

The logo for Weightmans, featuring the name in white text on a dark teal, wavy rectangular background.

Weightmans

When constructing the redundancy selection grid, what weight should you give to soft measures such as attitude and diligence?

How do you measure them?

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A decorative graphic at the bottom of the slide consisting of several overlapping, wavy teal lines that create a sense of movement and depth.

Redundancy and unfair dismissal – the backdrop

- Employer must establish that redundancy was the real reason
- ET must find the employer acted reasonably in all the circumstances of the case
- Was decision within range of reasonable responses – ET must not substitute its own view

A fair redundancy dismissal

- As much warning as possible of impending redundancies
- Consultation with unions/reps incl. seeking to agree criteria
- Establish fair selection criteria
- Selection made fairly in accordance with those criteria
- Consider alternative employment

But not immutable principles



Fair selection criteria

“The employer will seek to establish the criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service”

Selection criteria – what are you trying to achieve?

- Retain the best employees for the role/organisation
- Be fair
- Be perceived as acting fairly
- Have criteria which people know how to apply
- Avoid claims
- Be able to defend claims

Avoiding the procedural trap

- Recruitment-like process incl.: written assessment; pre-set question interview; & verbal group assessment
- *“By using this exercise and failing to consider such matters as length of service, appraisal records, the opinion of managers who had known the employees concerned, we consider the system used was grossly unfair”*

Don't be too procedural

- It is in our experience very unusual to base decision entirely on assessments of this kind without any reference to past appraisals or views of managers
- The employer took a lot of trouble & put a lot of resources into assessment – which is in principle to be applauded
- An over elaborate and HR driven method which deprived employer of benefit of input from managers who knew staff & which by its very elaborateness was liable to be difficult to apply consistently



Avoiding subjectivity?

“The goal of avoiding subjectivity and bias is of course desirable but it can come at too high a price; if the fear is that ET’s will find a procedure unfair only because there is an element of “subjectivity” involved that fear is misplaced”

Subjectivity – not a dirty word

“Subjectivity is often used in this context as a dirty word. But the fact is that not all aspects of the performance or value of an employee lend themselves to objective measurement, and there is no obligation on an employer always to use criteria which are capable of such measurement...we see nothing objectionable in principle to [the employee] being assessed on subjective criteria”

Samsung Electronics –v– Monte–D’Cruz

Assessing for an alternative role is easier

- Where an employer has to appoint to new roles after a re-organisation, the decision must of necessity be forward-looking
- It is likely to centre upon an assessment of the ability to perform in the new role
- An ET is entitled to consider how far an interview process was objective, but it should keep carefully in mind that an assessment of which candidate will best perform in a new role is likely to involve a substantial element of judgement
- ET should consider whether decision made capriciously or out of favouritism or on personal grounds

Morgan -v- Welsh Rugby Union



Good criteria

- Measurable
- Specific
- Evidenced based
- Unarguable
- Without discriminatory overtones



Criteria which make me nervous

- Attitude
- Cultural fit
- Best suited to needs of the business
- Flexibility/flexible approach
- Commitment
- Last in first out as a sole criteria (but fine as tie breaker)

When using soft criteria

- Get the terminology right (& think about it)
- Think about whether it can be measured or, at least, explained
- Get the weighting right (but it is often the decider in practice)
- Moderate & use the fairest process
- Can it be about new/alternative roles?



The key question

Does using the soft criteria best achieve your objectives?



Contact details

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