



Redundancy and dismissal: Hints Tips and Solution Focused Answers

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- *In a redundancy selection process how do you balance (1) objective factors, (2) the outcome of HR selection exercises and (3) management assessment?*

- Selection
 - Employment records
 - Manager's assessments
 - Selection exercises
- Consultation – can criteria be agreed?
- Challenges
 - Is process reasonable?
 - Is assessment fair?
 - Is there discrimination?

Objective factors?

- Disciplinary records
- Absence records
- Length of service
- Measurable criteria
- Scores supported by documentation

Has the scoring been explained?

◆ Gateley Plc

- Need to communicate employee's own scores
- Why?
- Employee needs to be able to challenge assessment
- Is the marking accurate ?
- Effective appeal process
 - John Brown Engineering v Brown

The individual's circumstances?

- Would scoring be discriminatory?
- Is score a consequence of a 'protected characteristic'?
- Was an absence due to disability or childcare?
- Would including it be justified?
- Could further allowance be made?
- Should it be entirely excluded e.g. maternity leave

Discriminatory criteria?

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- Length of service
- Indirect age discrimination?
- Justified?
 - Rolls Royce plc v Unite the Union
- Part of matrix not sole reason for selection

Can criteria be measured?

◆ Gateley Plc

- Job efficiency
- Output, sales, service, money generated etc.
- Comparisons when employee is on maternity leave?
 - Eversheds v De Belin
- Inflated score risks discrimination

- Appraisals –
 - Are they consistent?
 - Have different managers been involved

Too objective?

- Recruitment selection process
- Written test
- Interview
- Group exercise
- Entirely objective competency assessment
- Excluded all input from management who knew them
- Unfair – process not within band of reasonable responses
 - Mental Health Care (UK) Ltd v Biluan

- No detailed examination of scoring required
- Management marking was not overtly biased and no sign of discrimination
- Wrong to investigate every part of the assessment
 - Nicholls v Rockwell Automation
- No requirement for documented evidence in every case
- Degree of judgement required but assessed objectively
- Fair process had been adopted
 - Mitchells of Lancaster (Brewers) Ltd v Tattersall

Criteria too ambiguous?

- *“Who, in the opinion of the manager concerned, would keep the company viable”*
 - Williams and others v Compair Maxam Ltd
- *“Best suited for the needs of the business under the new operating conditions”*
 - Smith and others v Haverhill Meat Products Ltd
- *“Attitude”?*
 - Graham v ABF Ltd

- *"Employee trajectory and future potential"*
 - Ganesan v Opera Solutions Ltd
- *"Our law recognises that in the real world employers making tough decisions need sometimes to deploy criteria which call for the application of personal judgment and a degree of subjectivity"*
 - Swinburne & Jackson LLP v Simpson

- Dismissal and provide opportunity to apply for new jobs
- Redundancy/recruitment process
- Degree of subjectivity as employer would best know who would fit the new profile
 - Morgan v Welsh Rugby Union
- Adequate consultation
- Use of subjective criteria fair when deciding the best person for a suitable alternative vacancy
 - Samsung Electronics (UK) Ltd v Monte-D'Cruz

- The decision as to what criteria to use if not discriminatory will normally be a matter for the employer
- Tribunal will be reluctant to interfere with their conclusion
 - Chronos Richardson Ltd v Watson

- Case law suggests that the best redundancy selection matrix will be those that contain a mixture of criteria
- Some entirely objective criteria and some which depend on input from managers
- Identify the rationale for choosing the criteria
- Give weighting to that which most matters to the business going forward

Questions