Lloyds Redundancy and Restructure Process 2020

Please see the "PDA Redundancy and Restructuring Briefing" for overview of the whole process. This briefing deals with the actual consultation process and what occurs during and after the process is concluded, as well as the queries that have arisen so far.

1. Redundancy/restructure

a) Closure of a workplace (branch)

In this case, it is unlikely that there will be a consultation process. However, if there are other branches, then alternative roles should be offered elsewhere when the branch closes. Depending on whether or not there is a mobility clause, this could be offered instead of redundancy. The reasonableness of this will depend on where the alternative employment is located and will need to be looked at on a discrete basis. You should consult the PDA for advice, if you are being offered alternative employment.

b) Selection Criteria

If the branch or establishment is reducing its numbers, but not closing altogether, the company should draw up an appropriate "pool" of employees and establish an objective set of selection criteria (length of service, absence record, skills, qualifications etc.).

c) Selection Process

The selection criteria should be applied equally to all employees in the pool. They should be transparent and not discriminatory.

If the criteria are subjective and indicate that someone with a protected characteristic such as disability, race, sex, age will be treated differently or if there is any inconsistency, the criteria should be challenged. If a selection is made on the grounds of sickness absence, this could be as a result of a disability and therefore entitle the employee to claim that they have been discriminated against in the use of the process; as would someone who has taken time off to care for a relative or been off due to taking maternity leave.

d) The process

The redundancy process should follow that laid down in the company handbook, or if an outside organisation is appointed, you should be made aware of the process being followed in good time. The standard process will involve receiving a letter to say that the organisation is in a redundancy situation, you will then be advised of the number of consultation meetings you will attend. At the end of the consultation process, you will receive the decision in writing, this will set our details of your redundancy and any other outstanding payments owed to you at the time your employment terminates. It will also advise you of your last day of employment and your right to appeal.

e) Consultation

Redundancy should be the last stage of the process and there is an obligation to consider ways of avoiding it.

If there is a selection process, you should be given a copy of your selection criteria and scores to consider and challenge as part of the first meeting. If you are told that you have scored lower than the rest of the pool, you can request a copy of the scores of other employees, suitably anonymised; they may refuse, but it is worth asking. You should question your score on each criterion if you do not agree with the score. The scores should be based on your employee records and so should be easy to question if the score is factually incorrect. If your score is then altered, it may be that you will avoid being made redundant.

If the branch is being closed, the employer should discuss alternative roles elsewhere with this you. Throughout the consultation process, you should be kept informed of all suitable alternative roles as they arise. You should also be given the opportunity to put forward your own ideas as to how your role can be saved within the organisation.

The obligation to find suitable alternative employment may extend to considering roles that are not vacant. Where the alternative role is not vacant, it is referred to as "bumping". A bumped redundancy occurs when an employee whose role is not at risk of redundancy is dismissed as redundant and the resulting vacancy is filled by an employee whose role is redundant.

f) Representation

Throughout the process you can take a colleague or a trade union representative into meetings. The PDA will provide representatives for the final hearing, unless there is a need for a representative at an earlier stage, e.g. the employee has a protected characteristic which require such support.

g) Settlement Agreements

At any stage during the process, the employer may have a “protected conversation” with you or offer you a settlement agreement to leave the organisation early. If this happens, you should contact one of the PDA employment team immediately to discuss the agreement and the circumstances surrounding the offer.

h) Disciplinary and Grievance issues

If you have ongoing disciplinary or grievances during the redundancy process, this will be dealt with under a separate process.

i) Alternative employment

Your employer should consider all alternative employment in other branches and discuss these with you as part of the redundancy process. If you consider a role to be suitable, you will be able to trial the new role on a 4 weeks basis to see if it is truly a suitable alternative. If you continue in that role after the trial period, you will not be deemed to be redundant.

If you unreasonably refuse what is suitable alternative employment, you could lose your right to a statutory redundancy payment.

j) Looking for other work

You are entitled to reasonable time off work to look for a new job, which includes attending interviews.

k) Appealing your redundancy

You should be given the right to appeal the decision to dismiss you on the grounds of redundancy and, if so, you should contact the PDA for assistance with your appeal and representation.

Specific recent queries

The following responses relate to some of the aspects of this change that we are already receiving a number of similar questions from PDA members:

Q: What if I am asked to become involved in the management of the process?

As a manager, you may be asked to conduct consultation meetings with your staff. This is likely to be a reasonable request by your employer. However, if you have not been advised as to what you are required to do in this role, you should contact the person in charge of the procedure and request full guidance detailing your role in the process, you should be provided with a script and full instructions on what you are expected to do. It is usual for an HR employee to attend these meeting with you and they should be there to assist you in the process.

If you believe that what you are being asked to do as part of the redundancy process goes beyond what is set out above, and/or you are expected to do this in your own time due to the fact that you are too busy to do this in work time, you should raise this as a concern with your line manager.

There have been reports that pharmacist managers are being asked to carry out an assessment of what cuts can be made from their store to reduce staffing further. This is of some concern to the PDA, as this indicates that the Lloyds intends to make further redundancies.

It is the PDA's advice, that if you find yourself in this position, you should raise a grievance as this is

unlikely to be your role.

There may also be patient safety issues arising from this approach as well as health and safety issues regarding the number of staff that are being further cut leading to unsafe running of the pharmacy under the RP Regulations.

You should raise the issue of who will carry out your role as Registered Pharmacist whilst you are expected to undertake this consultation role. Your primary obligation is as a pharmacist and if, as it is being envisaged, you will not receive cover, you should ask your regional manager what measures will be put in place to run the pharmacy in your absence. Ensure that your Area Manager is aware whenever you are required to attend such a meeting.

Q: What does this mean for Relief Managers?

Some of you will have worked in one store for a long period and if this store is closing, you should be included in the consultation process. Alternatively, there may be a situation where one of the stores you work at will be closed and so there is a potential for a reduction in your hours. In this case, you should be consulted about alternative work.

Our advice is that you contact Human Resources team to request details of how Relief Pharmacists fit into the process.

Q: What about retention payments?

If you have been offered a retention payment, whilst we would not deter you from accepting this, you should not agree to anything which could prejudice your profession or limit your contractual rights. If the employer is attempting to tie you to remaining with the organisation to the very end, but by doing so your practice threatened patient safety, you should consider whether you wish to continue in role, in spite of the payment, as your compliance with the GPhC standards will outweigh the payment offered if your role is compromised.

2. Changes to terms and conditions

Although there is no legal requirement on employers to provide a written contract, they do have to provide a written statement of particulars of employment outlining the main terms and conditions including:

- the names of the employer and employee
- the date employment began
- the job title and duties of the job
- the place of work
- the rate and frequency of pay, hours, holidays, sickness pay and pension scheme/s
- notice details
- reference to any incorporated collective agreements
- details of any disciplinary and grievance procedures
- Both parties are bound by the contract and generally neither can vary it without the agreement of the other person.

a) When must the employee receive written terms of employment

The law changed this year and since 6 April 2020, new employees must receive written terms on or before the first day of work.

Anyone employed before 6 April 2020 can ask their employer for written terms that meet the new requirements. You must still be working with the employer or within 3 months of their leaving date. The employer must provide the written terms that meet the new requirements within 1 month.

b) Non-receipt of your written terms

If you employer fails to provide a copy of your written terms, you can raise a grievance, if you've not received the document by the time it's due.

If you understand the document exists but you have not received it, you can also make a formal 'subject access request' using your rights under data protection law.

If you still do not receive the document, you can raise the issue formally, beyond the company such as making a complaint to the information commissioner or submitting a claim to the Employment Tribunal. You could get compensation in the Employment Tribunal if the tribunal upholds your claim in combination with another one, for example unfair dismissal.

c) Can the employer change the contract unilaterally?

If an employer tries to impose a variation of contract, they will potentially be in breach of contract, in order to establish this, two initial questions have to be asked:

- Is the term being varied a term of the contract?
- If so, does the employer have the right to unilaterally vary it?

What is a non-contractual term?
A non-contractual term is one that does not legally bind the two parties to the contract. For instance, it may be very clear that certain allowances are at the discretion of the employer and as such would be deemed non-contractual. As a result, If the employer unilaterally removes them, this would not be in breach of contract.

It is not always easy to know whether or not the written contract and any other evidence show an intention to be legally bound. Tribunals and courts are often reluctant to rule that a term is non-contractual. To cover themselves, some employers incorporate a specific statement in the contract stating that entitlement to the benefit is non-contractual. For example, an established custom of enhanced redundancy payments was sufficient to indicate an intention by the employer to be contractually bound to such payments.

***Can the employer incorporate a term to unilaterally vary the contract*?**
A term of a contract may be changed if the contract specifically says so. However the courts will not always enforce such a term unless clear language allow these to unilaterally vary it. Conversely, courts may not uphold such a term where the result would be harsh and unreasonable, e.g. someone being asked to move to another city within six days with no consideration for his personal circumstances.

What about changes that are not authorised by the contract?
Where a variation is not authorised by the contract, the employer can still bring it about in one of the following ways:

- express agreement between the parties
- implied agreement through the conduct of employee
- union agreement which is binding on the employee
- termination of the existing contract and re-employment under a new contract

What is meant by express agreement?
A voluntary clear agreement between the employer and employee, which was voluntary and not under 'duress'.

What is meant by implied agreement?
By imposing new terms and conditions an employee may be assumed to accept this by working under the new terms for a long period without protest. However, the courts are generally reluctant to find that employees have consented to a variation of contract in the absence of an express agreement. This is particularly so in cases where the changes do not happen with immediate effect (e.g. changes to sick pay).

What about collective agreements?
As long as a collective agreement is incorporated into individual contracts, employees will be bound by any change negotiated as a result. Employees need not be a union member or even be aware of the collective agreement to be bound by it. These terms will be incorporated into your contract once agreed. They may also be implied where there is a well-established custom that terms of collective agreements are incorporated into individual contracts. *This will not apply until the union is recognised as the Lloyds pharmacists trade union, but this will be relevant afterwards.*

Can the employer terminate the contract?
If Lloyds wants to change the terms and you don't agree, they may terminate your existing contract and offer a new one with the variations. If you are dismissed for refusing to accept the new contract, it may not necessarily be unfair; it will depend on all the circumstances.

If Lloyds can show a good business reason for the changes, they may be able to establish that your dismissal was for 'some other substantial reason' and potentially fair.

A tribunal will also consider whether Lloyds behaved reasonably in bringing in the new contract, e.g. by consulting with the employees and unions, as a dismissal is more likely to be unfair if they impose the change without consultation.

What can the employee do?
If the employer imposes the new term or dismiss you for refusing to accept the change, you may respond in the following ways:

- stay and work 'under protest' and bring a claim for unlawful deductions or breach of contract
- in the case of a fundamental breach of contract, resign and claim constructive dismissal
- if they introduce a new contract which fundamentally changes the job, you can continue to work under the new contract and claim unfair dismissal in relation to the old one
- refuse to work the new terms if, for instance, they involve different duties or hours, this may result in dismissal which may or may not be unfair depending on the circumstances.

d) <u>Former Sainsbury's employees – TUPE issue</u>

Sainsbury's employees were transferred in 2016 to Lloyds. With the transfer certain benefits moved as part of the contract. Under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE), an employee's terms and conditions of employment are protected when a business is transferred from one owner to another.

Any variations to an employee's contract are considered void if the sole or principal reason for them is the transfer itself or if it is connected to the transfer. There is an exception where it is done for economic, technical or organisational reasons (ETO) entailing changes to the workforce and relating to the numbers or functions of the employees affected. It is not enough that employees protected by TUPE agree to proposed variations, even favourable ones.

Even a lengthy passage of time after a transfer may not entirely remove the risk for the employer, though it will be more likely that the reason for the variation will be unconnected to the transfer, allowing both sides to agree changes following correct procedure. But if the transfer is still a factor, an appropriate ETO reason will be needed. *So far, it does not there does not seem to have been such a reason for the proposed change.*

Businesses who want to renegotiate terms and conditions provided for in collective agreements one year after the transfer can do so. provided the overall change is no less favourable. *This does not apply to the current situation.*

From the information available, it would appear that the losses that Lloyds is attempting to buy out may cause a financial loss to former Sainsbury's pharmacists.

Allowances buyout
As part of the restructure, Lloyds are proposing to remove the benefits that transferred with the Sainsbury's terms and conditions. For whatever reason, Lloyds propose to align the Sainsbury's contracts with Lloyds contracts by buying out the allowances in a one-off payment of 50% of the allowances received over the last 12 months, as follows:

- Additional TUPE payment
- Bank holiday premium
- Location overtime
- Responsibility
- Saturday unsocial hours
- Saturday premium
- Skills overtime
- Skills payment
- Sunday premium
- Sunday premium overtime
- Weekday unsociable hours
- Sunday unsociable hours

If this forms a large part of your contractual income, this could be a fundamental breach of contract (see section 3. above).

As stated above, if you resist, they may terminate your current contract and simultaneously offer you a new contract containing the new terms. If the change is so fundamental you have the options to claim that there was a fundamental breach, claim unfair constructive dismissal claim in the Employment Tribunal.

If you believe that you will be substantially financially worse off as a result of the changes, you should contact the PDA on 0121 694 7000 or send an email to enquiries@the-pda.org

e) Sick Pay

If a sick pay policy is non-contractual, it may be amended from time to time, but if it is contractual, it forms part of your terms and conditions and any change will need your agreement otherwise, it will be unilateral and a breach of contract. It is important that you review your current terms and conditions and handbook to check the position.
Lloyds will be required to consult all affected employees of the intended changes, with an explanation of why the changes are required.

Whilst you can be informed in writing of the change, you should be given the opportunity to raise concerns about the changes, the effect this would have on you and what alternatives suggestions you have to the change.

f) Protected characteristics

Furthermore, you may find that the impact of this change could affect you more than other employees due to a disability where the requirement for a higher level of sick leave to non-disabled employees may mean that you are subjected to a substantial disadvantage due to the reduction in contractual paid sick leave that you have built up over a period. In such circumstances, you may need to raise this as a grievance.

There may be a bigger impact on older workers, who have built up greater benefits and so there could be a disproportionate impact on these workers in terms of the benefits lost in comparison to those who have not built up such a level and depending on individual circumstances, this may be seen as a fundamental breach of contract (see section 3. above).

It may in some circumstances lead to an argument for age discrimination. Each case would have to be considered on its own facts, unless there is an argument that proposal would have a greater impact on a group of workers (which would need to be considered to establish what the impact would be).

g) Death in Service benefit

Companies are not legally required to offer death in service benefit, so not all employers will give you cover. Sometimes death in service is linked to the company pension, which means you can be an employee without receiving death in service cover if you are not signed up to the scheme.

Whether there is a contractual benefit will depend on what is in your contract or handbook.

3. Next steps

The above gives general information about the current situation and your rights. However, if you need to submit a grievance, subject access request or Employment Tribunal claim you should discuss your circumstances with us. Such processes usually have precise processes, including strict deadlines.

If you need any further information or assistance, and are a PDA member please call us on 0121 694 7000 or send an email to enquiries@the-pda.org.

If you are a pharmacist or pre-registration pharmacist and not yet a PDA member, please join us https://www.the-pda.org/join/