



# **IT'S YOUR FUTURE:**

## **Understanding the consultation process and preparing for your one-to-one meeting**

**A guide for Managers in Partnership representatives and members**

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# IT'S YOUR FUTURE:

## Understanding the consultation process and preparing for your one-to-one meeting

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This MiP guide will help you to respond effectively to any consultation affecting you at work. We will explain the legal framework and how you can protect yourself, your colleagues and the service you provide. If you need further advice, MiP are always here to support you. Contact us at [MemberAdvice@miphealth.org.uk](mailto:MemberAdvice@miphealth.org.uk).

### Best practice

The MiP guide **Creating a Sustainable Workplace** sets out best practice for managing organisational change. As a manager and MiP member, it will help you to:

- promote understanding of effective change management
- work with senior NHS leaders to make sure best practice is followed
- engage your staff and give them a voice in the process
- ensure formal organisational change policies are followed
- encourage colleagues to support each other through the changes

# Part A: the Consultation Process

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It's important to engage with all stages of the consultation and respond both collectively and individually. Even if it seems like a 'done deal', you will be better placed to challenge an unreasonable workload or a reduction in staff, for example, if you have raised the issue earlier in the process.

## When do consultations happen?

Formal consultations usually take place when your employer proposes organisational changes which could result in:

- changes to job roles
- changes to organisational structures
- changes to the status or pay band of staff
- redundancies
- a change of employer (under a **TUPE** or **COSOP** process)
- a change of location
- changes to working practices (e.g. introducing hybrid home/office working or changes to on-call rotas)
- changes to car park charges or other terms and conditions

## Be prepared

Engaging with the consultation process will seem less daunting if you are properly prepared. To begin, make sure you have copies of:

- Your employer's organisational change policy
- MiP's **guide to managing change**
- A list of your employer's key legal obligations (see Part B below)
- Your up-to-date job description
- Your employment contract

## Assessing the proposals

Consultations normally begin when the employer publishes their initial proposals. Trade union representatives may have been given the chance to comment before publication.

Read the consultation documents carefully and ask yourself:

- Do the proposals make sense?
- How do they affect me?
- What is my ideal outcome?
- What does it mean for my colleagues?
- What does it mean for the population we serve?
- Is there anything missing?

## Part B: Legal Obligations

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This section will help you to understand the minimum legal requirements for consultation, including what constitutes ‘meaningful consultation’ and ‘reasonable timescales’.

There are at least six circumstances in which employers have *specific legal obligations* to consult with employees and/or their representatives about their proposals. They are:

- when staff may be dismissed
- when staff may be made redundant
- when staff may be transferred to a different employer
- when occupational pension schemes may be affected
- when health and safety issues may arise
- when collective bargaining agreements are in place

The consultation should seek views from all directly affected staff, and all other staff if there is a risk of redundancy.

### **Dismissals & redundancy**

If the proposals involve dismissals or redundancies, the consultation must look at ways to:

- avoid the dismissals altogether
- reduce the number of staff affected
- mitigate the consequences of the dismissals

**Your employer will fail in their legal duty unless they consult on ALL three of these aspects.** For further details, see the case of **Middlesbrough Council v TGWU (2001)**.

Under section 188(4) of the **Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA)**, the employer must provide the following information *in writing* to staff representatives:

- the reasons for the redundancies
- the number and description of staff the employer proposes to make redundant
- the total number of staff of any description affected
- proposals on how staff will be selected for redundancy
- the proposed timescale for carrying out redundancies
- proposals for calculating redundancy payments if they exceed the statutory minimum
- the number of temporary and agency workers working for the employer, where they work and what type of working they're doing

## ‘Meaningful consultations’ & ‘reasonable timescales’

Employers have an obligation to consult with the appropriate representatives of the staff involved. This will normally be MiP alongside the other health unions. Section 188(2) of TULRCA states that consultation must be *with a view to reaching an agreement* and meaningful consultation should be tantamount to negotiation.

**Section 188(1A) of TULRCA** also states that consultation must start in “good time”. This means employers need to plan ahead, set a timetable to allow for meaningful consultation and supply all the relevant information to staff representatives as it becomes available.

For proposals involving 100 or more redundancies over a 90-day period, consultation must begin at least 45 days before the first redundancy dismissal. When fewer than 100 staff are involved, the minimum period is reduced to 30 days. **Collective consultation should continue even after 30 or 45 days have passed if there are genuine issues left to be negotiated.**

A good employer should re-consult if they make significant changes to their proposals as a result of the consultation process.

If your employer fails to comply with the consultation requirements above, you may be able to take your complaint to an employment tribunal. **Make sure you discuss the issue fully with your MiP national officer before pursuing any legal challenge.**

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## Part C: Your one-to-one meeting

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As part of the consultation, you will normally be invited to a one-to-one meeting to discuss how your employer's proposals will affect you personally. This is also an important opportunity to ask further questions about how the proposals will be implemented and the impact they will have on your colleagues and the service.

There is no automatic right to trade union representation at these one-to-one meetings, although your employer's policy may allow your MiP rep to attend with you. If not, try to take a colleague as a witness and for support. If you're invited to a group meeting, it's important to attend and take notes of the discussion.

If you will **not** be accompanied by an MiP rep, this section offers advice on what to expect from your one-to-one meeting, how to prepare and what questions to ask.

### Preparing for your one-to-one

Find and review these documents, so you can assess how the proposals might affect you personally and identify anything that's still unclear:

- the consultation proposals
- your employer's organisational change policy – this may give you more rights than the legal minimum
- your employer's pay protection policy
- your employer's mileage policy
- your employer's equality and diversity policy and any equality impact assessment of the proposals



- the existing and proposed organisation charts
- the employer's selection criteria and scoring systems for voluntary or compulsory redundancies, if applicable

Also, try to think about the wider impact of the proposals. For example:

- Are the aims of the consultation exercise being met?  
What more should your employer be doing?
- How will the proposals affect patient safety and care?
- Are there any health and safety issues for staff and/or patients?
- How will the proposals affect disabled, women and BAME staff?  
Has your employer carried out an equality impact assessment?

After considering your personal situation and the wider context, use this guide to help you prepare a list of questions to ask your employer at the meeting.

## **At the one-to-one meeting**

First, ask your employer to spell out the objectives of the consultation exercise and explain how it will work. For example:

- What are the boundaries between consultation and negotiation?
- What can you influence through feedback?
- Will notes be taken and made available after the meeting?
- Will the agreed next steps and timescales be confirmed in writing?
- Who can you contact for further information and updates?

Then, work through your list of pre-prepared questions (see below for further examples of questions you may want to ask).

Make sure you discuss **your** preferences. For example, do you want to stay in the same or a similar post, or consider redundancy? Would you be like to be redeployed? What suitable alternative roles are available?

Make it clear to your employer that your preferences at this stage are non-binding. If, for example, you ask for a redundancy quotation or information about redeployment, explain that you are only exploring your options.

**Avoid making any final decisions at the meeting.** If you feel pressured, request an adjournment and ask MiP for advice before rescheduling the meeting. You should also contact MiP as soon as possible if you feel you have been unfairly treated, for example on the grounds of maternity or disability.

## Your employer's responsibilities

During the one-to-one, your employer should be able to answer any outstanding questions you have about the proposed changes, how they will affect you and the consultation process.

### The consultation process

*Your employer should:*

- Explain the purpose of the meeting
- Outline the consultation process, feedback procedure and how further information will be provided
- Explain the reasons for the proposed changes
- Tell you when the consultation ends and when the changes would take effect
- Show how they will communicate with you, and nominate someone to answer your queries as and when they arise
- Explain the role of MiP and other unions in the process

## The impact of the changes

*Your employer should:*

- Explain what alternative proposals were considered and whether you can still suggest changes, for example to avoid job losses or re-banding
- Confirm if the re-organisation is being treated as a potential redundancy situation
- Tell you how many and which jobs are at risk

## How the changes affect you

*Your employer should:*

- Explain how the proposals would affect your current job
- Outline the options available to you, such as redeployment, voluntary redundancy or early retirement
- Confirm the details and timing of any proposed transfer to a new employer, and explain the effect on your employment conditions and pension

## The selection process

*Your employer should:*

- Tell you why you have (or have not) been included in the selection pool for new jobs
- Explain the selection criteria, who agreed them and how, and when and by whom they will be applied
- Explain your right to challenge the criteria and/or your score as part of the consultation process

## Support

*Your employer should:*

- Provide details of the support available to you. Depending on your circumstances, this may include:
  - > career planning
  - > CV writing
  - > interview skills training
  - > occupational health support
  - > counselling
  - > independent financial and pensions advice
- In a redundancy situation, explain your right to paid time off to look for a new job
- Encourage you to seek advice and ask questions at any time during the consultation process

## Example questions to ask at your one-to-one

Make sure you ask your employer to explain how the changes will affect any specific personal circumstances, such as caring responsibilities, flexible working arrangements, restrictions on commuting distances, and occupational health requirements or adjustments. You should also ensure your employer clearly explains the timescales that will apply to you personally.

You should also consider asking the following questions if they apply to your situation and haven't yet been answered satisfactorily in the consultation process:

## **The proposals**

- Is there a clear clinical rationale for the proposed changes?
- What specific policies are being applied?
- Has the employer undertaken a risk assessment to ensure the new arrangements are safe?
- What alternative arrangements have been considered?

## **Changes to jobs**

- When will job descriptions and grading information be available for posts in the new structure?
- Have new posts been subjected to a proper job evaluation process?
- How will the allocation of posts and 'slotting in' work?
- Have the selection criteria been agreed and evaluated for equality purposes?
- How will the selection process work (e.g. interview or another process)?
- Will you or your colleagues be transferred to a new employer? If so, will they be outside the NHS? How will this affect your employment conditions and NHS pension?

## **Redeployment and 'suitable alternative employment'**

- What 'suitable alternative employment' is available and how will you be informed about suitable posts?
- What are the options for redeployment and how will it work?
- Will redeployed staff have pay protection if they're moved to lower banded jobs? How long will it last?

- Will any agreed or existing flexible working arrangements (or reasonable adjustments) stay in place for redeployed staff? If not, why not?
- What are the trial period arrangements if you're redeployed?
- Can you reduce or increase your working hours?
- Will your new post affect any special class or Mental Health Officer status you hold?

## Redundancy

- Are there any posts available outside of your directorate or department?
- Is voluntary redundancy available?
- Are compulsory redundancies likely? If so, how many?
- What early retirement options are available? For example, can staff who are over the minimum pension age retire early and use their redundancy payment to take an unreduced pension? (You may wish to take independent financial advice before deciding to take any pension benefits early.)

## Support & training

- What support is available to gain the skills and qualifications required for a new post?
- Is there any option to completely retrain? How will this be funded?
- What support is available for CV writing, interview guidance and time off to look for work, attend interviews or training?

## Protected conversations

Your employer may ask to speak “without prejudice” or have a “protected conversation” in which they set out the terms of an offer to leave – usually a severance payment as part of a settlement agreement. **We urge you to talk to MiP before accepting any such offer.** Tell your employer you need time to take advice and consider the proposal – they should not pressure you to sign anything there and then.

## After the meeting

You should receive a written account of what was discussed at the meeting. Check this for accuracy and raise any disagreements in writing. Otherwise, it may be difficult to challenge your employer’s account later.

Insist that your employer confirms any offers and answers any outstanding questions in writing. Request a further meeting if your concerns have not been dealt with satisfactorily.

Ensure your employer sticks to all the commitments they make during the meeting, including the agreed timetable. Keep a record of any subsequent meetings or correspondence. Ask MiP for advice on any further proposals before agreeing to discuss them with your employer.

When you need help from MiP, simply email us at:

**[MemberAdvice@miphealth.org.uk](mailto:MemberAdvice@miphealth.org.uk)**.

We will arrange for our casework co-ordinator, national officer or local rep to advise you.



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