

# How precarious is it to run a redundancy consultation for employees on maternity leave due to return soon?

6 November 2025

Dawn Dickson, Partner

# What if there are no alternative roles, or they refuse them?

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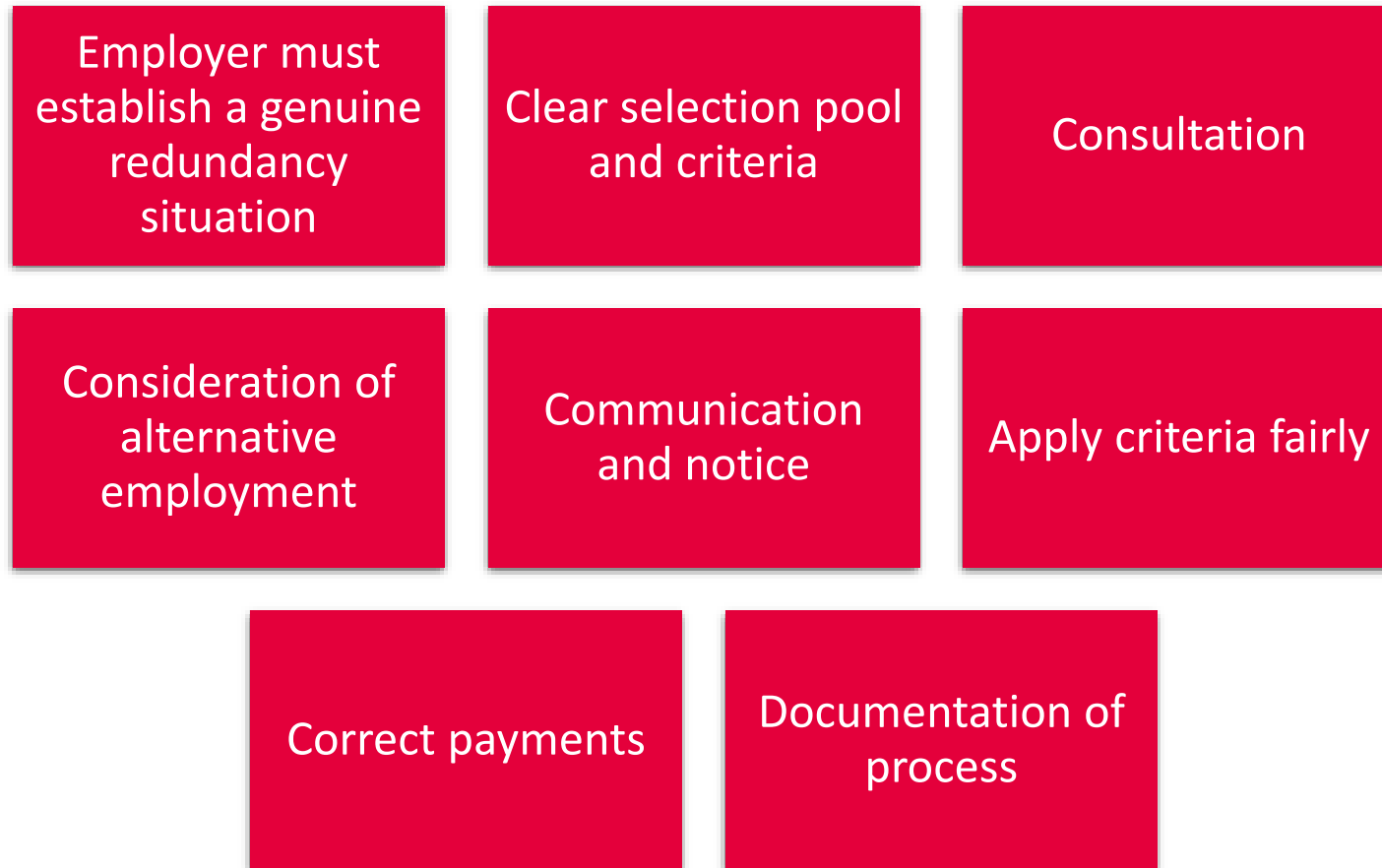
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# Agenda

- What is a fair redundancy process in general, and how does the maternity context affect it?
- What specific legislative protections apply to employees who are pregnant/on maternity leave (or shortly after return)?
- What are the pitfalls employers should avoid?
- How should employers react when there are no alternative roles available? Or where there are alternative roles but they are refused?
- Best-practice and top tips for HR professionals to mitigate risk and run a defensible, fair consultation
- Conclusions

What makes a fair redundancy process?

# Elements required for a fair redundancy process



# Specific legislation & protections for pregnant or employees on maternity leave

# Key legislation and protections

The Employment Rights Act 1996



The Equality Act 2010



The Maternity and Parental Leave etc. Regulations 1999



Protection from Redundancy (Pregnancy and Family Leave)  
Act 2023

# Considering alternatives

- Always part of consultation-collective or individual
- A means to avoiding or reducing dismissals
- Should form part of individual consultations process
- Any exemptions to this?
- Examples of alternatives:
  - Job sharing
  - Reduction in hours
  - Reduction in pay
  - Restricting recruitment





# The meaning of a 'suitable alternative vacancy'

## The new contract offered to the employee must be such that:

- The work to be done is both suitable and appropriate for her to do in the circumstances (*regulation 10(3)(a) of MPL Regulations*).
- The capacity and place in which she is to be employed, and the other terms and conditions of her employment, are not substantially less favourable to her than if she had continued to be employed in her old job (*regulation 10(3)(b) of MPL Regulations*).

## ***Carnival Plc (t/a Carnival UK) v Hunter [2024] I.R.L.R. 94***

- The Employment Appeal Tribunal clarified that if no actual contract of employment would exist for a remaining role, it is not a "suitable alternative."
- Employers are not required to displace another employee to create a vacancy for someone on maternity leave.

# Pitfalls: discrimination risks & failing obligations

# Risks?

Discrimination claims

Failure to offer a suitable alternative vacancy

Inadequate consultation

Failure to consider alternatives

Genuine redundancy but poor process

Refusal of alternative role by the employee

Record keeping



# Should the employer avoid selecting pregnant employees or employees on maternity leave for redundancy altogether?

## ***Risk of automatic unfair dismissal –***

- The only (or principal) reason for the employee's selection for redundancy was connected with:
  - The fact that she has given birth (where the dismissal ends the employee's OML or AML period).
  - The fact that the employee took, sought to take or availed herself of the benefits of maternity leave.

## ***De Belin [2011] IRLR 448***

- A male employee was selected for redundancy over a comparative female colleague who was on maternity leave at the time.
- The redundancy decision was based on performance scoring which favoured the female colleague by giving her the maximum score, as part of the Company's policy for protections for employees on maternity leave.
- The Tribunal found in favour of the male colleague and ruled that it amounted to sex discrimination, due to it being disproportionate.

No alternative roles or, where the alternatives are refused?

## Scenario A: No alternative roles available

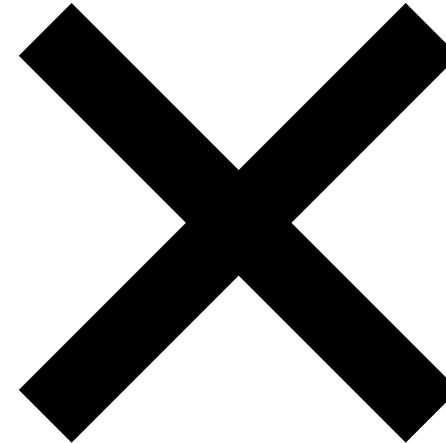
If there are no suitable alternatives available for the protected employee, they made be lawfully made redundant, ***provided*** the selection process is fair, the redundancy genuine, and the employer has complied with all consultation and priority-offering obligations.

- Documentation of process is key.



## Scenario B: Alternative roles offered but refused by the employee

- Employer must ensure that the role is genuinely ***suitable*** and ***appropriate in the circumstances***.
- The priority obligation under Regulation 10 only applies if a “suitable alternative vacancy” exists.
- If the employee ***unreasonably*** refuses, the employer may go ahead with the redundancy.
- However: what is ***unreasonable*** will depend on the context.



# Best practice and top tips





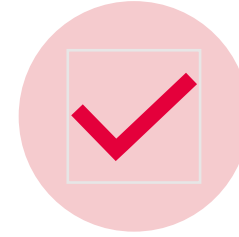
EARLY  
IDENTIFICATION AND  
PLANNING



ENSURE GENUINE  
BUSINESS REASON



EFFECTIVE  
CONSULTATION



REVIEW ALTERNATIVE  
ROLES DILIGENTLY



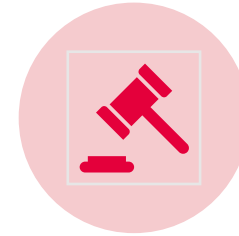
SELECTION CRITERIA  
FAIRNESS



CLEAR  
COMMUNICATION  
AND SUPPORT



DOCUMENT  
EVERYTHING



SEEK LEGAL ADVICE  
EARLY

# Conclusions

- The risk of employment claims is higher when dealing with employees on maternity leave
- It is still possible to make employees redundant whilst pregnant, on maternity leave or within the protected period, but they do have increased protections and you do have to tread carefully and take the time to fully consider each step you take.
- Employers must ensure that the redundancy process is fair and compliant with relevant legislation.
- Treat all employees equally in the process-remember the circumstances where pregnant employees can be given preferential treatment.
- Maintain effective communication throughout the process to mitigate risk.
- Employment Rights Bill....



Questions?