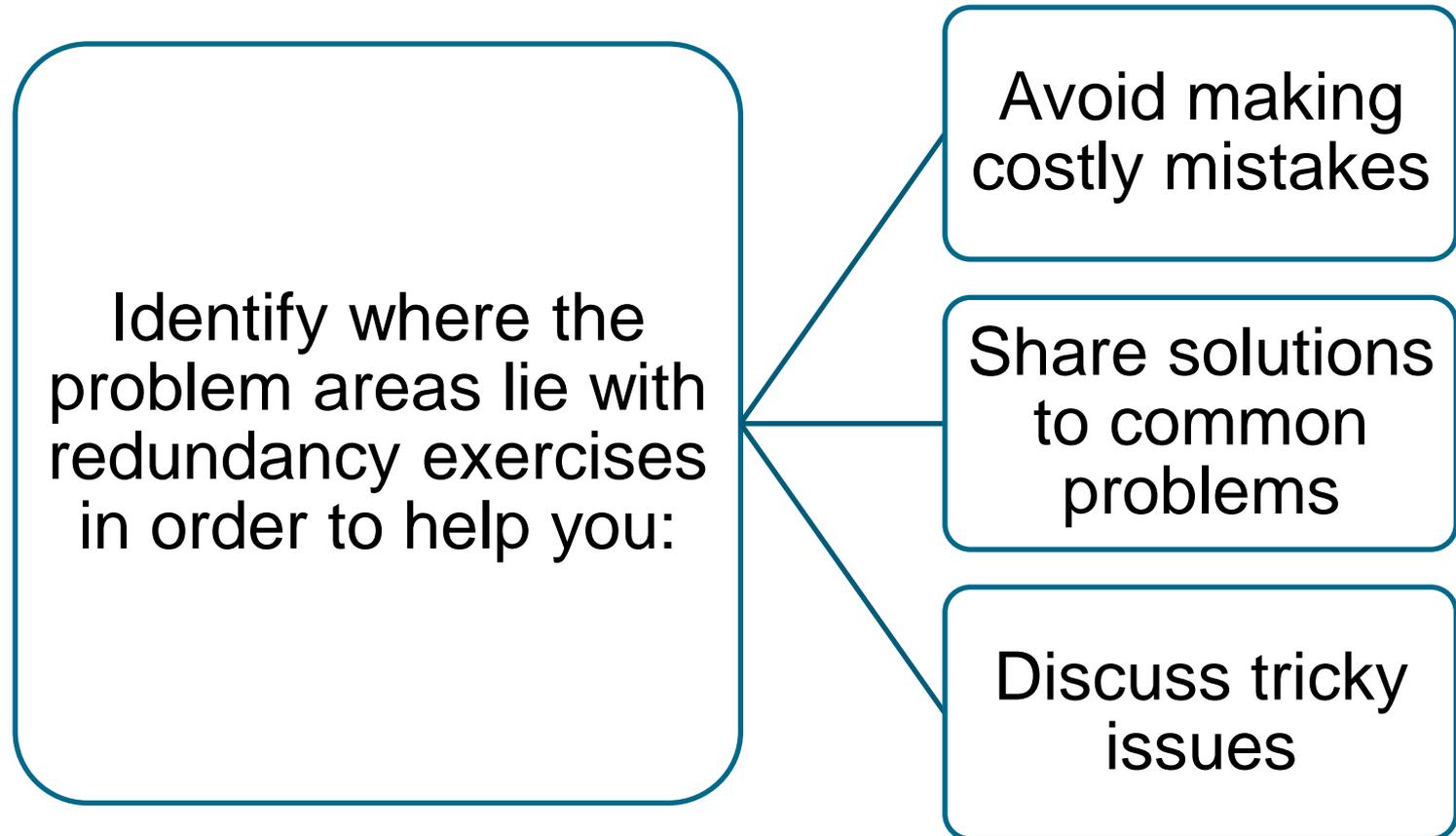




Redundancy: Avoiding the Red Lines

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Aims of today



When are you “proposing” to dismiss?

At what point do you start?

- Management may unilaterally decide in principle that a project should stop, department be closed down etc. and that accordingly 150 jobs should go.
- Under EU law, in general no duty to consult on economic decision making (Fujitsu)
- But UK case law provides exception for cases of complete closure (UK Coal Mining Ltd v NUM).
- Recent case E Ivor Hughes Educational Foundation v Morris and others – emphasised that consultation should start even when a provisional decision had been taken about closure of a school



Don't delay – don't wait until you have all the information organised to start talking - consultation should start while proposals are at a formative stage

“Affected” employees

Who should you consult with?

- Affected employees - the term extends beyond those immediately at risk of dismissal to include those affected by measures associated with the redundancies



Don't forget to correctly identify the correct group of employees to consult with

Pre-existing staff bodies

Many employers have a constitutional body - can be helpful for future exercises as it avoids delay, but if there are changes in the workforce then the body may no longer be sufficiently representative of the affected employees



Don't simply press ahead and consult with a pre-existing body without checking that they are representative of the affected employees

HR1 – it's a numbers game

Key issue here is to determine employee numbers

- It is important to identify numbers at the outset
- Woolworths decision: “establishment” is business unit to which employees are assigned to carry out their duties, not the whole organisation
- Tricky where one change exercise is affecting multiple employing entities and not sure where the dismissals will occur



Don't increase the numbers at a later date - the HR1 and s.188 letter should match

Electing representatives

How many representatives are necessary?

- The age old question!
- Procedures for setbacks along the way, such as resignations
- Consider whether to elect representatives for individual exercise or as a rolling programme?
- Highlights importance of getting pools/affected population right at the outset – add employees later in the day and potentially your reps are no longer sufficiently representative



Don't forget about absent employees and give them the option to be part of the process – family friendly leave, holidays, sickness absence, shift workers

Collective Consultation Meetings

All elected reps for the exercise must attend the initial meetings

- All elected reps to discuss and agree on selection criteria
- Thereafter discussions *may* (where appropriate) be focused to specific groupings and “break-off” discussions are permissible but not from the outset



Don't forget to properly consult all representatives – this involves giving the representatives an adequate opportunity to fully understand the issues over which they are being consulted

Collective consultation meetings – minutes

Minutes will be shared with all affected employees and should be provided only after internal review

- Review previous minutes and FAQs to ensure consistency, for both current exercise and others
- Clearly cover important points which may impact on liability
- Post meeting clarifications notes?

 **Don't offer to provide minutes straight after each meeting – give realistic timescales building in review time**

Challenges to the business rationale for the redundancies

Consistent message throughout the process is absolutely key but must be balanced against the need for an “open mind”

- Managers must “own” the message, be consistent and feel confident in its delivery
- Consult ‘with a view to reaching agreement’ but not necessary for Representatives to agree with all points
- Consultation means keeping an open mind
- How much information must you share?



Don't forget about the link with the ET disclosure process, FOI, DSARs

Scoring and pooling

Pools should be carefully assessed at the outset

- Will help hugely to be able to say criteria agreed during collective consultation – don't "renegotiate" on an individual level
- Make sure that your managers are trained on scoring employees and don't give "selected assurances" of job security
- Consider benefit of objective, central review of all scoring for consistency
- Particular issues may include -
 - A situation where a person is included or excluded from a pool in error and this must be resolved mid-exercise
 - Challenges to scoring which result in a shift in who is "at risk"
 - Common disability related challenges when timing is tight



Don't delay in dealing with challenges to scoring as this can have a knock on effect with those employees who are at risk

Alternative roles

Must inform employees if suitable alternative roles are available

- Ensure you give priority access to risk employees
- Are you doing enough?
- Cast your net widely
- Have you kept on contractors/agency staff?
- Do you have a paper trail?



Don't forget about the scope of protection for those on maternity leave. Reg 10(2) applies where there is a suitable available vacancy, then ...the employee is entitled to be offered alternative employment

Dealing with employees' concerns

What happens if an employee says the employer has been insensitive or careless?

- Redundancy exercises to you are about business needs; to employees they are about self-worth and rejection
- Inevitably emotional for most and can be a red flag to legal exposure
- If well handled, can reduce legal exposure and help employee relations
- Consider how to deal with these – informally, appeal mechanism, grievance process?



Don't be dismissive - employees' concerns may be valid or just an emotional reaction - either way, they merit consideration and sensitive handling

Summary of our red lines

Don't

- delay – consultation should start at an early stage
- simply press ahead and consult with a pre-existing body without checking that they are representative of the affected employees
- increase the numbers at a later date - the HR1 and s.188 letter should match
- forget about absent employees
- forget to properly consult all representatives
- offer to provide minutes straight after each meeting – give realistic timescales building in review time
- delay in dealing with appeals against scoring as this can have a knock on effect with those employees who are at risk
- forget about the scope of protection for those on maternity leave
- dismiss employees' concerns



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