

acas working
for everyone

Making Difficult Decisions and Delivering Change Effectively as a Leader

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Leadership: Making Difficult Decisions



What makes the decisions hard?

unknown unknowns
— the ones we don't know
we don't know



'we know, there are known knowns; there are things we know we know.

We also know there are known unknowns; that is to say we know there are some things we do not know.

*But there are also **unknown unknowns** — the ones we don't know we don't know.*

And if one looks throughout the history of USA and other free countries, it is the latter category that tends to be the difficult ones'

Recognising redundancy situations

**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**

Building and maintaining trust in the workplace



Consultation should:

**Be genuine
with a view
to reaching
agreement**

**Ensure
adequate
information
provided**

**Provide
adequate
time to
respond**

**Include
genuine
consideration
of employee
views**

**Support
working
together to
find common
solutions**

Pools and 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 have supporting evidence wherever possible

They should avoid discriminating against any employee

Assessments should be open to discussion/appeal

Redundancy

Are you considering making staff redundant?

Yes

Is there:

- An actual or intended closure of the whole business?;
- An actual or intended closure of the business at a particular workplace?;
- A reduction (or anticipated reduction) in the need for employees to carry out work of a particular kind?

No

Dismissal(s) outside of the scope of the redundancy legislation (s139 Employment Rights Act 1996) [link](#)

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Have you considered Government financial support schemes ?

Financial support for businesses during coronavirus (COVID-19) [link](#)

Support finder tool by nation [link](#)

20 or more employees within 90 days, one establishment

Caution – if at a later date but still within period of 90 days or less a risk of further redundancies is identified meaning total potential redundancies is 20+ employees, collective consultation and HR1 form **will** apply for **all** employees impacted during this period - s188. Trade Union and Labour Relations (Consolidation) Act 1992 [link](#)

Failure to adequately collectively consult could lead to a fine, tribunal award and the dismissal being deemed unfair.

Still good practice to fully consult with employees and their representatives in the same way (see process for 20+). During the consultation period you must let employees know in writing the information set out under "Prepare for the Consultation" [Acas guidance link](#)

Duty to collectively consult does not arise.

Less than 20 employees

How many staff do you anticipate will be affected by the proposed change? If you have multiple locations, will the number affected be across the organisation, or at specific locations as this may affect your legal obligations. For more information [Acas link](#) [Scotland support services PACE link](#)

Make a redundancy plan, working with TU/ staff representatives. Focus on ways in which redundancy can be avoided.

Plans must not be finalised at this stage.

20 + employees

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Collective Consultation Time limits: 20-99 employees **must be** at least 30 days before first redundancy. 100+ employees **must be** at least 45 days

Failure to adequately collectively consult could result in a protective award claim.

REQUIREMENT: Notify the Redundancy Payments Service (RPS) before a consultation starts, [HR1 form link](#). Failure to comply with the statutory notification requirements may result in prosecution and a fine

Consult with TU representatives or elected employee representatives. Where there is no TU, the employer must seek to elect an employee representative group (appendix 4) [Acas link](#). If they are unable to do so then they may consult directly with employees

Write to representatives explaining their duties in accordance with s188 TULCRA [link](#).

Provide information to representatives or staff about the planned redundancies, giving representatives or staff enough time to consider them [link](#), Govt information [link](#)

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Ongoing support to remaining staff

Arrange payments, dismissal effective from the date in which notice expires.

Ongoing support to affected and remaining staff

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Individual consultation - usually after consultation with representatives but can overlap if needed [link](#).

Selecting employees for redundancy [link](#), **remain vigilant to discrimination risks** [link](#), & set up an appeal process

Seek to agree selection criteria with employees ensuring they are non-discriminatory [link](#)

N.B additional protection is also applied to **Reservists** [link](#). Where their role has been made redundant, on demobilisation you must consider if it is reasonable/ practicable to find an alternative role.



And finally....why proactively manage after redundancy?

- Employee wellbeing
- Employee engagement
- Economic survival
- Reputation
- Accountability
- Organisational effectiveness
- Legal requirement



Resources

Making working life better for everyone in Britain

Acas gives employees and employers free, impartial advice on workplace rights, rules and best practice. We also offer training and help to resolve disputes. [More about Acas.](#)

How Acas can help

[Advice](#)

Free advice on employment rights, rules and best practice.

[Templates](#)

Free letters, forms and policy documents to adapt.

[Training](#)

Courses, events and tailored support on a wide range of employment topics.

[Dealing with workplace problems](#)

Advice on how to raise and resolve problems at work, either informally or formally.

[Dispute resolution services](#)

How Acas can help you get a legal agreement without going to an employment tribunal, or help resolve a dispute.

News and updates

[Acas publishes new advice on getting coronavirus vaccines for work](#)

News, 25 February 2021

[Acas conference: The future of workplaces](#)

Tuesday 25 May, 9:30am to 12:30pm

[Business support: managing in difficult times](#)

Find out how our free, expert support can help your business during the pandemic.

Welcome to Acas Learning OnLine

Learning OnLine offers a range of online courses and resources for individuals and different sizes of employers.



5 steps to success with Acas Learning Online

- 1 [Create a free account](#)
- 2 [Choose the courses you want](#)
- 3 [Work through at your own pace](#)
- 4 [Access further resources and support](#)
- 5 [Put the learning into practice](#)

News and Updates

Welcome to Acas Learning Online news and updates. Here you will find information about what is happening on this site.

16th December 2020 - Changes to our online learning

Due to the expiration of Flash, Acas is working hard to convert our online learning modules to HTML5 format so they are more accessible to everyone, however, this will mean a reduction in the number of modules available for a period of time. We would like to thank you for your patience and understanding at this time. Please check the news and updates section for updates regularly.

Courses

- [Acas Codes of Practice](#)
- [Bullying & Harassment](#)
- [Change Management](#)
- [Contracts of Employment & Written Statements](#)
- [Disability Discrimination and Reasonable Adjustments](#)

Training and Business Solutions

Access a variety of training courses and business solutions to suit a wide range of needs.

[Find out more >](#)

Tools and Resources

Explore a selection of tools and resources to help with employment issues.

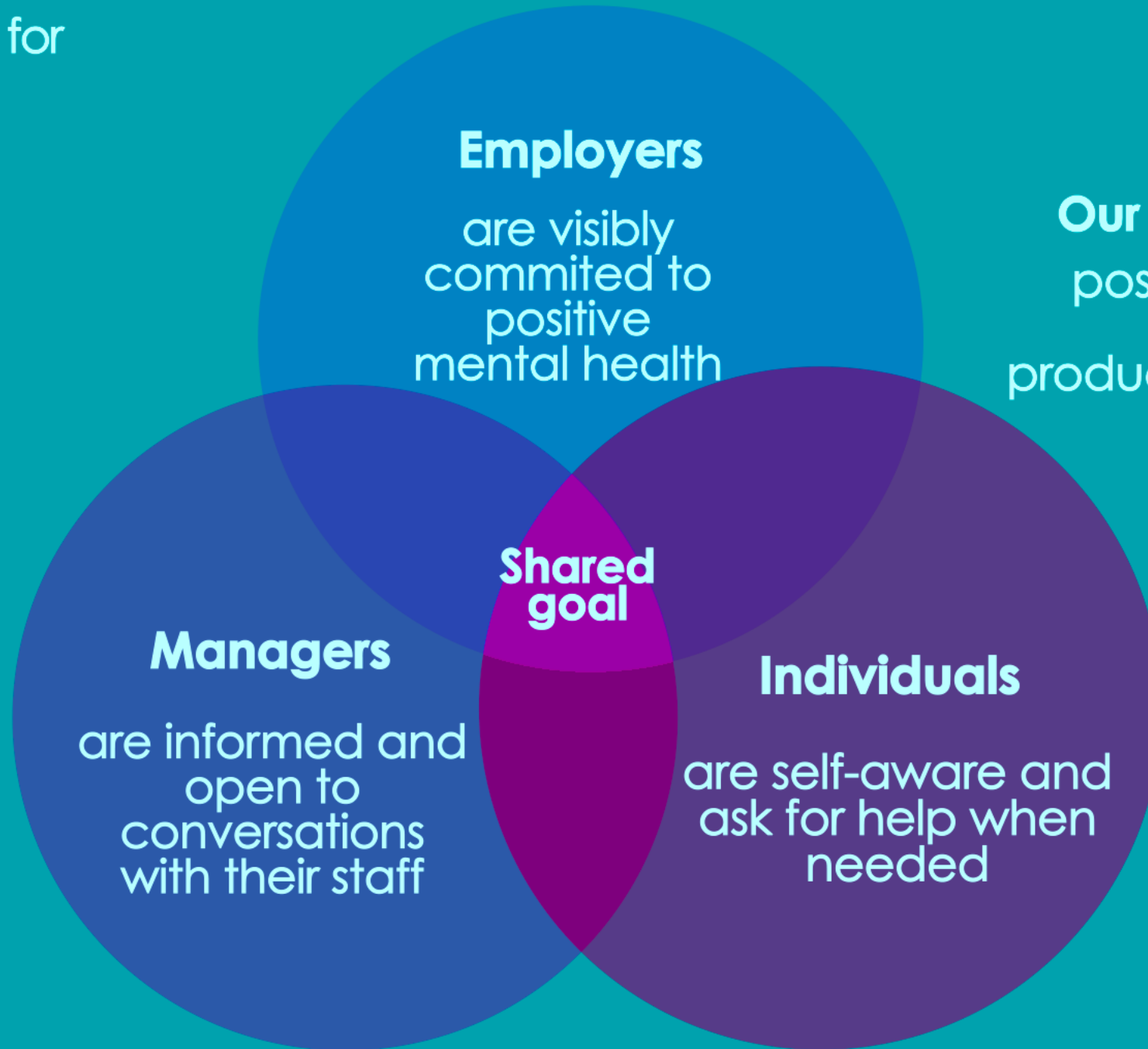
[Find out more >](#)

Advice and Guidance

Get advice and guidance on a wide range of employment relations topics.

[Find out more >](#)

Acas framework for positive mental health at work



Our shared goal is:
positive wellbeing and productive workplaces

Variation of employment contract

Varying a contract is complex, particularly balancing business needs with employee rights.

The end goal & recommended route is to achieve mutual agreement. This most often brings about the best business outcomes.

Pre-process preparation

- Check for TUPE implications, consider getting legal advice [link](#), [View Acas TUPE guidance](#)
- Establish if a current Collective Agreement/s in place with recognised Trade Union/s and/or Employee Forum [link](#)
- Gather business case evidence, for the **proposed** change
- Establish if there is an existing relevant employment contract flexibility clause

Understand consultation obligations

Trade Union Collective Agreement

- Establish if there is an obligation to consult & negotiate with the recognised Trade Union/s [link](#).
- And, if yes, does the agreement cover the whole organisation or specific groups of workers (eg bargaining group)?

Check if there is an existing Workforce Agreement

- If no TU Agreement, and/or no existing Employee Forum, establish if there is a need to set up an Employee Representative Forum [link](#) to consult with employees [link](#),
- Hold anonymised Employee Representatives elections as required [link](#), [Read Acas Advisory booklet](#)

End goal & recommended route – reach mutual agreement

- Engage early with everyone involved
- Meet statutory consultation obligations [link](#)
- Use meaningful consultation [link](#)
- Be clear and open about **proposed** change/s, reasons and options
- When consulting, seek and review alternative options
- Throughout the process remain vigilant to discrimination risks [link](#)
- Be aware of potential negative impact on employee wellbeing [link](#)
- Reach mutual agreement
- Confirm in writing within 1 month if changes affect written statement
- To avoid ambiguity later, employers should ensure that consent to changes is in writing

Alternative approaches to varying a contract

Proceed with below with caution as complex, seek specific and early case-by-case legal advice,

Consultation **will apply** before any final decision [link](#). **Check consultation obligations** as to whether collective and/or individual consultation applies [link](#), this may include holding employee representative elections
Failure to inform and consult as required by s.188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A 1992) can lead to fines/Protective Award [link](#).

Flexibility clause

An existing clause in the contract / T&Cs allowing changes through a flexibility (or mobility) clause [link](#).

Check the clause specifics. What notice/process to follow is required to make a change?

Is the proposed change minor and reasonable?

Relying only on an existing variation clause is unlikely to be suitable for any substantial changes, especially if the changes will significantly disadvantage employees e.g. reduced hours and/or pay rates.

Dismissal and re-engagement

Employer looks to impose change by giving notice to bring contract to an end, and offering to re-engage under new terms. Consult with staff before making final decision [link](#).

Check potential fair reasons for dismissal see **s.98 of the Employment Rights Act 1996** [links](#) which includes SOSR - "some other substantial reason of a kind such as to justify the dismissal of an employee holding a position which the employee held"

Provide staff with required notice of when dismissal will take effect, and offer re-engagement under new contract

Employee's options [link](#) and potential legal redress:

- Accept new T&Cs
- Reject new T&Cs, pursue claim for unfair dismissal (if minimum 2 years service)
- If change is fundamental, could resign and consider constructive dismissal
- Work new T&Cs under protest (must be clear and repeated) while bringing legal action for the breach
- Work old terms while bringing legal action for the breach
- Claim for unlawful deduction of wages (if pay affected)

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Transition from Lockdown – Returning to the Workplace
 Ongoing regular communication with all staff including furloughed staff
 England (E), Scotland (S), Wales (W)

Check if your workplace can open
[E link](#)
[W link](#)
[S link](#)

Local CV-19 restrictions:
[E link](#)
[W link](#)
[S link](#)

No – remain closed. Continue to engage with all employees. Prepare to open, read latest guidance and start employee return to work consultation
[E link](#)
[W link](#)
[S link](#)

Yes – use guidance to prepare steps to open, where possible work from home. Check for regular updates
[E link](#), [W link](#), [S link](#)

Government guidance
 • 5 steps to working safely [link](#)
 • Sector specific guidance
[E link](#), [W link](#), [S link](#)

Acas working safely guidance [link](#)

HSE guidance
 • Make your workplace covid-secure [link](#)
 • The basics for your business made simple [link](#)

There is a duty on every employer to consult with employees around health and safety
Health and Safety at Work etc Act 1974 s.2(6) [link](#)

Important employers should follow Government guidance but responsibility remains with the employer to assess their own individual workplace risks, set up safe systems for employees and **ensure** the system is implemented

Commence risk assessments
HSE risk assessments [link](#)

- Assess the risks
- Mitigate: set up safe system
- Implement systems
- Continuous review

Ensure early consultation with staff, trade unions (TUs), employee forums and other stakeholders

Returning to Work
People Strategy – Employer Considerations & Actions

All reasonable steps should be taken by employers to help people work from home where possible. For those who cannot work from home and the workplace is open, the government's message is to go to work

Individual situations – communicate and engage with staff & TUs early. Actively encourage staff to talk with managers on individual situations and considerations.

Furlough and ending furlough - give staff notice in writing, there's no minimum notice period for furlough, but employers should talk with staff about any plans to end furlough as early as possible, encourage staff to raise any concerns about returning to work
[Acas furlough guidance and templates link](#)

Clinically Extremely Vulnerable People –
[E link](#), [W link](#), [S link](#)
[HSE link](#)

Consult with employees on options including short term alternative support options, working from home, reasonable adjustments, remaining on furlough, finding alternative places to work nearer to the individual if public transport is a concern. Consider if an individual risk assessment is required.
[Acas guidance link](#)

Vulnerable people, those at high risk and/or living with someone at high risk

Carers [link](#), [S link](#) [HSE link](#)

Self-isolation
 • [Acas guidance link](#)
 • NHS Test and trace workplace guidance [link](#) [S](#) Test & protect [link](#)
 • Travel & quarantine [E link](#) [S link](#)

Annual leave [link](#) and other types of leave – [Acas guidance link](#)

Parental rights [link](#)
 Parents returning to work after extended leave eligible for furlough [link](#)

Reservists returning to civilian work eligible for government support schemes [link](#)

Potential redundancies?
[Acas redundancy flow chart link](#)
[Acas website link](#)

Contract variations?
[Acas changing contract flow chart link](#)
[Acas website link](#)

Can an employee be dismissed or not paid for not coming to work because of covid-19?
 Potentially yes but proceed with extreme caution and seek specific case-by-case legal advice.
Important - see **Employment Rights Act 1996 ("ERA")** [link](#) – s.44(1)(d) [link](#); s.100(1)(d) [link](#)

Discrimination and unfair treatment
[Acas guidance Link](#)

An employee or worker is protected by law against unfair treatment and dismissal based on any of the characteristics protected under the Equality Act 2010 [link](#) s.4

Important - many health conditions could be considered a disability – see Equality Act 2010 [link](#) s.6(1)

It could be unlawful discrimination if an employer either:

- unreasonably tries to pressure someone to go to work
- unreasonably disciplines someone for not going to work

It does not matter how long they've worked for the employer.

Equality Act 2010 [link](#) s. 13 to 27

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Further support



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Acas newsletter



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Customer Services
Team



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Social media



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