

# Redundancy: can employers use competitive application procedures in redundancy situations?

Published 11 June 2020

In this case, the EAT considered circumstances when it would be appropriate to use competitive application procedures rather than pooling employees and applying selection criteria in a redundancy process.

## THE FACTS

The two claimants in this case were teachers at a community secondary school employed by Gwynedd Council. As a result of a reorganisation of education provision in the area, it was decided that the school (together with several other primary schools) would be closed down and replaced with another school on the same site. All teachers at the original school were told that their contracts of employment would be terminated. Staffing at the new school would then, they were told, be determined by an application/interview process, with unsuccessful candidates being made redundant unless they were redeployed elsewhere.

The two claimants applied for positions at the new school, but were unsuccessful and were therefore made redundant.

The two claimants, through their trade union representative, questioned the fact that they were given no opportunity to make representations to appeal. The governing body of the new school apologised for the lack of appeal, but told them that this did not cause them any disadvantage because the dismissals were caused by the closure of the school, and no appeal panel could have reversed that decision.

The claimants claimed that they had been unfairly dismissed. The employment tribunal upheld their claims, and was very critical of the redundancy procedure. It held that the dismissals were unfair because of the absence of consultation, the manner in which they were required to “apply for their own jobs” and the failure to provide the claimants with a right of appeal. Gwynedd Council appealed to the EAT.

The EAT dismissed the appeal. Points likely to be of particular interest to employers are that:

- **Appeals:** There is no general rule that a dismissal will invariably be unfair if there is no right of appeal, or that a dismissal without a right of appeal would only be fair in exceptional circumstances. There has been no change in case law in this regard.
- **Competitive application procedures:** There are circumstances under which it will be fair to use competitive application procedures in redundancy situations instead of pooling employees and applying selection criteria. Where employees are being considered for changed roles, it might be appropriate to use a “forward-looking” competitive selection process (for example, an interview process). However, in this case, the employees were effectively being asked to apply for their old roles, and it was not perverse for the tribunal to find that the use of a competitive process, rather than pooling and selection, was unfair.

## WHAT DOES THIS MEAN FOR EMPLOYERS?

While it will not invariably be the case that failing to offer a right of appeal makes a dismissal unfair, the safest course of action will be to offer an appeal. In cases where an appeal will make no difference and the redundancy process is otherwise fair, which was not the case here, an appeal will not always be necessary subject to any collectively agreed redundancy procedures which may have contractual status.

In deciding whether to implement a competitive application process, employers should consider whether the relevant roles are the same as, or very similar to current roles, or whether the roles are different, or significantly changed. If the roles are different or significantly changed, a competitive application process is likely to be fair. Where roles are the same, or substantially the same, employers should use selection pools and criteria to decide who should be put at risk of redundancy.

[Gwynedd Council v Shelley Barratt and Ioan Hughes UKEAT/0206/18/VP](#)

## Authors



Ceri Fuller



Joanne Bell



*London - Walbrook*  
+44 (0)20 7894 6583  
[cfuller@dacbeachcroft.com](mailto:cfuller@dacbeachcroft.com)



*Manchester*  
+44 (0) 161 934 3179  
[jbelle@dacbeachcroft.com](mailto:jbelle@dacbeachcroft.com)



**Zoë Wigan**  
*London - Walbrook*  
+44 (0)20 7894 6564  
[zwigan@dacbeachcroft.com](mailto:zwigan@dacbeachcroft.com)

---

**DAC**  
**DAC BEACHCROFT**