

# TUPE – Redundancy – Restructuring

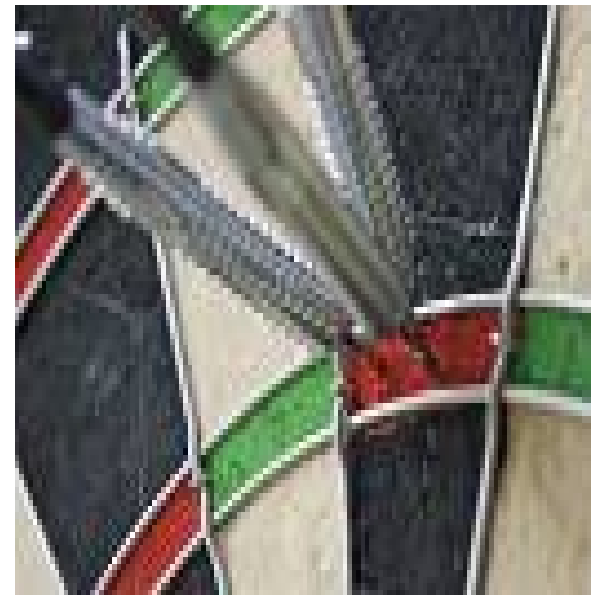
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# Aims and objectives of today



**By the end of this session we will:**

- **provide an overview of the Transfer of Undertakings (Protection of Employment) Regulations 2006**
- **provide an overview of the redundancy process**
- **Examine variation of contract as an alternative to the above**



# What is a relevant transfer?



- a business or undertaking or part of one is transferred from one employer to another as a going concern - can include cases where two companies cease to exist and combine to form a third
- when a client engages a contractor to do work on its behalf or reassigns such a contract including bringing the work "in-house"



# Transfer of Undertakings- Protection of Employment



## Reg.3- service provision change

- where a service previously undertaken by the client is awarded to a contractor (outsourcing or contracting out)
- where a contract is assigned to a new contractor on subsequent re-tendering or
- where a contract ends with the service being performed in-house by the former client (insourcing or contracting in)

# Contracts of Employment – Employer's position



- transferee takes over contracts of employment of all employees who were employed in the 'organised grouping of resources or employees' immediately before the transfer
- transferee takes over all rights and obligations arising from those contracts except criminal liabilities and some occupational pension scheme benefits
- transferee takes over any collective agreements
- where the previous employer voluntarily recognised an independent trade union in respect of some or all employees, the transferee must also recognise that trade union (s) to the same extent after the transfer

# Contracts of Employment – Employee's position



- **employees in the 'organised grouping' immediately before the transfer automatically become employees of the transferee**
- **they retain continuous service**
- **they retain all the rights and obligations connected with their original contracts of employment except occupational pensions**

# Economic, technical or organisational reasons



- related to the profitability or market performance of the transferee's business (economic)
- related to the nature of the equipment or production processes which the transferee operates (technical)
- related to the management or organisational structure of the transferee's business (organisational)

# Disclosure of employee liability information



- age and identity of those employees who will transfer
- information contained in their written statements of employment particulars
- information on any collective agreements applying to them
- instances of any disciplinary action taken by the transferor within the preceding two years where the statutory DDPs apply
- instances of any grievances raised within the preceding 2 years where the statutory GPs apply
- instances of any legal actions taken by those employees against the employer in the previous two years and instances of potential legal actions which may be brought by those employees where the transferor has reasonable grounds for believing that such actions may occur



**Both transferor and transferee have a duty to inform and consult representatives of their affected employees including-**

- **those individuals who are to be transferred**
- **their colleagues in the transferor employer who will not transfer but whose jobs may be affected by the transfer**
- **their new colleagues in employment with the transferee whose jobs may be affected by the transfer**

# Definition of Redundancy



- **Closure of the business or part of the business**
- **Closure of the workplace**
- **Fewer employees needed for work of a particular kind**
- **Fewer employees needed for work of a particular kind in that workplace**





consulting

The employer must have formed some view as to....

- How many are to be dismissed
- When this is to take place
- How it is to be arranged

# Pool of selection



- In carrying out a redundancy exercise the employer should begin by identifying the group of employees from whom those to be made redundant will be drawn. This is known as the 'pool of selection' and it is to these employees that the employer will apply the appropriate selection criteria.



- **Reasonable for employer to want to retain a balanced and skilled workforce**
- **Reasonable to use a number of selection factors determined by the needs of the business**
- **Assessments should be objective and come with supporting evidence where possible**
- **Assessments should be open to discussion/appeal**

# Selection criteria



The following are among those most commonly used in matrix form:

- Length of service
- Attendance and disciplinary records
- Performance / work quality
- Relevant skills and competences
- Qualifications and experience
- Conduct and attitude
- Versatility and adaptability
- Customer focus and quality

# Changing terms and conditions



**Contracts can be varied by**

- **mutual agreement**
- **a clause in the contract**
- **collective agreement**
- **unilateral variation**

# Changing terms and conditions



## Where agreement cannot be reached

- **terminate existing contract**
- **give proper notice**
- **offer new contract**
- **continuous employment**



# Changing terms and conditions



## Employee options

- **accept new terms**
- **leave at the end of notice period**
- **make claim of unfair dismissal**