

Redundancy – selection pools



Identifying the correct pool

Before selecting an employee for dismissal on the grounds of redundancy, the business must consider from which pool of employees the redundancy selection should be made, otherwise the dismissal is likely to be unfair.

Discretion over the size of the pool

There are no fixed rules about how a redundancy pool should be defined. As long as the business can show that its choice of pool was reasonable in the circumstances, it will be difficult for an employee (or an Employment Tribunal) to challenge the decision.

For example, it is not always unfair to choose a redundancy pool that is the same size as the number of redundancies being made. However, a business should only choose this option if there are strong reasons for doing so and the business should remain wary of overstating the commercial risks of a wider pool.

Considerations for identifying the pool

When considering the choice of pool, the business should start by asking two questions:

- Which particular kind of work is disappearing?
- Which employees do the particular kind of work that is disappearing?

If there is a clear link between the kind of work that is disappearing and the group of employees doing that work, then the pool is likely to be easy to identify. The business should also consider:

- the extent to which the employees are doing similar work;
- the extent to which employees' jobs are interchangeable; and
- whether the selection pool was agreed with union or employee representatives.

Look at the work the employees actually do

The business should look at the day-to-day activities of the employees and as well as the terms of their contracts. Businesses should concentrate on the reality of the situation, rather than what the employees' contracts say in theory that they may be required to do.

Consider interchangeable skills

Identifying the pool becomes complicated if the employees are multi-skilled and do different types of work or can be required to do different types of work under their contract of employment. In these cases, the employees are more likely to object to being labelled as redundant, particularly if they can point to other employees with whom they share interchangeable skills.

It may be unreasonable for the business to identify one employee as being in the pool simply because they are doing a particular type of work that is disappearing, and ignore another employee doing different work where the first employee could just as easily do that other work.

If an employee has previously done other work (other than the kind of work disappearing), it is likely that their skills are interchangeable with the other employees, and so a wider pool may be required.

Where the work is "low-skilled", the skills are more likely to be regarded as interchangeable.

Where an employee can point to another employee with interchangeable skills who also has less service than them, this may strengthen the argument that the other employee should be included in the pool.

Consider other sites

Where a business carries out similar work at more than one site, it may be unfair for the business to only include employees at

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one site within the pool, even if that site is closing completely. The business should therefore consider whether it would be appropriate to include workers from other sites.

“Bumping”

A business is entitled to widen the selection criteria for redundancy beyond those employees that are directly affected by the redundancy situation. The business can consider “bumping” out of their jobs employees whose roles are not redundant, to be filled by employees whose roles are redundant. There is no obligation on a business to consider “bumping”, but the business may fall foul of unfair dismissal law if it would have been reasonable to consider it in the circumstances.

Commercial problems with a wide redundancy pool

Businesses may be reluctant to draw up a wide redundancy pool, even if it would be technically correct to do so, because of the impact that it could have on the morale of the business’ employees. However, by identifying a narrow pool, or only consulting with those individuals provisionally selected for redundancy, the business may be more vulnerable to claims of unfair dismissal. Businesses must decide whether the risks to morale and other costs of widening the pool outweigh the risk (and cost) of claims.

We’re here to help...

This note gives a general overview of some key considerations in selection criteria for redundancy and should be read in conjunction with our redundancy key facts hand-out. Care should be taken in undertaking redundancies as additional considerations can arise, for example where a union is recognised by the employer, there is a risk of discrimination in the selection criteria, or where an employer has collective redundancy obligations.

If you would like any further information about our specialist employment law and HR services, please contact a member of the team.

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Kevin is experienced in all aspects of employment law, both claimant and respondent, from drafting contracts and procedures, through to providing representation before tribunals in cases involving multiple claimants, and advising on dismissal and re-engagement procedures in relation to contract variations for 500 plus employees. He has worked across the public and private sectors, for high street practices, local authorities and RSLs. This diverse range of experience has given him a very good understanding of the different pressures and considerations that apply when providing advice to individuals, businesses and public bodies. Kevin is admired for his pragmatic approach to most problems, and for finding solutions which minimise both cost and risk to clients.

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