

HOW TO

Effect an individual redundancy consultation

Regardless of whether there is an obligation to consult collectively, when contemplating redundancy dismissals, the employer will need to ensure that it has followed a fair procedure in relation to affected individuals, including consulting with them properly, so as to minimise the risk of claims for unfair dismissal.

This “How To” guide sets out the key legal and practical issues for businesses to be aware of.

Individual consultation v collective consultation

Individual consultation is required in all cases. However, where 20 or more employees are being made redundant over a period of 90 days or less, an employer also has a duty to consult collectively, which means they should:

- inform appropriate employee representatives;
- consult appropriate employee representatives for a set period of time depending on the number of employees affected;
- notify the Secretary of State.

In this guide, we will focus on individual rather than collective consultation.

Question of fairness

Even if a dismissal is genuinely on grounds of redundancy, whether it is fair or unfair to dismiss an employee on grounds of redundancy normally depends upon whether the employer acted reasonably in reaching the decision to dismiss. The question of what it means to act reasonably in a redundancy context has been considered in two key cases, *Williams and ors v Compair Maxam Ltd* and *Polkey v A E Dayton Services Ltd*. Helpfully, these cases have laid down guidelines for employers to follow in order to demonstrate they have acted reasonably. These are summarised in the following steps.

Announcement to all potentially affected employees

Explain:

- The reasons for the redundancy proposals;
- The process to be followed and whether volunteers are to be requested;
- The pool and method for proposed selection.

Individual meetings with each potentially affected employee

Explain:

- That you are proposing changes, which, if adopted, could result in redundancies;
- The reasons for the proposed changes, the pool which has been chosen and that their role is potentially at risk;
- The selection criteria and ways to avoid redundancies and/or mitigate consequences, when the proposed redundancies would take effect; and the potential redundancy packages.

The contents of the meeting should then be confirmed in a follow up letter to the employee.

Hold a second individual meeting

The employee will be given time to consider the position, before a second meeting takes place. Review:

- The employee’s thoughts on the proposed pool and criteria;
- Any suggestions which they have on the ways to avoid redundancies and/or mitigate the consequences.

HOW TO

You may need to adjourn this meeting to consider the points further and then reconvene to respond to any points raised by the employee.

The selection process

If no alternatives have been found, carry out the selection process. Hold a third individual meeting with each employee. During the meeting:

- Confirm the outcome of the selection process;
- Give the employee a chance to challenge their selection;
- Respond to the suggestions made by the employee;
- Look for alternative employment.

Review process to date

- Consider any suggestions/ applications made by the employee for alternative employment;
- Consider any other points raised by the employee during the process- further meetings may be required to respond to these points;

- Once consultation is completed and if no alternative is found write to the employee to invite them to a final meeting;
- Confirm in writing that no alternative has been identified and warn the employee that they may be given notice of dismissal at the final meeting.

The final meeting

At the meeting:

- Reiterate the reasons for the redundancy proposals;
- Answer any final queries the employee may have;
- Discuss any attempts to find alternative employment and confirm the position in relation to any alternative roles;
- If no outstanding points and no alternative available, issue notice of termination to employee;
- Confirm the termination date, payments and right of appeal.

Confirm the contents of the meeting in writing to the employee, including the right of appeal.

If the employee raises an appeal, this will need to be addressed.

Summary

It may be that in a particular situation, not all of these steps are required in order for an employer to still have acted reasonably. However, the more of these steps that are followed, the stronger the prospect of demonstrating that the dismissal on grounds of redundancy is fair.

For any further information please contact
howto@shoosmiths.com

Disclaimer: This document is for informational purposes only and does not constitute legal advice. It is recommended that specific professional advice is sought before acting on any of the information given.

✉ Legal e-briefings: www.shoosmiths.com/register
@ shoosmithsllp
in [linkedin.com/company/shoosmiths](https://www.linkedin.com/company/shoosmiths)