

Restructuring and Redundancy in Schools

Introduction

An increasing number of schools have informed us recently that they are either finding themselves in deficit or projecting one in the near future. The demands of dealing with COVID-19 have not helped already tight budgets and it seems unlikely that there will be significant increases in education budgets over the next few years as the Government tries to improve public sector finances.

One way of tackling a budget deficit is to try to reduce staffing costs, by restructuring. Restructuring can also help to drive improvement within schools and across a multi academy trust by ensuring that the right structures are in place and resources deployed to achieve maximum efficiencies. The ESFA continues to stress the importance of curriculum financial planning and the Academies Financial Handbook now requires all academies to complete the "[School Resource Management Self-Assessment Tool](#)". This requires trusts to ask themselves the following:

- ***Does the trust review and challenge its staffing structure regularly to ensure it is the best structure to meet the needs of the trust whilst maintaining financial integrity?***
- ***Is the pay of senior leaders tightly correlated to strong educational outcomes and sound financial management?***
- ***Does the trust benchmark the size of its senior leadership team annually against that of similar schools?***

Depending on the scope of the restructure, risks can range from claims for unfair dismissal or discrimination, to claims for failure to consult collectively with the appropriate representatives. It is important to make sure both that there is a genuine redundancy situation, and that a fair process is followed. In addition to legal risk, there is the ever-

present practical risk that the restructure either does not deliver the required savings, or leaves the school unable to function effectively in certain areas.

Redundancy Situation

A need to cut costs does not, of itself, constitute a redundancy situation. Redundancy, from an employment law point of view, is linked to a cessation in work, a reduction in the number of employees needed to carry out the work, or a relocation of the work away from a particular site.

Cost pressure can be a trigger to look at restructuring part or all of the school, to try to deliver teaching or support services in a more efficient way. However it is important when setting out the rationale for a redundancy situation to go beyond the requirement to save costs, and to identify the reduction in employees required to carry out the work.

Sometimes this will be straightforward – for example, because there is a fall in pupil numbers. Sometimes it will be more difficult – for example where the proposal is to redistribute duties amongst a number of other roles. But if in doubt, ask yourself what will happen to the work the at-risk employee(s) currently do. If you can't clearly answer the question, it may be difficult to justify the subsequent dismissals.

Consultation

Having identified a redundancy situation, trusts and schools need to follow a fair process. The first part of that process will be consulting with the affected employees.

If the employer is planning to make more than 20 redundancy dismissals in any rolling 90-day period, collective consultation may be required. Depending on the circumstances, it may be necessary to

aggregate the dismissals proposed across a number of sites. If collective consultation is required, it will be with the recognised Trade Union, or, if there is no Trade Union, elected employee representatives. Hand-in-hand with the requirement to consult collectively is a duty to notify the Secretary of State of the proposals. Legal advice will be needed.

Beware also of any agreements about consultation which have been reached with recognised Unions, for example in a recognition agreement or partnership agreement. Whether or not collective consultation is required, schools will still need to consult directly with the affected employees. Consultation should cover the situation and the reasons for it, the proposed pools, the proposed selection process, and any ways of avoiding dismissals.

Pooling and Selection

Pooling is the process of identifying the groups of employees from which those to be made redundant will be selected. For example, if the redundant post was an English teacher, depending on the structure of the school, the pool may be all of the English teachers, or all of the Humanities teachers. The school has a relatively broad discretion over the pools used, but it is important that the choice of pool is considered and can be justified.

Multi academy trusts should consider whether a process is to affect all schools in the MAT or just some. Many of our MAT clients have undertaken both a strategic leadership review and looked at centralising business management functions as a way to improve performance and tackle inefficiencies. This can be empowering for staff as it can create new opportunities for staff career development and collaborative working. But as with any change process there will be tensions and possibly genuine concerns about job security. We suggest advice is obtained at this stage.

Generally a smaller pool is advantageous as it puts fewer staff at risk, and consequently causes less upheaval. However choosing a pool which is too narrow may render any dismissals unfair. When considering the correct pool, give more weight to what employees do on a day-to-day basis than to the contents of their job description.

Selection is the process of deciding which employees, from within the at-risk pool, are to be dismissed. There are a number of ways this can be approached, from a desktop skills-matrix to an expression of interest form. The best model is likely to depend on the circumstances, and on how different the new structure is to the old one. However

the process should always be as objective as possible.

Avoiding Dismissals

Schools making staff redundant are under a duty to try to mitigate the effect of the redundancies by looking for alternative employment for at-risk employees.

Multi Academy Trusts have a legal duty to consider redeployment across all schools in the trust (even if only one school is making redundancies) and so it is important that anyone undertaking this kind of exercise at any level in the trust has a good understanding of what current vacancies there are and the suitability of alternative roles.

If an employee turns down an offer of suitable alternative employment, it can affect their right to a redundancy payment.

Employees on maternity leave are entitled to be offered a suitable alternative vacancy if one is available, so they should in effect be offered first refusal of suitable alternative employment.

Careful consideration should also be given to the consequences of any salary safeguarding arrangements.

Further Information

The key to a successful restructure is careful planning, so that as far as possible issues which may derail the process are identified and addressed in advance.

Members of our School Support Service have experience of advising schools on restructures and redundancy exercises. We can assist you to formulate a robust business case to ensure that the restructure is underpinned by a genuine redundancy situation. We can guide you through individual and (where necessary) collective consultation, and help you to develop a robust selection process.

For further information or advice please contact Andrea Squires, Partner, on 020-7593-5039 or asquires@wslaw.co.uk, or our dedicated Schools HR/Employment Law Team on 0345-026-8690 or schoolshr@wslaw.co.uk.