



Redundancy situations – 5 top tips for getting it right

By **Kate Potts** - 28 September 2017

Over the summer months, several large redundancies and restructuring processes have been reported across a range of companies including Tesco, RBS, Wilko and Asda. Set against the background of the Supreme Court's recent decision that tribunal fees are unlawful, the landscape is ripe for a rise in redundancy-related unfair dismissal/discrimination claims.

Most of you will be aware that the main reason to get the redundancy process right is that failure to follow a fair process can lead to claims from employees including unfair dismissal and failure to inform and consult. Naturally, redundancy processes can affect staff morale and draw attention from the media – two other good reasons to think carefully about the redundancy process is followed if your business decides that redundancies are necessary. Below are our top tips for dealing with dealing with redundancies.

- **Get the timing right**

Planning and timing is key. Make sure that you consider:

- How much time the business needs to commit to the consultation process and what level of interaction with the workforce you envisage. This will be driven as much by your culture as the law.
- Whether the team selected to carry out the consultation are available throughout the consultation period.
- That where there is a proposal to dismiss 20-99 employees within a 90-day time frame, collective consultation must begin at least 30 days before an individual's employment is terminated. For 100+ employees this increases to 45 days.
- When you expect that the proposed changes will take place – is there a long stop date or multiple phases?

- **Gauge the level/type of consultation and anticipate questions**

Consultation needs to be meaningful, enabling the employees to comment on the proposals at a formative stage. The type of

consultation which works best will vary for each situation. If more than 20 redundancies are proposed, collective consultation is required with elected employee representatives or a trade union (if one is recognised) in addition to individual consultation – in some cases the employees may prefer ‘town hall’ style consultation meetings to electing representatives. In any event, in a collective scenario, it’s usually a good idea to involve employees at an early stage and ask what level of consultation they prefer. This helps with employee buy-in. Not doing collective consultation will result in an award of 90 days’ pay per employee – this can become a very big liability if there is a significant restructure so it’s essential to get this right.

Prior to holding collective consultation meetings it can be useful to draw up information sheets, anticipating likely questions and answers before they are asked and thereby avoiding an ambush of difficult questions. This can speed up the consultation process as well as making the process more transparent. This also allows the business to manage and streamline information and messaging. This pre-emptive move is particularly helpful if the business is facing a hostile workforce/union.

If there are less than 20 proposed redundancies, you just need to consult individually with the employees who are ‘at-risk’ of being made redundant. A key decision is whether to consult with everyone who is in the selection pools or instead to carry out an initial ‘desktop selection’ to determine who is provisionally selected for redundancy and just consult with those individuals. The latter carries more unfair dismissal risk, but helps to minimise employee uncertainty. Again, the route you take will be driven by your culture and risk appetite.

Above all, the key word you need during consultation is “**proposed**” – nothing is decided until consultation has been completed. Presenting a *fait accompli* is likely to make the dismissal unfair.

- **Who is in the pool?**

Businesses have a good degree of flexibility in choosing their selection pools, so long as they do this in a way that a reasonable employer would.

It may be desirable in some cases to choose a wide pool so that the business can select poor performing employees from a variety of areas. This is often appropriate where employees can perform roles across different areas of the business and helps to prevent losing valued talent from within a more limited pool of employees. In other cases, where employees are more specialist, to minimise employee uncertainty, it may be appropriate to restrict the pool to employees working in a particular area, possibly down to a pool of one.

The key is to determine what you want to achieve from the restructure and then formulate pools to meet those objectives in a reasonable way that fits with your culture and risk appetite.

- **What are the selection criteria?**

Businesses have a wide discretion when choosing selection criteria as long as the criteria are fair and applied objectively. Each criterion should ideally be able to be verified by records or data such as performance, attendance, efficiency and length of service – the less subjective the better! If no suitable HR data exists to back up criteria, businesses should do their best to evidence the reasoning for their scoring, and preferably more than one manager should be involved in the selection process.

Businesses need to consider adjusting their scoring where criteria could be considered discriminatory, e.g. placing less weight on attendance for a disabled employee or ignoring maternity related sickness.

- **Dot the I’s and cross the T’s**

After doing the hard work it’s important to not lose focus on the administrative tasks. In particular:

- Keep records of conversations and meetings (even informal ones).
- Don’t forget to check your own procedures and policies.
- Make sure that redundancy payment amounts and employees’ bank account details are correct – it is usually difficult to recoup incorrect payments and this can frustrate the employees and increase the likelihood of claims.

- Don't forget that you need to submit an HR1 form if you are dismissing more than 20 employees at one establishment within a 90-day period. Failure to do this is a criminal offence and can lead to unlimited fines.

No two redundancy processes will be the same. When determining what the redundancy exercise will look like, businesses need to balance the risk of claims and negative PR against the risk of creating unease and unproductivity within the workforce.