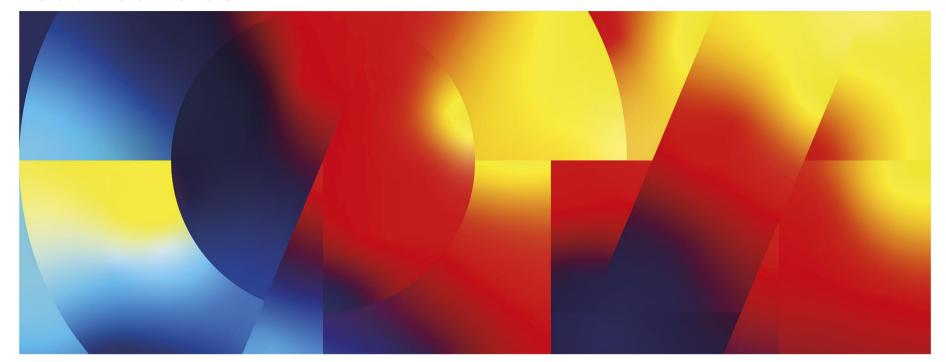
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Practical guidance on making redundancies



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What is redundancy?



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- (1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—
- (a) the fact that his employer has ceased or intends to cease—
 - (i) to carry on the business for the purposes of which the employee was employed by him, or
 - (ii) to carry on that business in the place where the employee was so employed, or
- (b) the fact that the requirements of that business—
 - (i) for employees to carry out work of a particular kind, or
 - (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

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

What is redundancy?



- Includes the following scenarios:
 - Site or business closure
 - Reducing the number of people who carry out a role
 - Deleting a role from the organisational structure entirely
 - 'Restructure' removing certain roles and adding new ones
- Doesn't require the business to be under financial pressure or a downturn in work
- Can be a redundancy situation even where there is an overall increase in the number of jobs as part of a restructure

Business rationale for redundancies isn't generally scrutinised too heavily by Employment Tribunals

Collective redundancies



- Special rules where an employer proposes 20+ redundancies at an establishment in any 90-day period
- Definition of redundancies for this purpose is wider than under the Employment Rights Act 1996
- Consultation with employee representatives
- Minimum periods before dismissals can take effect
- Severe consequences for non-compliance

What does a redundancy procedure look like?



- Redundancy policy may set a fixed process
- Trade union recognised?
- Key stages of a redundancy process:
 - Forming the proposal
 - Defining the redundancy pool
 - Designing the selection matrix
 - Scoring matrix
 - Consultation
 - Notice of termination
 - Appeal

Initial steps



- Do we need a 'business case' document?
- Beware of 'disclosable documents'!
- Always emphasise that it is a <u>proposal</u>
- Initial announcement
 - Never a good time but some times are worse than others
 - Have an 'at risk' letter ready
 - Not a Q&A session or a consultation meeting
 - Who else needs to know?

The redundancy pool



- Key question what type of work is there a reduced requirement for?
- 'Range of reasonable responses'
- · Narrower pools may be more open to scrutiny e.g. 'pool of one'
- Generally difficult to justify treating employees with the same job title differently
- Can we select those on fixed-term contracts first?
- 'Bumping'

Scoring matrix



- Do we even need to score?
- Can't we use an interview process instead?
- 'Objective' criteria
- Can we use 'subjective' criteria at all?
- How tailored should the criteria be to the role in question?

Scoring matrix – specific criteria and potential issues



- · Disciplinary record
- Length of service
- 'Last in first out'
- Attendance record
- Performance
- Attitude
- Skills and experience

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Scoring – practical points



- What about volunteers?
- Can employees challenge their scores?
- What if somebody's score changes?
- Do we have to give details of other people's scores?
- Will Employment Tribunals do a re-scoring exercise?

Alternative employment



- Part of a fair and reasonable redundancy process
- 'Ringfencing'
- Filling vacancies shortly before starting a redundancy process
- How soon after is it safe to recruit?
- What do we do where more than one 'at risk' employee wants a vacancy?
- Time off to seek alternative employment

Consultation



- Central pillar of a fair redundancy process
- Can be an opportunity to rectify any mistakes
- Right to be accompanied
- How many meetings and how long should it last?
- When to consult before or after scoring?

What should we be consulting about?



- The business reasons for the redundancy
- Potential alternatives to redundancy
- Selection pool
- Scoring matrix
- Employee's scores
- Alternative employment

What does a Tribunal expect consultation to look like?



- · Genuine and meaningful
- Takes place at a formative stage
- Providing adequate information
- Adequate opportunity to respond
- Conscientious consideration of points raised during consultation

Pregnancy, maternity leave and long-term sickness absence



- Protection against being made redundant?
- Do we still consult with employees on long-term sick or maternity leave?
- Scoring
 - Pregnancy- and disability-related absences
 - Scoring for maternity absence periods should they automatically receive full marks?
- Maternity and suitable alternative employment



