

November 2017

# Redundancy Consultation

What are the “red lines” of bad practice when handling a redundancy consultation, beyond which the entire process is invalidated?

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# What does fair “consultation” mean in the context of redundancy? (1)

- Consultation when the proposals are still at a formative stage
- Provision of adequate information on which to respond
- Provision of adequate time in which to respond
- Conscientious consideration of the response to consultation (and responding to the response)
- Consultation entered into when an open mind and a willingness to be persuaded

Glidewell L J in R V British Coal Corporation ex parte Price 1994 IRLR 72

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## What does fair “consultation” mean in the context of redundancy? (2)

“Giving the body consulted a fair and proper opportunity to understand fully the matters about which it is being consulted and to express its views on those subjects, with the consultation thereafter considering those views properly and generally”

Quality of information at outset.

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# Consultation in small and large scale redundancies

- Small Scale: Individuals or non large scale groups: (Unfair dismissal)
- Large Scale: covered by Trade Union and Labour Relations (Consolidation) Act 1992 S.188 (“the Collective Rules”) (Protective Award)

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## The Collective Rules are triggered when:

The employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less. If triggered the employer must consult with the appropriate representatives of the employees affected.

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# Consultation must begin “in good time” and as a minimum

- Where 100 or more redundancies are proposed, consultation must begin at least 45 days before the first dismissal takes effect
- Otherwise at least 30 days before the first dismissal takes effect.
- The moratorium: No dismissals can take effect until consultation is complete and the minimum period has elapsed.

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## What else must the Employer do when the Collective Rules are triggered?

- Disclose in writing to the appropriate representatives certain information regarding the proposed dismissals.
- Notify the Secretary of State for Business Innovation and Skills at (HR 1) at least 30 or 45 days in advance of the first dismissal taking effect (dependant on numbers). Failure to do so is a criminal offence.

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# What must Consultation be about under the Collective Rules?

- Ways of avoiding dismissals;
- Reducing the numbers to be made redundant;
- Mitigating the effects of dismissal.

and must be undertaken “with a view to reaching agreement”

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# Meaningful Consultation

In reality the same issues are relevant in both small scale and large scale under the Collective Rules:

- Information setting out the reasons for the proposals
- Consult in good time allowing a meaningful discussion
- Considering alternatives to redundancy
- If redundancy programme proceeds then the selection criteria/basis of selection (of criteria for selecting from within a pool and 'pool of one') process procedure used.

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# Meaningful Consultation (cont'd)

- Information regarding payments to be made;
- Outlining the process to be used allowing a challenge to selection and an opportunity to appeal;
- Consideration of alternative employment /assistance in finding other work

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# When does Consultation end?

Both small scale and large scale under Collective Rules are similar in principle:

- Agreement not necessary: so long as genuine consultation has taken place (and under Collective Rules “with a view to reaching agreement”) the employer can end the consultation
- Be in a position to demonstrate (by letters, notes and minutes) the key stages: giving sufficiently detailed proposals, listening to the response, considering and then responding to the response;

Note: Re Collective Rules: no dismissal to take effect within minimum period.

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# If you cross the red lines is the entire process ‘invalidated’?

- Failure to consult appropriately in Individual Claims: renders dismissal unfair but doesn't render the dismissal void or ineffective
- Equally, failure to consult appropriately according to the Collective Rule is a breach of Collective Rules and may lead to a Protective Award but would not render the dismissal void or ineffective.

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# Unfair Dismissal

- Unfair Dismissal
- Polkey: selection criteria
- Maximum Awards
- Automatically unfair redundancy dismissal

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# Breach of S.188 Protective Award

- Uncapped pay per employee up to 90 days – potentially very large awards.
- ET discretion in fixing the length of that period depending on what is “just and equitable” and taking account of the “seriousness of the employer’s default”.

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# The importance of planning and taking legal advice

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Thanks for listening

**Questions?**

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