provision of redeployment, retraining, career advice and counselling and other suitable methods of avoiding redundancy is developed
- there is weekly notification of vacancies at the institution
- the effect of any proposed redundancy on other employees is taken into account, for example, the workload implications.

Alternatives to Compulsory Redundancy

This section of the negotiating guidance covers a number of issues – some of which are based on legal requirements (also see the section on the legal framework at pages 10-21) and some of which are based on good practice.

New posts/filling of vacancies

Every effort should be made to ensure that the creation of new posts or the filling of vacancies in some areas are used to reduce the threat of redundancies elsewhere in the institution. All vacancies should, in the first instance, be considered for suitable alternative employment or redeployment (with training if necessary) for members of staff under threat of redundancy. The creation of new posts should be carried out in such a way as to maximise the possibility of them being filled by those under threat of redundancy.

Natural wastage

Where the required cost savings are likely to be met through 'natural wastage', e.g. through retirements or expected turnover of staff, UCU should be campaigning for all threats of compulsory redundancies to be withdrawn and for no action to be taken to effect cuts until all savings through such 'natural wastage' have been taken into account.

Alternative funding

Where cuts to posts arise due to lack of funding, e.g. the ending of a research grant, the first step by the employer should be to look for sources of alternative funding. This could be further external funds from a different body or the deployment of central funds. All sources of alternative funding should be examined and UCU should not simply take it at face value that funds are not available. Where work is still viable, albeit that a particular funding stream has expired, UCU should be arguing for central funds to be deployed to

ensure the continuation of the work or for full exploration of alternative funding arrangements. Arguments about affordability of a post should be seen within the context of the university's overall financial position and financial information should be provided to UCU to support any claims of un-affordability.

Where external funding is likely to be secured in the short to medium term the employer should make central funds available to maintain the post(s) between periods of funding. Bridging funds of this nature operate in a number of institutions, e.g. where central funds can be used for a period of up to three months when a fixed-term contract comes to an end but another contract will definitely start within the near future, or where a fixed-term contract comes to an end and the department believes a new contract can be obtained but funding has not yet been secured. Branches/LAs can obtain further information about such arrangements from the Regional Office.

Early Retirement/Voluntary Redundancies

UCU should be involved with negotiating the terms of any voluntary severance packages and such schemes should be in place in institutions to be used as an alternative to compulsory redundancies in all cases. Branches/LAs may wish to consider the value of negotiating the terms for a voluntary severance package as part of a collective agreement between the employer and UCU prior to any decisions on cuts to posts being made. Voluntary schemes must, however, apply equally to all members and be truly voluntary; the employer should be clear that UCU will not tolerate pressure being placed on members to go 'voluntarily'.

The offer of voluntary severance should be cast as widely as possible. All staff occupying posts in an area in which cuts are proposed should be included in the pool. As far as reasonably practicable the offer should also be available to staff who are outside of the group directly affected, if the resulting vacancies could be used to redeploy potentially redundant workers ('bumping').

Throughout national negotiations on USS, UCU has continued to argue that staff should receive an unreduced pension if they retire early on the grounds of redundancy. Changes to USS were imposed from 1 October which would have meant this right ceased in 2013. Following UCU action, it has been agreed that there should be a review of this provision and that the right to an unreduced pension will continue until 30 September 2014 to allow the review to report. In the meantime, USS requires the employer to fund the pension costs (including the actuarial charge) for those retiring before the age of 60. This is mandatory in redundancy situations.

Help in securing alternative employment, including retraining

As part of the consultation process with affected members of staff the institution should be identifying any assistance that those staff may need in securing alternative employment, either within or outside of the institution. The institution should be providing, in good time, the appropriate assistance, including any training required. Training may be needed to help a member of staff apply for a particular post or to provide them with additional skills to improve their chances of gaining suitable alternative employment.

Trial periods should be offered (at least four weeks) and if after that time the employee does not agree that the job is suitable then they should still have access to enhanced redundancy/early retirement packages and/or further redeployment opportunities.

Notification of vacancies

It is important that all staff in a potential redundancy situation have access to information about all vacancies across the institution. It is also a legal requirement (under the fixed-term regulations) to notify fixed-term staff of vacancies within the institution⁸. In all cases this should not be done simply through notice boards or similar but staff should be notified individually of all such vacancies on a regular basis.

Offer of suitable alternative work

An employer should offer suitable alternative work to potentially redundant employees if it is available (see legal framework section, 16, for more details).

Employers should slot potentially redundant staff into vacant or new posts if there is a significant match between their current (redundant) post and the vacant or new post.

A potentially redundant employee should not be refused an offer of suitable alternative employment simply because they wish to maintain their current working patterns (e.g. part-time working, flexible working arrangements).

Employees should have the right to appeal against the decision not to slot them into a post that they believe constitutes suitable alternative employment.

Redeployment

Where the above measures have not resulted in the threat of redundancy being withdrawn, redeployment should be made available for all affected members of staff who are interested. The aim of any redeployment process is to identify vacant or new posts to which a potentially redundancy employee could be appointed, with reasonable training if necessary. Such posts may not be a job match for their current post but will be posts that the potentially redundant employee could fill.

The decision whether or not to seek redeployment should be with the employee.

However, once an employee has indicated that they are interested in seeking redeployment as an alternative to dismissal the employer should actively seek suitable vacancies from across the institution. This should include any posts for which training may be required. Any redeployment process should be about matching transferable skills, not necessarily seeking an exact job match.

Some institutions run redeployment databases holding details of all these seeking alternative employment and matching those against vacancies in the institution.

As part of the redeployment policy departments should be obliged to consider suitable redeployees for any vacancies that they have, prior to advertising externally.

⁸ Regulation 3(6) of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 states that the employee has the right to be informed by his employer of available vacancies in the establishment.

It is also important that the policy recognises that employees may need training to be able to undertake a new role and gives a commitment to providing that training. Training may be required for a specific role, or to equip the employee with new skills so that they are more likely to be successfully redeployed.

The policy should allow for a reasonable period for redeployment even if this takes the employee beyond their notified date of redundancy. This period should begin when the individual is first identified as being at risk of dismissal for reason of redundancy and should, in any case, last no less than three months.

Where a redeployee is considered unsuitable and is therefore not offered a post it is important that the employing department provides full written details for their decision. When full written reasons are required it is less likely that redeployees will be rejected purely because of their redeployment status.

A redeployee wishing to maintain their current working patterns (e.g. part-time working, flexible working arrangements) should not be refused redeployment on the grounds of their working pattern.

There should also be the right of appeal against the decision not to offer a post as a redeployment opportunity.

As well as the employer taking responsibility for seeking alternative employment, the redeployment policy should ensure that employees have access to information about vacancies and training opportunities.

Temporary redeployment or the offer of temporary suitable employment may be appropriate in cases where a post is currently in a redundancy situation but may be reinstated at a later date, for example during a period of student shortfall.

The willingness of staff to engage in the redeployment process, however, should not disadvantage them in relation to access to a voluntary redundancy scheme if they are unsuccessful in securing alternative employment through the redeployment process.

UCU believes that redeployment is key to avoiding compulsory redundancies in a variety of situations. Branches/LAs should seek agreement that redeployment be available for as long a period of possible to maximise the opportunities of a successful redeployment.

An example of a redeployment procedure is attached at Appendix 2.

Other options for negotiations may include:

- temporary short-time working
- considering applications for part-time working or job sharing
- considering applications for unpaid leave, sabbaticals or secondments

Staff members may also have alternative proposals. As a general rule it is important for representatives to discuss all options with affected UCU members and to put formally to management any that are agreed.

Part IV
Challenging
Redundancies –
Campaigning

Challenging Redundancies – Campaigning

Campaigning against compulsory redundancies is an important part of any trade union's activities.

Branches will need to make decisions in conjunction with their Regional Office – based on their local circumstances and the details of each case – as to when and how to campaign against redundancies. Such campaigning should go alongside, and support, branch/LA negotiations to avoid compulsory redundancies.

Campaigning may take place as soon as potential redundancies are announced or even rumoured. It is important to be ready to campaign if proposals for potential compulsory redundancies are confirmed. Setting up a campaign group or action committee as early as possible – including branch/LA officials and representatives from groups directly affected by the proposals – is important for an effective campaign. It is also important that the branch/LA is ready to take action, should the need arise, by ensuring that members are aware of the situation and membership records are up to date.

This section of the document is split into two stages. Stage 1 looks at the types of action that the branch/LA can undertake to try to persuade the institution to withdraw its threat of compulsory redundancies. Stage 1 consists of a number of different situations; branches/LAs should gauge the seriousness of the situation and act accordingly, using the kinds of tactics outlined. Two principles should inform their responses: the first is that they should be flexible and ready to use new tactics, or new combinations of tactics; the second is that they should ensure that the responses are appropriate to the situation. Both over-reaction and under-reaction are to be guarded against, but even where the situation is serious and management appears determined to implement compulsory redundancies it is important at this stage to reserve some forms of action for use only when it is clear that persuasion has failed.

Where negotiations and persuasive action have not been sufficient to make the institution withdraw its threat of compulsory redundancy then branches/LAs will need to move to Stage 2 – demonstrative action. Most of the actions in Stage 1 will need to be maintained throughout Stage 2. The additional actions suggested below under stage 2 are severe and are intended to be so.

The importance of keeping members informed and involved from the outset, and throughout the campaign, cannot be understated.

Head Office and the Higher Education Committee will of course be fully involved before this stage is reached, and the particular actions to be taken and their timing will need to be discussed with them.

Detailed advice for branches/LAs on campaigning can be found on the UCU website at <http://www.ucu.org.uk/index.cfm?articleid=2123>. This advice includes planning a campaign, campaign tactics, winning support and promoting your campaign.

STAGE 1 – PERSUASIVE ACTION

Stage 1 tactics will be appropriate where the institution is discussing compulsory redundancies as a distinct possibility, rumour of compulsion is widespread and the governing body advocates measures such as the allocation of job losses (however 'notional') department by department, the merger or even closure of departments or other 'rationalisation' proposals.

UCU's aim at this stage must be to nip the threat in the bud and to help the institution to 'manage' its way out of any crisis. In many cases this objective can be achieved, and escalation to Stage 2 can be prevented.

Information

UCU Members

It is important that members and potential members are kept informed of the situation as it develops and that the arguments against compulsory redundancy are put before them. This should not be done in a way which might induce panic at a point where redundancies can still be avoided by the mobilisation of argument and the threat of action. Nor should it be done so constantly that the members begin to disbelieve UCU warnings. Branch/LA officers and the committee should continually monitor the situation to decide how to keep members informed of the situation and ready for action.

University authorities

It is important that university authorities are kept fully aware both of the arguments of principle against compulsory redundancy and of the effects which such moves on their part will have on the institution. The branch/LA should particularly stress the damage to reputation that could arise if the institution pushes ahead with its plans and forces UCU to take demonstrative action.

Student and parents

Students and parents can be valuable allies in the fight against compulsory redundancies and the reasons for such redundancies, e.g. department closures. The effects of the institution's decision and of staff losses should be communicated to students and their parents – this could be via general meetings, newsletters, student magazines, press releases etc. It is important that students understand the reasons for UCU opposition. If there is a need to progress to demonstrative action which may have a direct effect on students they are more likely to be supportive if they fully understand the issues and have been involved in all stages of the campaign.

The media and the local community

There are good reasons why UCU should inform the local media regularly of the union's views of the situation inside the university, but it must be a matter of judgement for the branch/LA committee as to how high a profile they wish to adopt. Crying wolf too often can lead to as much damage as being unprepared. Nevertheless, good stories can greatly help UCU's case, as can the involvement of the local community (e.g. the trades council, local

authority and business associations). It can often be helpful if branches/LAs have some (however crude) analysis of the importance of the university for the local economy, and of its role in the local community.

Other campus unions

Other unions on campus also need to be kept informed of any threats to our members so that they understand the situation and can offer support as appropriate. Proposed changes may of course also affect members of staff in other unions and it is important that we work as closely as possible with other campus unions to maximise support for any campaign against compulsory redundancies.

Demonstrative/consultative ballot

It is often useful to hold a demonstrative or consultative ballot both to test strength of feeling amongst the membership and as a focus to build the campaign.

Action

General Meetings

Whilst we have national policy to oppose compulsory redundancies and many branches/LAs will have adopted similar motions, at particular times it may be appropriate to call a general meeting and invite a national officer or member of the National Executive or Regional Committee to speak and re-affirm the branch/LA's policy of opposition to compulsory redundancies or any actions likely to lead to compulsory redundancies. It may be appropriate to do so when the institution is discussing a new academic plan or reorganisation or is considering the budget, for example. The branch/LA's reaffirmation of policy against compulsory redundancies should be immediately conveyed to the relevant authorities.

Developing an alternative financial strategy

Where proposed job cuts are as a result of an institution's financial strategy it is important that UCU challenges that strategy and offers alternatives that avoid job losses.

Branches/LAs should seek to establish a small group including one or more people with relevant expertise - or the appointment of an appropriate individual may be sufficient - to be responsible for monitoring the financial projections of the institution and for formulating proposals for changes to the assumptions on which such projections are based. UCU disagreement with the university authorities should be publicised to members in order to build up an alternative 'base' to official projections. Such projections should be challenged at meetings of the governing body.

The branch/LA should, on the basis of its assessment of the institution's finances, highlight points of disagreement and draw up an alternative financial strategy. In many cases institutions are quick to translate targets for overall financial savings into job loss targets, while giving undue protection to non-payroll expenditure. Many alternative financial strategies prepared by branches/LAs in the past have been successful in protecting jobs by drawing attention to both non-payroll spending and to the levels of universities' reserves. Branches/LAs must ensure that a full picture of the institution's finances is available when

decisions are made. An alternative financial strategy should also be given a wider circulation in the local community via MPs, councillors, etc.

Financial information on individual institutions is often available from UCU's national research office.

Challenging academic plans and 'rationalisation'

A persistent and increasing threat to members' jobs, which arises only indirectly from financial pressures, is that posed by academic plans. Such plans may involve mergers, reorganisations, relocations or even closures of departments. UCU has a direct interest in intervening when such proposals are being considered, in order to protect the interests of its members in the affected departments. Where such rationalisation measures are proposed, branches/LAs should ensure that any academic plans include the clear understanding that the planning targets will not be used to make any individuals compulsorily redundant. UCU representatives should ensure that academic plans and financial plans, particularly where there is an implication for members' jobs, should be on the agendas of regular joint consultation meetings, where employers should be required to raise any plans or potential planning exercises. Similarly, UCU should use its own contacts on university governing bodies to ensure that such plans are properly scrutinised and debated. Where necessary, UCU may wish to lobby in opposition to such plans.

Avoiding compulsion

Discussions around avoiding compulsion, e.g. through voluntary severance, will be a key strategy in avoiding compulsory redundancies and are discussed in full in the negotiations section of this briefing (pages 23-27).

Lobbying governing bodies

Members of all bodies to which proposals for compulsory redundancies, or measures which might lead up to them (governors' meetings, council/court, senate, planning committee meetings etc), are made should be constantly reminded of UCU analysis of the situation and, as and when the situation becomes more serious, should be persistently lobbied. At times when crucial decisions are to be taken the following steps should be followed:

- a rota of branch/LA committee members and other activists should be drawn up to do the lobbying
- each academic and academic-related member of the relevant bodies should be lobbied until he or she gives a firm assurance to oppose compulsory redundancies; it should be remembered that academic and related members on the relevant bodies are representatives of academic and related staff, directly or indirectly, and that it is part of their job to listen to representations from those they represent
- the branch/LA president or secretary should write to all UCU members on the relevant bodies to remind them of their duty as UCU members; all members of those bodies should be made fully aware that UCU will fight any moves towards compulsion and be made aware of the consequences of such a move.

Moving motions to the governing body

A motion opposing compulsory redundancies should, at an appropriate time, be put by UCU members to the appropriate decision-making body. Members of the appropriate body should be lobbied on the motions as above and asked to put their name to the motion in advance of the meeting. It will be necessary to consider the wording of any motions carefully and it might be advisable to prepare fallback positions in advance, or to propose more than one motion to the appropriate body.

Demonstration outside meeting of governing body

The meeting of the body at which the motion suggested above is put and other key meetings of that body should, where appropriate, be the subject of a demonstration to make members of the meeting aware of the feelings of academic and related staff.

If the institution takes the decision to move towards compulsion and starts to formulate plans to do so, the branch/LA needs to demonstrate, in a forceful way, the opposition and disruption that will occur if they push ahead with their proposals. Once such a decision in principle is taken, UCU's action is designed to block attempts to implement these decisions using as many means as possible. At this stage national as well as regional support is essential and Head Office and the Higher Education Committee (HEC) should be involved.

National backing

A request should be made for a UCU official, together with appropriate HEC members, to visit the institution to reiterate the case against redundancies, and to make quite clear to the institution that UCU (as a national body) fully backs the branch/LA.

General meeting to consider direct action

A general meeting (involving Regional Officials and HEC members) should be called to consider an initial programme of direct action. No industrial action can be taken without a ballot of members but an early meeting will allow the branch/LA to discuss options with members, gauge levels of support for various types of action and start to prepare members for the possibility of taking some form of direct action. Proposals for action should be circulated before the institution makes its decision to impose compulsory redundancies, to put maximum pressure on the governing body.

External support action

The morale of a branch/LA fighting redundancies is greatly lifted by external support. Also, our experience has shown that institutions are impressed by evidence that the local UCU is not fighting alone. These activities should initially be directed towards the meeting at which the decision in principle is taken, and should continue until it is reversed.

Messages to the chair of the governing body

Other branches/LAs should be asked (via Head Office) to send emails or fax messages expressing support for the threatened branch's/LA's action and opposing the compulsory redundancies. The messages should be sent to the chair of the governing body immediately before a key meeting.

Support from local MPs, councillors, prospective candidates etc

Local MPs, councillors, prospective candidates, etc, should be informed of the situation and asked to put pressure on the institution not to take any decision on compulsory redundancy. Even if some will not give direct support immediately they should be asked to write to the institution asking for an explanation, and when this is given it should be discussed with them in terms of the alternative financial strategy, etc. Local councillors who sit on the governing body should also be lobbied.

Support from trades councils and regional TUCs

Trades councils and regional TUCs should be asked to pass motions supporting the fight against compulsory redundancies and to send these to the chairperson of the governing body and to any TUC nominee on the governing body. Non-university unions should be asked to support demonstrations through these bodies.

Support from learned societies, professional bodies, corresponding departments, etc

Where specific departments have been identified for redundancies corresponding departments in other institutions, eminent foreign colleagues, learned societies, professional bodies, etc, should be written to asking them to write to the press, to the chairperson of the governing body, to MPs, etc, expressing their concern. In several disciplines learned societies have already shown great concern, and their interventions have been widely publicised.

Support from students and parents

Decisions to cut posts or close courses will almost invariably adversely impact on the learning experience of the students at the institution. Support should be sought from the local NUS and from the groups of students (and their parents) who are directly affected.

Support from the local community

It may sometimes be possible to get local authority bodies to indicate to the university their opposition to compulsory redundancy. Where other community groups can be involved, this should be organised. Branches/LAs might consider community meetings to outline the issues involved, especially, where appropriate, the effects on the local community and its economy. At such meetings the branch/LA should present an analysis of the role of the university as a major employer in the locality, as well as a provider of public facilities.

Support from other campus unions

Other campus unions should be asked for maximum support. It should, of course, be made clear that UCU will support other unions if their members are threatened with redundancy. Many branch/LA committees already play an active part in joint campus union committees. In a crisis atmosphere their involvement will be a crucial factor in ensuring that the campus unions fight the management proposals together.

Legal action

There may be situations where the decision to make compulsory redundancies can be challenged legally – for example in a pre-92 institution where the council/court takes a decision on compulsory redundancies despite a decision by the senate opposing such

redundancies or when the process laid down in statute has not been followed. In such circumstances Head Office will give advice on any appropriate legal action. The threat of legal action has proved to be a powerful deterrent, particularly in bringing home to management the message that moves to sack staff entail serious financial risks for the institution. However, it is not a substitute for effective membership action to ensure that redundancy proposals are not implemented.

National lobby

Members of the body which will decide to institute compulsory redundancies should be left in no doubt as to the support the branch/LA has – locally and nationally. A mass lobby of the governing body meeting should be organised, involving all local members, those bodies locally who have supported the branch/LA in its fight against compulsion and representatives from other UCU branches/LAs.

STAGE 2 – DEMONSTRATIVE DIRECT ACTION

In the vast majority of cases the steps outlined above have been sufficient to prevent institutions taking decisions on compulsory redundancies. However, where action under stage 1 has not been successful and the institution has indicated its intent to push ahead with compulsory redundancies branches/LAs should move to stage 2.

The actions suggested below need to have been agreed by a general meeting

For any form of industrial action members will need to be balloted. Industrial action may take many forms but action which involves a breach of contract is industrial action, which can only be taken when a statutory ballot of members has been conducted. All statutory industrial action ballots are conducted through either the Regional Office or Head Office.

There may also be occasions when a consultative ballot of members is appropriate, to ascertain the level of support for certain actions. Branches/LAs should speak to their Regional Official about the appropriate approach for their circumstances.

Escalating industrial action, beginning with token demonstrative stoppages and, if necessary, moving to major coercive sanctions, is an essential part of achieving the withdrawal of decisions to declare redundancies. Because action must start within four weeks of the completion of the ballot, timing must be considered carefully. The following pattern of escalation is suggested:

Demonstrative meetings

The withdrawal of labour at any time requires a formal statutory ballot. However, branches/LAs may want to consider, as well as industrial action in the strict sense, well-publicised meetings and demonstrations held, for example, during lunch periods where members can demonstrate their support for UCU's opposition to unjustifiable job cuts. Similarly such events may also include the lobbying of meetings of council/court or senate. Other events, such as marches or teach-ins, can also help publicise UCU's opposition and enable members to demonstrate their support. Neighbouring branches/LAs should also be asked to send contingents in support.

Internal non-cooperation

The experience of branches/LAs which have faced (and seen off) a redundancy threat has shown that great pressure can be brought to bear by adopting measures of non-cooperation. Any non-cooperation measures must be entered into only after the advice of the relevant official has been sought. Many types of non-cooperation could be interpreted as forms of action short of a strike, in which case they could only be carried out after a statutory ballot and may require further legal advice, depending on the local situation. Such industrial action short of a strike can result in loss of pay.

Refusal to discuss or take part in selection mechanisms

Any proposal of a process for the selection of staff for redundancy should be opposed. Where involvement in the process will be by individual staff members' *voluntary* agreement, the branch/LA president or secretary should write jointly with the national president to all members of staff likely to be involved in any selection mechanism asking them to declare that they will not cooperate in any way with procedures which directly or indirectly select individuals for compulsory redundancies. This written approach should be followed up by personal approaches from local UCU officers.

Non-cooperation with supporters of compulsory redundancy

Where senior members of the institution, such as heads of department, deans or committee chairs, publicly support the decision to declare redundancies or voluntarily agree to take part in the selection mechanism, every effort should be made to persuade them to change their minds. If they do not, then condemnatory motions naming them should be put to UCU general meetings; motions of no confidence should be put to departmental meetings, faculty meetings, etc, as appropriate. As with all forms of non-cooperation which are not part of an industrial action remit, members should not refrain from doing any part of their job as part of this action.

Resignation from external committees

Members should be asked to resign from all external committees on which they voluntarily represent the institution and to write to such committees and to the press explaining that they are resigning because the institution has decided to implement compulsory redundancies.

Although this may involve some loss of income, members should understand that they are being asked to make this sacrifice to stop their colleagues being sacked. Members should not withdraw from any committee on which they sit as part of a contractual relationship with another institution (such as acting as an external examiner) and wardens of halls and colleges should not be asked to resign where this would involve the loss of their home.

Making compulsory redundancy an issue at all committee meetings

In general, members should not resign from decision-making committees within the institution, but should instead use their membership to raise repeatedly (at length) the issue of redundancy. In particular the issue should be raised when any proposal involving expenditure is made. Such proposals should be opposed on the grounds that the money should be used to avoid compulsory redundancies.

Disruptive action

Staff may be in a position to disrupt the functioning of administrative and management processes in various ways. Such action has to be well coordinated to be effective and must take place only after full consultation of UCU members and members of other unions who may be affected by it.

- *New appointments*

It may be possible, as part of a package of measures of industrial action short of a strike, to refuse to co-operate with appointment committees for new posts at the institution. Branches/LAs may also find ways of encouraging members in other institutions not to apply for any posts that are advertised.

- *Withdrawal by external examiners*

The general meeting already mentioned could pass a motion requesting all external examiners not to renew their contracts with the institution. In that case, examiners should be asked to write immediately to the university authorities informing them of this intention, and to send a copy of the letter to the branch/LA. This should also apply to external examiners of theses for higher degrees. As soon as redundancies are declared all external examiners should be contacted again and their mass withdrawal should be used as a focus of pressure against the institution. Head Office will also help to ensure that, so far as is possible, such action is 100% solid, and that resigning examiners are not replaced by others from the academic community. External examiners will be approached through Head Office, who will of course need to be supplied with their names and addresses by the branch/LA.

- *Conference trade*

For many universities the conference trade has become big business and any disruption of this trade would be a most effective sanction. Also, this is an action which could be taken in the summer vacation when many other direct forms of direct action would be ineffective. Detailed plans for this form of action would depend very much on local circumstances, and should include trying to dissuade people from coming to conferences at the institution. The aim should be to get conferences cancelled. Conference organisers should be informed of the situation and advised to transfer the event to another institution. Since such action will have a serious effect on the work of members of other unions, their support and understanding for the action should be sought first.

Where demonstrative, direct actions are not part of a campaign of industrial action involving a statutory ballot, it is important that UCU is not seen as inducing members (or anyone else) to breach contractual obligations as this could lead to legal action being taken against the union. Advice should be sought from Regional Officers prior to any such action being taken.

Personalisation of the campaign

Publicising examples of individual members facing redundancy can galvanise support but it is important that any personalisation is only carried out with the full support and cooperation of those members involved. Those to be sacked should be invited to speak at general meetings of their own branch/LA and of supporting branches/LAs. UCU members on the governing bodies should make use of these personal details when re-opening the redundancy issue at each meeting of these bodies. Local newspapers should be encouraged to cover these personal story aspects.

Balloting members on industrial action

Many of the measures outlined in this section involve breach of contract and thus, under the terms of employment legislation, require members involved to be balloted before action can begin. Experience has shown that the use of ballots can reinforce solidarity among members and effectively extend action.

Ballots need official authorisation from elected members and are run either through the Regional Office or Head Office, but in all cases adequate time needs to be allocated for such ballots. This can be up to six weeks from the time that official authorisation is given. This time is crucial for building the campaign and also for seeking a resolution through negotiations. When balloting members on action it must be made clear to them that taking industrial action may lead to loss of pay.

Regional Offices will give advice both on the legal and tactical use of ballots.

Demonstrative Strike Action (one day strike)

Following a decision to move to strike action or action short of a strike, the use of one day strikes can be particularly valuable. The aim is to achieve a complete closure of the institution for one day. All UCU members should absent themselves from the campus and all entrances should be picketed. The day should end with a rally. Neighbouring branches/LAs should be asked for support at the rally.

Although one day strikes are essentially demonstrative, they can be extremely effective in initiating a longer term programme of industrial action, which includes industrial action short of a strike. As involvement in action short of a strike is seldom comprehensive for all UCU members, an initial one day strike gives the opportunity to demonstrate wider support.

More sustained strike action

The branch/LA will need to consider seriously whether it can deliver more sustained strike action either across the branch/LA or amongst selected groups. Such strike action will result in loss of pay for those taking part so the decision to embark on such action must not be taken lightly.

Action short of a strike

Action short of a strike can take a number of forms and requires a ballot of membership before such action can commence. The idea of action short of a strike is to include as many members as possible in taking some form of action by not undertaking a function that is normally part of their job. However, no action short of a strike should result in any member stopping work completely.

Action short of a strike should not be regarded as an easy option. It can be very difficult for members to take action that has a direct affect on their students and there is the possibility of the employer deducting wages for the duration of action short of a strike.

However, action short of a strike has been a powerful weapon to UCU in the past and if well supported can force employers back to the negotiating table.

All packages of industrial action short of a strike need thorough consideration and branches/LAs should speak to their Regional Office about what would be suitable in the circumstances. Legal advice will be taken if necessary.

Some examples of action short of a strike are given below:

No cover for staff declared redundant

Members could, as a form of action short of a strike, refuse to take on any of the work currently being done by colleagues to whom redundancy notices have been sent. The cooperation of heads of department will be important here, but the action should commence with or without their support. The work would include undergraduate and postgraduate teaching, supervision of research students and of research projects, administrative duties, etc. 'Work currently being done' should be interpreted widely. Courses given should not be replaced by others, classes should not be transferred between departments or between institutions.

It should be made quite clear that redundancy means that the job will disappear, that it will not be taken on by others. It would be morally wrong for members to take on any of the work of sacked colleagues; it would amount to complicity in their sacking. This point should be made clearly to members. Many members will need considerable support from UCU in taking a stand on this. They will be helped by clear and firm instructions. Local officers, where necessary supported by their Regional Office and/or a member of HEC, should be prepared to explain the position to individual heads of department.

Boycott of call-out cover

A boycott of call-out cover applies only to those staff who either are required to be on stand-by either by direct reference to their contract of employment or as a result of established (i.e. long standing) patterns of work – usually computer staff. All members in this situation should be called upon not to respond to any call-out, under any circumstances.

Boycott of assessment (including marking of examinations)

If Stage 2 is reached many external examiners will have resigned in accord with their declared intention following the request made to them as part of Stage 1. A boycott of examination and assessment by members within the institution can have a significant

impact. Such a boycott is a very serious sanction and has the potential to alienate students or other potential supporters if not handled correctly. Therefore it is very important that this option is considered very carefully by the branch/LA in conjunction with their Regional Office before being used.

National support

Employment legislation makes many actions which would formerly have been open to UCU colleagues at other institutions, such as support on picket lines, etc, 'secondary actions' and hence illegal. However, aside from the practical and legal advice and support which Head Office will provide, branches/LAS throughout the UK should be called upon to provide both practical and moral support for members who have been sacked, including participating in rallies of support, inviting sacked members to speak to meetings of their own branch/LA and making collections. The importance of such actions cannot be overstated. Demoralisation quickly follows once a branch/LA or individual members feel isolated.

Censure and Academic Boycott (sometimes referred to as 'grey-listing')

In 2010, the Higher Education Sector Conference agreed a Censure and Academic Boycott policy as set out in circular UCUHE/56.

Where all the local measures as outlined above have proved unsuccessful a branch / LA may request a range of sanctions against their institution as part of the campaign against redundancies. This could take the form of being added to a censure list and, ultimately an academic boycott of the institution.

This is an action of last resort and will only be undertaken where there is a major demonstration of membership support (usually including a ballot) and only after a substantive act of industrial action at Branch/LA level.

Part V

Appendices

Management of fixed-term and hourly paid contracts

Although there are many aspects of fixed-term and hourly paid contracts we could cover here, the focus is on how staff on such contracts are affected by redundancy. UCU continues to campaign against casualisation through its 'Stamp Out Casual Contracts' campaign.

Reference to fixed-term contracts applies to all contracts that include an end date or state that the contract will end when a task is completed or if an event does or does not happen. Some employers purport to move staff from fixed-term contracts containing an end date to 'open-ended' contracts but still include in the new contract an 'at risk' date or similar.

Depending on the wording of the contract, such 'open-ended' contracts may still be classified as fixed-term in law (if the contract states that the appointment will end when an event does or does not happen, for example). Branches/LAs should seek advice from their Regional Office on the wording of any such contract their institution may seek to introduce.

Contract researchers with an end date in their contracts are fixed-term staff. Most hourly paid contracts in Higher Education are also fixed-term in nature – often lasting just one academic year. Large numbers of fixed-term staff remain in Higher Education and even where staff are moved to permanent (or open-ended) contracts they often still find that their employment is insecure.

UCU has a long held policy of seeking to reduce the numbers of academic and related staff on fixed-term contracts within Higher Education. We advise branches/LAs to negotiate with their employers on policies on the use of fixed-term contracts, to try to restrict their use and also to reach agreement on the treatment of those staff who do remain on fixed-term contracts.

UCU would argue that the use of various kinds of casual contracts is generally damaging not just to the staff who are on such contracts, but to the quality of work and the core objectives of universities and colleges. What is important to note here is that staff on these contracts may face specific problems when there are threats of redundancy. Employers may attempt to treat those on fixed-term, pro rata, or hourly paid contracts differently from those on other contracts when it comes to redundancy criteria and selection procedures. Local negotiators and activists need to be vigilant in spotting and resisting such practices.

The Joint Negotiating Committee for Higher Education Staff (JNCHES) guidance on fixed-term and casual employment states that the procedure for terminating a fixed-term contract should, wherever possible, include the following components:

- up to four months before expiry of the contract all the alternative options should be considered, e.g. renewal, redeployment, etc.

- up to three months before the expiry date, consultation should take place with the postholder on the prospects for alternative options, taking account of the postholder's aspirations (Note: the legal requirements relating to collective consultation plus the contracted notice period means this period may well be required to be longer)
- the postholder should be given information about other positions in the institution
- where the expiry of the contract is a redundancy, consultation should take place with the recognised union(s) in accordance with statutory requirements
- further consultation should take place with the recognised union(s) and the postholder as required

The ending or expiry of a fixed-term contract is regarded as a dismissal in law.

For such a dismissal to be fair it must relate to one of the following reasons:

- capability or qualifications to perform the work
- conduct
- redundancy
- complying with legislation
- 'some other substantial reason'

Where a member of fixed-term staff is dismissed because the requirements for employees to carry out work of a particular kind have ceased or diminished then the dismissal will be for reason of redundancy. In most cases, the ending of a fixed-term contract will be a redundancy.

If a redundancy is contemplated at the end of a fixed-term contract then the employer has the same legal duties towards fixed-term staff as it does towards permanent staff except that from April 2013 there will no longer be a *legal duty in relation to collective redundancies of fixed-term contract staff at the end of the contract term* (see section on legal framework). However, there will still be a legal duty to consult with UCU in relation to 'open-ended' staff whose post is identified with a fixed-term external source of funding if or when such funding comes to an end.

Fixed-term academic staff (and possibly academic-related staff) in chartered institutions may be covered by the university's model employment statute and subject to its provisions in relation to redundancy. If they are so covered they have the right to insist on the procedure being used if the University wishes to make them redundant.

Whilst it is important to try to move staff onto permanent contracts, for the purposes of redundancy law, those on fixed-term contracts have the same individual legal rights as those on permanent contracts. However, the right to claim unfair dismissal (for staff on any form of contract) only applies after two year's service.

Any redundancy process that applies to fixed-term staff should not be less favourable than that afforded to comparable⁹ permanent staff. If fixed-term staff are treated less favourably than comparable permanent staff in this regard the employer is likely to be in breach of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 unless in each case less favourable treatment can be objectively justified.

It is also important to ensure when negotiating the transfer of fixed-term staff to new 'open-ended' contracts that the employer does not detrimentally differentiate between staff in this group and those it regards as 'permanent'.

When drawing up the redundancy pool the employer cannot just draw it round the member of staff who is on a fixed-term contract, or whose post is linked by the employer to a particular funding stream that is due to end. The employer must look at who is doing the work of the particular kind that they wish to reduce. This could, in effect, mean a redundancy pool of one but it is not necessarily so.

Selection for redundancy from the pool must not be based purely on the fixed-term nature of an employee's contract. Such selection is likely to be both unfair and a breach of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

We need systems in place to deal with the potential redundancies of fixed-term staff when their contracts are coming to an end (and the potential redundancies of permanent staff when fixed-term funding comes to an end) such that UCU is fully engaged in consultation and negotiations with a view to avoiding compulsory redundancies.

We need to secure employment for all our members and to ensure that in strengthening the position of one group of members we do not weaken the position of another group.

This can only be done by UCU being very clear in its opposition to compulsory redundancies of all staff and using its collective strength to resist any such compulsory redundancies.

Whilst we need to be engaged with negotiating and campaigning to avoid compulsory redundancies we also need to look at ways in which we can change the culture in Higher Education. We need to persuade employers to move away from the constant cycle of potential redundancies – particularly for research and hourly paid teaching staff – to a position where staff resources are managed in a far more strategic way within the overall resources of the institution.

The solution to this problem is likely to differ for research staff and teaching staff employed on hourly paid or variable contracts.

In the case of research staff, the pattern of employment that has persisted until recently is one where staff are locally managed, skills are assumed to be highly specialised and staff are assumed to be intrinsically difficult to redeploy. Research staff themselves may be

⁹ A comparable staff member is defined in the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 as someone who is employed by the same employer and is engaged in the

resistant to redeployment outside 'their' discipline because they are required to specialise in order to develop a career. Most of all, until relatively recently, employers felt little real pressure to avoid the redundancy of research staff because they argued that staff were contracted only to fulfil the research contract with the funding body. However, following the judgement in *Ball v Aberdeen University*¹⁰ this is starting to change.

Appendix 4 outlines how employers could take responsibility for managing research staff in such a way as to avoid redundancy at the end of funding periods, and includes a model policy for avoiding redundancy. Our view is that this policy should be negotiated with employers but also publicised as part of a campaigning agenda to win other stakeholders, including research councils, to the side of increased security for research staff.

In the case of teaching staff on hourly paid or other part-time contracts, the problem is slightly different. Here the duties (the courses) may be ongoing, but employers continue to try to avoid their obligations by claiming that staff are not employees but 'workers' or 'self-employed' staff. This should be robustly challenged (see p19 on employment status).

Fixed-term hourly paid or other part-time teaching staff may have the rights to a permanent contract under the Fixed-term Employees (Prevention of Unfavourable Treatment) Regulations 2002, but that is of little help if the current contract is unfavourable or offers no guarantee of hours year on year or term on term. Some contracts, although not labelled as 'zero hours' contracts state that hours will be allocated by a manager at the start of term. In effect these are 'zero hours' contracts and offer little protection for the employee. UCU has a firm policy against the use of zero hours contracts in all their forms.

Hourly paid and other part-time staff may be able to challenge any less favourable treatment in relation to redundancy under the fixed-term regulations or the Part-Time Workers (Prevention of Unfavourable Treatment) Regulations 2000. Both these sets of regulations require a comparator (permanent or full-time as appropriate) to demonstrate less favourable treatment. In institutions where no obvious comparator exists it may be difficult to make use of this legislation to protect fixed-term and part-time staff. For employers who use unfavourable contracts for such staff the employment of staff on poor terms and conditions is likely to be critical to their business, and they will therefore be under a great deal of pressure not to increase their costs.

However, in the case of *Sharma and others v Manchester City Council*¹¹ a group of part-time workers did challenge their employer's right to reduce their hours and not that of pro-rata or full-time colleagues and they won.¹²

Some progress has also been made by UCU campaigning and negotiating and it is important to note that in recent years there has been a significant shift among some

same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification and skills.

¹⁰ See circular UCUHE4 for more details on the case and its implications.

¹¹ *Sharma and Others v Manchester City Council*
http://www.employmentappeals.gov.uk/Public/Upload/07_0561ResfhRCRN.doc

¹² See UCUHE08 for further details on the case and its implications

employers to move staff from hourly paid contracts to pro-rata part-time contracts and even in some cases to permanent contracts of employment. However, this has not been a uniform shift and in some institutions the employer may be seeking to widen the gap between the role of hourly paid and non hourly paid staff to avoid legal issues of comparability.

UCU remains committed to seeking secure contracts for all academic and related staff whether they work full or part-time, and parity of employment contracts for all such groups.

Model Redeployment Procedure¹³

The redeployment procedure policy is operated alongside the institution's collective agreement on the use of fixed-term contracts and the Statutory Redundancy Procedures or agreed redundancy procedures and is not intended to replace those policies and does not affect the rights of an individual to appeal against any redundancy or dismissal proceedings.

1 Introduction

- 1.0 The institution is committed to protecting the security of employment for its staff as far as is possible. It is therefore essential that a clearly understood practical redeployment policy is in place which enables staff to be redeployed to suitable posts within the institution.
- 1.1 The institution undertakes to develop and implement a structured redeployment policy including a positive approach to re-training with individual training needs being assessed and active help and support provided.
- 1.2 There may be a number of situations where staff are seeking to be re-deployed:
 - when the job they are currently doing is no longer required and there is no suitable alternative employment;
 - when part of the job is no longer required (i.e. 25% or more of the post);
 - when, due to medical reasons, they are unable to continue in their present post;
 - when one or a series of fixed-term contracts is coming to an end and there is no suitable alternative employment;
 - another substantial reason that puts their employment at risk.
- 1.3 All staff in the situations outlined at 1.2 above will have the opportunity to be entered onto the institution's redeployment register with a view to seeking an alternative post. However, the register is not for members of staff who do not fall into one of the situations outlined in 1.2 who are seeking a new job or change of career.
- 1.4 Where the need arises, the institution will ensure that full consultation and communications will take place with staff both collectively and individually and with Trade unions at the earliest opportunity. Consultation with the individual would usually be at least four months before any change takes place and as soon as is possible for those staff who due to medical reasons are unable to continue in their present post.

¹³ This model policy is based on the one submitted to the national employers by the joint trade unions (EIS, GMB, UCU, Unison, Unite) during pay negotiations in May 2009.

- 1.5 The institution recognises that redeployment constitutes a change to an individual's contractual terms of employment and therefore cannot be implemented without his or her consent.

2 Principles

2.0 When dealing with an issue of redeployment the following principles should be followed:

- staff and their representatives have the right to be involved at the earliest opportunity in decisions which may affect them.
- staff have the right to have their wishes and preferences taken into consideration.
- insofar as is practicable staff will be encouraged and supported in undergoing any relevant training or reorientation, or in having other development needs met, with the aim of assisting them to remain employed at the University. Once staff are on the redeployment register they should be allowed reasonable paid time off for retraining from their existing post.
- staff will be offered counselling through the University counselling service should they require it.
- where appropriate, career counselling/advice will be offered.

3 Definitions

3.0 Redeployee

Member of staff on the redeployment register

3.1 Suitable Vacancies

Suitable vacancies are those where the skills and knowledge sought to fill the vacancy match the skills and knowledge of the redeployee with or without further training. In assessing whether or not a vacancy is suitable a number of factors will need to be taken into account including:

- nature of the job
- status of the job
- qualifications and skills needed and those of the redeployee
- hours
- location and accessibility
- personal circumstances
- career prospects of the redeployee
- interests of the redeployee
- aspirations of the redeployee

3.2 Prior consideration for a vacancy

Prior consideration for a vacancy means being considered prior to the post being advertised or alternatively prior to the normal selection process.

3.3 Redeployment Register

This is a register held by Personnel for staff who need to be redeployed. The eligibility criteria are shown in section 1.2.

3.4 Formal Restructuring

Formal restructuring is a restructuring exercise that is agreed in advance with Personnel and one where full consultation with the relevant Trade unions takes place prior to and during the restructuring exercise.

4. General Approach

4.1 The Redeployment Register will be coordinated by Personnel, who will be responsible for maintaining central records and the monitoring of who is on the register and their general progress. It will be funded centrally.

4.2 Once staff have been placed on the Redeployment Register the appropriate Personnel advisor will take responsibility for managing the process of redeployment for that individual.

4.3 Each staff member who is placed on the Redeployment Register will be interviewed by the appropriate Personnel advisor. The purpose of this interview is to establish a full skills profile of the individual, any training needs, and the categories and types of jobs that are likely to be suitable. A Skills Analysis Form should be completed in all circumstances and, if appropriate, a CV.

4.4 Personnel advisors will take a pro-active role in trying to secure alternative employment for staff on the Redeployment Register by:

- maintaining a website with details of current ring-fenced vacancies and job specifications
- regular liaison with the Recruitment Service, Heads of Departments and Personnel colleagues to try to determine any suitable vacancies
- advising the Head of Department of any applicants for vacant posts from the Redeployment Register
- maintaining regular contact with staff on the register and providing any necessary support and guidance
- holding a formal review meeting once per month, or sooner if appropriate, to assess the current position

4.5 Staff placed on the Redeployment Register will be granted appropriate paid time off for the purpose of attending job interviews for internal appointments and with external employers.

5. The Filling of Posts

5.1 Initially all relevant vacant posts will be ring-fenced for an agreed period.

- 5.2 Personnel will check whether there is a potential match on the Redeployment Register. This will involve continuous liaison with the Recruitment Service. If there is a potential match the Personnel advisor will inform the member of staff both verbally and in writing of the match and ask them to consider the post.
- 5.3 Individuals on the redeployment register can also access the list of ring-fenced vacancies through a secure webpage, or can request written details from personnel if they do not have regular access to the website.
- 5.4 A suitable match will usually be at the same grade and where appropriate shift patterns, with consideration given to personal circumstances, location etc. as the individual's most recent previous post.
- 5.5 Departments with vacant posts will give prior consideration to staff on the Redeployment Register BEFORE considering other applicants. Prior consideration involves considering the member of staff against the Person Specification for the vacant post. In order for a match to be established the staff member must normally meet most (approx 75%) of the essential criteria for the post. Appropriate training can be given if required.
- 5.6 Once a match has been established then the individual(s) will be offered an interview prior to any other candidates (except for other redeployees).
- 5.7 If a person proves suitable at interview then they should be offered the post.
- 5.8 The person is deemed unsuitable at interview the individual and Personnel Advisor should be informed, in writing, of the decision and the full reasons for the decision not to appoint. This will assist the individual and enable the Personnel Advisor in supporting the staff member in future applications.
- 5.9 The redeployee has the right to appeal against a decision not to appoint. The appeal process will be subject to agreement between the institution and the recognised trade unions.
- 5.10 Departments undergoing restructuring are not expected to give prior consideration to staff on the Redeployment Register from other departments whilst their own restructuring is in process.
- 5.11 Individual employees will have the right to use the Grievance Procedure if they feel that redeployment procedures have not been followed correctly.

6. Training

- 6.0 The institution is committed to providing relevant training and to providing any appropriate upskilling. Any re-training will be funded by the institution, including any necessary travel and accommodation costs.

7. Trial Periods

- 7.0 Where possible and practicable, employees who are considering suitable vacancies will be given the opportunity to spend up to four weeks in that new job as a trial period prior to the interview. After four weeks there will be a full review and if the post is suitable the person will be offered an interview for the post prior to other candidates.

- 7.1 A trial period could also take place after the member of staff has had an interview for the post and there is a question by either side about the suitability of the post.
- 7.2 Initially the cost of the trial period will be met from central resources. If the trial period results in an appointment, the cost could be recovered from the departmental budget including research funding.
- 7.3 Existing departments will be expected to release staff to enable them to undertake trial periods.

8 Protection Arrangements

- 8.0 The institution policy on Protection of Pay and Conditions of Service will apply to staff in situations where the post to which a member of staff has been redeployed is at a lower grade than their current/most recent contracted one. Staff redeployed to a lower graded post will also have the opportunity to remain on the redeployment register to maximise their opportunity of securing alternative employment at an equivalent grade to their original post.

UCU MODEL HE REDUNDANCY AVOIDANCE AGREEMENT¹⁴

1 Introduction

- 1.1 This document provides a framework agreed between [insert name of institution] and recognised trade unions for the avoidance of compulsory redundancies. It is not intended to remove any current protections afforded to staff under their contracts of employment or under existing legislation. This procedure applies to all staff including those on fixed-term contracts and/or part-time contracts, open ended contracts, contract research staff and hourly paid lecturers. The framework and any agreements made under it will give due regard to the ACAS code of practice on redundancy handling.
- 1.2 It is the intention of this agreement to encourage full engagement of the trade unions in the planning and taking forward of organisational change. By implementing all the measures associated with this agreement, the employers recognise that compulsory redundancies are avoidable.

2 Avoiding Redundancies

- 2.1 To this end, the institution will establish a Committee on Redundancy Avoidance, which will consist of management and union representatives in equal numbers. This Committee and its work will be fully funded by the institution, including the provision of additional union facility time.
- 2.2 Regular meetings of the Committee will be scheduled throughout the year to identify any potential future problems regarding funding and organisation issues affecting the institution, with the specific intent of avoiding redundancies (for example, those arising from a fall in student numbers). The institution agrees to full disclosure of the necessary information to enable an informed dialogue, including full disclosure of all necessary financial information.
- 2.3 The Committee will develop an agreed communication strategy which will ensure that trade union representatives remain accountable to their constituencies and that the employer can keep all staff apprised of developments. Meetings will be minuted and copies of the minutes made available
- 2.3 The Committee will also develop and oversee the arrangements for:

¹⁴ This model agreement is based on the one submitted to the national employers by the joint trade unions (EIS, GMB, UCU, Unison, Unite) during pay negotiations in May 2009.

- a robust redeployment policy (based on the model in Appendix 2 of this briefing document),
- 'talent pool' systems and processes for research staff (for an example, see Appendix 4)
- careers advice
- training in transferable skills, including the part funding of fees associated with further or higher education study
- collaborative work with other institutions in the same geographical area to extend 'redeployment' opportunities
- job fairs
- CV completion

2.4 In potential redundancy situations, the institution recognises the benefit of early and meaningful consultation with unions.

2.5 The institution also recognises its additional statutory obligations in respect of consultation. Consultation will include consideration of the steps to avoid compulsory redundancy listed in 2.6 below and will be with a view to reaching an agreement. Early consultation regarding these steps will take place at the point where a potential redundancy situation is identified and prior to formal notification of a redundancy situation. The institution agrees that, as a minimum, an additional 30 days will be added to any statutory minima.

2.6 The institution will give consideration to the appropriateness of the following measures on each occasion that a redundancy situation arises:

- trying to make savings in non staff budgets
- reduction of staff levels by natural wastage
- redeployment (including, where necessary, retraining) to other parts of the organisation
- reduction or elimination of overtime working
- freezing of external recruitment, unless otherwise agreed by the trade union representatives
- considering volunteers for part-time working
- considering volunteers for job sharing
- sabbaticals and secondments
- seeking alternative funding, e.g. where funding for a particular project has expired

2.7 If, having followed the measures outlined above, the institution still requires a reduction in staffing levels, volunteers will be sought for redundancy or

early retirement including, where practicable, from areas of work where staff possess transferable experience and skills to enable possible redeployment.

- 2.8 The Institution will establish a budget which will be used to provide training for those persons who are at risk of redundancy (for example, those placed on the re-deployment register).

3 Formal Consultation Procedures

3.1 In the unlikely event that the measures outlined in section 2 fail to remove the potential redundancy situation, for the purposes of consultation the institution will provide unions with the following information:

- reasons for the proposals
- number and description of employees whom it is proposed to dismiss as redundant
- total number of employees of that description employed at the institution
- proposed method of selecting the employees who may be dismissed
- proposed method of carrying out the dismissals with due regard to any agreed procedure, including the period over which the dismissals are to take effect
- proposed method of calculating the amount of any redundancy payments made to employees who may be dismissed
- statistics on staff turnover for the last three years
- list of vacancies on a weekly basis
- details of the institution's current financial position
- the financial impact of any proposed redundancies
- the impact on remaining posts of any job losses
- information about redeployment opportunities and details of failure to redeploy
- agreed details of the Appeals procedure

This list is not exhaustive.

3.2 The institution will actively engage with unions with a view to reaching agreement about ways of:

- avoiding the dismissals
- reducing the number of employees to be dismissed
- mitigating the consequences of the dismissals

This will include ring-fencing vacancies that represent suitable alternative employment or redeployment opportunities and the arrangements for

voluntary redundancy or early severance, including the calculation of the terms.

In line with obligations to consult, reasonable time and opportunity will be given to the union representatives to consider the information provided, to seek clarification, or challenge assumptions and to put forward their own views or proposals. The institution will give these proper considerations and answer them in writing explaining any changes to the original proposals, the reasons for rejecting any alternative proposal and confirming the final proposals.

The institution must conduct equality impact assessments and will consult unions to ensure prior consideration on whether the proposals have a disproportionate effect on either gender, black and ethnic minority staff, disabled staff, and staff of different ages. These will be prepared with regard to the provisions of the Race Relations (Amendment) Act 2000, the Disability Equality Duty and the Gender Equality Duty.

- 3.3 In addition to the consultation with unions as the recognised trade union, the institution will engage in individual consultation with those staff affected. This will include discussion about how the institution can mitigate the potential redundancy by such means as transferable skills and redeployment options, including the potential for retraining. Staff will have the right to be accompanied by a trade union representative in all individual consultation meetings of this description.
- 3.4 The minimum period for consultation is prescribed by S188 of the 'Trade Unions and Labour Relations (Consolidation) Act 1992' but the employer will notify the unions at as early a time as possible to allow meaningful consultation on the avoidance of compulsory redundancies. Consultation must take place before any final decisions have been made for it to be meaningful.

4 Statutes

In considering the local application of this agreement, parties will pay regard to existing institutional statutes, where they exist.

5 No detriment

In considering the local application of this agreement, parties will maintain any existing beneficial local arrangements.

Research Management for the avoidance of redundancy

Introduction

For decades the employment of research staff has been on serial fixed-term contracts. However the *Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002* and their interpretation by the Employment Tribunal (Scotland) (*Dr A Ball v University of Aberdeen 2008*) is likely to cause employers to move research staff onto permanent/open ended contracts with 'at risk' dates or including statements to the effect that the contract is contingent on future funding being secured.

The Employment Tribunal Panel criticised the University of Aberdeen, saying that most employers would be grateful if they could guarantee the employment of staff for two or three years in advance. However, the employers are likely to adopt minimum practices of compliance unless UCU pushes for a principled, planned approach to the avoidance of redundancy.

The mere transfer of staff from fixed-term contracts to 'open-ended' contracts with 'at risk' dates does not necessarily end the cycle of threatened redundancy that has characterised research contracts for decades. It is this insecurity that UCU must challenge.

The new *Concordat to Support the Career Development of Researchers* published by Research Councils UK (RCUK) in June 2008 goes some way to recognising the problem of variable funding, but does not address the question of the content of good research management. UCU chose not to be a signatory to this document – not because of what it does say but because we felt it went nowhere near far enough in challenging the insecurity of the employment contracts of researchers.

However, section B point 1 says '[E]mployers should ensure that the development of researchers is not undermined by instability of employment contracts. This approach should be embedded throughout all departmental structures and systems'.

The Concordat does not say what these 'structures and systems' might be.

This document summarises a draft model policy for 'proactive redeployment and career planning' that addresses this by:

- placing the responsibility on the HEIs for enforcing standards of research management and planning to avoid the redundancy of staff
- identifying employment rights
- improving conditions of service, e.g. by extending the scope of continuing professional development (CPD)
- creating additional positive benefits for UK research

The policy has been developed for discussion by branches/LAs with a view to negotiating for the introduction of such a policy with your local institution. UCU recognises that this type of policy will work most effectively if members of the senior management team responsible for research are involved in any such negotiations.

The problem

The problem that research staff continue to face is the effective conflation of their contract of employment with the research contract between the HEI and the funding body and the instability engendered by a competitive grant application process.

Since research contracts are time - and resource - limited, in the past the institution simply issued contracts to individual research staff which were equally constrained. When the funding ended the staff were sent letters of redundancy at a notice point (usually around three months before the end of the contract). Some institutions have moved research staff onto permanent/open ended contracts, with the result that the ending of such a contract is at least nominally accompanied by the formal statutory redundancy procedure. However, in some cases, little else appears to have changed.

In order to *avoid* redundancy, therefore, significant prior planning must be undergone so that research staff can move from one grant or financial heading to another. The management of this process is the responsibility of the employer. It should be noted that the end of a research project is an entirely predictable event that can be planned for.

In practice, research staff themselves and their immediate managers (called Principal Investigators or PIs) are usually in the best position to write research proposals to maintain their employment. However, as we note below the status quo is an internal competitive market for grants and research awards which militates against employer-wide co-operation.

The process and conditions of applying for grants from research councils differs slightly between Councils and between programmes. The following points are common.

- **Time to prepare.** Research proposals normally take between 6-12 months from submission to obtaining a result. Further delays can mean that 18 months can pass from submission to project start.
- **Cost of preparation.** Research Councils UK commissioned a study that found in 2007 that the cost of writing a proposal was around £10,000, based on the time commitment of institutional staff.
- **Success rates.** Expected success rates are around 30% or less.
- **Overall budget.** Funding under Full Economic Costing (fEC), a new method for accounting for costs on grants, has caused the cost of some research charged to research councils to increase by a factor of two or more.
- **Eligibility of applicants.** Most research councils will accept grant proposals in the name of the researcher if they are given a permanent contract of employment.

- **Start date flexibility.** Some research councils accept that research projects may be delayed by up to 11 months from their original start date with the agreement of the funding body; for others the limit is 6 months.
- **Staff cost flexibility.** Staff and other costs are not negotiable after the proposal is submitted (with the exception of maternity and sick pay costs). Research Councils need to make good on their Concordat promises and encourage proposers to cost for existing named staff or, if costing for new staff, not to cost at the bottom of the pay scale.

Some research proposals are not funded by research councils and processes differ. Charities such as Cancer Research UK and the Leverhulme Trust, for example, will not pay overheads.

The difference in income that HEIs receive under fEC is extremely important. For example, a research proposal to the Leverhulme Trust in 2008 was costed at £127,000 without overheads (i.e. without fEC). The proposal had previously been submitted with fEC in 2007 to a research council at a cost of £500,000. This is an example of the potentially significant increase in income to institutions from research councils that has accompanied fEC¹⁵.

HEIs have fostered a high degree of competition between staff: for grant funding and the outputs of research. This leads to internal disputes, e.g. between research staff and PIs, about proposals to be submitted and intellectual property rights. Moreover, alongside this competition for grants comes a process of micro-budgeting, where departments, research groups and PIs are held responsible for managing a budget, including controlling staff costs by issuing redundancy notices to research staff they manage.

The modest proposals we make here place the responsibility for avoiding redundancy back on the employer and its senior management team, demand increasing co-operation between research groups within the institution, and maximise the research benefits of projects for the institution.

The model policy set out below is provided to branches/ LAs as a negotiating tool and as another step in challenging the insecurity of the employment contracts of research staff.

¹⁵ For further information on fEC see <http://www.ucu.org.uk/media/pdf/3/s/fecadvicetolas.pdf>

Model policy of proactive redeployment and career planning for research staff¹⁶

The avoidance of redundancy is the responsibility of the employing institution. This policy is in addition to the institution's general policy on redundancy and concerns itself with measures to minimise the risk of redundancy for research staff.

- Research groups with common research themes should form 'clusters' or networks around these themes. Research groups can fit into multiple overlapping themes. Clusters may be 'virtual' rather than co-located in the same department or faculty, but will organise regular seminars in work time to permit staff to share research results. The aim of research clusters is to
 - i) give opportunity for joint grant applications
 - ii) develop research programme themes, and
 - iii) manage multiple successful project bids, with staff, facilities and estate following the research.
- Particular attention should be directed towards individual lecturers expected to act as PIs for the first time, and integrating PIs who may not be part of a formal research group into research clusters.
- Individual research staff will be supported in elaborating and developing a 'research skills record' (RSR) alongside their academic CV. The RSR will summarise their current skills, specific project contribution and experience; identify research groups into which they could be transferred should the need arise; and identify continuous professional development needs. Research staff will be supported in meeting informally and participating in research seminars with staff in other research groups, whether part of a shared cluster or not. The RSR is additional to teaching experience and the development of skills outside of research activity as part of the Roberts Agenda. The RSR will be reviewed annually, either as part of a negotiated appraisal process, or in addition to it.
- In the absence of a named researcher, research staff will be budgeted in grant applications as high as possible, ideally on the top non-discretionary point of the relevant research grade (for post doctorate researchers this will be at least Grade Ac2), in order to facilitate redeployment.
- Successful project bids may be delayed in order to maximise continuity of employment of staff. The possibility of delay will be discussed within the research group and cluster(s) with the announcement of the successful bid.
- When staff are allocated to a project the following order of priority is likely to apply:
 - i) named research staff in the original grant proposal

¹⁶ This model policy is based on the one submitted to the national employers by the joint trade unions (EIS, GMB, UCU, Unison, Unite) during pay negotiations in May 2009.

- ii) research staff in the same research group
 - iii) redeployees on any redeployment register
 - iv) research staff in the cluster, network or department
 - v) external applicants
- Human Resources will be responsible for ensuring that posts are not advertised externally until internal applicants have been considered and that processes of fair competition at each level of priority are maintained. Trial periods of four weeks (typically), with the right to withdraw on either side, can be included for stages (iii) and (iv) above.
 - Consideration will be given to the flexible deployment and redeployment of research staff to avoid potential redundancies. This could involve moving staff to different projects (with their agreement), to create a vacancy in their original project which could be used for another researcher whose current project is coming to an end.
 - The aim of this policy is to avoid redundancy of research and other research grant-funded staff, including administrative and technical staff. In the case of a shortfall of funding, a minimum period of *six months'* underwriting at a time will apply to all staff with over one year of service. During this period the staff member will be placed on the redeployment register in the institution and will have a prior claim to research posts as indicated above.
 - Reporting mechanisms will be developed to ensure that any falls in funding in a particular area and, therefore, numbers of staff placed on the redeployment register will be reported to senior management and the trade unions in sufficient time to permit collective consultation to avoid the redundancy of staff.
 - The unions reserve the right of any of their members to challenge their redundancy and to object, through the grievance procedure, to any failure to follow this policy fairly.
 - The implementation of this policy will be monitored jointly by [name of the institution] and the relevant trade unions, including for discrimination (whether direct or indirect) by race, disability, age, LGBT status, gender or religion or belief.

[Name of the institution] and the unions recognise that this policy represents a major change in the way that research staff are currently managed and deployed and recognise the positive impact that these changes represent for research staff and on the research being carried out.

Glossary

Bumping	The relocation of a member of staff whose post is being made redundant to another filled post (that is not under threat). Bumping can be used to avoid compulsory redundancies where staff in posts that are not under threat are interested in changing their job or taking voluntary severance, as their post can then be used to redeploy a potentially redundant member of staff.
Chartered institutions	Higher education institutions that are covered by a Charter containing statutes which control how the institution carries out its functions. The majority of pre-92 Higher Education institutions are chartered institutions.
Collective redundancies	A legal term that applies if the employer is proposing to dismiss as redundant 20 or more employees at one establishment within a 90 day period.
Employment status	The determination as to whether someone is an employee, worker, self-employed or employed by another body. Employment status will affect the level of protection afforded by employment legislation.
Academic boycott	An academic boycott (sometimes still referred to as 'Grey-listing') is when the union asks members nationally voluntarily to agree to suspend normal professional relationships with an institution. This could include applying for advertised jobs, speaking at conferences, giving lectures, accepting positions as visiting professors or researchers, writing for a any academic journal which is edited at or produced by the institution in question, accepting new contracts as external examiners and collaborating on new research projects. Academic boycott is the most serious sanction available to the national union and is only entered into after a strong ballot result, industrial action and careful consideration by the union's Higher Education Committee and appropriate Officers.
Impact assessment	The thorough and systematic analysis of a policy and/or practice to ensure it is not discriminating against any particular group.

Industrial action	Action taken to improve terms and conditions of employment. It can refer to strike action and action short of a strike.
National contract	The nationally negotiated contract in use on post-92 institutions which determines a number of terms and conditions of employment.
Natural wastage	Savings that could potentially be made by the employer through the ordinary turnover of staff.
Open-ended contract	Usually used to refer to a contract that does not contain a specific end date. Often used by employers to describe a post that they link to fixed-term external funding.
Positive Equality Duties	The legal duties on employers positively to promote equality in relation to race, disability and gender.
Redundancy pay	Compensation offered to employees who are made redundant. All employees with at least 2 years' service are entitled to payment and legislation sets a minimum amount that must be payable. Employers are able to increase redundancy pay beyond this minimum. Some enhanced redundancy pay schemes are contractual.
Redundancy pool	When the employer decides that they want less staff to carry out work of a 'particular kind', all staff engaged in work of that 'particular kind' would be in a redundancy pool. The employer may want to make everyone in the pool redundant or just some of the staff. If the latter they would need to undertake redundancy selection from the redundancy pool.
Redeployment	The offering of another post to someone who cannot continue in their current post. The term 'redeployment' is often used to include offers of suitable alternative work but could also include offers of other posts which are not a match for the current post but the employer and employee both believe could be undertaken by the employee (with training if necessary).
Section 188 notice	The name given to the information that is legally required to be provided by the employer to the recognised trade union(s) in a collective redundancy situation.
Selection for redundancy	The process the employer will use to select individuals from the redundancy pool as potentially redundant.
Short-time working	A temporary reduction in working hours.

Statute

Chartered institutions are governed not only by national legislation but their own statutes. Most will have an employment statute which sets out the steps they need to take if they want to dismiss a member of staff covered by the statute for reason of redundancy.

Suitable alternative work

If the employer makes a post redundant they are under an obligation to offer suitable alternative work, if available, to the person who is potentially redundant. Suitable alternative work is work that is the same as, or not substantially different from, the previous work and must be suitable for the employee.

Tenured

The expression used to describe a type of contract that does not allow an employer to dismiss for reason of redundancy.

USS

Universities Superannuation Scheme. Final salary pension scheme offered to academic and academic-related staff in pre-92 institutions.

Voluntary redundancy

This is a way of the employer seeking to avoid compulsory redundancies by asking for volunteers from its staff. It is usually accompanied by an offer of enhanced redundancy pay for anyone who volunteers.

References

Employment Rights Act 1996 (ERA 1996)

http://www.opsi.gov.uk/acts/acts1996/ukpga_19960018_en_1

Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002

<http://www.opsi.gov.uk/si/si2002/20022034.htm>

Trade Union and Labour Relations (Consolidation) Act 1992 (TUL(C)RA)

http://www.opsi.gov.uk/acts/acts1992/ukpga_19920052_en_1.htm

UCU Equality Resource Centre

<http://www.ucu.org.uk/index.cfm?articleid=2131Equality>

UCU Toolkit in Implementing the public sector equality duty

http://www.ucu.org.uk/media/pdf/i/3/UCU_Equality_duty_toolkit.pdf

UCU's Stamp Out Casual Contracts Campaign

<http://www.ucu.org.uk/index.cfm?articleid=3532>