

Redundancy

ADVICE AND INFORMATION FOR LECTURERS
WORKING IN FURTHER EDUCATION

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The Association of Teachers and Lecturers (ATL) is a TUC-affiliated trade union and professional association working for a dynamic education service which responds to the needs of students and to those who teach them.

ATL provides high-quality professional support to over 160,000 members, who are drawn from every sector of education. Non-party political but politically astute, ATL also plays an active part in shaping Government policy and responding with authority to consultations. Decision-makers turn first to ATL because of its constructive approach, which is based on the practical experiences of its members – real practitioners, reporting from the frontline of the profession.

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This document has been written as guidance for lecturers in further education. While aiming to be fairly comprehensive, it does not claim to be exhaustive or to contain a definitive statement of the law. Especially in an area as complex as redundancy, each case has to be considered on its own merits. Please contact the Association of Teachers and Lecturers (ATL) if you require specific advice.

INTRODUCTION

Redundancy has unfortunately become a fact of life since Further Education institutions became incorporated in April 1993. Colleges are striving to become even more efficient and productive on fewer resources. Mergers and 'downsizing' have led to redundancies in many cases. It is therefore vital that all employees and union representatives are fully aware of their redundancy rights and of the employer's responsibilities in handling redundancies.

The Association of Teachers and Lecturers (ATL) works to protect individuals' jobs and to avoid compulsory redundancy wherever possible. ATL promotes good employment practices and offers advice, information, support and, where necessary, formal representation for members facing redundancy.

Note: The 'Further Education Corporation' (the correct legal term) will be referred to as the 'college' throughout this booklet.

REDUNDANCY AND THE LAW

1. What is the legal basis of redundancy?

The law on redundancy is very complex. The key legislation is embodied in the Employment Rights Act (1996) and the Trade Union and Labour Relations (Consolidation) Act (1992).

According to the Employment Rights Act, a redundancy may legally be declared where:

- (a) the employer has ceased (or intends to cease) to carry on business, or
- (b) the employer's requirements for employees to carry out work of a particular kind in the place where they are employed have ceased or diminished (or are expected to do so).

An example of (a) is where a college closes for financial reasons. However, the most common reason for redundancy in a college is (b), where a financial crisis or a reorganisation leads to staffing cuts. Redundancy may also arise if an employee is expected to work in a different place from their contracted place of work (for more details, see paragraph 5 on page 4).

It is important to appreciate that the employer (ie, the college) has the right to decide whether to make redundancies and in which areas they should occur. Similarly, the employer does not have to justify to an Employment Tribunal the business reasons which led to a redundancy situation.

2. Can redundancies be challenged?

If employees have worked for their employer for one full year (whether full-time or part-time), they are entitled to challenge their redundancy at an Employment Tribunal, claiming unfair dismissal. There is a strict time limit on any claim: three months (minus one day) from the date the dismissal takes effect.

Redundancy can be a legally acceptable reason for dismissal. But to satisfy an Employment Tribunal that a redundancy was indeed fair, the college would have to meet two criteria; firstly that it could establish that a genuine redundancy situation existed, and secondly to demonstrate that they had acted reasonably.

Experience has shown that Employment Tribunals, when assessing unfair dismissal claims, will not normally go in detail about the rights and wrongs of a declaration of redundancy (eg, by investigating how a redundancy situation arose or whether it could –or should – have been avoided by better management). In that sense, the employer does not have to go far to justify the redundancy – provided, of course, that it is a genuine redundancy and not a ‘sham’ (where the employee is being directly replaced from outside, for example). Any challenge to a redundancy is normally more realistic on the second criteria, ie, whether the employer has acted reasonably.

3.How can redundancies be avoided?

The college should endeavour to avoid compulsory redundancies wherever possible.

Measures for avoiding redundancy would normally include some or all of the following:

- natural wastage
- terminating the employment of casual staff and staff employed via agencies
- seeking volunteers for redundancy (or premature retirement, where appropriate)

- reducing or eliminating overtime working
- restricting recruitment
- considering volunteers for part-time working
- considering short-time working
- trying to make savings in other areas
- considering suggestions from unions/employees.

4.What are the main grounds for redundancy?

The most common reasons for a redundancy are:

- The college decides not to offer a certain subject or course any longer. This may arise from a strategic decision, or the withdrawal of external funding. The falling demand for construction workers as a result of a recession in that industry, for example, could lead to poor recruitment on courses and, consequently, underemployment of lecturers.
- The college reorganises its duties so that the same work can be carried out by fewer staff. For example, if two colleges merge then a number of management posts may be duplicated.
- The college is in financial difficulties and needs to reduce its salary costs. This is still a redundancy situation as the college is having to reduce its ‘requirement’ for employees, albeit unwillingly.

- A full-time post is reduced to a part-time post or is staffed by an agency lecturer. The legal position is not always clear in such cases.

There is not normally a redundancy situation if the work stays the same, but:

- the college requires someone with different personal characteristics to undertake the work (eg, it employs a new employee to 'do the same job better')
- the college employs someone from outside (eg, on a lower salary) to fill the same post, or
- the college changes the terms and conditions of the job.

5. What happens if the college asks an employee to work at another site?

If an employee is asked to work at another college site, no redundancy situation exists provided that the site is one at which s/he can be required to work under her/his contract. In most cases, college sites will be only a few miles apart.

However, if the college takes over a new site further afield, meaning that some employees are faced with an unreasonable journey not contemplated within their contracts, then this could lead to a redundancy situation.

6. What procedures must the college follow when implementing redundancy?

It is important that the college follows the correct procedure when implementing redundancies. In all cases, it must act reasonably. Guidance to employers on this central requirement was established in a case in 1982 (*Williams v Compair Maxam Ltd*).

The first stage is for the employer (ie the college) to conduct a review of staffing needs. If that review suggests that the college will have to reduce the number of staff, then the law expects employers generally to adopt 'fair industrial practice' by observing five key principles and procedures:

- 1 The employer should *warn* the staff as a whole of the possibility of redundancies at the earliest opportunity. ATL considers that this should be done either by notifying all staff in writing of the impending redundancy situation and/or by holding staff meetings.
- 2 Representatives from recognised unions should be *consulted* with a view to seeking alternatives to redundancy and to consider selection criteria. The purpose of consultation is to provide an early opportunity for all concerned to share the problem and explore the options.
- 3 *Objective criteria* should be established for the selection of staff for redundancy once redundancies are deemed to be required.
- 4 These criteria must be applied objectively so that *fair selections* are made.
- 5 Reasonable steps should be taken to find *alternative employment* for those staff selected for redundancy.

Any staff member facing potential redundancy should also be entitled (under the college's Articles of Government) to:

- a personal hearing before the decision is taken to dismiss them

- a subsequent appeal (for more information, please see paragraph 17 on page 10).

ATL would expect colleges to have redundancy procedures in place which embody (and expand on) these principles and procedures. The Advisory, Conciliation and Arbitration Service (ACAS) has published a helpful booklet entitled *Redundancy Handling*, which offers advice to employers on how best to do this.

7. Collective consultations

Historically, the rule in redundancy situations was that the employer must consult recognised unions 'at the earliest opportunity'. However, the legislation was significantly amended in 1996, and the formal consultation requirements are now as follows:

- an employer proposing to dismiss as redundant 20 or more employees at one institution within a period of 90 days or less must undertake collective consultations
- these consultations must begin 'in good time' and, in any event, at least 30 days before the first redundancy takes effect. Where the employer proposes to dismiss 100 or more employees, the consultations must begin at least 90 days beforehand
- these consultations must be held with either recognised trade union representatives or elected employee representatives. Where there are both recognised union(s) and employee representatives, the employer may choose which one of these to consult
- the process must include consultation on ways of:
 - (a) avoiding the dismissals
 - (b) reducing the number of employees to be dismissed
 - (c) mitigating the consequences of the dismissals
 and shall be undertaken with a view to reaching agreement with the representatives
- the employer must (effectively, to start the consultation process) disclose in writing to the recognised union(s)/employee representatives:
 - (a) the reasons for the proposed redundancies
 - (b) the number and descriptions of employees likely to be made redundant
 - (c) the total number of staff of these descriptions employed
 - (d) how people will be selected for redundancy (ie, the selection criteria)
 - (e) how dismissals will be carried out and the period of time involved, and
 - (f) how redundancy pay will be calculated if the intention is to pay more than the statutory minimum.

This is normally done by the employer issuing a 'Section 188 notice'.

Continuous service qualifications are not relevant to the statutory requirement of consultation. The obligation to consult applies to proposals to make any type of employee redundant – even those on temporary contracts, recently-appointed staff, employees who are not entitled to a redundancy payment (because they have

signed a 'waiver clause', for example) or staff who are not members of a trade union.

Where a college proposes to make fewer than 20 staff redundant however, there is not presently an enforceable legal obligation for the employer to consult unions formally. The Government are conducting a review of legislation on collective consultations, and rules relating to consultation with trade unions may change. In particular, a reduction of the present threshold of 20 redundancies before consultations are a statutory obligation is possible.

In the meantime, many employers are continuing their established practice of consulting with unions over any proposed redundancies (ie, even when fewer than 20 staff are affected) in the interests of good management practice. Established redundancy agreements often specify this. Certainly ATL considers that the employer should offer consultation at all stages, whether or not there is a formal statutory requirement to do so.

The consultation will normally involve discussion of three issues:

- the financial situation of the college/the need for redundancies and alternative remedies
- how staff will be selected for redundancy
- the search for alternative employment.

ATL considers that consultations should generally involve both written correspondence and face-to-face meetings.

Full consultation should take place before dismissal notices are issued.

8.Consultations with individuals

Employment Tribunal cases have emphasised the importance of employers consulting the individuals concerned, whether or not they are also consulting formally with the unions on a collective basis. As the ACAS booklet *Redundancy Handling* states:

'Case law has shown that dismissals have been found to be unfair where the union has been consulted but not the individual. It is therefore essential that individuals who are to be made redundant are consulted, whether or not they are members of the recognised trade unions'.

This consultation with individuals should give the employee the opportunity to discuss the situation with an appropriate member of management before any final decisions are made.

9.How should selection criteria be established?

The criteria for selection of individuals for redundancy are a matter for consultation (although not necessarily agreement) with the unions and/or the staff affected.

Selection of staff for redundancy must be made, and seen to be made, fairly and in accordance with stated objective criteria. It is vital that any decisions taken by the college stand the test of being scrutinised by an Employment Tribunal, should an employee decide to challenge the fairness of their selection for redundancy. The selection

criteria should be *realistic, justifiable, specific* and *measurable*. If the criteria cannot be objectively measured or supported by specific evidence, then they should not be used.

Selecting staff for redundancy is an extremely delicate task. Case law gives some guidance on this: it is important that the criteria for selection do not depend solely on the subjective opinion of the person making the selection, for example. In making the selection, the college management may use information from personnel files and appraisal interview notes. In some cases it may be appropriate to differentiate between staff by conducting interviews to determine their skills and abilities.

When making the selection, a 'points system' is often used, in which the candidates in the 'pool' for selection are given scores against each of the stated criteria. This can assist to ensure clarity and objectivity – and it is therefore recommended by ATL as a mechanism for selection.

College managers are often unaware of (or simply disregard) the breadth of expertise which lecturers in one subject may have in other areas. ATL considers that a skills audit and a curriculum audit should take place to assess the college's needs and their staff's available expertise. Sometimes staff can be used flexibly to avoid redundancies. ATL encourages its members to co-operate in these exercises: for example, if German is no longer a viable subject, a German lecturer might be able to teach another subject for which continued teaching is required.

10. What selection criteria should be used?

The law does not oblige employers to use any particular selection criteria, provided the criteria adopted are reasonable, non-discriminatory and applied objectively. An Employment Tribunal will not replace the employer's judgement with its own assessment of which criteria ought to have been applied; rather, it will assess the reasonableness of the selection(s) actually made.

Following are the selection criteria which colleges frequently consider adopting:

Curriculum need

ATL considers that curriculum need should be the main selection criterion, and that this should be applied following a skills audit of staff. (For example, there should not be a simplistic assumption that, because a college is over-provided with English lecturers, one of them should be automatically dismissed as redundant, nor that consideration of the redundancy problem should be confined to the English department alone.)

Curriculum need is the most commonly-applied criterion in selection, since it can enable the college to retain a balanced, skilled and experienced workforce.

Last in, first out

'Last in, first out' (LIFO) is an objective criterion which is easy to apply. It will rarely be appropriate as the main criterion in colleges however, where delivery of the curriculum – and the retention of staff to fulfil this – is usually the main concern.

If LIFO is to be a criterion for selection, ATL considers that it should normally be a secondary criterion only – to be applied if 'all other things are equal' on the curriculum-need and staff-skills analyses.

Qualifications and experience

The relevance of this criterion is likely to depend on the type of work for which the college has a diminishing requirement, and on the type of work being continued. If the college is continuing work for which particular qualifications are necessary or desirable, then these might become a significant criterion. In other cases, it could be argued that once employees have reached a certain level of expertise, additional qualifications provide the college with only a marginal benefit. In any event, any application of qualifications or experience as criteria should be based on an objective and factual assessment.

Flexibility

Flexibility in this sense means a willingness and/or an ability to undertake a range of duties, perhaps including some activities (such as teaching other courses or subjects)

which the employee does not currently undertake. Lack of flexibility could be a selection criterion for redundancy. An example could be where there is a reducing demand for a subject such as music, and, in selecting lecturers for redundancy, the college wishes to retain staff who can also teach other subjects if necessary. In using flexibility as a selection criterion, the college must be careful that it does not discriminate against certain members of staff. Where the necessary 'flexibility' involves unsocial hours, for example, this could discriminate against employees who have childcare commitments.

Performance

The college may be eager to retain those employees it considers most likely to 'contribute to the success' of the institution. ATL does not support the use of criteria such as 'performance' or 'productivity'. If they are to be used, they must of course be based upon clear and objective evidence; it is recommended that at least two people (both of whom should be able to assess the person fairly) are involved in any selection.

Disciplinary records

It is possible for employers to use records of misconduct, poor timekeeping or incompetence when selecting staff for redundancy. ATL opposes this, believing that issues of discipline and redundancy should be kept entirely separate. If the actions of a member of staff merit disciplining or even dismissal, then proper disciplinary procedures should simply be invoked.

If poor attendance is considered as a criterion for selection, there are dangers of indirect sex discrimination if absences related to pregnancy or maternity are taken into account. In any event, there are dangers of discrimination against people with disabilities when this criterion is used. Accordingly, ATL advises against it.

Other criteria

Other criteria for selection may include the possession of particular skills or qualifications that are legitimately required.

It is most unwise for colleges to take the simplistic step of targeting part-time staff for redundancy, for two reasons. Firstly, the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 prevents detriments being imposed on part-timers. Secondly, the selection of part-time staff first is likely to discriminate indirectly against women.

11.What efforts should be made to find alternative employment?

The college should take reasonable steps to find suitable alternative employment for staff, if it is available. For example, if a vacancy arises which the employee could fill then they should be invited to apply, even if they are on a lower grade or currently working a different number of hours. The college has a duty to safeguard an employee's existing salary only if there is a contractual obligation to do so. Even when notice of redundancy has been given, the college should also continue to monitor the availability of alternative employment until an employee's notice expires, and should keep a record of this.

Some colleges offer redundancy counselling, but this is not a legal requirement.

Employees who have been given notice of redundancy are entitled (provided they have completed at least two years' continuous employment) to 'reasonable' time-off to look for work or to arrange training. The statutory entitlement is effectively two days' paid leave – although many employers offer more than this.

Any redundant employee accepting employment under a new contract with the same employer has a statutory right to a trial period of four weeks. If either side terminates the employment during or at the end of this trial period, then the redundancy is deemed to have taken effect at the date of the original termination.

12.What about re-employment via an agency?

Some colleges are now dismissing staff and re-engaging them through an agency such as Education Lecturing Services (ELS). Where this happens, the lecturer is likely to be regarded either as an agency employee or as self-employed, and their entitlement to redundancy pay from the college should not be affected. As to whether this situation might give rise to a legitimate claim for unfair dismissal, please contact ATL for advice; each case needs to be considered on its own merits.

13. What is 'suitable' alternative employment?

Employees facing redundancy are entitled to refuse an offer of alternative employment. However, if they refuse an offer of 'suitable' alternative employment, they may forfeit redundancy pay.

Whether alternative employment is 'suitable' depends on a number of factors, including pay, status, location, duties and hours of work. If the new post is significantly different to the current post in any of these respects, the employee will normally be able to refuse the job as not being 'suitable' and retain their right to redundancy pay.

14. How long should the whole redundancy process take?

ATL considers six months a reasonable length of time for the whole redundancy process, from the initial warnings to the redundancies taking effect. Note however that staff on certain contracts (former Silver Book contracts, for example) may be entitled to an extended period of notice; this may be as long as a year.

15. What happens if the employer doesn't follow these procedures?

Any lecturer who has completed one year's continuous employment can, as a last resort, bring a claim for unfair dismissal to an Employment Tribunal. The claim should be made against the college as a corporation and not against the principal or college management. In an Employment Tribunal, employers will firstly have to establish that the dismissal was a genuine redundancy. The tribunal will then go on to assess whether the employer acted reasonably.

If the claim proves to be successful, the outcome is compensation and/or (more rarely) reinstatement or re-employment in some new capacity at the college.

16. Does the Department for Education and Skills (DfES) have to be notified?

Yes. The college has a statutory duty to notify the DfES if it proposes to dismiss 10 or more employees as redundant. This notification must be given in writing (Form HR1), and a copy of the form given to the appropriate trade union representative.

17. Can an employee appeal against a proposal to make them redundant?

Yes. Before a decision is taken to declare a member of the permanent staff redundant, an employee should first be given an opportunity to make representations in person, accompanied by a representative. They then have the right of appeal. The first hearing to make representations is normally in front of the principal but in some colleges it will be to a member of senior management. Similarly, any appeal against the principal's decision will normally be heard by a committee of the college governors. The specific procedure should be set out in the college's dismissal procedures.

18. What redundancy payment is an employee entitled to?

To qualify for a redundancy payment, employees must have been continuously employed for a minimum of two full years on a full-time or part-time basis. Statutory redundancy payments are based on three factors:

- age at the date of departure
- length of continuous service (counted in complete years)
- final gross 'weekly pay' (calculated as at the date when the statutory minimum notice was due to have been given).

The payment is due whether the redundancy is compulsory or voluntary, provided that a formal dismissal takes place.

The Government sets a statutory maximum for the calculation of 'a week's pay'. (The current maximum is £250.) Employees (mostly part-timers) whose gross weekly pay is less than this will receive a statutory redundancy payment based on multiples of their actual weekly salary. Those who earn more than £250 per week will have the statutory figure for a week's pay applied to them, unless the college exercises its discretion to calculate redundancy payments based on the actual salary; many do.

19. How is the statutory redundancy payment calculated?

Ages 18—21

For each complete year of service, 0.5 of a week's pay.

Ages 22—40

For each complete year of service one week's pay.

Ages 41—65

For each complete year of service, 1.5 weeks' pay.

No more than 20 years' service can be used in this calculation, which means that the maximum statutory redundancy payment is currently $(20 \times 1.5 \times £250) = £7,500$.

Example: A lecturer is being made redundant from a college where he has taught for 15 full years. He is 47 and his gross weekly pay is £300. His entitlement to statutory redundancy pay is therefore $(15 \times \text{a week's pay}) = £4,500$ (applying the current statutory limit on a week's pay of £250).

Calculation of redundancy payments

The table overleaf may help to calculate the multiples of a week's pay to be used.

SERVICE (YEARS)	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
AGE 20	1	1	1	1															
21	1	1.5	1.5	1.5	1.5														
22	1	1.5	2	2	2	2													
23	1.5	2	2.5	3	3	3	3												
24	2	2.5	3	3.5	4	4	4	4											
25	2	3	3.5	4	4.5	5	5	5	5										
26	2	3	4	4.5	5	5.5	6	6	6	6									
27	2	3	4	5	5.5	6	6.5	7	7	7	7								
28	2	3	4	5	6	6.5	7	7.5	8	8	8	8							
29	2	3	4	5	6	7	7.5	8	8.5	9	9	9	9						
30	2	3	4	5	6	7	8	8.5	9	9.5	10	10	10	10					
31	2	3	4	5	6	7	8	9	9.5	10	10.5	11	11	11	11				
32	2	3	4	5	6	7	8	9	10	10.5	11	11.5	12	12	12	12			
33	2	3	4	5	6	7	8	9	10	11	11.5	12	12.5	13	13	13	13		
34	2	3	4	5	6	7	8	9	10	11	12	12.5	13	13.5	14	14	14	14	14
35	2	3	4	5	6	7	8	9	10	11	12	13	13.5	14	14.5	15	15	15	15
36	2	3	4	5	6	7	8	9	10	11	12	13	14	14.5	15	15.5	16	16	16
37	2	3	4	5	6	7	8	9	10	11	12	13	14	15	15.5	16	16.5	17	17
38	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	16.5	17	17.5	18
39	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	17.5	18	18.5
40	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18.5	19
41	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	19.5
42	2.5	3.5	4.5	5.5	6.5	7.5	8.5	9.5	10.5	11.5	12.5	13.5	14.5	15.5	16.5	17.5	18.5	19.5	20.5
43	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
44	3	4.5	5.5	6.5	7.5	8.5	9.5	10.5	11.5	12.5	13.5	14.5	15.5	16.5	17.5	18.5	19.5	20.5	21.5
45	3	4.5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
46	3	4.5	6	7.5	8.5	9.5	10.5	11.5	12.5	13.5	14.5	15.5	16.5	17.5	18.5	19.5	20.5	21.5	22.5
47	3	4.5	6	7.5	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
48	3	4.5	6	7.5	9	10.5	11.5	12.5	13.5	14.5	15.5	16.5	17.5	18.5	19.5	20.5	21.5	22.5	23.5
49	3	4.5	6	7.5	9	10.5	12	13	14	15	16	17	18	19	20	21	22	23	24
50	3	4.5	6	7.5	9	10.5	12	13.5	14.5	15.5	16.5	17.5	18.5	19.5	20.5	21.5	22.5	23.5	24.5
51	3	4.5	6	7.5	9	10.5	12	13.5	15	16	17	18	19	20	21	22	23	24	25
52	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	17.5	18.5	19.5	20.5	21.5	22.5	23.5	24.5	25.5
53	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19	20	21	22	23	24	25	26
54	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	20.5	21.5	22.5	23.5	24.5	25.5	26.5
55	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	21	22	23	24	25	26	27
56	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	21	22.5	23.5	24.5	25.5	26.5	27.5
57	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	21	22.5	24	25	26	27	28
58	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	21	22.5	24	25.5	26.5	27.5	28.5
59	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	21	22.5	24	25.5	27	28	29
60	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	21	22.5	24	25.5	27	28.5	29.5
61	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	21	22.5	24	25.5	27	28.5	30
62	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	21	22.5	24	25.5	27	28.5	30
63	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	21	22.5	24	25.5	27	28.5	30
64	3	4.5	6	7.5	9	10.5	12	13.5	15	16.5	18	19.5	21	22.5	24	25.5	27	28.5	30

20. Are part-time staff entitled to redundancy pay?

Yes. All part-time staff employed by a college are entitled to redundancy payments on the same terms and conditions as their full-time colleagues. The historical requirements for part-timers to work a certain number of hours or to have been employed for longer than the standard two years in order to qualify for employment protection rights have been removed.

Some lecturers work on a self-employed basis. (This applies to some working for agencies such as Education Lecturing Services (ELS)). Self-employed lecturers are not entitled to redundancy pay.

21. Are staff on fixed-term contracts entitled to redundancy pay?

Staff employed on fixed-term contracts qualify for redundancy payments once they have been employed continuously for two years. Whether the non-renewal of a fixed-term contract entitles the employee to claim a redundancy payment depends upon the particular circumstances of each case. If, for example, the college's overall requirements for staff have diminished, this is likely to give rise to a redundancy payment. If, on the other hand, an employee on a fixed-term contract has been fulfilling a specific temporary task (such as 'covering' for an existing member of staff absent on secondment or maternity leave), then the

non-renewal of the contract arising from that colleague's return will not normally lead to an entitlement to redundancy pay.

Staff on fixed-term contracts of two years or more who have signed a 'waiver clause' voluntarily giving up their right to a redundancy payment will not receive one if their contract is not renewed. The capacity for employers to insert these waiver clauses into future fixed-term contracts is likely to be removed when new Regulations providing some protections for fixed-term staff are implemented in summer 2002.

22. What happens to employees who have worked in more than one educational institution or in another field altogether?

When employees change jobs and move to another college (or school), their employment – for redundancy payment purposes only – is normally regarded as continuous, provided there is no break between the employments. This applies to maintained FE colleges, universities and colleges funded by the Higher Education Funding Council (HEFC), LEA schools, and other work places on a statutory list*. It does not apply to schools and colleges in the independent sector.

23. Are there circumstances in which an employee would not be entitled to redundancy pay?

Yes. Most significantly, an employee is not entitled to redundancy pay if s/he is declared redundant but – before the contract ends – agrees to move straight on to work for the same employer (or for any employer on a statutory list*). In this case they are not

entitled to a redundancy payment, since the previous service will be carried forward into the new employment for redundancy purposes. 'Moving straight on to work for the same employer' should be taken to mean that the employee starts the new job less than four clear weeks plus one day after the date their previous employment ended.

A employee will lose redundancy pay only if the offer of the new employment was made, either orally or in writing, before the previous (redundant) post ended. They will retain their entitlement to redundancy pay if:

- they leave a maintained college post and take up employment in an independent school/college (or vice versa)
- the new post with another listed* public sector employer begins after a gap of more than four clear weeks plus one day or
- the new post starts within the four-week period but is offered only after the termination of the previous job.

This means that a lecturer can (for example) take on casual supply work without affecting their redundancy pay, provided this is offered at the start of the new term (ie, after the previous contract has ended). But a lecturer must not accept any specific offer of employment before leaving the permanent post, or s/he will lose her/his entitlement to a redundancy payment.

*This list of connected employers includes most employers in the public sector and in particular all maintained schools and colleges, and all 'new' universities funded through the Higher Education Funding Council (HEFC).

There are some other categories of staff for whom the entitlement to a redundancy payment may be lost or abated. These include:

- Staff aged between 64 and 65 years (for more information, please see paragraph 25)
- Employees over normal retirement age
- Staff on fixed-term contracts who have signed a waiver clause (for more information, please see paragraph 21).

24. Will the redundancy payment be taxed?

Redundancy payments are not normally liable for tax unless they form part of a termination package which exceeds £30,000. In these cases only the amount above £30,000 will normally be taxed.

25. Does age affect redundancy payments?

Employees over retirement age (generally 65 years) are not entitled to a redundancy payment. Employees aged between 64 and 65 years are entitled to the statutory redundancy payment, but this is reduced by one-twelfth for every complete month by which the employee's age exceeds 64 years at the date of departure.

26. What happens if an employee leaves the college before the formal date on which redundancy becomes effective?

If employees leave the college before their redundancy becomes effective, they may not be entitled to redundancy pay, as their departure may be treated as a resignation. However, if they leave early by agreement with the employer, they may retain the right to redundancy pay.

27. How do staff claim their redundancy payments?

In most cases, a lecturer who is made redundant will automatically receive the appropriate payment from their employer. If however there is any dispute, a claim for the redundancy payment should be made in writing to the employer within six months of departure. Failure to observe this deadline could lead to the claim being judged out of time. (Note that this time limit is longer than the three month deadline for any claim for unfair dismissal.)

Members seeking further advice on any of the issues raised in this booklet should contact their branch secretary or ATL.

28. Are staff who are made redundant eligible for premature retirement?

Lecturers who are 50 years or over when their redundancy takes effect are eligible for premature retirement. However, this does not mean that they are entitled to claim premature retirement. When they reach the age of 60 they are entitled to receive their pension, but for those between the ages of 50 and 60, premature retirement (with or without enhancement) is a discretionary matter for employers to decide, rather than an automatic right.

New pension Regulations introduced with effect from 1 September 1997 provide that, when a lecturer in England and Wales is granted premature retirement before the age of 60 (whether on grounds of redundancy or 'efficient exercise'), the employer must pay a proportion of their pension for life. The proportion to be met by employers tapers from 42% per cent for

those retiring at the age of 50 to 6% for those retiring at the age of 59. Needless to say, this is a significant disincentive to colleges to offer premature retirement. No such changes to the pension Regulations have been implemented in Northern Ireland.

ATL's experience is that, in view of the cost to employers, the granting of premature retirement has become much less common – particularly for lecturers in their early fifties. However, colleges may, as an alternative, use their discretion to offer severance payments.

For more information, please see also ATL's pension factsheets '*Premature Retirement Compensation*' and '*Early retirement and the state pension*'.

29. What about the new severance arrangements?

Regulations passed in 1997 now enable employers to award severance payments to lecturers who leave service under the age of 50, or to those aged between 50 and 60 years, as an alternative to premature retirement. These payments are not available to lecturers who have reached the age of 60 years (and so are automatically entitled to take their retirement benefits), or to those who have been re-employed after taking premature retirement.

Severance payments can be awarded to any lecturer leaving service either on grounds of redundancy or on grounds of the 'efficient discharge of their employer's functions'. These may be paid in addition to a redundancy payment or they may replace a redundancy payment (where the employer

offers the lecturer the choice of taking either redundancy or voluntary severance, for example). There is therefore no need for a redundancy situation – a severance payment can be a 'golden handshake'. It should, however, be noted that severance payments and premature retirement are mutually exclusive. In any event, like the granting of premature retirement, the award of severance payments is discretionary – it is not a matter of entitlement.

The Regulations set out maxima for these payments: up to two weeks' (gross) pay for each full year of service before the age of 41, and up to five weeks' (gross) pay for each full year over the age of 41. There is an overall maximum of 66 weeks' pay.

Note: Educational institutions in Northern Ireland are not covered by these Regulations and so do not have discretion to make these severance payments.

Maximum severance payments (in multiples of weekly pay)

The table below sets out the maximum potential severance payments according to age and full years of service.

SERVICE (YEARS)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31		
AGE 22	2	4	6	8																													
23	2	4	6	8	10																												
24	2	4	6	8	10	12																											
25	2	4	6	8	10	12	14																										
26	2	4	6	8	10	12	14	16																									
27	2	4	6	8	10	12	14	16	18																								
28	2	4	6	8	10	12	14	16	18	20																							
29	2	4	6	8	10	12	14	16	18	20	22																						
30	2	4	6	8	10	12	14	16	18	20	22	24																					
31	2	4	6	8	10	12	14	16	18	20	22	24	26																				
32	2	4	6	8	10	12	14	16	18	20	22	24	26	28																			
33	2	4	6	8	10	12	14	16	18	20	22	24	26	28	30																		
34	2	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32																	
35	2	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32	34																
36	2	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32	34	36															
37	2	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32	34	36	38														
38	2	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32	34	36	38	40													
39	2	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32	34	36	38	40	42												
40	2	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32	34	36	38	40	42	44											
41	2	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32	34	36	38	40	42	44	46										
42	5	7	9	11	13	15	17	19	21	23	25	27	29	31	33	35	37	39	41	43	45	47	49	51									
43	5	10	12	14	16	18	20	22	24	26	28	30	32	34	36	38	40	42	44	46	48	50	52	54	56								
44	5	10	15	17	19	21	23	25	27	29	31	33	35	37	39	41	43	45	47	49	51	53	55	57	59	61							
45	5	10	15	20	22	24	26	28	30	32	34	36	38	40	42	44	46	48	50	52	54	56	58	60	62	64	66						
46	5	10	15	20	25	27	29	31	33	35	37	39	41	43	45	47	49	51	53	55	57	59	61	63	65	66	66	66					
47	5	10	15	20	25	30	32	34	36	38	40	42	44	46	48	50	52	54	56	58	60	62	64	66	66	66	66	66	66				
48	5	10	15	20	25	35	35	37	39	41	43	45	47	49	51	53	55	57	59	61	63	65	66	66	66	66	66	66	66	66	66	66	
49	5	10	15	20	25	30	35	40	42	44	46	48	50	52	54	56	58	60	62	64	66	66	66	66	66	66	66	66	66	66	66	66	
50	5	10	15	20	25	30	35	40	45	47	49	51	53	55	57	59	61	63	65	66	66	66	66	66	66	66	66	66	66	66	66	66	
51	5	10	15	20	25	30	35	40	45	50	52	54	56	58	60	62	64	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	
52	5	10	15	20	25	30	35	40	45	50	55	57	59	61	63	65	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	
53	5	10	15	20	25	30	35	40	45	50	55	60	62	64	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	
54	5	10	15	20	25	30	35	40	45	50	55	60	65	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	
55	5	10	15	20	25	30	35	40	45	50	55	60	65	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	
56	5	10	15	20	25	30	35	40	45	50	55	60	65	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	
57	5	10	15	20	25	30	35	40	45	50	55	60	65	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	
58	5	10	15	20	25	30	35	40	45	50	55	60	65	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	
59	5	10	15	20	25	30	35	40	45	50	55	60	65	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	

**MAXIMUM
66 WEEKS' PAY**

30.If a lecturer gets another job after taking redundancy, will his/her pension be affected?

The regulations governing this area are complex. For more details, please contact ATL or request ATL's 'Understanding the Teachers' Pension Scheme'* series of pensions factsheets, especially factsheet 7, 'Re-employment after retirement'.


*Note that the Teachers' Superannuation Scheme changed its name to the Teachers' Pension Scheme (TPS) in early 1998.

ATL 2002 ●●●●●

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ISBN 1-902466-12-8



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