



## The perils of failing to consult

A recent case has highlighted the potentially dramatic consequences of failing to carry out a proper collective redundancy consultation with employees when mass redundancies are in prospect.

When the clothing chain USC (part of the Sports Direct group) went into administration in January this year, 83 workers were made redundant at the company's warehouse in Ayrshire with very little prior warning. On 7 January, stock was removed from the warehouse and there were rumours that the warehouse was to close, but the staff were not officially informed. A staff meeting was then called for 14 January; at that meeting a letter was given to all employees about the situation. Approximately 15 minutes later, employees were then handed a second pre-prepared letter; that letter referred to there having been consultation and it intimated redundancies. The employees were dismissed in terms of that letter. An Employment Tribunal has now found that there had in fact been "no discussion or consultation regarding alternatives of information as to redundancies", meaning that the former employees are entitled to a protective award due to the failure to consult. The Tribunal can award up to 90 days' actual pay per employee, and press reports would suggest that, due to the seemingly complete failure to consult here, staff will receive the maximum amount. However, as USC went into administration, this award will be another debt for administrators to deal with and rank against USC's other creditors, although the National Insurance Fund may cover up to 8 weeks' pay from this award if it cannot be fully paid by USC's administrators once they have distributed the proceeds of USC's assets amongst its creditors in a prescribed order of priority.

Although it is less common these days to see an employer completely failing to carry out collective redundancy consultation, it is certainly not unheard of. However, the real sting in the tail for Sports Direct has been both the public criticism and now criminal proceedings which have followed. MPs have been highly critical of Sports Direct for its behaviour during the events that led up to the collapse of the USC, branding it "immoral" and "callous". Also, in a rare move, Sports Direct chief executive David Forsey has been charged with the criminal offence of failing to notify the Secretary of State (for Business, Innovation and Skills) of the proposed collective redundancies. The maximum penalty for the offence is £5,000, but the real punishment is the public embarrassment of these proceedings. What this case highlights is the public policy behind the legislation governing collective consultation requirements, and that the government will use the more draconian measures in its arsenal in more extreme cases.

