



# *Facing redundancy – what are my legal rights?*

YOUNG MEMBERS COMMUNITY (8 OCTOBER 2020)

FACILITATOR:

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# *Support for ICAEW members & ACA students*

MARY JANE GUNN, SUPPORT MANAGER, CABA

# Redundancy & Legal Rights

8 October 2020

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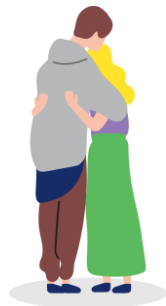
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I see the CABA courses I did as an investment in myself and an enjoyable day out of the office where I can think creatively and strategically in new ways.

**John**



CABA were hugely helpful in my return to work and supportive in more ways than I could have imagined.

**Tim**



I'm so grateful for all of the support that CABA has given. I would recommend them to anyone for career or personal support.

**Freya**





# *Redundancy & Covid-19 – your legal rights*

**AMIR MOHAMMED, OPERATIONS MANAGER, LAW EXPRESS**



## Redundancies: The Impact of Coronavirus

October  
2020

## Overview

- Redundancy and the impact of Coronavirus
- Understanding the process of redundancy
- Alternatives to Redundancy – Schemes, Lay offs & Short Time Working

## Redundancy Due to Coronavirus crisis?

The coronavirus pandemic has impacted on businesses forcing some employers to make changes and as part of those changes they may make employees redundant.

For a redundancy to be lawful there must be a “**redundancy situation**”, such as a business or workplace closure causing the work to cease entirely or a diminished requirement for employees doing work of a particular kind.



## Redundancy Procedures in the CV Crisis

- The impact due to the speed of changes following the crisis has meant that employers are having to “fast track” certain decisions.
- This is imposing difficulties in **complying with redundancy procedures**.
- If employers fail to follow certain procedures they can risk **unfairly dismissing employees**.



## Redundancy Procedures in the CV Crisis

- Explore the process adopted by your employer
- Is it a genuine redundancy situation?
- Have your employers followed a **fair redundancy process**
- Have they used a **fair selection criteria**?
- Whether your employers have considered appropriate **suitable alternative roles** before making you redundant.

## Consultation during Redundancy

There are no rules about how employers should carry out the consultation if there are less than 20 employees.

Compulsory consultation is only if 20 or more positions will be made redundant.

20 to 99 redundancies = 30 day consultation

100 or more redundancies = 45 day consultation



## Suitable alternative employment

Whether a job is suitable will depend on the following:

- how **similar work** the is to your current employment
- the **terms of the job** being offered
- your **skills, abilities and circumstances** in relation to the job
- the **pay** (including benefits), **status, hours and location**

**Note:** if you refuse a position that is a suitable alternative role you could lose your right to statutory redundancy



## What redundancy payments am I entitled to?

- Provided you have the requisite 2 years of service. You will be entitled to your contractual or statutory notice pay (whichever is the greater). You will get paid your annual leave that has been accrued to date.
- You will also be entitled to receive redundancy pay which is calculated based on your gross weekly salary (capped at £538), your age and your length of service are also taken into consideration.
- Some companies may offer a more generous package.



## Alternatives to redundancy?

Redundancy procedures are time consuming and decisions permanent. If employees have been made redundant then they usually cannot be rehired when the situation has improved.

Therefore, there should be some considerations to alternatives to redundancy which might be more suitable if addressing a “temporary setback”.



## Job Retention Scheme

- The coronavirus job retention scheme was established in March to allow employees to furlough staff as an alternative to redundancy.
- It has since been extended to the end of October, but has been winding down since the start of August.
- The Job Support Scheme will then run for six months from 1<sup>st</sup> of November 2020.

## Laying off staff due to Coronavirus

Without terminating the employment, an employer provides **no work and no pay** to their employees for a period of time.

It is an interim solution, it can assist with avoiding the need for redundancies where a business closes temporarily.

There will need to be a lay off clause in the employees contract to enable the employers to take such measures.



## Short time working due to Coronavirus

Providing employees with **less work and pay** for a period while still retaining them as employees. It is a **temporary solution** which may be an alternative to redundancy when businesses face unexpected challenges.

Similar there will have to be clauses in the contract to enable the employer to impose this.



## I'm Last in, so first out?

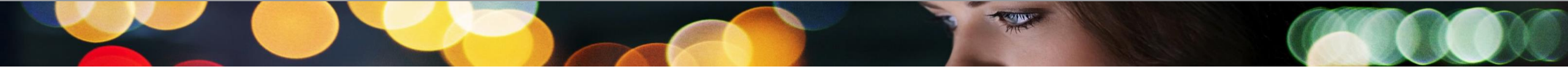
**Reality:** Length of employment was one of the most common ways of considering who to make redundant.

However, now it may not be considered fair or safe for employers to use this as a sole selection criteria, especially so, if it is deemed discriminatory e. g.... due to age?



## Can I volunteer to be made redundant?

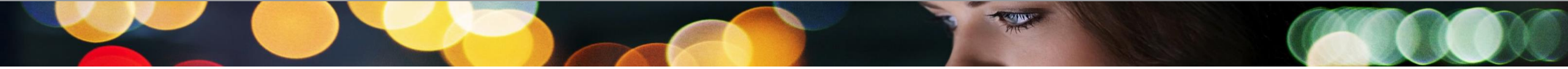
Your employers may ask for volunteers for redundancy. If this is the case then you can volunteer. However, it is up to your employer whether they actually select you for redundancy or not. Therefore, it does not guarantee that you will be made redundant.



## Can I refuse alternative employment that my employer has offered?

If the post is deemed suitable alternative then you may lose your right to statutory redundancy pay if you unreasonably turn down the offer. If the position offered is not a suitable alternative post then if not agreed then you may still be eligible for redundancy.





## What is bumped redundancy?

In considering suitable alternative employment, you employer may look at roles that are not vacant. Where the alternative role is not vacant, it is referred to as "bumping".

A bumped redundancy then occurs when an employee whose role is not at risk of redundancy is dismissed as redundant and the resulting vacancy is filled by an employee whose role is redundant.



## Redundancy during maternity, paternity, adoption or shared parental leave?

If you are placed at risk of redundancy and are currently on maternity, paternity, adoption or shared parental leave, there is special protection.

Such employees will have an automatic right to be offered any suitable and appropriate vacancy (where one is available) before it is offered to any other employee.

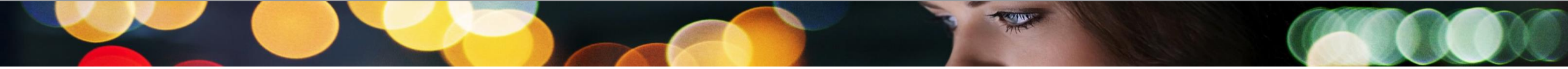


## What if my employers have not followed a fair process?

You may have a claim for unfair dismissal, if the process has not been fairly adopted or its not a genuine redundancy.

In order to claim unfair dismissal, you must have worked for your employer for at least two years.

If you don't have two years' service, then you won't be able to claim unfair dismissal, even if your employer did not follow the process correctly.



## I will be made redundant and I will take my clients with me

You must first check the terms of your contract of employment. Employers reserve post-termination covenants that can prevent you doing so.

Such restrictions can last for several months after the employment has ended as well.

## What if my employers have discriminated against me during the redundancy process?

If you feel you were selected unfairly for redundancy because you are female, pregnant, on parental leave or because of another protected characteristic such as race, religion or belief, sexual orientation, gender reassignment, marital status, age or disability then you may have a claim that you were unfairly dismissed due to discrimination.

# *Questions?*

## **Q&A PANEL**

- Mary Jane Gunn, Support Manager, CABA
- Amir Mohammed, Operations Manager, Law Express

# *Thank you*

Please visit **icaew.com** for more information and support, including:

- Coronavirus Hub & Redundancy Hub
- **CABA & Law Express** (supporting our members, students and their families):
  - Legal advice helpline
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