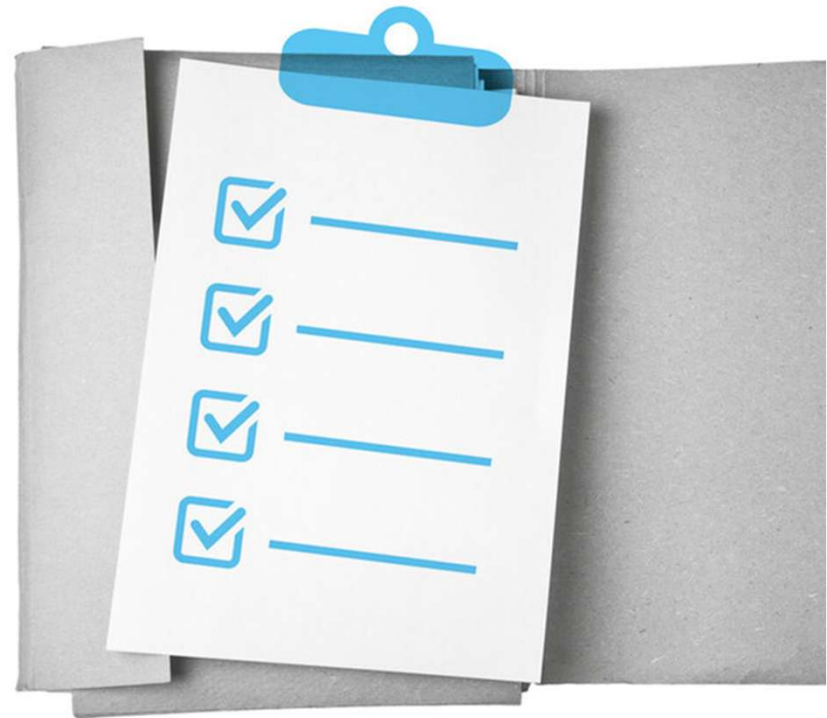


Suitable Alternative Employment in Maternity Redundancy Situations

Why the rules are different and what employers must get right

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Suitable Alternative Employment in Maternity Redundancy Situations

Question:

“What amounts to "suitable alternative employment" in a redundancy situation for employees on maternity leave? What if they could feasibly do it, but are not a good match and would need a lot of training?”

Special maternity protection: the role must be offered, not competed for

- Employees with a **legal priority right** include those who are:
 - ✓ Pregnant
 - ✓ On maternity leave
 - ✓ Returning within 18 months of childbirth (under the extended protections from April 2024)
- ACAS is explicit: if any suitable alternative vacancy exists, the employer must offer it to the protected employee; they cannot be required to apply or interview for it.

Regulation 10 Core Principle

- Maternity leave employees have priority for any suitable alternative role
- Employer cannot use interviews, scoring, or competitive selection
- Employee does not need to be the “best” candidate, only sufficiently suited
- Protects new mothers from being disadvantaged during organisational change

What is Suitable Alternative Employment (SAE)?



Suitable alternative role offered to avoid redundancy dismissal



A key element of a fair redundancy process under the Employment Rights Act 1996



Should be actively explored during consultation and notice periods



Failure to offer a suitable vacancy can make dismissal unfair (or automatically unfair for protected groups)

Key legal pillars:

- Reasonableness in redundancy
- Objective test of suitability (role, pay, status, location)
- Priority status for employees on maternity and certain family leave in redundancy situations
- 4-week statutory trial period

When must employers consider alternative roles?

Duty to Consider SAE

- Duty begins at consultation and continues until termination
- Employers must:
 - ✓ Identify vacancies early
 - ✓ Monitor vacancies throughout consultation and notice
 - ✓ Review roles across the organisation (and associated companies where redeployment is realistic or established practice)
- Assessment must be genuine and structured
- Failure to offer a suitable vacancy:
 - ✓ May render dismissal unfair
 - ✓ Can lead to **automatic unfair dismissal** where statutory priority protections apply



Two-Step Assessment: Suitability & Reasonableness

Tribunals first assess whether a role is objectively suitable, then consider whether the employee's refusal was reasonable in their individual circumstances, so employers must evaluate both the role itself and the specific situation of the employee.

Test of Suitability

- Role must be appropriate for the employee
- May include retraining or transferable skills
- Priority right applies even if others are more qualified

Test of Reasonableness

- Employer must offer the role directly
- Cannot require interviews or assessments
- Role should not be substantially less favourable

What Makes a Role “Suitable” Alternative Employment?

- **Terms and conditions:** The role should broadly match the employee’s current status, pay, hours, and location. Some variation is permissible as long as the role is not objectively worse.

- **Skills and experience:** The employee must be reasonably capable of performing the new role.

- **Trial periods:** The statutory framework allows a four-week trial period, extendable by agreement, to help the employee adapt to new duties.

- **Priority right:** Even if other employees are more qualified or “better suited,” the protected employee must be offered the role if it is suitable.

Reasonable Refusal of a Suitable Alternative Role



Objective suitability and employee refusal are separate legal questions



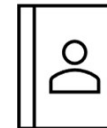
Tribunals assess refusal based on the employee's personal circumstances



Relevant factors include caring duties, health, commute, childcare, finances and work-life balance



Different employees may reasonably reach different conclusions

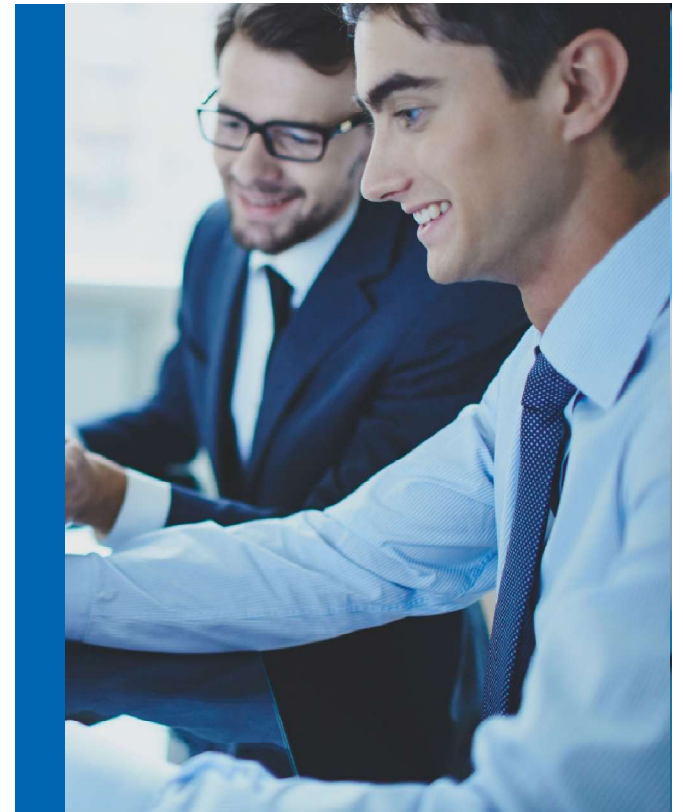


Unreasonable refusal can remove statutory redundancy pay, but the employer must prove it

The Grey Area

Jobs That Are “Close Enough”

- Many disputes arise in situations where a role is not a perfect match but is arguably close. The key questions are:
 - ✓ Can the employee perform the role with ordinary, manageable training?
 - ✓ Would it be normal for the business to offer such training to anyone moving into a similar position?
 - ✓ Are the core skills transferable?



Concerns about Employee suitability or the level of training required?

Key points from case law and guidance

- **No competitive process**
 - ✓ No interviews or assessments for suitability
- **Employer decides suitability**
 - ✓ Based on existing knowledge (not testing)
- **Retraining does not prevent suitability**
 - ✓ Transferable skills can be sufficient
 - ✓ 4-week trial period (extendable by agreement)
- **Priority over other employees**
 - ✓ Must be offered even if others are more qualified
- **Lower threshold than recruitment**
 - ✓ Role must be appropriate in the circumstances
 - ✓ Not substantially less favourable
 - ✓ Does not need to be the “best fit”

Case Study

Suitable Role

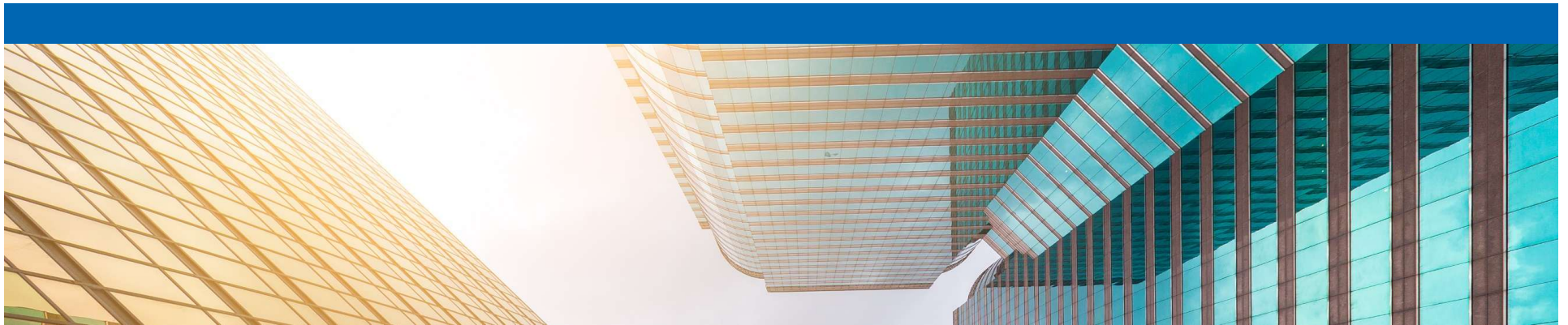
Take an HR Advisor whose role becomes redundant. A Talent Acquisition Advisor position is available. Although the nature of the work shifts toward recruitment, the foundational HR knowledge, understanding of organisational culture, and interpersonal skills are already present. The need for training on an applicant tracking system is routine and not a substantial barrier. Because the roles share core competencies, a tribunal would likely see this as suitable. **The employer would therefore be required to offer the role to the employee on maternity leave before considering anyone else.**



Case Study

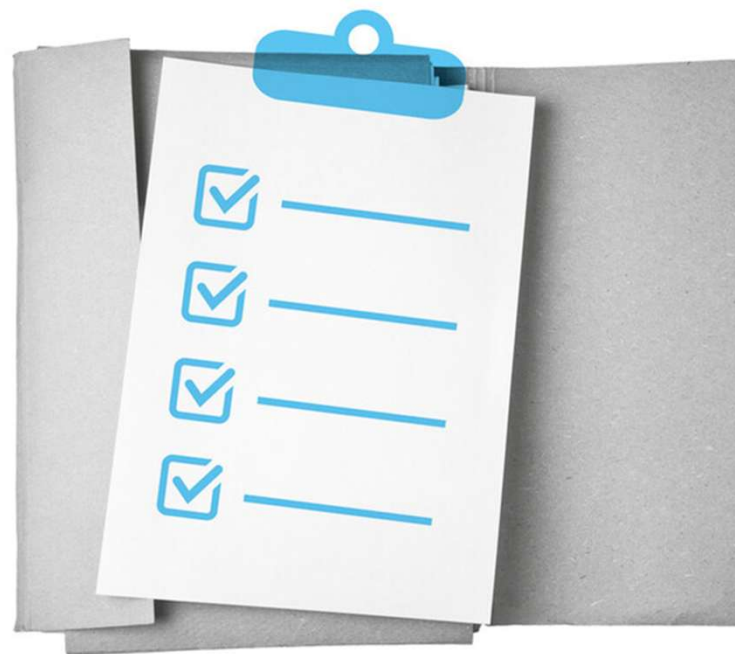
Unsuitable Role

Consider a Finance Analyst whose role ceases to exist. The only vacancy is a Senior IT Developer. This requires advanced coding abilities, technical qualifications, and specialist knowledge. Training would not be a short-term or reasonable adjustment - it would constitute a career shift. **In this situation, the role is objectively unsuitable, and the employer is not required to offer it to the employee on maternity leave.**



Practical Employer Checklist

- Employers should systematically assess all vacancies before finalising redundancies.
- Employers should also document why each role is or is not suitable, considering terms, duties, grade, and required skills. Where a suitable role exists, they must offer it with full information about pay, location, and duties.
- Training should be considered where appropriate, and employers should keep clear written records explaining their reasoning.
- The employee should also be given time to consider the offer — this helps avoid allegations of pressure or unfairness.



Common Employer Errors in Maternity-Related Redundancy

- **Unlawful competitive selection processes**
 - ✓ Employers sometimes require employees on maternity leave to compete for suitable roles.
- **Incorrect assumptions about employee interest or suitability**
 - ✓ Assuming the employee “won’t want the role,” or treating training needs as making a job unsuitable.
- **Failure to identify or review all vacancies**
 - ✓ Employers often miss roles elsewhere in the organisation or fail to undertake structured vacancy searches.
- **Weak or missing documentation**
 - Tribunals highlight poor practice where employers:
 - ✓ Assume suitability without structured comparison
 - ✓ Treat demotion as automatically acceptable
 - ✓ Over-rely on mobility clauses
 - ✓ Fail to consider personal circumstances
 - ✓ Do not document reasoning
 - A brief, documented comparison of old and new roles is often decisive.

Any questions?



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