

**COUNCIL NEWS
DECEMBER 2022**

1 Conducting Redundancy Consultation

The first three months of the year are often the time when larger Councils consider restructuring their workforce in anticipation of the new financial year. There are many reasons for this to happen between January and March, such as funding for particular posts coming to an end, the Council wanting to stop loss making activities or simply restructuring what they do.

However, if restructuring also entails making staff redundant, the process is not a risk-free option. Any Employee with two or more years continuous employment could claim Unfair Dismissal if the process is mishandled. One of the key elements of any redundancy process is meaningful consultation.

For a Council to simply resolve that a post or posts are no longer needed, and to inform Employees that they will be leaving at the end of the Financial Year without prior explanation or entering into dialogue before making that decision, is failing to deliver that consultation and creates an Unfair Dismissal.

This was recently tested in case law (*Teixeira v Zaika Restaurants*) following a dismissal over the phone of a chef who was less experienced than their colleagues. The Employer's defence was that consultation would always have been meaningless, as the job had ended and there were no other options available for consideration.

The Court disagreed with the Employer's failure to consult and ruled that the purpose of the process was to test an assumption that there was no further need for an Employee, and in this case the Employee was denied that opportunity. The purpose of consultation is to challenge the reasons for proposing redundancy and consider alternative jobs or opportunities.

By denying Employees an opportunity to engage in a dialogue over these options, removes the possibility of them coming up with ideas that could have avoided the redundancy.

Consequently, taking the unilateral decision to dismiss without consultation constitutes Unfair Dismissal.

2 Could Requiring someone with a Disability to attend a Redundancy Consultation meeting constitute Disability Discrimination?

Yes, if the disability places someone in an unfavourable position in attending the meeting, as was determined in the case of *Hilaire v Luton Borough Council*.

If an Employee has a disability that affects their communication skills, ability to fully understand what is being discussed, or they have a mental health problem that could be exacerbated by attending the meeting, the need to attend a consultation interview could be a discriminatory practice.

A Council faced with such a dilemma would be wise to make reasonable adjustments to help accommodate the Employee through the process. This could involve getting an informed medical opinion from their GP, or an independent Occupational Health Specialist, as to what such adjustments could be. Possible options could be to allow the Employee to be accompanied by an advocate/Union Representative, attend via Zoom/Teams, conduct the meeting in a neutral venue, conduct it at a time of day that is more accommodating to the Employee. Whichever option a Council chooses to use would depend on the medical advice.

Statutory Payment Rates from April 2023

Shared Parental Pay (ShPP)	
Statutory rate of £172.48 or 90% of employee's weekly earnings if lower.	
Maternity Pay (SMP)	
6 weeks at 90% of average weekly earnings. Then statutory rate of £172.48 or 90% of employee's weekly earnings if lower.	
Adoption Pay (SAP)	
6 weeks at 90% of average weekly earnings. Then statutory rate of £172.48 or 90% of employee's weekly earnings if lower.	
Paternity Pay (SPP)	
Statutory rate of £172.48 or 90% of employee's weekly earnings if lower.	
Parental Bereavement Pay (SPBP)	
Statutory rate of £172.48 or 90% of employee's weekly earnings if lower.	
Statutory Sick Pay (SSP)	
£109.40 pw for 28 weeks subject to earnings (average £123 per week)	
Minimum Wage from April 2023	
Workers aged 23 and over (National Living Wage)	£10.42/hour
Workers aged 21–22	£10.18/hour
Workers aged 18–20	£7.49/hour
Workers aged 16-17	£5.28/hour
Apprentices under 19, or over 19 and in first year	£5.28/hour

PROFILE

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If you need advice from Chris let us (Norfolk ALC) know and we can refer you.