

FACTSHEET – Redundancy Selection Pooling

Where the redundancy involves a diminishing (rather than completely ceased) requirement for work of a particular kind to be done this will normally mean that the redundancy will involve the need to pool employees for selection. This means that more than one employee is identified as at risk of redundancy and one or more employees will retain their roles following the redundancy process. Or you may have a phased closure of a site, in which case you will need to determine the order of employees to leave through a selection process, although they will all eventually lose their roles.

Fair selection involves the fair application of objective selection criteria to a pool of employees. An employer should begin by identifying the pool, by which we mean the group of employees from which it will select those who are to be made redundant.

Your advisers can advise you on your pool for selection in any redundancy process.

Identifying a Selection Pool

If an employer dismisses an employee for redundancy without even considering the pool for selection, the dismissal is likely to be unfair.

Where there is an agreed procedure which specifies a particular selection pool, you will be expected to adhere to it. Where a Trade Union is recognised by the employer the employer would normally be expected to discuss the proposed pool with the Union.

Flexibility when Identifying the Pool

Where there is no formal procedure, you have a degree of flexibility in defining the pool. Provided an employer can show that they genuinely applied their minds to the choice of pool it will be difficult for an Employment Tribunal to rule that business decision as unreasonable.

However, while you are allowed to be flexible, your decision regarding the pool will need to be reasonable. The following considerations are relevant:

- What type of work is ceasing or diminishing?
- Which employees perform that particular type of work?
- Which employers perform similar types of work?
- Is it appropriate to include employees from other sites or locations?
- To what extent are roles and duties interchangeable?
- What does each employee do in practice rather than simply what is their job title or written job description?

It may well be reasonable to confine the pool to employees doing the same or similar work and therefore identify a reasonably narrow pool for selection. However, it would be advisable to ensure that if there are employees

with interchangeable skills or similar work done at different geographic locations the decision to not include others and create a wider pool is documented in a file note giving the business reasons.

Consultation on the Selection Pool

As part of a fair consultation employees identified as within the pool for selection should be asked for their views on the pool. They may make suggestions on how the pool could be changed or widened for example identifying more employees who do similar work or whose skills are interchangeable. They may also suggest widening the pool to include other geographic locations where similar roles are undertaken.

There is no absolute requirement to implement suggestions made by employees during the consultation process but the suggestions must be shown to be considered and if they are not implemented business reasons should be communicated to the employees.

Commercial Considerations

The wider the pool, the more onerous the redundancy selection process. This is because the employer will need to cover a greater number of employees in the selection and consultation process and apply the selection criteria to more individuals. A wider pool may also cause greater business disruption and have a bigger impact on employee morale as more employees are caught up in the redundancy process.

For these reasons many employers are reluctant to identify a wide pool for selection and will be inclined to keep the selection pool as narrow as possible. The commercial benefits of identifying a narrow pool should be balanced against the greater risk of claims for unfair dismissal based on employee perception of the fairness of the narrow pool. Ultimately this will be a commercial decision for the employer to make.

Bumping

Bumping is the process of moving a potentially redundant employee into a role currently performed by another employee and dismissing that displaced employee by reason of redundancy (even though the role they were performing had not actually ceased or diminished). The issue will often arise where a senior role is identified as redundant and the post-holder argues that a more junior employee should be made redundant, to create a vacancy for the senior person to slot into.

The latest judicial pronouncement on the subject is in fact that an employer does not have to consider bumping but there are certainly a number of cases where the courts have found a failure, at least to *consider* bumping, to be unfair. We think that nowadays such cases are more likely to be confined to where the potentially redundant employee is long-serving and there is an under-two-years'-service or clearly poorly performing employee who could be made redundant to accommodate the long-serving employee. Even there, if you have considered bumping and rejected it for sound business reasons, we think a tribunal is unlikely to upset your decision.

Bumping is a tricky process to get right and can result in damage to employee relations and costly Tribunal claims and it is therefore recommended that [legal advice is obtained from your advisers](#) before making a decision to carry out bumping.

Applying Selection Criteria to the Selection Pool

Once the selection pool is identified and the employees within the pool have been consulted on the pool itself it will be necessary to begin the process of selection. This will involve applying selection criteria to each employee within the selection pool and is set out in detail in the factsheet titled [Redundancy Selection Criteria \[7.2 RED FS\]](#).

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