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Restructures

What do you need to consider?



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Restructures: What do you need to consider?

In the past week, the BBC has reported on the growing numbers of schools in financial difficulties, with the Association of School and College Leaders (ACSL) warning that thousands of primary and secondary schools are close to becoming 'financially unviable'.

With a resolution of the funding issues in education still some way off, schools are looking for ways of plugging gaps in their budgets. Overcapacity within staffing structures is one area where vital costs savings can be made. However, restructuring can be met with significant opposition from staff and unions and negatively impact on morale, especially where redundancies need to be made.

This year we are working with a number of schools that have decided to carry out staffing restructures. These have presented their own challenges to the Governors and Senior Leadership Teams (SLT), which we have been able to assist with. In this article, I have set out some of the things to think about before and during a restructure process for those schools that may be considering a restructure as a way of balancing the books.

Preparation is key

Once a proposed restructure is announced, employees and their unions are likely to have lots of questions. Also, if the proposed restructure will result in redundancies, the school will need to be in a position to terminate employment fairly by establishing that there is a genuine redundancy situation. Therefore, before starting consultation, it is a good idea to put together a detailed plan including the following:

- The reasons why the school needs to restructure;
- Which groups of staff will be affected;
- What the staffing structure looks like before and after the change;
- How the restructure will be carried out; and
- A proposed time frame.

The process of putting this plan together should also confirm to the school that there is a genuine need for a restructure and that this is not just a knee-jerk reaction to a short-term problem.

Once this plan is complete, it can also be used to assist Governors, who will need to approve a proposal to change the staffing structure.

Do you need to collectively consult?

Collective consultation is the process of consulting with representatives of employees that are likely to be affected by the restructure. Where a school recognises one or more unions, this consultation will be with representatives from those unions.

The duty to collectively consult arises where an employer proposes to dismiss as redundant 20 or more employees within a 30 day period. For these purposes the term 'redundant' has a wide meaning. As well as applying to any employees that are likely to lose their job, it will also include those whose jobs may be changed as a result of the restructure.

Where there is a duty to collectively consult it must take place 30 calendar days (or 45 days where 100 or more employees may be affected) before any dismissal or change takes place.

Where less than 20 employees are likely to be affected, schools should still check their own restructure policies for additional requirements in relation to consultation.

Collective consultation with unions or other employee representatives will not replace the requirement to consult individually with employees.

Consider voluntary redundancies

To reduce the number of compulsory redundancies, a school may wish to consider inviting staff to apply for voluntary redundancy. The advantages to this are that voluntary redundancies are likely to have a less negative impact on morale among remaining staff and remove the need to go through a full redundancy process. However, there is a risk that schools may lose members of staff that had significant experience and skills that they would have preferred to retain.

If members of staff are invited to volunteer, schools should ensure that any applications for voluntary redundancy are made subject to acceptance by the school and they reserve the right to refuse any application in the event that it does not fit with the needs of the school.

How long will it take?

Once a decision has been made to proceed with a restructure, schools are often keen to implement their plans. However, there are a number of factors that could impact upon how long a restructure may take:

1. **The consultation period** - as set out above, where collective consultation is required this could add up to an additional 45 days to the process.
2. **The timing of Governors' meetings** - Governors' meetings are often scheduled several months in advance. Waiting until the next scheduled full meeting before a decision can be made, could cause a significant delay in the process. Schools may consider requesting more flexibility from Governors to attend meetings at short notice and/or delegating some decision making to a subcommittee set up for that purpose.
3. **School holidays** - The majority of staff in schools are not contractually obliged to attend work during school closure periods. Therefore, it would not be possible to meet with staff (unless they agreed to do so) to progress the restructure during those times.

4. **Notice periods** - In the event that a restructure results in redundancies or changes to job roles, those affected will be entitled to a notice period. The length of notice will depend on the contract of employment and length of service but may be up to 3 months. For teachers, it is also important to note that under the Burgundy Book terms and conditions there are only 3 days in a year when notice can be given (31 October, 28/29 February and 31 May).

Our advice to schools wanting to calculate the likely time frames for a restructure exercise would be to start from the date that they would want to implement the new structure and work back from there, incorporating all of the necessary stages, to ensure that the process is started in good time.

If your school requires assistance with a restructure process or has any queries about this or any other legal issue, please contact a member of our specialist Education team on 01332 227 596.

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- Land Acquisition & Disposals (*including options*)
- Leases
- Planning / Section Agreements
- Profit Sharing / Overage Agreements
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