

Trial periods in a redundancy scenario

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The Employment Tribunal has ruled that employers must give clear notice of the termination of the redundant role when any alternative employment is offered, and a trial period commences during a redundancy consultation.

It is advisable, in any redundancy consultation, for an employer to make a reasonable search for suitable alternative employment, which employees at risk of redundancy could perform to avoid being made redundant.

Where alternative employment is offered, both the employer and the employee benefit from a trial period to assess the suitability of that role. Under the [Employment Rights Act](#), the trial period starts when the employee's employment under their existing contract ends and lasts for a period of four weeks.

In the recent case of [East London NHS Foundation Trust v Mr David O'Connor](#), Mr O'Connor worked for the NHS. In 2017 he was made aware that he was at risk of redundancy. He was told that due to a reorganisation, his current role would be "deleted" on 3 July 2017 and he began a trial for a different role on that date.

The parties subsequently disagreed about whether this role was suitable and Mr O'Connor pursued a grievance which was unsuccessful. The NHS again offered Mr O'Connor the alternative role which he declined, and he was therefore dismissed in December 2017.

In dismissing Mr O'Connor, the NHS refused to make a redundancy payment to him, as it argued that the trial period had ended on 9 August 2017.

One of the first issues the Employment Tribunal had to consider was whether Mr O'Connor had been dismissed on 3 July 2017, prior to starting the trial of his new role. They concluded that he had not and, therefore, 3 July was not the start date of his trial period.

In a scenario such as this, legislation provides that an employee shall be taken to be dismissed by his employer if, amongst other things, the employer gives notice to the employee to terminate his existing contract of employment.

Whilst the NHS had informed Mr O'Connor that he was at risk of redundancy and made him aware that his role was being "deleted", it did not, in law, constitute a notice of dismissal.

An employer must communicate to an employee that their employment is terminating and whilst Mr O'Connor knew that his then role was being "deleted", the Employment Tribunal held that it was ambiguous as to whether Mr O'Connor would consequently know that his employment contract was being terminated.

Employers need to have a sound working knowledge of the redundancy process and the recommended practices surrounding it, so as not to fall foul of procedure. Employers that do not carry out a full and fair redundancy process could face claims for unfair dismissal.

For advice and information on any redundancy process, contact [Karen Cole](#) today.

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