

Managing Redundancies

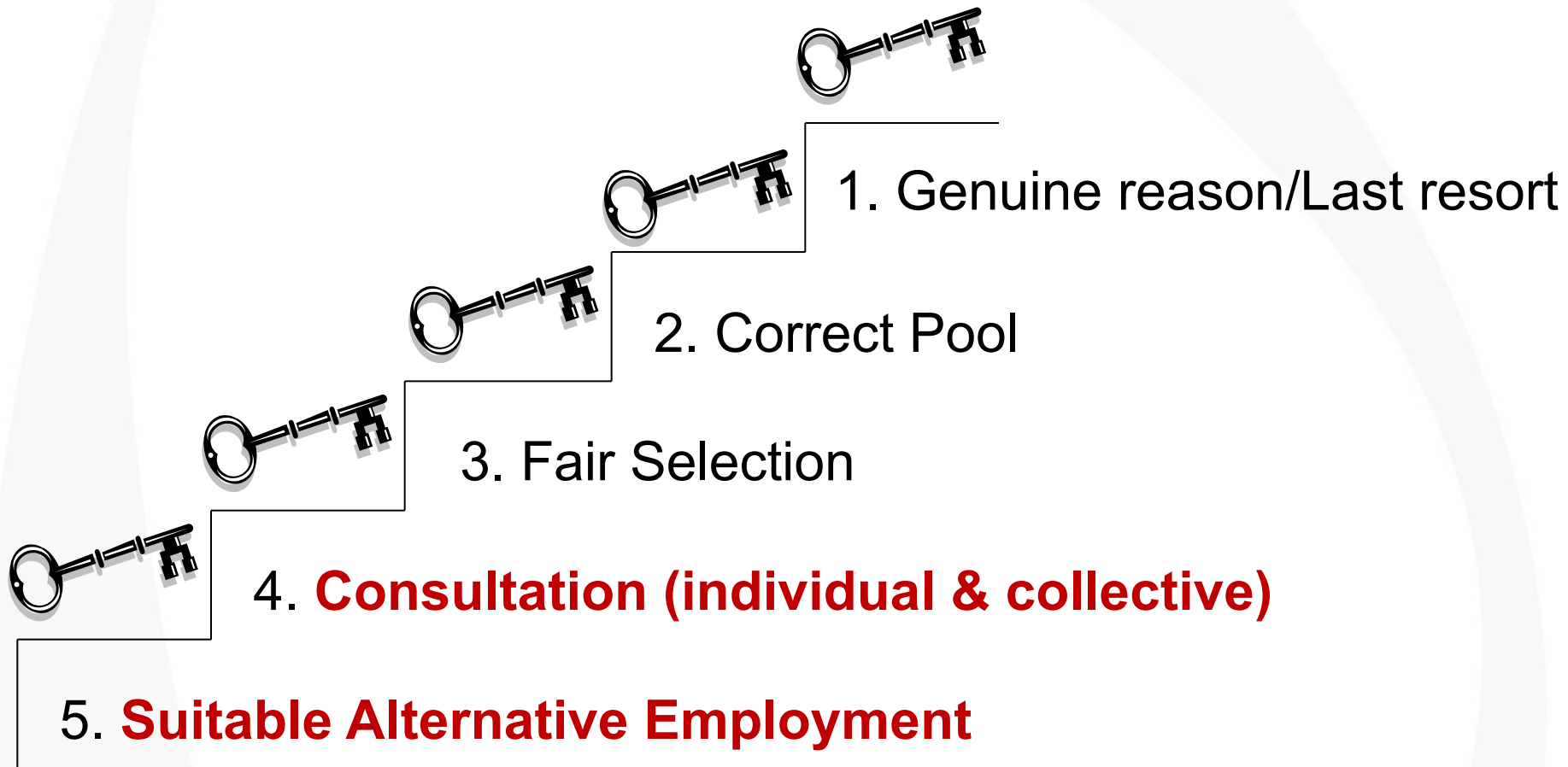
What is redundancy?

- The statutory definition (Article 174 Employment Rights (NI) Order 1996) covers three specific situations. In summary:
 - The closure of a business
 - The closure of a particular place of work
 - A diminishing need for employees to carry out work of a particular kind

A dismissal will not be for redundancy unless it falls within one of these three situations.

Consistency is key

Key Steps to Fairness (“The Legal Context”)



Planning is Key

Some legal...

- Who is affected?
- Who will be placed at risk (pool)?
- How will we select those at risk (selection criteria)?
- Is there a redundancy policy or procedure which needs to be considered?

Some more practical but equally important...

- Who is going to deliver the news?
- Can we contact everyone at the same time?
- How do we ensure that messages are consistent?
- Do managers need training?

Legal Context: Identifying the Correct Pool

- **Flexibility:** the reasonable employer
- Consider pooling across sectors, departments, teams
- **Factors to consider:**
 - ☑ What type of work is ceasing or diminishing
 - ☑ Extent to which employees are doing similar work
 - ☑ Extent to which jobs are interchangeable
 - ☑ Whether employer genuinely applied its mind to the pool
 - ☑ Whether selection pool was agreed with employee reps/union

Selection Criteria

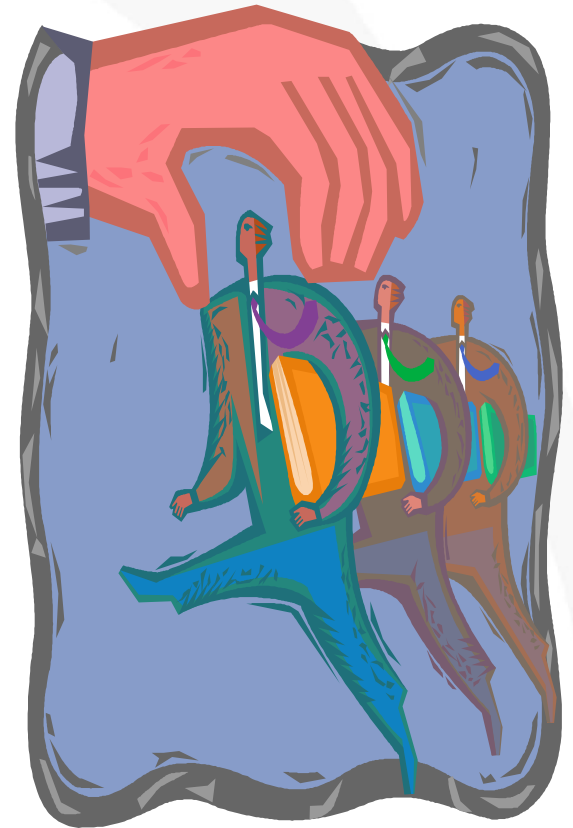
- Objective as possible
- Competencies/skills
- Based on future business needs
- Consistently and fairly applied



Indirectly discriminatory criteria?

Legal Context: Individual Consultation

- Essential to avoid dismissal being unfair
- Should disclose to individuals own score and how it has been reached
- Give employee adequate time and opportunity to discuss question/concerns
- Allow employees to make suggestions
- Usually 2 or 3 consultation meetings
 - Genuine and meaningful



Legal Context: Alternative Employment

- Consider prior to dismissal otherwise unfair
- Not obliged to create vacancies
- Suitability
 - broad approach
 - no assumptions
 - keep records
- Trial period
- Refusal of suitable alternative employment



Statutory Dismissal Procedure

- Step 1 – Notify the selected employees in writing that you are contemplating their dismissal by reason of redundancy.
- Step 2 – Hold the meeting
 - Notify the employee of the decision
 - Inform employee of right to appeal
- Step 3 – Appeal meeting
 - Notify employee of final decision

Redundancy payments

- Statutory redundancy
 - Minimum two years' service
 - Calculation based on pay, service and age
 - Current maximum weekly pay £560 (gross)
 - Refusal of suitable alternative employment may affect entitlement
- Enhanced redundancy pay
- Notice (if not worked)
- Holiday pay

Obligation to Consult Collectively

- Article 216 Employment Rights (NI) Order 1996.
Duty arises where the employer

*“...proposes to dismiss as redundant 20 or more employees **at one establishment** within a period of 90 days or less”*

- Totting up numbers:
 - Include voluntary redundancies
 - Include fixed term contracts over 3 months in duration



Obligation to Consult Collectively

- Timeline
 - 20 to 99 redundancies: min 30 days before the first dismissal takes effect
 - Over 100 redundancies: min 90 days before the first dismissal takes effect



Notifying Department for the Economy

- Notification in writing (HR1)
- At least
 - 30 days before first dismissal takes effect (20 +)
 - 90 days before a first dismissal takes effect (100 +)
- Copy to employee representatives
- Failure to notify = criminal offence (fine: £5,000)



Consult with whom?

- “*appropriate representatives*” of the “*affected employees*”
- Beyond those immediately at risk of dismissal
- Affected by wider measures
- Representatives:-
 - primarily recognised TU reps.
 - in absence of these
 - existing workforce reps. (with mandate); or
 - specifically elected reps.



What Does Consultation Involve?

Provision of information

Article 216(6) letter

Purpose/Objective

“With a view to reaching agreement”

Mandatory subject matter

- avoiding dismissals (including business case for redundancies);
- reducing number of dismissals; and
- mitigating the consequences of dismissals.

Duration

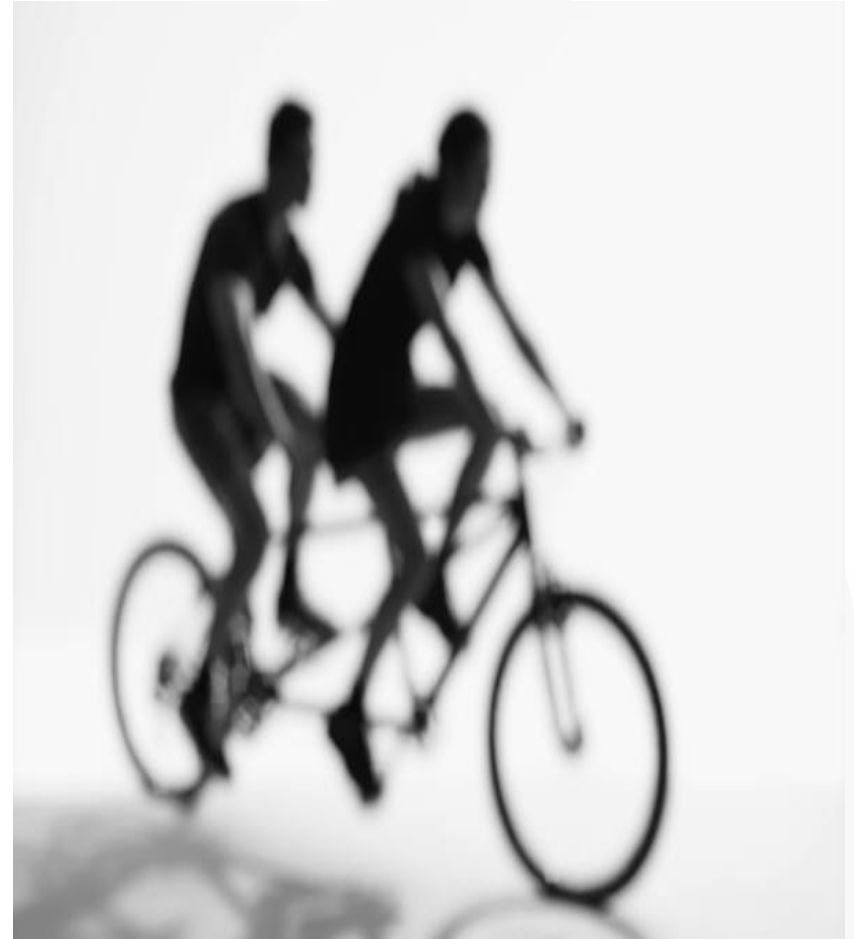
- in good time (retrospective assessment)
- proposals at a formative stage
- minimum periods [30/90 days]

Duty to inform

- Employer is obliged to disclose, in writing, the following information to the appropriate representatives:
 - Reasons for the proposals
 - Numbers and descriptions of employees it proposes to dismiss as redundant
 - Total number of employees of that description employed at the establishment in question
 - Proposed method of selection
 - Proposed method of carrying out the dismissals
 - Proposed method of calculating redundancy payments
 - Information on agency workers

Relationship Between Individual and Collective Consultation

- Collective consultation is not a substitute for individual consultation
- Make provision for individual meetings as well



Capturing the Evidence



- Written record of rationale, discussions/consultation essential

Risks

- Unfair dismissal claims
 - Basic award (offset by statutory redundancy payment)
 - Compensatory award (subject to max of £88,693)
- Discrimination claim
 - Compensation unlimited
- Protective awards (collective consultation)
 - Starting point is 90 day's gross pay per employee