

## MONEY OFFICE POLITICS

# What you can do if you're being restructured out



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It can be a fair reason to be shown the door, explains Matt Gingell, so know your rights.



**A business may decide that more junior employees could do the work of older, more expensive, staff members**

It's all in the news. Microsoft is set to cut 18,000 jobs in a restructuring programme. The BBC is axing 415 news jobs. Mothercare's boss Mark Newton-Jones, meanwhile, has warned that the retailer must modernise and embark on a cost-cutting exercise.

And don't forget the banks that have been undergoing massive restructuring in the aftermath of the financial crisis. Businesses may not be shutting down in as quick succession as they were before, but if you are unlucky enough to get a tap on the shoulder in the middle of a business reorganisation, is it any different?

The legal meaning of redundancy and restructuring is not the same. A redundancy technically occurs when an employee is dismissed

due to: the actual or intended closure of the business; the actual or intended closure of the workplace where the employee was employed; or diminished requirements of the business for employees to do work of a particular kind. There is no legal definition of restructuring. But as with redundancy, reorganising the business can be a fair reason for dismissal. If, for example, a business decides that work should be split between employees or that more junior employees can do the work, the dismissal may not necessarily be due to redundancy in the strict legal sense. It would nevertheless be as a result of restructuring in the wider sense, and could still be fair.

But where does that leave you? In any redundancy or restructuring situation, in order to dismiss fairly, the employer should consult with the individual before a decision is reached, carry out a fair selection process if appropriate, and search for suitable alternative roles. Separately, in certain cases, employers have obligations to consult the workforce collectively.

If you feel you have been unfairly dismissed, however, you could consider bringing a claim. Generally, employees would need to have had at least two years' service to bring an unfair dismissal claim. Any such claim must usually be filed (with the requisite fee) within three months (less a day) from when the employment ends. You would also be required to follow the Advisory Conciliation and Arbitration Service's (Acas) early conciliation process prior to issuing a claim. The maximum compensation award is the lower of 52 weeks' pay or £76,574.

## SETTLEMENT

Sometimes, employers may agree to pay a termination or compensation payment on condition that the employee does not bring any employment claims. The parties would then normally enter into a settlement agreement, a requirement being that you must obtain legal advice before entering the agreement. The first £30,000 of the payment can often be tax-free.

So what then is the difference between redundancy and restructuring? Well, apart from the fact that employees who have at least two years' service and are made redundant (in the technical and legal sense) are entitled to a statutory redundancy payment, not a lot.

