

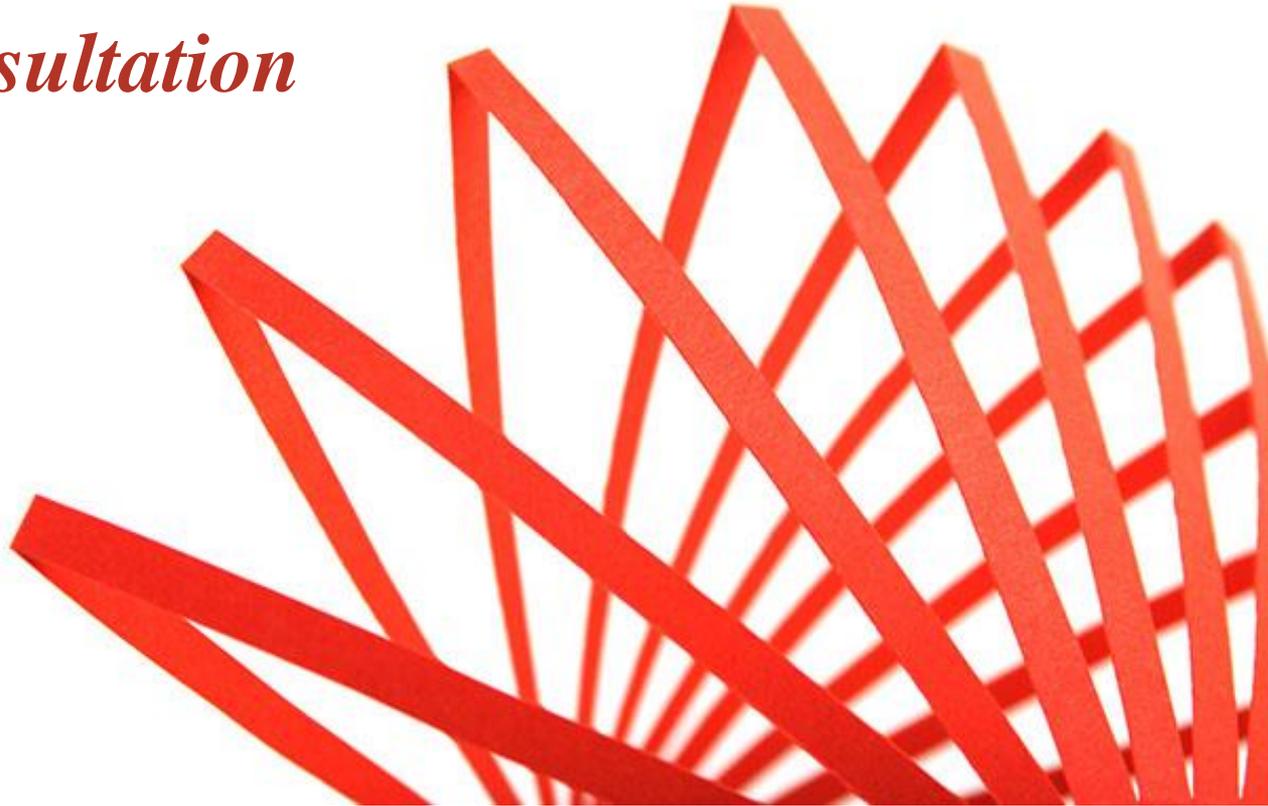
ALLEN & OVERY

Redundancy and Dismissal: Hints, Tips and Solution-Focused Answers for Employers

Redundancy consultation

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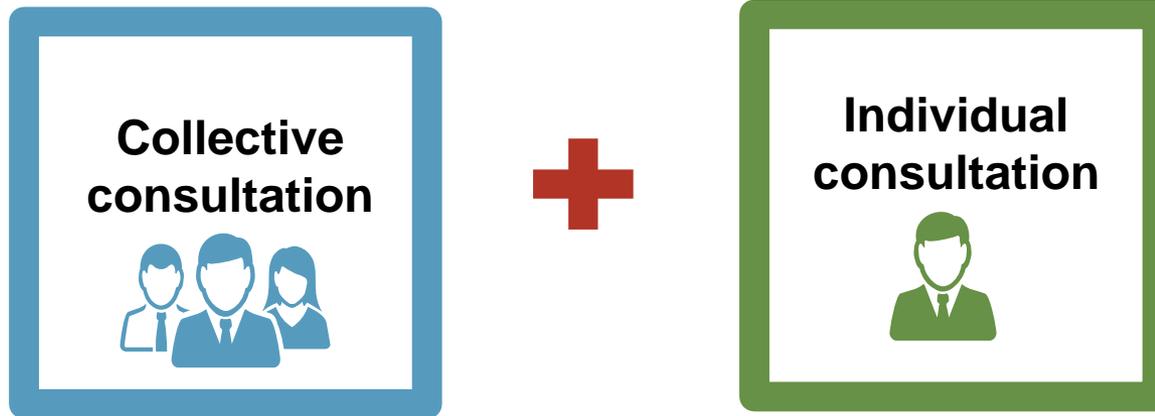
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Quick overview of the consultation rules



Collective consultation

Number of redundancies	Within	Consultation	How long should consultations last?	When can HR1 notices be issued?
20 or more	90 days		30 days	30 days before first dismissal
100 or more	90 days		45 days	45 days before first dismissal

 Voluntary redundancies count towards the thresholds

 Obligation triggered where an employer is proposing to dismiss 20/100 or more employees "at one establishment"

Collective consultation – elected employee representatives

Employer must consult with appropriate representatives of affected employees

When there is no trade union, employer must consult with employee representatives

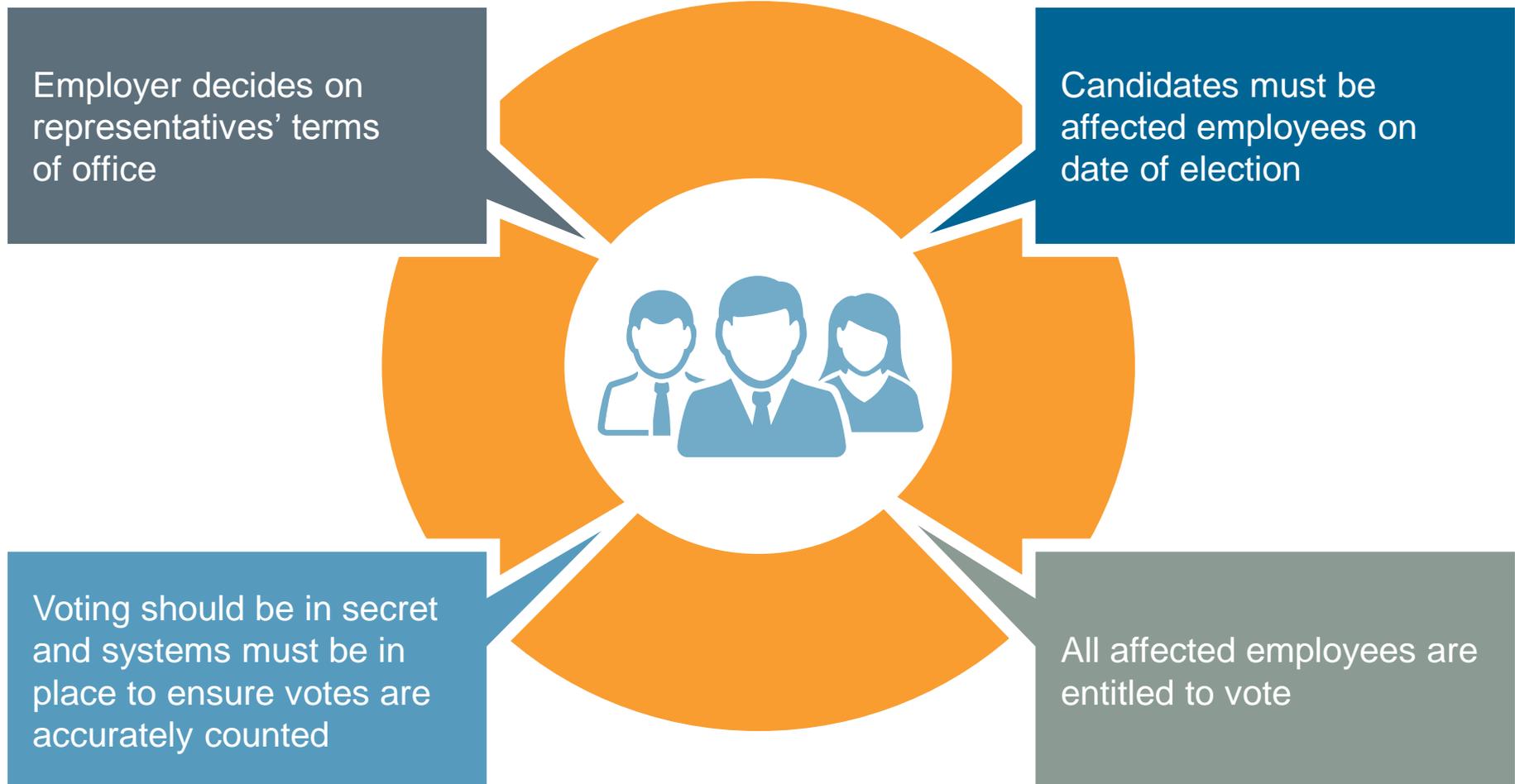
Fair election

Employer decides on number of representatives but there must be a sufficient number to represent all affected employees

Employer decides whether affected employees should be represented by representatives of all affected employees or classes of those employees



Collective consultation – elected employee representatives



Collective consultation

The consultation process will need to include:

- an explanation of the rationale for the redundancies within the business and the division
- time for employees to comment on redundancy selection criteria (if applied) and method of assessment
- a chance for employees to suggest ways of avoiding making redundancies
- an explanation of the basis for selection
- a financial package
- consideration of suitable alternative positions



Individual consultation

Dismissal is likely to be unfair without individual consultation

A typical consultation process might include:

At risk meeting

First consultation meeting

Second consultation meeting/final consultation meeting



Timing of consultation – there is no statutory time frame

Q1 **What are the "red lines" of bad practice when handling a redundancy consultation, beyond which the entire process is invalidated?**

Consultation must be meaningful, "with a view to reaching agreement with the appropriate representatives"

Just going through the motions would be in breach of the consultation obligations, and may result in a more substantial protective award, but will not invalidate the process

Different in some European countries – in the Netherlands, for example, consent to implement dismissals will not be given by the competent government authority unless it is satisfied that a proper consultation process has been undertaken

Demonstrate that there has been a genuine consultation by, for example, comparing the starting position with the final package – this makes it important to start the process with something to give

Q2 Does the consultation have to last for the full 30/45 days?

There can be confusion over the length of consultation and when the dismissal notices can be given to redundant employees

Consultation can be longer or shorter than the statutory period – the key element is whether consultation is meaningful

It is often the case that not taking any action until the full period has expired causes low staff morale – they want to know their position as soon as possible

So long as meaningful consultation has taken place, which might be a three-week period during a consultation period of 45 days, dismissal notices can be given provided they do not take effect during the statutory consultation period

Q3 At what point should individual consultation take place?

No "one size fits all" approach

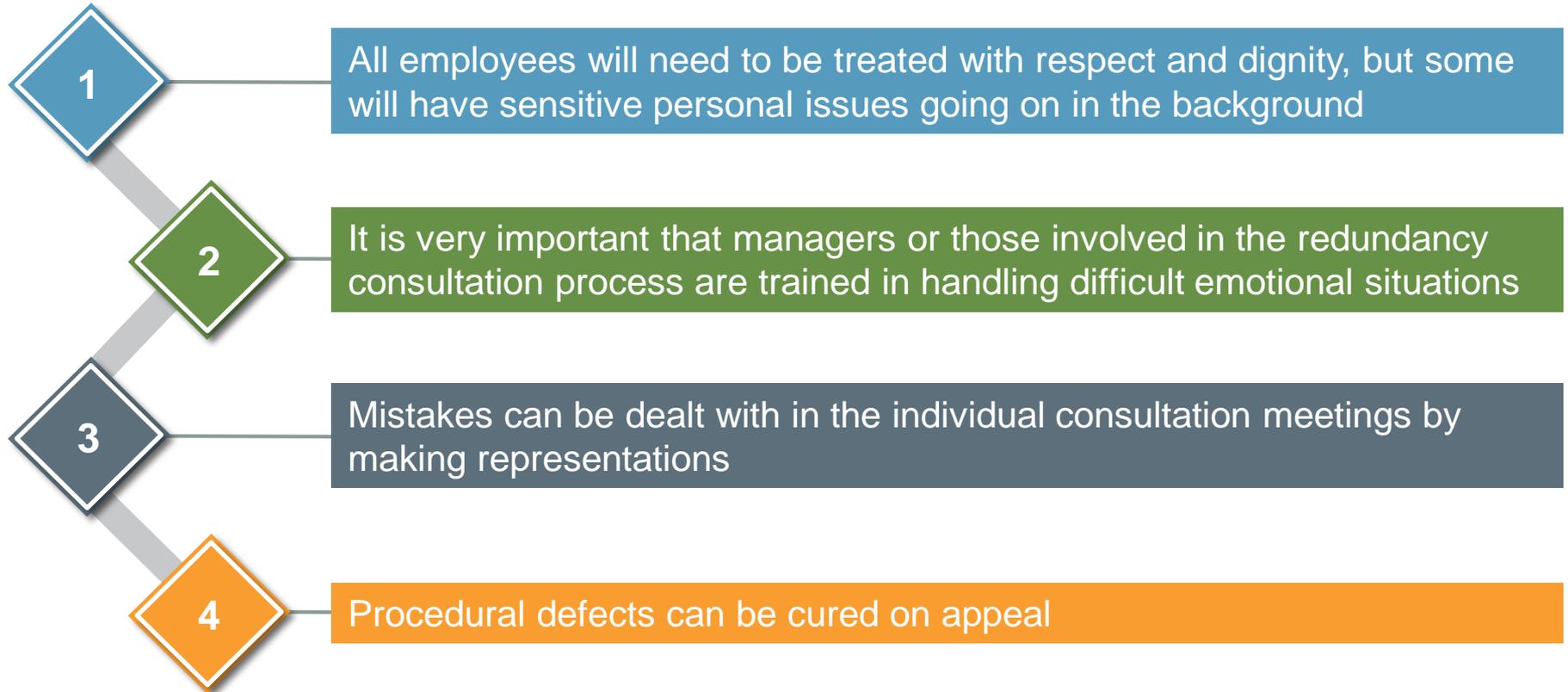
Some wait until collective consultation has taken place; others run individual consultation concurrently

Do not underestimate the level of anxiety of employees waiting to hear whether they are at risk, and the outcome

There may be business reasons why different units should be dealt with in priority to others, and therefore individual consultation with this population may start while collective consultation is ongoing

Q4

What if an employee suggests you have been insensitive or careless?



Q5 Do you have to consult with those absent on maternity leave?



Failing to conduct individual consultation with those on maternity leave is potentially maternity or sex discrimination



Regulation 10 of the Maternity and Parental Leave Regulations gives those on maternity leave priority over other "at risk" employees in terms of suitable alternative employment



The penalty for failing to give those on maternity leave priority when it comes to suitable alternative employment is a potentially automatically unfair dismissal

Q6 What are the worst mistakes employers make?

- 1 Documentation can be your friend or your enemy
- 2 Schedules of those selected for redundancy which pre-date collective or individual consultation make frequent appearances in employment tribunals
- 3 Promises or comments in emails from line managers that indicate to an employee "not to worry, your job is safe" make it harder to discharge the evidential burden that consultation was genuine
- 4 Thoughtless emails from managers can be good evidence that the consultation was a sham or that the dismissal was not a genuine one but instead was made for discriminatory or other reasons
- 5 Managers should be briefed and trained before the process begins, with an on-going dialogue to deal with situations as they arise

Top tips

Go into consultation with an open mind

Give the employee representatives a fair and proper opportunity to understand fully the matters for consultation and a chance to respond with suggestions

Protracted consultation periods cause low morale with staff – progress matters with diligence

Think through how information will be disseminated from the employee representatives to the staff – intranet notices work well

Keep in constant dialogue with your line managers, making sure that any lessons are passed to all managers in the process so that there is a consistent approach

Recognise that this is a stressful period for employees – remind them of any health and wellbeing initiatives at work which may help

Put in place a communication and action plan for those employees who are not being made redundant so that productivity and morale are returned to normal once the exercise is completed

Questions?

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