

## **Chapter 18: Redundancy**

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1. If the theory that UK employers are more prone to engage in large-scale redundancies subsequent to corporate takeovers<sup>1</sup> or in the event of difficult economic conditions is accurate, are you convinced that the UK Parliament's regulatory response to the phenomenon of redundancies has been adequate and appropriate?

**Author's answer:** Adherents to the viewpoint that is sympathetic to the existing legal approach towards the regulation of redundancies would argue that overall efficiency in the economy is enhanced if employers are permitted to exercise their managerial judgment with few substantive interferences in redundancies. This argument posits that the preoccupation with procedural fairness – in terms of the legally-sanctioned exchange of information and consultation about individual and collective redundancies – is warranted as it leaves decisions about redundancy to employers. As lawyers, judges should not attempt to second-guess commercial decisions, such as redundancies, and to the extent that the current law adopts this approach, it is entirely justified. Of course, the counterargument is that the impact of individual and large-scale redundancies on the workers concerned, as well as the communities affected, can be so catastrophic (sometimes career-ending and destructive of entire communities) that the UK Parliament has a legitimate stake in drawing up a more intensive regime for the regulation of redundancies. The fundamental idea here is that the social costs of redundancies are passed on to the general public as taxpayers. As such, some argue that by adopting the managerial decision to fire employees for redundancy, employers are free-riding on the State, i.e. externalising the social costs and internalising the economic benefits associated with a leaner workforce. Therefore, before the State accepts the absorption of these social costs, this line of argument claims that more effective external legal constraints on redundancies should be recognised by the UK Parliament, imposing more stringent scrutiny of employer's decision-making in this context.

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1. Bearing in mind that it has brought about a widening of the concept of redundancy, do you agree with the decision of the House of Lords in *Murray v Foyle Meats Ltd.*? If so, on what basis would you justify it? If not, why not?

**Author's answer:** The main criticism of the decision is that it essentially functions to elide the words 'work of a particular kind' in section 139(1) of the Employment Rights Act 1996. It is argued that it renders them meaningless and as such, represents an unwarranted gloss on the statutory

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<sup>1</sup> For evidence of the negative employment impact of takeovers, see M. Conyon, S. Girma, S. Thompson, and P. Wright, 'Do Hostile Mergers Destroy Jobs?' (2001) 45 *Journal of Economic Behavior and Organization* 427; M. Conyon, S. Girma, S. Thompson, and P. Wright, 'The Impact of Mergers and Acquisitions on Company Employment in the United Kingdom' (2002) 46 *European Economic Review* 31; A. Pendleton, 'The Employment Effects of Takeovers', in J. Cremers and S. Vitols (eds.), *Takeovers with or without worker voice: workers' rights under the EU Takeover Bids Directive* (Brussels, European Trade Union Institute, 2016) 71; and O. Dessaint, A. Golubov and P. Volpin, 'Employment protection and takeovers' (2017) 125 *Journal of Financial Economics* 369. As for the negative employment effects of private equity-backed acquisitions, see M. Goergen, N. O'Sullivan, and G. Wood, 'The Employment Consequences of Private Equity Acquisitions: The Case of Institutional Buy-outs' (2014) 71 *European Economic Review* 67.

provisions. The problem arises because if there is a dismissal and it can be attributed to a cessation or reduction in the employer's need for work, then the dismissal will count as a redundancy. This removes the link between the employee's job and role from the equation, e.g. if the role or job does not disappear, the employee can nevertheless be treated as redundant if the employer's need for work generally has diminished.