

FACTSHEET – Redundancy Selection Criteria

Once a pool for selection has been identified (see [Redundancy Selection Pooling \[7.1 RED FS\]](#)) it will be necessary to select which employees from that pool will be made redundant using fair and objective selection criteria.

Unfair selection can lead to claims for unfair dismissal based on not only the selection criteria itself but also the manner in which it was applied to employees.

Your advisers will be able to assist you in devising a selection criteria matrix that meets your needs. Also see [Redundancy Scoring Criteria and Score Sheets Example \[7.3 RED EX\]](#).

Deciding on Selection Criteria

You should choose criteria that are designed to ensure you retain the best people for the job but also that are that are wholly objective as well, if you have the data to support their inclusion: for example, timekeeping, attendance and/or disciplinary record. This is because the criteria used should ideally be measurable rather than based on personal opinion.

If an existing agreed set of selection criteria exists (for example in the Employee Handbook, a collective agreement or by custom and practice) this should be used but caution applied to ensure that it is appropriate in the circumstances. If a Trade Union is recognised it would generally be expected that the Union should be consulted with regarding proposed selection criteria.

The starting point for deciding on selection criteria should be to identify the present and future needs of the business and set criteria which will enable the business to meet those needs. Criteria should not be chosen as a way of ensuring that certain employees are selected for redundancy as that would present a risk of an unfair dismissal claim due to unfair redundancy selection.

Common Examples

There is no 'one-size-fits-all' fair selection matrix; it needs to be designed for every individual situation based on the continuing needs of the business, but we recommend that you do not have too many criteria or too many possible scores per criterion. As a general rule the following criteria would be relevant:

CRITERION	SUPPORTING RECORDS
Length of service/Last in First Out (but see warning below).	Personnel file detailing employment start date.
Attendance record over a substantial period of time (it is unwise to make this the sole criterion for selection).	Attendance records/charts, self-certificates and doctor's certificates covering sickness absence (excluding maternity/parental/dependant care/paternity/adoption/shared parental/parental bereavement leave, pregnancy-related illnesses, suspension from work on maternity grounds

	absences, absences due to disability, absences due to 'shielding' (in accordance with the government's Covid-19 guidance)).
Disciplinary record for misconduct / poor performance.	Current warnings recorded on the personnel file. Be careful including warnings that are still subject to an appeal process.
Timekeeping record.	Clocking-in machine records, time sheets.
Qualifications and work experience.	The employee's CV and supporting certificates (ensuring they are brought up to date).
Relevant skills and knowledge.	Appraisal forms and skills audits, certificates.
Achievement of necessary targets/job performance.	Sales figures, production figures, statistical data, target charts, appraisal forms.
Ability to take on additional or new job duties and responsibilities.	Appraisal forms and skills audits.

It should be noted that the above are examples only. What is important in choosing selection criteria are the particular needs and future viability of the employer's business.

Purely subjective criteria like "attitude" or "value to the business" or "adaptability" should be avoided as should criteria purely based on costs savings of the employee's pay and benefits costs.

Avoiding Discriminatory Criteria

The old practice of selecting according to the criterion LIFO ('Last in, first out') should normally no longer be used as it is likely to involve age discrimination as older workers are more likely to have longer service and sex discrimination as you are less likely to score well if you are female. This is aside from the fact that it does not necessarily leave you with the best workforce. If you must use it, ensure it is used as part of a balanced set of criteria rather than the sole criteria or used as a tie break only where overall scores are equal.

Where attendance is used as a criteria it is essential to disregard maternity leave, disability or pregnancy related sickness absence and other family related leave.

Part-time or fixed-term status should never be a factor in the selection criteria.

Any criteria linked to race, right to work in the UK or nationality must be avoided.

Weighting

Sometimes, the criteria may be 'weighted', with more importance being attached to a particular criterion than is attached to the other criteria. This means, for example, that the marks awarded could be doubled for one particular criterion.

This is acceptable provided always that the employer is having regard to the present and future needs of its business and the weight attached to each criterion can be justified by reference to their relative importance to the business.

Flexibility and Discretion

The selection criteria decided upon by the employer is fundamentally a business decision. This means that the Employment Tribunal will find it difficult to deem the criteria unfair provided it cannot be said that the criteria used were such that no reasonable employer would have used them in the way that the particular employer did.

This gives the employer a large degree of control over the criteria they decide upon which won't be interfered with unless it is unreasonable or discriminatory.

Consultation on the Selection Criteria

As part of a fair consultation employees identified as within the pool for selection should be asked for their views on the proposed selection criteria. They may make suggestions on changes to the criteria themselves or the weighting, for example they may suggest additional criteria that they consider to be relevant to the role and the continuing needs of the business.

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.

Fair Application of Selection Criteria

Carrying out the Scoring

Deciding on the selection criteria to be used is only the first element of a fair selection exercise. It is also necessary to ensure that the relevant selection criteria are applied to the employees in a reasonable, fair and objective manner.

You should avoid having too many possible scores per criterion. The scoring is often on a scale of one to five or one to ten with one being the lowest mark and five or ten being the highest mark. Managers can face a difficult time in tribunal having to explain why they gave employee X a score of 57 for achieving targets but employee Y a score of 56 if that one mark led to Y being made redundant. If they have a choice between, for example, 25 = 'all of the time', 20 = 'most of the time', 15 = 'some of the time', 10 = 'hardly ever' and 5 = 'never', their decision-making and their ability to justify the decision may be easier - especially if they have either records of attainment or clear examples of relative success or failure.

It is advisable to decide in advance and set out in writing what has to be achieved for the employee to be awarded a particular mark on each criterion. Then the employee can be fairly marked according to the objective selection criteria chosen and the marks can be justified by reference to the supporting data. An example of this in relation to a criterion of disciplinary record would be a score of 5 for no live disciplinary warnings; 4 for live informal concerns/letter of concern; 3 for written warning in the last 12 months; 2 for final written warning in the last 12 months; 1 for extended final written warning in the last 12 months.

Once objective criteria have been decided upon, the employer must take care that any marks the employee receives are verifiable by reference to data such as attendance records, disciplinary records and measurable efficiency. This ensures that selection does not depend on the opinion of the person making the selection. Scoring of the redundancy criteria should also be consistent with appraisal outcomes, unless there is a demonstrable reason why not.

It is also always prudent to have the adopted marking system checked independently by at least two members of the management team. If there is no clear recorded data on performance available and an assessment is being made of how individuals carry out aspects of their role, it is good practice to have two people who know the employee's work score the employee independently, to introduce an element of objectivity. It is important that the "scorers" understand what they are assessing under each criterion and the scores to be awarded. Managers should bear in mind that, if employees have never been told that there is anything wrong with their work, awarding a very low score for job-related criteria might well trigger an unfair dismissal claim, so scoring needs to be capable of being justified by clear evidence.

Consultation with Employees on their Scores

Once the selection process has identified certain individuals, it is important that they are not immediately made or labelled as redundant. At this stage, they remain only "at risk" of redundancy. They must be given an opportunity to be consulted about what should be referred to as their "provisional selection".

An essential part of a fair redundancy consultation is to disclose individual scores to the individual employees, explain how the scores were arrived at and allow them the opportunity to challenge the scores they received.

Whether or not it is also necessary to give employees details of other employees' scores or to communicate the "break point" below which score individuals were selected for redundancy is less clear cut. This could be determined on a case-by-case basis taking into account the numbers of individuals and how close the scoring was. You can normally provide them with those scores with the names blanked out and any other identifying information removed.

The object of the first formal consultation meeting with the provisionally selected employees is to enable them to understand "why me?" i.e. why they were awarded the scores they were and not higher scores that might have 'saved' them. It provides an opportunity for them to challenge their selection by, for example, challenging the information on which the decision was made or offering explanations. The meeting needs to be conducted sympathetically. The employee may need to be reminded that the business is not saying that they are bad at their job; simply that someone has to be made redundant and regrettably their score is lower than those of other colleagues.

If the employee challenges their scores, you may need to adjourn the consultation process to another day to enable you to consider what they have said.

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