

Service transformation  
*Managing workforce changes legally*



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Background

- Unprecedented challenges in local government
- Already pressure to cut cost to meet efficiency targets – to increase after election?
- High cost of redundancies – is it cheaper to vary contracts e.g. reduced hours?



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Is this redundancy or changing terms?

- Important to get this early diagnosis right
- Considerations:
  - keep in mind statutory definition i.e. “work of a particular kind”
  - is the **essence** of the job changing e.g. tasks carried out or skills employed, or
  - are you simply seeking to change the Ts & Cs upon which the job is performed?
    - shift patterns, relocations



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### Changing terms: “the basics”

- Consent (express or implied)
- Contract allows for variation (e.g. flexibility clauses)
- Collective agreement
- Employer imposes a change on employee:
  - present changes as a fait accompli
  - terminate existing contract and offer new terms



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### How to change terms and conditions

- Key elements on any exercise: -
  - Consult with employees / trade unions
  - Seek agreement to the changes
- If no right to vary and can't agree, options are: -
  - Terminate with an offer to re-engage
  - Impose the change
- Termination and re-engagement on new terms is a redundancy for purposes of s188 TULRCA



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### Changing terms and conditions

- Employer must act reasonably:
  - Business rationale for introducing the change;
  - Consider employee's reasons for rejecting the change;Provide reasonable warning of the proposed changes;
- Clearly explain the full effect of the changes to employees;
- Assess the impact on employees



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### Changing terms and conditions

- Employer must act reasonably:
  - Consider alternatives to the changes;
  - Attempt to obtain voluntary agreement to the changes;
- Key is employer **must** conduct a reasonable and genuine consultation process



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### How to collectively agree a variation

- Is the collective agreement “incorporated” into the contract of employment?
- Agreement with the Trade Union can then be incorporated directly into the contract
- No need for individual consent!
- Typical examples include pay awards, but can be used in other ways



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### Negotiation with trade union

- Changes to terms as an alternative to redundancy?
- Is there a pay protection policy in place?
  - Note difference for reason of protection (i.e. equal pay)
- Offer it as part of a “deal” with Trade Union



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### Imposing changes

- Imposing a change without contractual right will be a breach of contract
  - Implied consent if it “bites” immediately (e.g. change to hours);
  - Difficult to argue if no immediate impact (e.g. sick pay)
- Option is for employee to resign and claim constructive dismissal
  - Reduction in hours / pay likely to be a fundamental breach
  - If full consultation has been undertaken and there is a genuine reason, can be a “fair” constructive dismissal



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### Collective consultation & varying terms

- “Dismissal for a reason not related to the individual concerned”
- Collective consultation for 30 / 90 days for 20 / 100 or more redundancies at an “establishment”
- Obligation to inform Trade Union
  - reasons for proposals
  - numbers and descriptions of employees
  - total number of employees of such description
  - method of selecting the employees
  - method of carrying out the dismissals
  - any redundancy payments
- Individual consultation still required
- Protective award 90 days per employee



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