

## **APPENDIX E – EMPLOYMENT IMPLICATIONS OF RESTRUCTURING**

### **1. Restructuring and Redundancy**

- 1.1. Dealing with restructuring exercise can be daunting for both employers and employees. Even where there is an intention to replicate current structures changes in work location or job roles can give rise to a potential redundancy situation.
- 1.2. Employers need to ensure that they follow correct procedures and apply them fairly. Employees have a number of rights in a redundancy situation and both parties need to understand what these are.
- 1.3. Therefore, when conducting any restructuring exercise it is Employers need to know what "redundancy" means and when arguments can give rise to an obligation in respect of collective consultation (with trade unions or employee representatives) about the possibility of redundancy (even it that outcome is not the intended one).

### **2. "Redundancy situations"**

- 2.1. Employers, employees and lawyers alike frequently speak of there being a "redundancy situation", as a convenient shorthand for the states of affairs set out in section 139 of Employment Rights Act 1996. Broadly speaking, redundancy situations fall into three categories:
  - Business closure (that is, closure of the business altogether).
  - Workplace closure - when an employer has ceased, or intends to cease, to carry on its business "in the place where the employee was ... employed" (that is, closure of one of several sites, or relocation to a new site).
  - Diminished requirements of the business for employees to do work of a particular kind.

### **3. Reduced requirement for employees to do work of a particular kind**

- 3.1. As above a redundancy situation may arise where there is a diminishing requirement of the business for employees to carry out work of a particular kind (either in the place where the employee was employed, or within the business generally).
- 3.2. Employers who decide to undertake reorganisations or restructuring of their working practices and/or workforces need to be alert to the fact that what they are doing may meet this definition of redundancy.
- 3.3. This could arise in a number of ways. The most frequent include where; as a consequence of the reorganisation, there:
  - is the same amount of a particular kind of work but fewer employees are needed to do it
  - is less work of a particular kind and fewer employees are needed to do it (the work shrinks and so does the headcount)

- less work of a particular kind or in a particular location, but the same number of employees are required. This may occur where there is a change in job function or a reduction in hours of work.
- 3.4. Whenever there is an internal reorganisation or change to individual job duties, the employer should ask whether a particular kind of work is ceasing or diminishing as a result of the changes. If that is the case, then there is likely to be a redundancy. Here there may be a redundancy even though the overall number of employees in the organisation remains the same.
- 3.5. Additionally, where an employer moves work of a particular kind from one site to another a redundancy may arise. Here although the volume of work, and the requirement for employees to carry it out, may remain the same or even increase, it will nevertheless have ceased or diminished “in the place where the employee was employed”. This would be the case whether or not the original workplace stays open for other kinds of work. However, if the place of work is closed or expected to close altogether, then there will be a redundancy situation in any event by virtue of a workplace closure.

#### **4. Restructure Implications**

- The application of the Organisational Change Policy generally but notably at this stage;
  - Section 5: Consultation with Staff Interests – the need for early and effective consultation with representatives of Trades Union through local partnership arrangements and triggers for Collective Consultation of Proposed Redundancy
  - Section 6: The introduction of change – the need to discuss the issues with employees and their representatives before any final decision is made and consultation with accredited representative(s) of the employee(s) concerned, at the earliest possible stage.
- Latterly the Organisational Change Policy will impact on
  - How staff are managed through the change
  - The procedure for filling posts
  - Protection of pay and conditions of service
  - Excess mileage and travel costs
  - Relocation /Removal expenses

The last three of these may have long lasting cost implications.

- A failure to adhere to the Organisational Change Policy could lead to grievances in the first instance and could be used as evidence to support any related employment tribunal claim.
- What starts off as a proposed reorganisation, or as a proposed change to terms and conditions, can frequently end up being a dispute about redundancy. Employees may argue that any change of location, altered duties

or reduction of posts in any new structure means that a particular kind of work is ceasing or diminishing giving rise to a redundancy situation.

- If the restructure does give rise to a potential redundancy situation, then there will set procedures to follow, consultation requirements to be met and potential liability for redundancy payments. In this respect while the organisational change policy and general ethos places compulsory redundancy as a measure of last resort it cannot always be avoided.
- Where a restructure could result in 20 or more dismissals on the grounds of redundancy within a period of 90 days or less notification and collective consultation requirements could be engaged.
- If the reorganisation falls short of a redundancy then depending on how it is implemented any unhappy employee could argue that the change amounts to a fundamental breach of contract and claim constructive dismissal.

## **5. Restructure Key Considerations**

- When to engage the Organisational Change Policy - Careful planning will need to be considered to ensure consultation requirements are met in line with the provisions the Organisational Change policy, Union requirements and redundancy provision. Here there be varying requirements across multiple organisations.
- Is there a risk the restructure could give rise to a redundancy situation - If any reorganisation will result in a change to individual job duties, employee numbers or location, the employer should ask whether a particular kind of work is ceasing or diminishing (generally or at a specific location) as a result of the changes. This may involve;
  - reviewing the terms of contracts of employment (clauses relating to job duties and place of work) and comparing them to what happens in practice,
  - a comparison of the actual work being performed by the 'old' employee and the 'new' employee, both in terms of actual duties carried out and an evaluation of the skills required,
  - an analysis of whether the requirement for employees to do a particular kind of work has diminished or ceased. This may involve standing back, looking at the needs of the organisation as a whole and analysing the workflow.
- If there is the potential that a redundancy situation could arise particular consideration should be given to the application of the obligations to collectively consult – the maximum sanction for breaching these obligations is a "protective award" of up to 90 days' gross actual pay for each affected employee, which can add up to a substantial amount.
- There may be overlapping obligations to inform and consult under TUPE and under collective consultation provisions where redundancies are proposed on a TUPE transfer.