

Peter Chiu and Zoe Spivey  
Lloyds Pharmacy

By email

26<sup>th</sup> June 2023

Dear Peter and Zoe

## **Collective Grievance Appeal Outcome**

Thank you for your letter of appeal and for confirming that the appeal should be conducted by way of review, without the need for a meeting.

I have reviewed the details of the Grievance appeal document and have set out my findings and decision below, using the numbering in your letter.

I uphold Mr Acland's decision that the Policy is not a contractual document and does not give a contractual right to enhanced redundancy payments for ex-Sainsbury's staff.

In summary, the Colleague Handbook does not make Policies on 'Connect' contractual and says they can be amended from time to time. The Colleague Handbook (as amended from time to time) is stated to form part of an employee's contract of employment. There is no express wording in the Colleague Handbook giving a right to enhanced redundancy pay. The reference to the Redundancy and Redeployment Policy is expressly for information purposes only. If the Policy is the one referred to in the Colleague Handbook (and I agree with Mr Acland's analysis which shows it can't be), the Policy expressly states it is not contractual. There has been no ongoing practice of paying enhanced redundancy pay since 2020, when it was expressly revoked after collective consultation.

The detailed responses to your numbered points and the grounds for my decision are as follows:

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1. Noted

### **Reasons for appeal**

2. Noted. I have also reviewed the original grievance and Mr Acland's letter dated 10<sup>th</sup> May 2023.
3. For the reasons given, I do not find that the Policy was contractual and continues to form part of ex-Sainsbury's staff's contracts of employment.
4. Noted

### **The Colleague Handbook**

5. It is noted that the Contracts of Employment state that *the Colleague Handbook (as amended from time to time) also forms part of your contract*. Therefore, I agree that rights contained in the Colleague Handbook can be incorporated into colleague's contracts of employment.

I note that the Colleague Handbook can be amended from time to time (and please see my comments below in relation to express wording in the Policy saying it is non-contractual).

I also note that the contract of employment wording states that there are references to 'Connect' which contains policy documents, scheme rules and other information about colleague benefits "... which may be amended from time to time". These policies etc are not stated to form part of the contract of employment (like the Colleague Handbook is). There could be no expectation that such policies and information is contractual.

Whatever the status of the Policy, it is clearly a Policy that could be found on 'Connect' does not form part of an employee's contract of employment. It is not therefore considered to be contractual and can be amended from time to time.

I also consider it is important to note:

- (a) the wording contained in the Colleague Handbook in relation to redundancy was set out and analysed by Mr Acland in full. In particular, the express wording of the Colleague Handbook (page 86) does not give a right to enhanced redundancy pay; and
- (b) the Policy referred to does not appear in the Colleague Handbook.

You have not addressed me on how the document dated 13<sup>th</sup> January 2015 (referred to by Mr Acland as the "Policy") forms part of the Colleague Handbook or how it becomes incorporated as contractual right via the Colleague Handbook and the wording in the contracts of employment.

The Colleague Handbook states: "*Please refer to the Redundancy and Redeployment Policy for more information, this is available on Connect or ask your line manager for a copy*". It must therefore be argued that this reference to *the Redundancy and Redeployment Policy* incorporates that Policy into the Colleague Handbook, and thereby into the contract of employment.

Mr Acland considered this point and the issues surrounding it:

- (a) The reference in the Colleague Handbook is to "*more information*" being available. This does not show that contractual rights are being provided for.
- (b) The actual wording in the Colleague Handbook does not suggest a constant and complete right to enhanced redundancy – as Mr Acland noted, it refers to statutory redundancy pay "... *as a minimum...*" If it was intended that there was a contractual right to enhanced redundancy pay, this wording would make no sense. Mr Acland also notes how that wording would make sense where colleagues do have express rights to enhanced redundancy pay set out in their contracts of employment.
- (c) For the clear reasons set out by Mr Acland, the Policy cannot be the Redundancy and Redeployment Policy referred to in the Colleague Handbook;
- (d) The Policy would be found on Connect; and

(e) The Policy expressly states it is non-contractual.

I consider that the express wording stating the Policy is non-contractual (and the lack of any direct wording in the contract of employment about redundancy) means the Policy cannot be incorporated into the contract of employment in its own right.

6. The Colleague Handbook specifically states (page 3) that “Some of the information is part of the terms and conditions of working with us....” [my underlining]. The Colleague Handbook contains many items that clearly are not contractual, which is a point I think PDA noted in the original grievance. The wording quoted by Mr Acland about protections for the business and employees clearly indicates there are matters that are not intended to be contractual. However, I accept that some matters can be contractual as per the wording of the contract and the Colleague Handbook. But in any event, this is not relevant to the key issues outlined above.

### The Sainsbury's redundancy policy

7. In relation to the specific points on the Policy:

- a. As noted above, the Colleague Handbook states that ‘some of the information’ is part of the terms and conditions, so it is not quite correct to say “*the Handbook does say it is contractual...*”. You are right that the contract of employment incorporates rights in the Colleague Handbook (which can be amended from time to time).
- b. Even if the Policy is the one that is being referred to in the Colleague Handbook, it cannot simply be incorporated by the wording you reference. “*More information*” is not enough to give rise to a contractual right. You say “*this supports the Policy as also being contractual*” but “*supports*” is the highest it can be put, and I don’t agree. First, the wording in the Colleague Handbook does not give an unequivocal right to enhanced redundancy pay. Indeed, the express wording says the redundancy payments will in line with the statutory redundancy pay scheme, although it implies more generous redundancy pay may be available when the words “*as a minimum*” are added. But the “*further information*” can’t then convert this express wording into a full enhanced redundancy pay situation. Secondly, the Policy expressly states it is not contractual. Thirdly, as noted above, the Policies on ‘Connect’ are not contractual as is clear from the wording in the same paragraph of the Colleague Handbook (and noted above).
- c. I think the wording in the contract of employment you refer to – “*Throughout this document references are made to the Company’s intranet site called ‘Connect’ which contains policy documents, scheme rules and other information about colleague benefits*” – is clearly distinct from the reference to the Colleague Handbook. The Policies etc specifically are not stated to form part of the contract. It would be highly unusual for such Policies etc. to be incorporated into a contract of employment (and the presumption would be it is not so incorporated unless any such policy etc is expressly and unequivocally incorporated. There is a clear differentiation in the wording used between such policies etc and the Colleague Handbook. As I note above, the Policy is a Policy on Connect and is not set out in the Handbook and the Policy says expressly it is not contractual.

- d. Again, I think the point needs more careful analysis. The Colleague Handbook does not state a right to enhanced redundancy pay. That is clear. The Colleague Handbook makes high-level reference to things like support, development, retraining and different roles in a redundancy situation. The “reference” to the Policy is simply to provide “*more information*”.

I also note that the wording of the Policy itself does not give an unequivocal right to enhanced redundancy pay either. Not only does the Policy expressly state it is not contractual, but the right is conditional. The Policy says “*If you are eligible for our Company redundancy Pay...*”. It is not stated in the Policy what the eligibility criteria are. This is consistent with the Colleague Handbook wording which says that statutory redundancy pay is the minimum. There is a condition that an employee would have to have more than one complete years’ service, but statutory redundancy pay is only paid after two years’ complete service. Mr Acland noted that some contracts of employment include an express right to enhanced redundancy pay and that could explain the eligibility criteria.

- e. Mr Acland has given good reasons for saying why the Policy cannot be the one referred to and I note you have not taken issue with those reasons.
- f. The additional note clearly is part of the Policy. It states “*This policy isn’t contractual*”. That wording can’t be clearer or more unequivocal.

8. I conclude that the Policy is not the one referred to and is not incorporated into contracts of employment. I therefore uphold Mr Acland’s decision.

## Custom and Practice

9. Mr Acland makes no reference to the practice in Sainsbury’s or the first 12 months at Lloyd’s Pharmacy.
10. Mr Acland noted clearly that enhanced redundancy has not been paid since 2020. So, there has not been a continuous custom and practice.
11. In response to your additional points, which I note are copied from the original grievance:
  - a. Noted. I cannot verify this but note that there are Lloyd’s Pharmacy staff made redundant since 2020 who have been paid statutory redundancy pay.
  - b. Noted. Again, I can’t verify this but any custom and practice was ended in 2020 and if the Policy was relevant, this was allowed by the Additional Wording that said the Policy could be changed in any way.
  - c. I agree a Policy was available. I don’t believe it was the Policy under review and there have been no grounds for believing the Policy to be relevant. And the eligibility criteria are not available.

- d. I disagree with parts of this assertion. The enhanced redundancy pay calculation is clear (in that there is no cap on a week's pay and the number of a weeks' pay is increased for each band within the statutory redundancy pay scheme). But as noted above, both the Colleague handbook and the Policy are indeed qualified. In the Policy there is an eligibility threshold and it is expressly non-contractual.
- e. My view about the contract position is different as set out above. It is key, in my view, that the enhanced redundancy pay is not included in the Colleague Handbook; the Policy is referred to only for "*information*"; the Policy and Connect information is not expressly incorporated into contracts (as per the wording at the beginning of the Colleague Handbook set out above); and the Policy is expressly non-contractual.

Mr Acland set out his view on the relevance of Sainsbury's position at the time of the transfer. The specific references are on page 127 of the PDA document. The answers to the questions are that redundancy terms are Sainsbury's contractual redundancy terms. There is no other information about what those terms are.

- f. I note your comments about the practice at Sainsbury's, but even if the Policy applied, it could be changed and after consultation was withdrawn in 2020, after which time there has been no custom and practice for enhanced redundancy pay. Furthermore, the Colleague Handbook itself could be changed
12. I agree that the answers you refer to state that redundancy terms will be as per Sainsbury's contractual redundancy terms. But as noted above, we understand this is a reference to those contracts of employment which have express enhanced redundancy payment terms included. Lloyds Pharmacy has paid enhanced redundancy payments to those staff. Furthermore, these are comments in a very large document and are of limited value in understanding what terms applied. Mr Acland also pointed out that Sainsbury's communicated at the time that any enhanced redundancy pay would be honoured by Lloyds Pharmacy for 12 months following transfer. As Mr Acland pointed out, this would not be acceptable if enhanced redundancy pay was fully contractual (as opposed to being based on a non-contractual Policy).
13. Please see my comments in paragraph 12 above.
14. Agreed, but as noted above, my conclusion is that the Policy (if it is the relevant Policy) was not contractual. Policies not forming part of contracts of employment can be changed after transfer. As Mr Acland also noted, the Policy was formally removed after collective consultation in 2020.
15. Noted.
16. I agree. But the key and only question is whether the enhanced redundancy pay terms form part of an employee's contract of employment or not.

## Outcome

17. Thank you for your appeal and the full and well-argued grounds of appeal. I appreciate that my decision will be disappointing for staff, but (other than those who have the express wording in their

contracts of employment) staff do not have a contractual right to enhanced redundancy pay and Lloyds Pharmacy will pay statutory redundancy pay.

Yours sincerely



Mark Coupland  
CFO – LloydsPharmacy Ltd