

NEATHOUSE PARTNERS

Overview of Pooling and Selection Redundancy Process

Please note it is essential that you ensure your redundancy process is correct to avoid/limit exposure to claims for unfair dismissal.

This process should only be used if fewer than 20 redundancies are to be made. If there are 20 or more redundancies anticipated within a 90 day period, please speak to your advisor about collective redundancies as this process will not be suitable and will carry significant legal risk.

If your need to make this employee redundant is because you have sold or outsourced part of your business, then you should also speak to your advisor as to whether the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) apply to this situation.

You are advised to speak to your assigned Neathouse Advisor before undertaking this process, and throughout the process at the relevant stages between each meeting to ensure nothing has been raised that will affect the redundancy process.

This guidance note is intended as a general overview of what would be considered a legally fair redundancy process.

Redundancy Consultation Obligations

In a redundancy situation your obligations as an employer looking to make an employee redundant are:

1. to give adequate advance warning of the proposed redundancy;
2. to consult with the affected staff to explore whether there is any possible way of avoiding the redundancy, which would avoid the need to make compulsory redundancies;
3. to be fair and reasonable and follow a proper process and use a proper selection process not designed to pick on people;
4. to ensure you give the employee right to be accompanied (by an accredited trade union representative, or another employee) at all formal individual consultation meetings;
5. to consider, discuss and offer suitable alternative employment if such is available; and
6. to make an appropriate redundancy payment subject to the statutory requirements if no alternative/higher contractual arrangements exist.

The first thing you need to consider is the pool of people to be consulted. In this case you are reducing the size of one or more separate teams from one number down to a smaller number, for example 10 telesales staff down to 6. All staff who are doing the same work or similar 'work of a particular kind' or whose roles 'interchange' will be considered part of the same pool. In this example your pool would be all telesales staff. Subject to the redundancies you propose, you may have more than one pool, for example all administrators in one pool, all telesales staff in another pool etc.

Also, if you have another site then these staff could argue that the staff from both sites should be pooled. If you do have another site at which staff do the same or similar work of the team at risk then you should speak to your advisor to discuss whether there is a need to pool both sites.

You should speak to your Neathouse Partners if you wish to include Voluntary redundancy offers within the consultation as there are points to consider with this.

Selection matrix

The next thing you need to do is devise for each pool a selection criteria often in the form of a matrix using measures which are as objective as possible, but in any event measurable and justifiable. For example using performance management and annual appraisal measures (if you have them and if they are reliable), attendance records, disciplinary record, records of complaint or good service etc.

In addition, you will need to list the key skills required for the work in each pool in order to retain the best staff at those skills in the reduced size team moving forwards these objective criteria and key skills marks will be used to determine which staff remain in which staff are made redundant. There is therefore no 'one size fits all' selection criteria, and this should be tailored to the circumstances and business needs.

Your Neathouse advisor will be able to assist in preparing appropriate selection criteria for your redundancy situation and can provide some template suggestions for constructing your selection criteria to assist you.

Remember, the purpose of the redundancy consultation is to determine whether the proposed redundancies can be avoided. Therefore, if the employees raise suggestions about avoiding the redundancies and you believe this to be a valid point and a viable solution, you can write to the employees at any stage of the consultation process to advise that they are no longer at risk of redundancy and that the consultation process has therefore finalised.

Advance Warning - Announcement

The first step of this process is to hold a group meeting with all the affected staff to inform them of the redundancy proposals. Within this, you should outline what the proposed number of redundancies will be.

No formal notice is required for this meeting, however, if there are a larger number of staff involved then some advanced planning may be necessary. You should provide as much detail as possible regarding the reasons for the proposed redundancies and explain that unfortunately due to these reasons their positions are now considered at risk of redundancy.

It is imperative that you maintain throughout the redundancy consultation that the employees are only considered as 'at risk' and only confirming that they are redundant at the end of the consultation. Failure to do so can lead to arguments that the decision was pre-determined from the start, therefore undermining the fairness of the redundancy consultation process.

Explain that you will be consulting with all affected employee further regarding these proposals and that you will follow this up in writing.

You should bear in mind that sometimes the initial meeting is a shock to an employee and not much more questions are raised at that time, however as the employee takes time to digest the situation, they may have questions or want other areas explored further, which are all elements that will be covered off in the subsequent consultation process. It may therefore be advisable to take notes of this meeting said that these can be referred back to at a later stage.

Written Confirmation of a Risk of Redundancy and Invite to First Formal Group Meeting

Following verbally placing the employees at risk of redundancy you should write to all affected employees confirming the reasons for the potential redundancy and inviting them to a first formal **group consultation meeting** giving at least 48 hours' notice.

Your advisor at Neathouse will be able to assist with this process and draft the relevant letter for you.

First Formal Consultation Meeting

Within this meeting you will discuss the business case to support the need for redundancy in more detail. Recap the first meeting ask employees if they have any questions that they did not raise in the previous meeting. Fully discuss any questions, comments or suggestions that the affected employees may have.

It is advisable to take minutes of this meeting, and a note taker can be present to do so. If a note taker is present, you should make clear that they have no bearing on the decision-making process.

Recording devices are becoming more common, and so if you would prefer to record the meeting, this is fine so long as this is made clear to the employees before doing so and a copy is provided to them.

You will be required to fully discuss the situation with the employees and see whether they have any feedback/comments, as well as asking whether they have any suggestions as to how the redundancy may be avoided.

All suggestions or comments put forward by the employees should be considered as part of the consultation. Some points raised may be easily answered during the consultation, as you may be able to demonstrate and explain why such would not be a viable option/solution to avoid the redundancy.

You should however be careful not to appear to simply dismiss any suggestions raised as this could undermine the consultation process.

If the employees raise suggestions, or points for consideration which you cannot provide an answer to in the consultation meeting, it is fine to simply record this in the notes and advise that you will consider this further and come back to them with a response. Subject to what is raised which needs further consideration, there may be a requirement for further formal consultation meetings to discuss this, before continuing to undertake your selection matrix.

It may be necessary to explain why the TUPE regulations do not apply to this situation. Issue the blank scoring matrix and scoring criteria and ask staff to consider this and come back to you within the next 24/48 hours if they have any issues or queries with the content. Explain that if there are no comments or once you have taken the comments on board and made any appropriate amendments that this proposed scoring criteria will be what is used to score all affected staff against and you will then proceed to carry out the scoring exercise.

Follow Up Action Following First Formal Group Meeting

1. Call Neathouse Partners to discuss how the meeting went and email any notes/minutes across to your advisor.
2. Investigate any comments or suggestions made by the employees.
3. After 24/48 hours see if there are any comments or objections to the proposed scoring selection matrix and scoring criteria. If there are comments or objections you should speak to your Neathouse advisor before proceeding as a further meeting may be required before initiating the scoring.
4. If there are no comments or objections, carry out the scoring exercise. If the scoring produces a 'concerning result' which may give rise to a discrimination claim, e.g. all the lower scoring staff are your older staff; or all the lower scoring are your female staff; or all the lower scoring are your Muslim staff, you should contact Neathouse for assistance before proceeding to disclose the scoring results to the affected staff.

5. Work out who is still at risk in the process and issue formal invitations to the next meeting, which would be an invite to an individual consultation meeting with each affected staff member to discuss their individual own scores.

Second Formal Consultation Meeting - Individual Meetings

Meet with each employee individually. They are entitled to be accompanied by a colleague or trade union representative.

You should ensure you have a means of taking notes during this meeting. Sum up the process so far and go through their own individual scores with them in as much detail as possible explaining why you have given them the scores thought you have on explaining why you have not scored them a higher mark giving examples as far as you can.

You should also show the individual staff member the master score sheet with all other affected employees' names blanked out and showing the individual employee where they fall on the list.

Give the employee 24/48 hours to consider their scores and raise any objections to you.

If the employee in question will still be considered at risk following all employees' objections being taken into account, you should advise the employee that if the situation does not change then this may result in them being made redundant.

At this stage it would be worth discussing whether there are any suitable alternative roles available and discussing any other available vacancies. If there are none available, you should say so.

A suitable alternative role for these purposes is defined as another role on comparable terms, with similar/the same seniority and similar duties. You are advised to speak to your Neathouse advisor regarding this area.

Even if there is not a role which would meet the definition of a suitable alternative role, you should also discuss whether there are any other current vacancies anywhere in the immediate employer or group of companies which the employee could move into to avoid being made redundant.

If there are **no suitable alternatives** or vacancies, then you should say so.

If there **are suitable alternatives** discuss whether the employee wishes to move into one of these positions to avoid compulsory redundancy. The employee should be given some time following the consultation meeting to consider this.

In relation to suitable alternatives:

- if the employee is interested in a vacancy and you believe the employee to be suitable for the role, then the employee will not be made redundant and will move into this role. In this circumstance the employee is entitled to a 4-week statutory trial period in the new role, (and this 4 week period can be extended in specific circumstances and only for training purposes).
- if the employee refuses any offered alternative role you need to establish whether the refusal is a reasonable one, if the refusal is unreasonable the employee will potentially forfeit their right to a statutory redundancy payment. If this is the case, this should be made clear to the employee as part of the consultation process. If you find yourself in this situation it is advisable to speak to your Advisor at Neathouse Partners for further advice on managing this situation

Follow Up Action from Third Meeting

1. Call Neathouse to discuss how the meeting went and email the notes across to your advisor for review.
2. Investigate any suggestions the employees have raised.
3. After 24/48 hours finalise your scoring and placement of employees.
4. Issue a formal invitation letter to a potentially final meeting to the lowest scoring staff who would still be considered in the 'at risk' positions which will advise within that if no viable solution can be found, they may be confirmed as redundant in this meeting.
5. Consider the draft financial statements for the staff still considered at risk of redundancy for discussion in the final meetings.

Final Individual Meeting

This will be with the lowest scorers only following the conclusion of the scoring process.

Sum up the process so far, e.g. At meeting on [date] we discussed [what] you asked [what] and we looked into this further; then on [date] we met again and we discussed your scores; you did/did not raise any objection to those scores and unfortunately this meant they you were in the bottom group and still in the considered at risk positions.

Make sure that every query and suggestion raised has been fully considered.

Go through the financial statement and discuss the entitlement to notice and redundancy payments.

Within this meeting it is advisable to also recap that you have discussed whether there are any suitable alternative vacancies that the employee could move into. If there are no vacancies or suitable alternative roles, you should confirm this again. If there was a suitable alternative role, and the employee has unreasonably refused this, you should reiterate that this will mean the employee would not be entitled to a statutory redundancy payment if they refused to accept this.

Within this meeting you can go through the draft financial statement with the employee to confirm your figures are correct with regards to notice and redundancy payments etc. You should ask whether the employee has any further questions.

Unless the employee raises new points for consideration within this meeting, which have not already been discussed and cannot be addressed in this meeting, and so long as all other options have been explored then you can confirm the employee as redundant at the end of this meeting.

Explain that they will receive a formal redundancy confirmation letter which will confirm the payments due to them on termination.

If they do raise any further issues, or say anything which concerns you, you do not have to verbally confirm the redundancy in that meeting and can advise the employee that you will consider what has been discussed in this meeting further and communicate any decision in writing following the meeting.

In any event, you are advised to call Neathouse Partners for advice following the meeting. Your advisor will then draft the redundancy confirmation letter for you to issue.

Confirming Redundancy and Termination of Employment

Payments due on termination

The employee will be entitled to certain payments in the event they are terminated on the grounds of redundancy which are as follows:

1. notice pay as per the terms of their contract of employment (which must meet the statutory minimum in any event);
2. pay in respect of any accrued but untaken holiday up to the date of termination; and
3. any statutory redundancy payments in the event the employee has over two years continuous service with you.

There may also be payments due associated with the employee's contract of employment such as outstanding expenses; bonus; commission etc and so it is advisable to send the employee's contract of employment to your advisor at Neathouse Partners for review.

Notice

Depending on the terms of the employee's contract of employment you may decide to terminate the employee's employment immediately, and make it payment in lieu of notice, or you may require the employee to work some or even all of their notice, and/or remain at home for some or all of the notice period ("garden leave").

If suitable alternative positions become available during the employee's notice period, you are obliged to offer it to the employee. Please note that if the employee is required to work their notice period having been made redundant, then they will be entitled to reasonable time off during the notice period to attend interviews etc.