

NEATHOUSE PARTNERS

Overview of Standalone 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 is only appropriate for an employee who is genuinely in a standalone role. Sometimes this will be obvious, however some instances it may appear on paper that an employee is considered standalone, when in reality they are not. You should discuss this with your Neathouse advisor.

What do we mean by standalone?

Your employee will be considered as 'standalone' if they are the only person in your business/group of businesses who does this job role and there is no one performing a broadly similar role (even if this role has a different job title).

If there are others who do a similar job, even if this is at another site, on a different shift, or with a different job title, this standalone process will likely not be appropriate. To continue with a standalone process in any of these circumstances could risk an unfair dismissal. 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;
4. to ensure you give the employee the 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.

It is essential you ensure the pool of staff selected is correct from the start of the consultation. Assuming an employee is in a standalone position is assuming a pool of one, and if this is not correct, this will undermine the fairness of the process, and any subsequent redundancy dismissal. Therefore, you should only continue with this process having taken advice and assessed the position, concluding that the employee can be treated as genuinely standalone.

Remember, the purpose of the redundancy consultation is to determine whether the proposed redundancy can be avoided. Therefore, if the employee raises a suggestion about avoiding the redundancy and you believe this to be a valid point and a viable solution, you can write to the employee 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

The first step of this process is to inform the employee of the redundancy proposals.

It is imperative that you maintain throughout the redundancy consultation that the employee is only considered as 'at risk' and only confirming they are redundant at the final stage 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.

When initially informing the employee that they are 'at risk' of redundancy, no advance notice is required. You can therefore simply ask to speak to the employee in private and inform the employee of the reason for the potential redundancy of their position in as much detail as possible and explain that unfortunately due to these reasons their position is now considered at risk of redundancy.

Explain that you will be consulting with the 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 many 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 need to 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 at Risk of Redundancy

Following verbally placing the employee at risk of redundancy you should write to the employee confirming the reasons for the potential redundancy and inviting them to a first formal consultation meeting giving at least 48 hours' notice and the right to be accompanied.

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

First Formal Consulting Meeting

Within this meeting you will discuss the business case to support the need for redundancy in more detail.

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 employee before doing so and a copy is provided to them.

You will be required to fully discuss the situation with the employee 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 employee 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 employee raises 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 the employee 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 to invite the employee to another follow up consultation meeting to specifically discuss answers to the point(s) raised, before continuing with the consultation to make the employee redundant.

Vacancies and 'Suitable Alternative Roles'

There will also be requirement within this meeting to discuss whether there are suitable alternative roles which the employee could move into.

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, it is also recommended that you 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.

Steps Following First Consultation Meeting

Following the first consultation meeting you're advised to contact your advisor at Neathouse to discuss how this meeting went and forward any minutes for review. Your advisor will then advise on any issues with the process and provide the invite to the next stage of the consultation.

If nothing has so far presented itself which would avoid the need for redundancy it is advisable to draw up a draft financial statement detailing the payments which would be due to the employee if they were to be made redundant.

The next formal consultation letter will reference the previous consultation and invite the employee to a further and potentially final meeting (48 hours' notice and the right to be accompanied will still apply).

Please note that this letter will state if no viable alternative solution can be found the employee may be confirmed as redundant in this meeting, therefore, to proceed to this stage there should not be any outstanding issues that have not been explored as part of the consultation. If there are, then there may be a requirement to hold a further consultation meeting before proceeding to the potentially final meeting.

Second Formal Consultation Meeting

Within this meeting you would sum up the process so far.

Ensure that every question or query raised by the employee has been fully considered and answered and explained.

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 a 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.

NEATHOUSE PARTNERS

Contact:

James Rowland

Commercial Director at Neathouse Partners Ltd.

Mobile 07949 844250

jamesrowland@neathousepartners.com