



VGHH/3/LS

Commissioner's File: CU/214/1985

C A O File: AO 4512/UB/85

Region: London North

**SOCIAL SECURITY ACTS 1975 TO 1985
CLAIM FOR UNEMPLOYMENT BENEFIT
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

[ORAL HEARING]

Decision

1. This adjudication officer's appeal fails. My decision is that payment of unemployment benefit from 1 November 1984 to 30 April 1985 (both dates included) is not precluded by regulation 7(1)(d) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 [SI 1983 No. 1598] ("the 1983 Regulations").

Representation

2. I held an oral hearing of this adjudication officer's appeal and, at the same time, of a claimant's appeal in another case, the reference to which on Commissioner's file is CU/105/85. Neither claimant attended the hearing. In both appeals, the claimant was represented by Mr. A.J. Hows, Solicitor, of Lawford & Co, Solicitors and the adjudication officer was also represented.

Nature of the appeal

3. Both appeals relate to men employed by the Manpower Services Commission whose employment was terminated through compulsory redundancy. The question at issue, in each case, is whether the redundancy terms included a payment in lieu of notice or of remuneration in respect of days for which unemployment benefit has been claimed. Unemployment benefit is not payable for any day to which such a payment relates: see regulation 7(1)(d) of the 1983 Regulations.

The relevant law

4. Regulation 7(1)(d) of the 1983 Regulations provides:-

"7.-(1) For the purposes of unemployment, sickness and invalidity benefit -

.....

(d) a day shall not be treated as a day of unemployment if it is a day in respect of which a person receives a payment (whether or not a payment made in pursuance of a legally enforceable obligation) in lieu either of notice or of the remuneration which he would have received for that day had his employment not been terminated, so however

that this sub-paragraph shall not apply to any day which does not fall within the period of one year from the date on which the employment of that person terminated;

....."

The claim: background and initial evidence

5. The claimant was born on 23 October 1920. From 23 October 1972 to 31 October 1984, the claimant was employed as a tutor for the Manpower Services Commission Instructor Training College at Letchworth. On 31 October 1984 his employment was terminated, along with that of all other persons in his age group with more than 10 years service, through redundancy. Those with less than 10 years service in that age group (including the appellant in the second appeal) had their employment terminated through redundancy on 31 July 1984. I was told at the oral hearing that there are some 200 outstanding appeals relating to persons made redundant in this way who fall within this particular age group.

6. The claimant attended an unemployment benefit office and claimed unemployment benefit from 1 November 1984 by completing Form UB 461. An executive officer of the claimant's employer completed Form UB85 on 9 November 1984. In this form it is stated that the claimant was employed from 23 October 1972 to 31 October 1984 and that payments were made in respect of the termination of his employment namely

"A sum equivalent to the salary he would have received had he remained in post until 30.4.85.

A pension £1450.60.

A lump sum £1884.44"

In answer to the question "How much notice was the claimant entitled to?" in the space for reply which contains the following:

".....weeks, ormonths"

a dash was inserted before the word "weeks" and the following is written below:

NB Please see Circ Min 97/84"

In answer to the question "Was notice given and, if so, when?" the reply was "Yes". See para 11 attached MSC Memo 510/65".

7. A copy of Memo 510/65 was before the adjudication officer. It is dated May 1984 and was issued by the Manpower Services Commission. The heading states that the Memo has been "agreed with the CSU and should be brought to the IMMEDIATE attention of all Instructional Officer staff, including those absent for any reason". Paragraphs 1 to 5 and 11 and 12, inclusive, are set out in the First Appendix to this decision. No copy of Circ Min 97/1984 is in the case papers and it was not produced at the oral hearing.

(2) The adjudication officer's decision

8. By a decision issued on 14 November 1984 an adjudication officer decided:-

"Unemployment benefit is not payable from 1 November 1984 to 13 November 1984 (both dates included) because it is a period for which the claimant receives a payment (whether or not a payment made in pursuance of a legally enforceable obligation) in lieu either of notice or of the remuneration he would have received for that period had his employment not been terminated. (Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations reg 7(1)(d)).

If any further claim for unemployment benefit is made in respect of a day falling in the period 14 November 1984 to 30 April 1985 (both dates included) and on that day the grounds of this decision have not ceased to exist, this decision is to be treated as a disallowance of that claim. (Social Security (Claims and Payments) Regulations reg 12(5))."

(3) The social security appeal tribunal's decision

9. The claimant appealed against this decision to a social security appeal tribunal. Before them, further evidence was produced. First, there was in evidence extracts from the Department of Employment's Staff Rules and Conditions of Service. March 1974 Edition. Paragraphs 37 and 38 of this document contain provisions as to termination of appointments. These paragraphs are set out in Part 1 of the Second Appendix to this decision. Secondly, the tribunal had before it a letter dated 9 July 1984 giving the claimant notice that he would be retired on redundancy grounds on 31 October 1984, unless he wished to retire earlier. Copies of this notice, and of the claimant's formal acceptance of retirement on that date, which was also before the tribunal, are set out in Parts 2 and 3 respectively of the Second Appendix to this decision. Thirdly, documents were before the tribunal showing that the claimant had been awarded the following: a revised pension of £1450.60 and an extra lump sum of £1884.44 in accordance with the provisions of the Principal Civil Service Pension Scheme; the sum of £647.31 was payable "under the redundancy act rules"; and a sum, described in the accompanying pay slip sent to the claimant as a "Redundancy Payment" of £4284.20. A letter from the Manpower Services Commission, which was included in the bundle before the tribunal explains the "Redundancy Payment" in the following way

"[the claimant] was entitled to a sum equivalent to the salary he would have received had he remained in employment from 1 November 1984 to 30 April 1985, a period of six months. Because a pension under the Principal Civil Service Pension Scheme was payable immediately on retirement, the sum equivalent to the salary mentioned above was subject to abatement by the amount of pension payable from 1 November 1984 to 30 April 1985."

The sum shown on the pay statement was made up as follows:

"6 months salary at the annual rate of £10,019	£5009.50
Less 6 months pension at the annual rate of £1450.60	<u>£ 725.30</u>
TOTAL	£4284.20"

10. Before the tribunal Mr. Hows submitted, according to the chairman's note of evidence:

- "(1) [The claimant] entitled to remain in employment 23.10.84.
- (2) Payments were not payments in lieu of notice since as [sic] he was given over 7 weeks notice by letter of 9.7.84.
- (3) Officers in this category were losing some part of pension right, shown by the fact that the officers with less service were paid more to compensate for their lower pension".

11. By their decision of 18 April 1985 the tribunal unanimously allowed the claimant's appeal. Their recorded findings of material facts were:

- "(1) The payment made to [the claimant] was a Redundancy payment,

- (2) No part of the payment represented a payment in lieu of notice".

Their recorded reasons for decision were:

"Applying the principles laid down in the decision of Stratton:

- (1) Since [the claimant] had been given notice on 9.7.84 (per document 3) and had continued employment until 31.10.84, no part of the payment could be attributed to notice.
- (2) Since this was a Redundancy payment, and since there had been an abatement of [the claimant's] pension payment during the relevant time, it was not a case of payment for what he would have received but solely for past services and to compensate, as in the Stratton case, for the loss of employment".

[Note: Document 3 is set out in Part 2 of the Second Appendix]

12. The adjudication officer now appeals, with my leave, against this decision.

Additional evidence

13. In preparing for the appeal enquiry was made by the adjudication officer, enclosing an earlier document (probably the replies to Form UB85) "completed by yourselves in which it is not clear what [the claimant's] notice entitlement was." The enquiry continues:

"He [the claimant] has provided an extract from the DE staff rules and conditions of service (copy also attached) which suggests that the appointment of monthly paid staff with more than ten years service is "normally" terminable by nine weeks notice and by seven weeks notice in the case of weekly paid staff. The situation here was clearly not "normal" and we understand, from other cases involving MSC employees made redundant in the same circumstances, that the MSC premature retirement scheme adhered to the normal Civil Service redundancy terms of twenty six, thirty nine and fifty two weeks notice depending on length of service. (The nine months notice applying to officers over sixty with between ten and twenty five years service such as [the claimant]."

The Manpower Services Commission replied to this enquiry that:

"[the claimant]" was retired on redundancy terms on 31st October 1984 in accordance with the MSC Memo 510/65 para 3b...As an established officer over age 60 with between ten and twenty five years service he was entitled to nine months' notice under the terms of the Model Redundancy Agreement as detailed in the Establishment Officers Guide Part IV...please see para 9032 which refers to periods of notice".

14. The Establishment Officer's Guide Part IV as revised and issued on 10 February 1984 by the Cabinet Office (MPO) provides, under paragraph 9032, in the case of redundancy the minimum period of notice is

"established staff over 60 with under ten years' service should have 12 months' formal notice, and established staff over 60 with between ten and 25 years' service should have nine months' notice (though this extended notice should not run beyond the 65th birthday)"

Attached to the Guide there is a Model Redundancy Agreement which provides for the Order of Discharge.

15. The claimant has commented in writing on the above mentioned documents. He says (and I accept) that he never saw the Establishment Officers Guide. All his documentation referred to retirement and redundancy. Even the main payment slip was referred to as a redundancy payment. He had had ample notice that he was going to be finished in October.

16. Lastly, the claimant's advisers have produced the actual calculation the product of which was the £647.31 paid to the claimant: see paragraph 9 above. That document described it as a "Payment to be made by analogy with the Redundancy Payments Act" and is headed "Principal Civil Service Pension Scheme". They have also produced "Paragraphs 10400 to 10667 (sic) of the Retirement Policy". Paragraphs 10400 to 10402, inclusive, of this Code, which are part of an Issue dated July 1976, are set out in the Third Appendix.

The arguments on appeal

17. The adjudication officer's representative submitted that the payment of £4284.20 was a payment in lieu of notice. The letter of 9 July 1984 constituted formal notice of termination of the claimant's employment on 31 October 1984. The departmental memorandum circulated in May was general and did not give formal notice of termination but merely advance warning. The claimant was born on 23 October 1920 and attained 64 on 23 October 1984, just before his employment finished. He had 12 years' reckonable service. The first part of the fifth paragraph of the letter dated 9 July 1984 did not apply because it was not necessary to terminate his employment before 31 October 1984. The notice of 9 July 1984 pointed out that if the claimant wished to retire before 31 October 1984 he could do so but he would not be entitled to payment for the unexpired part of the notice. The claimant's entitlement was to 9 months' notice: see paragraph 9032 of the Establishment Officer's Guide. That provision was an odd way round; for the longer one had been employed the shorter the notice.

18. It was not contested on behalf of the adjudication officer that either the £647.31 payable by analogy with the Redundancy Payments Act or the pension payments were caught by regulation 7(1)(d). No reliance was placed by him on numbered decision CU 12/73 where, at paragraphs 8 and 10, the Commissioner treated an accelerated pension as a payment in lieu of remuneration. When a civil servant retires he receives retirement pension and a lump sum. That sum does not preclude one from getting unemployment benefit for ever - or even for 12 months - unless one is caught by the statutory occupational pension provisions. A civil servant retiring before the age of 60 under a voluntary scheme has title to unemployment benefit the day after he retires and regulation 7(1)(d) is not applied in regard to him. The adjudication officer did not wish to rely on the pension element. It was the payment of the £4284.20 that he relied on.

19. The claimant had deleted the paragraph providing for his retirement earlier than 31 October 1984 under which he would have agreed to forego his pay for the balance of the actual notice period i.e. the balance of the period up to 31 October 1984. The payment of £4284.20 was for the period 1 November 1984 to 30 April 1985. There was no apparent link between the amount of the payment and the length of service of the claimant. It was not a payment for the loss of a capital asset.

20. Mr. Hows, on behalf of the claimant, distinguished decision R(U) 3/83, where it was said that where there was a notice period the payment could nevertheless be a payment in lieu of remuneration and that decision R(U) 7/73 went too far in stating that there could not be such a payment. Decision R(U) 3/83 referred to a clear statutory period which was not applicable in the present case.

21. Reliance was placed by him on Stratton's case [1979] Q.B. 361. (The Court of Appeal's judgment is conveniently set out in the Appendix of decision R(U) 1/79.) The payment of £4284.20 was a redundancy payment. The claimant was entitled to 9 months notice. He

received 13 weeks. In the second appeal, the claimant was entitled to 12 months notice and he received 8 weeks. Alternatively, the whole scheme of the Model Redundancy Agreement was a redundancy payments scheme and the provisions for 9 months and 1 year's notice at paragraph 9032 were not notice at all. What had happened in the present case was, however, not in accordance with the model redundancy agreement. All persons over the age of 64 years on a certain date were to go regardless of their years of service. The Department argued, he said, that the code requires notice in the case of redundancy of 9 months as regards the claimant, that redundancies were carried out in terms of the code, therefore the claimant was entitled to 9 month's notice, therefore payment to him was money in lieu of notice. For the claimant, it was said that the redundancies were not carried out strictly in accordance with the code. The arrangements set out in the Memo and agreed with the union negated the original redundancy provision. It was agreed that employees should be given notice by a certain date. The claimant was given slightly more notice than he could normally have expected to receive namely 14 and a bit weeks which equates quite closely to the 13 weeks entitlement of notice under normal circumstances. The code at paragraph 10401 recognises terms and conditions may be changed at any time. The agreement reached with the union superseded normal arrangements and provided for periods of notice and payment calculated by reference to an appropriate period, in the claimant's case 6 months salary. This was quite clearly a redundancy payment. There was a right to notice under the old document but not under the new. The periods to which reference is made in calculating payments vary according to past service: see the Memo. If an employee had served for less than 10 years the calculation was referable to a different period to that where the service was over 10 years. So also with pension rights. 3 months' more money were received by the one than by the other, for which the first person was not working. In one case 6 months' moneys and in the other 9 months' moneys were received. The payments made under paragraphs 3a and b of the Memo were tax free; whereas the claimant dismissed later, and with longer service, had to pay tax as he worked. The longer one carries on working the more the pension builds up. Persons with less than 10 years service have smaller pension rights than those with more because the amount of pension payable is directly referable to the amount of back service. In addition to the fact that the periods to which reference is made in calculating the amount of the payment under 3a or 3b of the Memo vary according to past service the base point for the calculation also depends on the amount of past service. Accrued pension entitlement is calculated as at the date when one leaves employment.

22. In Mr. Hows' submission the amount of remuneration referred to in paragraphs 3a and b of the Memo was unrelated to what one would expect in respect of notice, which would be in proportion to the length of service not in inverse proportion. All redundancy schemes had an element of the future about them and in order to identify if the scheme was a redundancy scheme one must look to see if the payment was consistent with a payment in lieu of notice. Two things made the payment inconsistent here, first quantum which was inverse to the length of service and secondly because it was referable to different pension entitlements themselves referable to back service. Reliance was placed on the remarks of the Commissioner in decision R(U) 4/80 and of Lord Justice Templeman in Stratton's case as to the distinction between a redundancy payment and a payment in lieu of notice.

Conclusion

23. It is not in dispute in this appeal that neither the lump sum of £1884.44 received under the Principal Civil Service Scheme, nor the pension of £1450.60 a year nor the £647.31 calculated and paid to the claimant by analogy with the Redundancy Payments Act attract the operation of regulation 7(1)(d) of the 1983 Regulations. The only payment in issue in this appeal is the sum of £4284.20 received by the claimant. The question that I must ask myself is whether, in respect of any of the days in issue in this appeal (1 November 1984 to 30 April 1985), that payment was in terms of regulation 7(1)(d) either (a) a payment in lieu of notice or (b) of the remuneration which the claimant would have received had his employment not been terminated? Or was it neither, but a redundancy payment not falling

within regulation 7(1)(d) at all?

24. (1) The Court of Appeal, in R v National Insurance Commissioner ex parte Stratton [1979] Q.B. 361, (also reported as Appendix II to decision R(U) 1/79) drew a sharp distinction between redundancy payments and payments in lieu of notice or of remuneration.

(2) Lord Denning, in considering the true characteristic of a redundancy payment, said:

"It is made because a man is regarded as having an accrued right in his job..... His job is in the nature of a proprietary interest. If he is deprived of it he should receive a capital payment to compensate him for the loss of it. That payment is not for loss of future income, but to compensate him for loss of his job." [page 370 letter D]

"Compensation for unfair dismissal is to be distinguished from a redundancy payment because its true characteristic is that it is a compensation for loss of future income, not for any loss of capital." [page 371 letter A]

and

"The matter depends on the true characteristic of the payment, not in the way it is described or calculated." [page 372 letter B]

(3) Lord Justice Templeman, as he then was, said:

"The argument is that the payment to the applicant was intended partly to compensate him for the foreseeable consequences of his redundancy. One foreseeable consequence was the loss of the remuneration which he would have received if his employment had not been terminated. The regulation deprives a claimant of unemployment benefit if he receives a sum in lieu of the remuneration which he would have received. The regulation applies to a payment which in the mind of the payer provides some compensation for that loss of remuneration. I do not accept this argument. Every redundancy scheme looks forward as well as back. Every redundancy payment is inspired partly by the fact that an employee who is dismissed for redundancy loses through no fault of his own his expectation of receiving remuneration in the future until in the fullness of time he reaches retirement age. But the 1975 regulation was never intended to affect redundancy schemes.....A redundancy scheme is identifiable because entitlement and quantum are related to the number of years of past services in a manner which is inconsistent with entitlement or quantum of a payment in lieu of notice or remuneration. The present redundancy scheme introduces a further factor in determining the quantum of those with more than 13 years' service, namely the factor of age, but in my judgment in the context of this scheme this does not alter the character of the payment and it is clearly not a disguised form of payment in lieu of notice or remuneration."

(4) The judgment of Lord Justice Bridge (as he then was) was to similar effect. He equated a voluntary redundancy payments scheme introduced for members of the services to statutory redundancy payments and concluded that neither fell within the terms of regulation 7(1)(d).

25. It is accordingly necessary to look at the true character of the particular payment made. That character does not turn on the mind of the payer when making it: see Lord Justice Templeman's remarks quoted in paragraph 24(3) above. Nor does it turn on what it is called: see the last passage from Lord Denning's judgment as quoted in paragraph 24(2) above, which confirms the well-settled practice of the Commissioners. It is an objective test.

26. (1) The payment of the £4284.20 does not in my view have the character of a payment in lieu of notice.

(2) This is not a case where the payment was expressed to be in lieu of notice and the payment is calculated by reference to a notice period. The instant case presents a clear contrast to that of an express payment in lieu of notice, of which decision R(U) 8/73 affords an example. There the claimant was being made redundant and was accordingly entitled to 9 months' notice. The Department employing him was unable to provide employment for the whole period of the 9 months' notice to which the claimant was entitled (though not, being a Government Department, under any legal obligation). The Department paid the claimant, under the terms of a Defence Council instruction, his normal salary in a lump sum based on "the rate in issue on the last day of actual service, for the unexpired period of notice". A Tribunal of Commissioners held that this was a payment in lieu of notice and in lieu of remuneration. The facts are quite different here. If the payment is to be held to be in lieu of notice, it must be a matter of inference from the known facts.

(3) Such an inference is comparatively easy to draw when a man is dismissed or coerced to resign immediately, as may happen where there is some personal conflict between the individual claimant and his employer or there is some misconduct, or fancied misconduct, not affording a ground for dismissal without notice. In that sort of case, where the claimant has a legal right to notice, it is common to infer that any payment made was in lieu of notice. For the claimant would, otherwise, have a right to damages for the employer's breach of contract in failing to give proper notice. But in the present case where the claimant has no legally enforceable right to notice: see paragraph 10401 of the code in the Third Appendix. No question of damages can arise. Nor is there any other nexus between the notice period and the payment. The notice that would normally have been given was 7, later 13 weeks: see Part I of the Second Appendix and paragraph 10401(c) in the Third Appendix respectively. The redundancy notice period is longer - 9 months: see paragraph 14 above. The amount of the redundancy payment bears no relationship to any of these periods. No inference can be drawn in the present case that the payment was in lieu of notice and I hold that it was not.

27. Nor, in my judgment, was the payment in lieu of the remuneration that the claimant would have received in respect of any particular day or days. The sum in question is calculated by reference to a six months period. In the Memo (see the First Appendix to this decision) pursuant to which it was paid it is stated to be "a sum equivalent to the salaries they would have received had they remained in service until 30 April 1985 or until their 65th birthday whichever is the sooner" but that "Because pension and lump sum entitlements under the Principal Civil Service Pension Scheme (PCSPS) will be payable immediately on retirement, the sum equivalent to salaries...will be subject to abatement by the amount of pension payable from the date of retirement until 30 April 1985". The method of calculation does not determine the nature of the payment: see Lord Denning's remarks in Stratton's case at page 372 Letter B (quoted in paragraph 23(2) above). It was held in decision R(U) 7/73, which is that of a Tribunal of Commissioners that where (as here) there is a notice period the question of whether the payment is in lieu of remuneration does not arise, because such a payment can only be considered in relation to fixed term contracts. Decision R(U) 3/83 suggests that that is no longer correct. But that decision turned on the statutory duty under section 99 of the Employment Protection Act 1975 as a result of which there was an obligation to pay the employee for specific days beyond the end of the notice period. That period in the present case is shorter than, and falls within the notice period. It is used solely as a method of calculation. It is not tied in to any contractual (as in a fixed term contract) or statutory (as in R(U) 3/83) obligation.

28. In my judgment, the payment of £4284.20 was exactly what it was described to be in the pay slip accompanying it, namely a redundancy payment. The Civil Service Union

negotiated, in respect of all claimants aged between 64 and 65 who were losing their jobs as a result of compulsory redundancy, a package under which claimants were entitled to work out their notice (in the case of claimants in the position of this claimant, a notice of approximately 15 weeks) and then received a capital sum (representing wages less pension) as compensation for being made redundant i.e. for the loss of their jobs. That capital sum varied, as did the period in decision R(U) 1/79 (Stratton's case - see page 2581 of the report of the decision of the Chief Commissioner) according to the uncompleted portion of the claimant's career to normal retiring age (65). The essential facts are closely paralleled by those in Stratton's case where the pay made to persons with at least 13 years qualifying service was calculated, and calculated only, on the uncompleted portion of career to that age. I draw the same conclusion as the Court of Appeal in Stratton's case. The payment made was a redundancy payment not a payment in lieu of notice or remuneration.

29. My decision is set out in paragraph 1. Before parting with this case, I draw attention to the fact that all three Lords Justice in Stratton's case pointed out that the amended regulation 7(1)(d) in the 1975 Regulations was never intended to deal with a redundancy situation. The difficulty of ensuring that any decision given on this branch of unemployment benefit fits in to a coherent and logical body of law is now almost insuperable. I respectfully adopt the remarks made by the learned Lords Justice in Stratton's case as to the desirability of amending regulation 7(1)(d) which are just as relevant today as they were when they were written.

(Signed) V G H Hallett
Commissioner

Date: 8 August 1986

THE FIRST APPENDIX (see paragraph 7 of this decision)

STAFF

CHANGES IN RETIREMENT POLICY OF THE INSTRUCTIONAL OFFICER GROUP

INTRODUCTION

1. This Memo announces changes in the retirement arrangements for staff in the Instructional Officer (IO) group. These changes have been introduced as a pre-redundancy measure to help reduce surpluses of staff as a consequence of the changing requirements of Skillcentre Training Agency (STA) operations.

EARLY TERMINATION - OFFICERS AGED 64 AND OVER

2. In order to deal with the surpluses as quickly as possible, it has been agreed with the Civil Service Union that IOs will be retired in accordance with the following conditions. The effective date for these measures will be 30 April 1985.

APPLICATION

3. Officers who will be aged 64 or over on or before 30 April 1985 will be retired according to the following conditions -
 - a. officers with less than 10 years reckonable service on 31 July 1984 will be retired on 1 August 1984 and will be paid a sum equivalent to the salaries they would have received had they remained in service until 30 April 1985 or until their 65th birthday whichever is the sooner;
 - b. officers with more than 10 years reckonable service on 31 July 1984 will be retired on 1 November 1984 and will be paid a sum equivalent to the salaries they would have received had they remained in service until 30 April 1985 or until their 65th birthday whichever is the sooner.
4. Because pension and lump sum entitlements under the Principal Civil Service Pension Scheme (PCSPS) will be payable immediately on retirement, the sum equivalent to salaries mentioned in para 3 above will be subject to abatement by the amount of pension payable from the date of retirement until 30 April 1985. This sum will not however be subject to deductions from income tax or ERNIC.
5. Staff who have already formally announced their intentions to retire in 1984 or who will be 65 prior to 1 August 1984 are not eligible for the above provisions.
.....
11. This Memo should be treated as giving formal notice of the above measure to all IOs who will be aged 64 or over on or before 30 April 1985. Individual letters will be issued to all staff affected as soon as possible.
12. A Voluntary Premature Retirement (VRP) scheme is to be introduced for IOs in the 55-59 age group and full details will be issued shortly in another Memo in this series.

THE SECOND APPENDIX (see paragraph 9 of this decision)

Part 1

37. Appointments are ordinarily subject to a probationary period - the length of probation depending upon the grade of the officer concerned. During the first 3 months of service appointments may be terminated by one week's notice on either side without cause assigned. Thereafter, unless dismissal is on disciplinary grounds, and providing at least 13 weeks continuous service has been given, appointments of monthly paid officers will normally be terminable by 5 weeks notice during the first ten years of service and 9 weeks thereafter. In the case of weekly paid officers, periods of notice will be as follows:-

Less than 2 years continuous service	-	2 weeks
2 years but less than 5 years continuous service	-	3 weeks
5 years but less than 10 years continuous service	-	5 weeks
10 years but less than 15 years continuous service	-	7 weeks
15 years continuous service or more	-	9 weeks

38. Any employee wishing to terminate his appointment is expected to give at least 1 months notice if he is paid monthly and 1 weeks notice if paid weekly.

Part 2

Dear [claimant's name]

Following the changes in retirement policy for the Instructional Officer Group as announced in MSC Memo 510/65, which have been agreed with the CSU, I am writing to give you formal notice that you will retire on redundancy grounds on 31st October 1984.

It has been agreed that you will be paid a sum equivalent to the salary you would have received had you remained in Service until 30th April 1985. Central Pay Office will therefore be instructed to pay you an untaxed payment for the period from 1st November 1984 to 30th April 1985 abated by any pension in payment during this period. The Commission's liability for payment of National Insurance contributions ends on 31st October 1984 which is your last day of actual service and the payment for the above period will not therefore be subject to deductions of ERNIC contributions.

As you are over 60 you will not be entitled to any redundancy compensation payment under the Principal Civil Service Pension Scheme. However, you may be entitled to a special payment under the Employment Protection Legislation. The DE Group Superannuation Section will be writing to you about this together with details of your Civil Service pension lump sum benefits.

Normally all benefits are awarded within 4 weeks of termination, but every effort will be made to advise you of your entitlement before that date.

Should it become necessary to terminate your employment before 31st October 1984 Central Pay Office will be instructed to pay you an un-taxed payment in lieu of notice up to 30th April 1985 abated by any pension in payment during this period. If you do not wish to work out your period of notice to 31st October 1984 your appointment can be terminated as soon as you wish but you will have no entitlement to payment in lieu of unexpired notice. In these circumstances the Redundancy payment and Pension will become payable at the date you choose to have your appointment terminated.

I enclose two copies of form E 76 which should be completed in the presence of, and countersigned by, a senior officer. If for any reason you are absent from your office and unlikely to return to duty before your appointment terminates, you do not need to have the form countersigned. You should retain one copy of the form and return the other to this office.

I should like to take this opportunity of thanking you on behalf of the Commission for the work you have done during the period of your employment, and to express regret that circumstances have made it necessary to terminate your appointment.

Will you please acknowledge receipt of this letter by signing the declaration at the end of the copy of this letter and return it to me within 10 days via your Personnel Section.

You should retain the top copy for your own information.

Yours sincerely
M Ainsworth
M AINSWORTH (MR)

Part 3

DECLARATION

I acknowledge receipt of your letter dated 9.7.84 and wish to proceed as follows:-

To retire on redundancy terms and terminate my employment on:-

*(a) 31st October 1984

SIGNED E F Freebody III

DATED 16.7.84

*Delete inapplicable paragraph

THE THIRD APPENDIX (see paragraph 16 of this decision)

paragraphs 10400 to 10406

NOTICE

10400 This section of the Code gives details of the minimum periods of notice which are given to non-industrial and industrial civil servants who are due to be retired on age grounds or who are to be prematurely retired on grounds of inefficiency. Longer periods of notice apply to staff who are retired prematurely in the public interest, i.e. on redundancy, or structural or limited efficiency grounds (see Code sections Retirement On Age Grounds, Premature Retirement and Redundancy).

10401 In consequence of the constitutional position of the Crown, the Crown has the right to change its employees' conditions of service at any time, and as the Crown's employees hold their appointments at its pleasure they cannot demand a period of notice as of right when their appointments are terminated.

10402 In practice, provided an officer gives satisfactory service, an established appointment in the Civil Service is not normally terminated before minimum retirement age. When an appointment is terminated unless the officer is dismissed on disciplinary grounds (in which case the period of notice to be given is entirely within the discretion of the head of the department), the following minimum periods of notice, which became effective from 1 June 1976, will apply to officers who have served continuously for 4 weeks or more:-

a. Monthly paid staff:

less than 4 years service: 5 weeks

b. Weekly paid staff

Less than 2 years' service: 2 weeks.

2 years' but less than 3 years': 3 weeks.

3 years' but less than 4 years' continuous service: 4 weeks.

c. For all staff with 4 years or more continuous service the minimum period of notice shall not be less than one week for each year of continuous employment plus one week, to a maximum of 13 weeks.

Part 2

Dear [claimant's name]

Following the changes in retirement policy for the Instructional Officer Group as announced in MSC Memo 510/65, which have been agreed with the CSU, I am writing to give you formal notice that you will retire on redundancy grounds on 31st October 1984.

It has been agreed that you will be paid a sum equivalent to the salary you would have received had you remained in Service until 30th April 1985. Central Pay Office will therefore be instructed to pay you an untaxed payment for the period from 1st November 1984 to 30th April 1985 abated by any pension in payment during this period. The Commission's liability for payment of National Insurance contributions ends on 31st October 1984 which is your last day of actual service and the payment for the above period will not therefore be subject to deductions of ERNIC contributions.

As you are over 60 you will not be entitled to any redundancy compensation payment under the Principal Civil Service Pension Scheme. However, you may be entitled to a special payment under the Employment Protection Legislation. The DE Group Superannuation Section will be writing to you about this together with details of your Civil Service pension lump sum benefits.

Normally all benefits are awarded within 4 weeks of termination, but every effort will be made to advise you of your entitlement before that date.

Should it become necessary to terminate your employment before 31st October 1984 Central Pay Office will be instructed to pay you an un-taxed payment in lieu of notice up to 30th April 1985 abated by any pension in payment during this period. If you do not wish to work out your period of notice to 31st October 1984 your appointment can be terminated as soon as you wish but you will have no entitlement to payment in lieu of unexpired notice. In these circumstances the Redundancy payment and Pension will become payable at the date you choose to have your appointment terminated.

I enclose two copies of form E 76 which should be completed in the presence of, and countersigned by, a senior officer. If for any reason you are absent from your office and unlikely to return to duty before your appointment terminates, you do not need to have the form countersigned. You should retain one copy of the form and return the other to this office.

I should like to take this opportunity of thanking you on behalf of the Commission for the work you have done during the period of your employment, and to express regret that circumstances have made it necessary to terminate your appointment.

Will you please acknowledge receipt of this letter by signing the declaration at the end of the copy of this letter and return it to me within 10 days via your Personnel Section.

You should retain the top copy for your own information.

Yours sincerely
M Ainsworth
M AINSWORTH (MR)

Part 3

DECLARATION

I acknowledge receipt of your letter dated 9.7.84 and wish to proceed as follows:-

To retire on redundancy terms and terminate my employment on:-

*(a) 31st October 1984

SIGNED E F Freebody III

DATED 16.7.84

*Delete inapplicable paragraph