



Aspect achieving
change together

*the voice of educational improvement
& children's services professionals*



Education and Children's Services Restructuring and Redundancies: How To Respond

first edition

Copyright © Aspect 2010

First edition published in October 2010 by
Aspect
Woolley Hall
Woolley
Wakefield
West Yorkshire WF4 2JR
www.aspect.org.uk

All rights reserved. Except for the quotation of short passages for the purposes of criticism and review, no part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the publisher. Extracts from this document may be reproduced for non-commercial educational purposes, provided that the information quoted is not used in a misleading context and that the source and date of publication is acknowledged.

For additional copies contact 01226 383428 or email info@aspect.org.uk



Contents

PAGE 4

INTRODUCTION

PAGE 6

PRACTICAL GUIDANCE FOR LOCAL REPRESENTATIVES

PAGE 14

USEFUL DOCUMENTS TO CUSTOMISE OR QUOTE

PAGE 27

CONCLUSION

1 Introduction

1.1 Local authority and related education and children's services are under severe pressure. The Westminster coalition government's cuts in public expenditure have already reduced area-based grants and other funding sources for key local services and its Comprehensive Spending Review (CSR) assumes further significant expenditure reductions to be implemented over the next three years. Aspect is totally opposed to these cuts and campaigns to protect local education and children's services at every opportunity. These financial constraints have already persuaded several individual authorities to review services and introduce job reduction programmes, and others are planning to follow their example and implement redundancy exercises over the coming months, as they reconfigure and downscale their direct delivery of education and children's services. Highly skilled and experienced education and children's services professionals are losing their jobs.

1.2 In addition, this government's strategy of relying upon new independent, state-funded schools, enjoying Academy status under the recently-approved Academies Act 2010, to raise overall educational standards across the board, poses a further challenge to established local authority services. Each of these schools is entitled to claim a share of the funding traditionally awarded to local council central services designed to support local maintained schools. The new Academy schools are designed to function outside of the local authority 'family' of schools.

1.3 However, we have not been informed of any plans to alter the important statutory responsibilities of local authorities for raising local school standards. Chapter 2, section 5, of the School Standards and Framework Act 1998 amended section 13 of the Education Act 1996 to place a legal duty on local authorities to exercise all of their functions relating to the provision of education "with a view to promoting high standards" in both primary and secondary education and this remains in place.

1.4 Aspect members and their local representatives, confronted by these new developments as they start to impact upon the important services they deliver, need advice and support as they face these major challenges and seek to protect their interests in the localities. This publication is therefore intended to offer practical advice and helpful

information on how to respond, in this new and difficult climate. It supersedes the Aspect "Guide to Local Education and Children's Services Restructuring" last published in a revised edition in 2006.

1.5 The local Aspect response to any early indication of plans to introduce service rationalisation and associated job losses must be **pro-active**, and not simply involve waiting around for the employer to disclose details and implementation procedures. The Aspect local representative should alert the union's Regional Officer to the possibility of detrimental changes and job losses as soon as word leaks out. As soon as there is an indication of such proposals then it is important to email all members (via the local representative or the regional official) and call a members meeting. If there is not a local representative in place, it is essential that someone comes forward to at least act as the information link between the members and the regional official. At this stage, wherever possible, further efforts should then be made to recruit new members to the Association. If we have more members, our voice will be stronger and our influence over subsequent events can be enhanced. Conversely, if our local membership is weak, the employer will know this and feel less inclined to take meaningful account of our representations.

1.6 This guide, in the next section, looks at practical points of guidance to assist Aspect local representatives in their efforts to protect local members' interests when confronted by service restructuring and associated job reductions. It then proceeds, in the third section, to reproduce useful documents which local representatives may adapt for their own purposes or quote from in local consultations over restructuring and redundancy. Further documents will be available on the Aspect website for members to download for local use.

What does 'consultation' mean?

1.7 A restructuring exercise may well lead to posts being declared redundant. In such circumstances, there is a statutory duty on the employer to consult with representatives of recognised independent trade unions. That is why it is essential to check, well in advance of any such problem, that Aspect is formally recognised as a union by the employer concerned. Otherwise, it may well prove harder to find a way of representing our local membership. In this connection, a key argument to deploy is that the national-level Soulbury

Committee, which the national Local Government Employers (LGE) fully support and participate in, officially recommends to all local authorities “full recognition of those unions and associations represented on the national body. Such recognition includes the provision of facilities for representatives as accorded to other teaching and non-teaching staff unions and regular consultation with representatives...” (Soulbury Report, 2010, paragraph 11.1). Aspect has the largest representation of all the unions on the national Soulbury Committee. Even in circumstances where no jobs are at risk of redundancy, it would be a matter of good industrial relations practice to establish joint consultation between the parties to consider the proposals for restructuring.

1.8 For a definition of consultation, it is useful to turn to decisions made at the Employment Appeal Tribunal (EAT) where the question has been considered and guidance provided as follows:

“Fair consultation involves giving the body consulted a fair and proper opportunity to understand fully the matters about which it is being consulted, and to express its views on those subjects, with the consulting employer thereafter considering those views properly and genuinely,” and “fair consultation means consultation when the proposals are still in the formative stage...with adequate time in which to respond.”

(Industrial Relations Law Reports, 1985 IRLR412)

Aspect would expect nothing less from local authorities and other employers in the important context of local education and children’s services.

What does ‘negotiation’ mean?

1.9 Negotiation is a different type of two-way dialogue. It is defined as the process of bargaining between the parties to determine a **mutually acceptable** settlement of the terms and conditions of employment and working practices arising from the restructuring of a service. It does not consist of telling staff what has already been decided and is about to happen.

1.10 It is important for all staff concerned with restructuring to understand the rationale behind local proposals for change and to feel they can express their views. Regular meetings should assist this understanding and encourage debate. At this stage, the first **priority** is

to have a clear written statement from management of the timetable and process the employer says they wish to follow. The first **question** to ask is whether what is proposed is “fit for purpose” - in other words can what is proposed with regard to the numbers of staff, their skill mix, their deployment and management arrangements reasonably be expected to deliver what is stated in terms of the new goals of the service. Each group of staff should be asked to contribute to an early Aspect response to the proposals highlighting professional and service issues. It can be sent to the employer via the regional official.

1.11 Members will then rightly raise questions over job security and redeployment. In particular members will want to know about their own job, arrangements for assimilating them to any new jobs, job descriptions and grading for any new jobs, the arrangements for pay protection, and any arrangements for redundancy - voluntary or otherwise. A whole range of other concerns will be raised - such as whether current part time and flexible working arrangements can be maintained.

Equality impact assessments

1.12 In addition, public authorities, including local authorities, are now required to comply with their statutory equality duties, when making decisions about the service they provide, including decisions to introduce redundancies through service restructuring. This involves conducting robust equality impact assessments for such decisions, to make sure that they do not adversely affect different ethnic groups, disabled people or men and women. Local representatives will wish to check that such assessments have indeed been carried out.

1.13 As the proposals develop, employers can adopt one of two responses. Sometimes there is no real acknowledgement of staff concerns and the proposals are driven through in a manner that alienates staff, fails to acknowledge concerns, and results in a structure that is self evidently not capable of meeting its stated goals. Alternatively, even where jobs go, it is possible to restructure in a manner that still retains the confidence of staff that their voice is valued and that the best has been done to meet a difficult situation.

2 Practical Guidance for local representatives

Restructuring: key stages

2.1 There are three key stages of the service restructuring process to consider:

- The strategic stage, which considers the rationale and context for the proposed reorganisation.
- The consultative stage, which leads to a new structure.
- The negotiating stage, which should agree the precise ways in which the organisation will move from its present shape and structure to its new structure.

Consultation

2.2 Employees in education and other relevant services who are affected by a restructuring where jobs are at risk have a statutory right to be consulted fully at every stage by management during the restructuring process. This should extend to cover the proposed new structure and the appointment and/or assimilation of staff into this new structure. For this to happen, staff representatives must be provided with the following documents at the start of the consultation process.

- A copy of the proposed changes and their rationale
- A document setting out the consultation timetable
- The management structure, identified jobs at risk and job descriptions of any new posts

At that point, or very soon afterwards, management should also provide:

- Two parallel lists of the jobs and grades in the current structure and the proposed new structure, identifying where it is proposed that staff are to be automatically slotted in, where “pools” of staff may have to compete for posts, and any staff for whom there may not be obviously suitable alternative employment.
- A copy of the equality impact assessment they have undertaken prior to launching the consultation together with arrangements for commenting on it

2.3 If there are potential redundancies, ie where jobs are at risk, employers have a statutory duty to consult trade

union representatives and individuals, under the Trade Union and Labour Relations (Consolidation) Act 1992, section 188. The European Directive on ‘Information and Consultation in the Workplace’ (directive 2002/14/EU) also places employers under a legal obligation to consult with their employees on, among other things, decisions which are likely to lead to changes in work organisation. Under the terms of section 188 of the TULR(C)A, where 100 or more redundancies are proposed at one establishment within a 90-day period, consultation must begin at least 90 days before the first dismissal takes effect. Otherwise, this must commence at least 30 days before the first dismissal takes effect.

2.4 All Local Authorities, and many other employers, will have a ‘managing change’ document, together with a policy and procedure for handling redundancies. This will contain details of:

- The process to be followed
- The purpose and timetable for consultation
- What staff and their representatives can expect to receive
- Definitions of pay protection, suitable alternative employment, slotting arrangements, assimilation
- Arrangements for volunteering for redundancy, and for compulsory redundancy, including redundancy payments
- The implications of taking redundancy for pensions - and where to find out more

It is essential that all parties engage properly in the consultation process, first, to ensure that the new role of the organisation will be met, and, second, to try and address the needs of the individuals involved. Communication on this process should therefore be clear and facilitated as early as possible, so that all parties feel they are able to participate effectively.

The role of the Aspect local representative

2.5 The Aspect local representative will play a pivotal role as the first point of contact for management when a proposal to restructure a service is being considered. At this strategic stage – and to avoid the local representative bearing all the burden of the work to follow alone – it is recommended that a small

working group of perhaps two or three Aspect members is formed to manage the process through each stage, duly informing their Aspect regional officer of all major developments and key documents. It will be important to have an up to date list of members with email addresses which Aspect Head Office can provide to local representatives so they can be kept informed. It would also be useful to have an Aspect “lead contact” in each team or base to pass on information to and from the local representative. Local management should be holding general staff meetings, as well as meetings with Aspect and other unions, and our members should be helped, when necessary to ensure they can attend. All Aspect members should be urged to check their contracts, continuous service records, and terms and conditions of employment.

2.6 As noted above, the kinds of restructuring exercises outlined in this guide provide an important opportunity for Aspect local representatives to recruit new members. Indeed, this strategy will further protect the interests of existing members: the more members Aspect enlists who belong to the same authority undergoing a service restructuring, the more Aspect will be capable of exerting a stronger influence on the consultation process as it proceeds. Membership recruitment is therefore a key component of responding to any service restructuring proposals. Recruitment literature and application forms are available from our Head Office on 01226 383428 or via our website www.aspect.org.uk

2.7 The interests of other trade unions which may also be involved in the restructuring process will likewise need to be considered. In any joint trade union consultation process, it is necessary to ensure the attendance of an Aspect local representative at all meetings. The working group could also rotate attendance at these meetings, as long as the information obtained is duly passed on. This obviously involves establishing effective joint working with the other unions, while ensuring that Aspect members’ specific concerns are properly raised.

2.8 Local representatives should always seek advice from their regional officer if they are unsure of the implications of any proposals, and they may need to

ask for more time before responding. It is necessary to understand the constraints in any consultative proposal, but not to allow them to overwhelm good practice. Nevertheless, meaningful consultation is essential as it provides the opportunity for:

- Alternative solutions to be raised
- Proposals to be tested
- Individuals to consider their own situations and make their individual issues/problems known to relevant people
- The people directly affected to understand that their views are being seriously considered.

There is also a need to recognise and manage the familiar and unavoidable tension between:

- The perceived need to carry out a reorganisation as quickly as possible, in order to reduce the period of uncertainty, and
- The requirement to consult fully at each stage of the process.

2.9 Regular reports to all members on the progress of consultation are therefore essential so that local Aspect members can understand how the process is developing. The regional official should be asked to attend an early meeting of Aspect members to talk through issues - and possibly to provide a “surgery” to individual members. Non members should be invited to the first of such meetings and invited to join.

2.10 A guiding principle for those managing the process for the employer should be to understand how change is perceived by staff colleagues and to create a genuine sense of securing a future for the service to local schools, even if staffing and resources are being cut back.

Strategic view of reorganisation

2.11 As a professional association, Aspect has views about the structure of local services. However, as local authorities vary so much in their culture, establishment, financial position and size, there can be no universal blueprint. Our local members will understand the hard realities of local service delivery and their knowledge and expertise should inform the early stance of the Aspect local representative. Membership meetings may be

needed to assist this input, and managers should help to facilitate this, given the importance of proper consultation and the issues at stake. Where financial constraints represent the reason for change, it should be supported with clear evidence justifying the scale of cuts and the ability of the new structure to continue to provide key services.

2.12 Staff should also have the opportunity to make their own contribution to the debate in the formative stages of the change programme. This will enable the best ideas to be incorporated. Much will depend on what the authority needs to prioritise and focus on, and the following points may be helpful:

- The restructuring process should start with the submission of a strategic design, supported with hard evidence, to show that a restructuring is likely to retain a sustainable and effective service
- Leadership and levels of management responsibility in each proposed tier and for each group of services should be clearly identified in diagrammatic form, and their purpose defined in terms of the aims and objectives of the reorganisation
- All posts in the proposed new structure should be presented with a clear job description and person specification
- Any proposed structure should allow for lateral and vertical career development, and the relationship between posts in each tier should be well defined
- A record of relevant meetings should be made available and circulated to all staff.

Consultation on the new structure

2.13 Much will obviously depend on whether the restructuring is of a limited nature or more extensive. It is good practice to review the progress of the consultation at regular intervals.

2.14 If the process does not take place in this way, then opportunities presented by promotion may mean that some individuals are put through more stress than necessary. For example, individuals may apparently be displaced when a further post on their tier later becomes available, either due to promotion or as a result of having to be interviewed twice (once on their own tier, and then subsequently at the higher tier).

Restructuring: key points

Before the restructuring process begins:

- There should be a formal written procedure to underpin the process of consultation
- Reference documents will be required and should include redeployment and pay protection procedures, selection panel and interviewing procedures, voluntary early retirement and redundancy policies and Local Government Pension Scheme options.
- A timetable of meetings and events, eg dates for job adverts – internal and external – will need to be agreed
- There should be clear written details of compensation terms available for anyone who may be made redundant
- The prime aim should be to avoid compulsory redundancy. Clarification of individual council's policies on this key issue, at an early stage, is therefore important.

During the process – assimilation:

- Proceed hierarchically from the 'top' downwards.

2.15 The practice of declaring every member of the team potentially redundant, deleting all their posts and declaring all posts in the new structure as significantly different and asking everyone to apply for the new posts, be shortlisted and interviewed, is very stressful and time-consuming. It is particularly time-consuming for the senior managers who have to make the appointments. This practice should therefore be avoided if at all possible. If it cannot be avoided, detailed consultation and fair criteria are essential.

2.16 Assimilating and matching skills and job roles is normal practice during service restructuring. Details of the person specification and any relevant council policy on this matter are essential information. Redeployment policies may also be helpful at this stage. Where there is a 60–70 per cent overlap between posts in the old structure and in the new, then the process of assimilation should apply if there is only one person who meets the criteria. Local agreements may set out a specific percentage.

Implementing the new structure

2.17 The process should be to:

- Identify in the new structure which posts are broadly similar to those which already exist
- Determine the pay scales based on responsibilities
- Where there is only one eligible person for such a post that person should be slotted into it and a skills audit to help validate this process should be completed at an early stage
- Where there is more than one candidate, request volunteers for transfer to any other available posts for which there is no competition and for which the candidates of the 'oversubscribed' post are eligible
- Request volunteers for severance on given terms
- If there is no voluntary solution, then interview for the post.

Interviews and ring-fencing

2.18 Where the number of people in the 'old' structure with comparable job descriptions who meet the person specification for the new posts, exceeds the number of posts available, then the posts should be ring-fenced to that group of people. Posts should be ring-fenced, initially to individuals on the same level or above (if already displaced) employed within the organisation. If posts on a particular level remain unfilled and there is a possibility of displacement at lower levels, they should be open to competition from within the organisation and ring-fenced to current employees. It may well be helpful to consult over job advertisements to avoid false or misleading information. Shortlisting and interviewing should follow agreed criteria and observe any policies local councils have on equal opportunities.

Is there a right to volunteer for redundancy?

2.19 There is no such right in law. However, there are two important arguments for encouraging volunteers if other staff face compulsory redundancy. The first is that the employer faces losing staff who want to stay and contribute to the work of the organisation. The second is that it's not in the employer's interest to keep staff who want to leave when they could leave. Employers will point out they have no statutory duty to allow volunteers, and that they risk losing key skills, and that volunteers are sometimes

staff with long service whose redundancy might cost more than those facing compulsory redundancy. However, unless employers can demonstrate that only those seeking voluntary redundancy can perform a particular job, we should press hard to let volunteers go so that others who want and need work can stay. The mere fact that an employee volunteers does not, however, mean that the redundancy will be granted. If volunteers are accepted, the employment will be lawfully terminated by reason of redundancy.

Selection for redundancy

2.20 Where there is any question of redundancy, the unions have a right to discuss and seek to agree selection criteria. The criteria must be clear, objective and precisely defined and must not discriminate against employees on a protected ground, eg. disability, and must be applied in a reasonable, fair and unbiased way. Early retirement on suitable terms may still be a way of avoiding compulsory redundancy. It is often only made available after the matching and selection process is completed. Voluntary early retirement on the grounds of redundancy or the efficiency of the service is usually, however, at the discretion of the employer and the pension level should always be carefully checked (see 'pension rights' below).

What is "suitable alternative employment" ?

2.21 Employment law encourages employers who are considering dismissing someone by reason of redundancy to look for alternative employment for that person. In law, a failure to take reasonable steps to find alternatives to redundancy can make a redundancy dismissal unfair. However, that does not necessarily mean that all offers of work from an employer are "suitable alternative employment". In general terms, it has to be work that the employee can reasonably be expected to undertake, bearing in mind their skills and seniority, and it has to be offered on terms and conditions that are not substantially less favourable to the employee concerned. In some situations staff facing redundancy find alternative work before notice of dismissal is issued. In other cases, it is only while the employee is working during the notice period that a possible alternative role is identified. In making a decision whether to accept an alternative position on offer,

staff will have to take into account a range of circumstances which include the degree of salary protection offered, as well as the nature of the role itself, responsibilities, career prospects and personal circumstances. Travelling distance and time may also be a factor. If the employee accepts an alternative role, any notice of dismissal can be withdrawn by agreement, and no dismissal or redundancy then takes place. The employee would continue in continuous employment in the new position.

2.22 In some cases, however, when our members do not wish to accept the role offered, a legal issue can then arise about whether the right to a redundancy payment upon leaving employment in those circumstances is lost. In broad terms, the right to a redundancy payment will be lost where an employee has unreasonably rejected an offer of suitable alternative employment. In order to lawfully avoid having to pay a redundancy payment in this situation, the employer must establish that the following elements are present:

- the offer of the new role must be made **before** the old contract has ended.
- the new role must begin before or **within 4 weeks** of the date on which the existing contract ends.
- the new role must be a **suitable alternative**
- the rejection of it must be **unreasonable**

Whether a post being offered is a suitable alternative requires an objective assessment of whether the new job offered is suitable in terms of

- the **status**, role and responsibilities of the position,
- the **financial package**, including the grade and protection arrangements
- the **place of work**, especially if that has substantially changed
- the **hours, holidays and other terms and conditions.**

2.23 No one single factor is decisive in legal terms and the job has to be considered as a package. The fact that a job may require some retraining does not necessarily make it unsuitable. A lower status job for the same pay can be unsuitable. A similar status job with a reduction in pay may be suitable. If there is salary protection for a year or more, the fact that the post requires salary protection is, **on its own**, unlikely to make the job unsuitable, particularly if there

is opportunity for further advancement before the salary protection period ends. The question of whether the post is permanent or temporary is also relevant and a fixed-term or temporary post may well be an unsuitable alternative to what had been permanent employment. An offer of school-based work to a member of staff currently centrally employed in a local authority education support service is not a decision for the authority alone to make. Schools tend to have delegated management powers today and their agreement would therefore be required to offer such a role. Indeed, for certain, more autonomous, schools, the local authority is no longer the relevant employer, in the eyes of the law. **In summary, the employer cannot expect the employee to accept any job that is offered; nor can an employee automatically reject any job that is offered without risking loss of redundancy entitlements. It all depends on the particular circumstances.**

2.24 Whether rejection of an offer is an unreasonable rejection will affect entitlement to redundancy payments. If the job offered is not suitable, then the redundancy payment is not placed in jeopardy if the offer is refused. If, however, the job is suitable, then our member will lose the right to the redundancy payment in rejecting a job unless that rejection is regarded as reasonable. In considering reasonableness, an employment tribunal would also take account of personal circumstances which are unrelated to the job. These can include family situations, personal views (e.g conflict in the past with those who will now manage the employee), or the fact that the employee has had insufficient time to consider the offer properly.

2.25 The law allows a trial period of up to four weeks (or longer if retraining is required) for the employee to try the role before making a final decision. Members must insist on this when considering any such offer and should get it in writing. If an offer of alternative employment is to be rejected, the reasons for rejecting it should be set out clearly in correspondence at the time. If the employer subsequently withholds the redundancy payment, then an employment tribunal claim may be necessary and advice should be sought through the Aspect regional official. Prior to that being the case, Aspect would want to discuss with the member and the employer whether the employer's actions

are reasonable in the circumstances. Reasonable in this context means “in law” and is not a moral judgement.

Time off to look for work elsewhere

2.26 If employees are required to work their notice period, those with two or more years’ continuous service are entitled to reasonable time off with pay to look for other employment or arrange training to help them obtain other employment. It is important to raise this issue as early as possible since, if it is ignored, any later redundancy termination is potentially automatically unfair dismissal.

Fixed term, part time and flexible staff

2.27 Staff working under fixed-term contracts must not be treated less favourably than other employees when an employer seeks to implement redundancies. This is laid down by the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, SI2002/2034. The same is true for part-time workers, under the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, SI2000/1551. The selection for redundancy of any such staff is viewed as an automatically unfair dismissal, in the eyes of the law, if the reason for that selection contradicts any of their rights awarded under these regulations. It is also unfair to make an employee redundant because he or she has requested flexible working. The right to request flexible working arrangements became a statutory entitlement in 2003 for parents of children under age 6 or of disabled children. In 2007, this was extended to carers of vulnerable and disabled adults and, in 2009, to parents of children under age 17. Although employers may deploy lawful reasons for denying such individual requests in certain circumstances, many have been granted and it is unlawful to make such an employee redundant because they work flexibly in such situations.

2.28 Staff on maternity or adoption leave

Similarly, pregnant employees and staff who are absent from work on maternity or adoption leave should be included in redundancy consultation and selection processes in the same way as other affected employees, although it may be necessary to change how they are consulted if they are absent from work. Employers must ensure that the redundancy selection criteria are objective

and non-discriminatory to avoid claims of sex discrimination and unfair dismissal, and ensure that the criteria are applied fairly. For example, if absence from work is one of the selection criteria used, then any absences directly related to the pregnancy or to time off for dependents should not be included to avoid potential sex discrimination.

2.29 However, employers must prioritise employees on maternity or adoption leave who are under notice of redundancy for offers of suitable alternative employment where these exist. Under regulation 10 of the Maternity and Parental Leave Regulations 1999, these employees must be treated more favourably during their redundancy notice period than any other redundant employees, even those who are better qualified. A failure to meet this obligation could result in the dismissal being automatically unfair and also potentially in direct sex discrimination. However, if there are no suitable alternative vacancies, an employee may be made redundant during or after maternity leave.

Redundancy pay

2.30 When a redundancy is being implemented, there is a statutory entitlement to a minimum level of redundancy pay for staff with at least two year’s service. This statutory redundancy pay is calculated as follows:

- half a week’s pay for each complete year of service below the age of 22
- one week’s pay for each complete year of service between the ages of 22 and 40
- one and a half week’s pay for each complete year of service after reaching 41

The maximum total length of service which can be taken into account, for this purpose, is 20 years and the total amount of a “week’s pay” is also capped, and is currently defined as £380.

2.31 Many local authorities, and other major employers, have traditionally paid higher amounts than these statutory entitlements, known as “enhanced” redundancy pay, although some have reduced the financial value of their enhanced payments, over recent times. Such enhanced payments are often modelled on the basic statutory scheme i.e. they are based on age and service (which

is specifically permitted, under the government's Age Regulations), but use a multiplier to increase their value, and may also be based on the employee's actual weekly pay as opposed to the statutory scheme's capped figure. Redundancy pay is awarded tax-free upto a level of £30,000. Employers may, however, offer different levels of redundancy pay in the event of compulsory, as opposed to voluntary, redundancies. SPA points and service increments should be included in the redundancy pay calculation. Employers are required by the Employment Rights Act 1996 to base any calculation of statutory redundancy pay on the contractual pay at the time the notice of redundancy is issued, though they need not take account of changes to contractual pay that are due to take effect after the redundancy notice has been issued.

Pension rights

2.32 If you are a member of the Local Government Pension Scheme (LGPS), and you are made redundant, you will also need to consider your pension rights. If you are aged 55 or above in such circumstances, your pension benefits are payable immediately, without any reduction despite the fact that you are retiring early. Indeed, at the employer's discretion, you may have your benefits enhanced through an award of up to 10 extra years of service or extra annual pension. However, this approach is increasingly rare, given the current financial pressures on local authorities, and many are instead awarding lower-cost, and entirely discretionary, compensation payments to be added to statutory minimum redundancy payments. This type of local policy therefore leaves you with an unreduced, but not enhanced, pension available if you are redundant at 55 or above.

2.33 Where such pension rights are available, you can calculate your benefit entitlements as follows:

- For each year of pensionable service before April 2008, you receive an annual pension based on $1/80^{\text{th}}$ of your final pensionable salary. You also receive a tax-free one-off lump sum of three times the total value of your annual pension
- For each year of pensionable service after April 2008, you receive an annual pension based on $1/60^{\text{th}}$ of your final salary. However, you can only receive a tax-free lump sum if you give up part of your annual pension.

2.34 It used to be the case, before 1 April 2008, that any LGPS member could access their pension prior to normal retirement age, without reduction, if their age and total pensionable service added together came to 85 years. The "85 year rule" has now been abolished, but there are still protections for staff who were in membership of the LGPS as at 30 September 2006. These are:

- **If you will be 60 or over by 31 March 2016** and wish to retire before age 65, **provided you satisfy the 85 year rule when you start to draw your pension**, the benefits you build up to 31 March 2016 will not be reduced.
- **If you will be under 60 by 31 March 2016** and wish to retire before age 65, **provided you satisfy the 85 year rule when you start to draw your pension**, the benefits you've built up to 31 March 2008 will not be reduced. Also, if you will be 60 between 1 April 2016 and 31 March 2020 and meet the 85 year rule by 31 March 2020, some or all of the benefits you build up between 1 April 2008 and 31 March 2020 will not suffer a full reduction.

2.35 As you can see from the above, your pension benefits are calculated with reference to your "pensionable salary" and "pensionable service". If you are working part time, your pension will be based on the equivalent full time salary level but service will be credited on a pro-rata basis for those periods when working part time. If you are employed on a term-time only contract, your full-time equivalent (FTE) will be based on a 44-week year. "Final salary" is usually your pay in your last year of scheme membership, or one of the previous two years if this is higher. It is calculated to include maternity, paternity, and adoption pay, but does not include travelling or subsistence allowances. As a result of pensions legislation, all LGPS pension benefits must be put into payment prior to you reaching age 75.

Aspect support

2.36 Apart from advice and support for our local representatives in responding to local service restructuring and redundancies, from our Head Office and Regional Officers, Aspect also provides:

- career counselling and coaching services
- 'going independent' courses and a range of specific services for members who become self-employed consultants
- early retirement courses
- a Retired member category of Association membership

Details are available from our Head Office on 01226 383428 or via our website www.aspect.org.uk

3 Useful documents to customise or quote

3.1 This section reproduces selected documents of potential practical value to local representatives in fashioning their response to local restructuring and redundancy exercises. The documents are of different types, as explained below, and local representatives may wish to quote them or to adapt and customise these documents to assist their own local submissions on behalf of Aspect members.

3.2 The documents reproduced here are:

- An example of a local response - executive summary of the 12-page initial Aspect response to Kent County Council's proposals to restructure education and children's services, March 2010
- Another example of a local response - Aspect's proposed action plan for a new educational advisory service for Warwickshire.
- An up-to-date advice note on Public Sector Equality Duties, published by the Equality and Human Rights Commission - this explains equality impact assessments.
- "Suffolk's plan to outsource services is a mixture of inspiration and desperation", Guardian 23 September 2010 - an article on the ideological motivation behind some current local authority service redesign projects.

**AN INITIAL RESPONSE TO THE KENT CC RESTRUCTURE
OF CHILDREN FAMILIES AND EDUCATION (CFE) SERVICES
AND THEIR IMPACT ON EDUCATION IMPROVEMENT
SERVICES AND STAFFING.**

**ASSOCIATION OF PROFESSIONALS IN EDUCATION AND
CHILDREN'S TRUSTS**

MARCH 2010

Executive summary

On February 23rd 2010 Kent County Council announced proposals for restructuring CFE services and staffing. In the draft proposals out for consultation:

- 268 posts will be deleted
- 76 posts (Nett) will be transferred in (164 in and 88 out) which mask the extent of potential job losses in certain areas if the service.

The overall published percentage of post reductions in CFE is 7% but the effect on the school improvement teams is considerably more than this. In the secondary sector there will be in excess of 50% reduction in staffing and current job description releases give no indication of other areas where these staff might be redeployed.

This is an initial response by staff at almost every level and across all teams within the school improvement service within Kent. We have a number of deep concerns about the impact of the proposals on local schools which may be summarised as follows:

- the proposals have been developed without any significant consultation with almost all the staff who provide and manage education improvement services in Kent
- no document has been published in which any assessment of the risks the proposals present to current school improvement services is considered
- no evidence has provided as to whether the radically reduced and restructured service is fit for purpose i.e. is able to deliver on the goals as summarised above – to improve outcomes, increase customer satisfaction and prioritise support to the most vulnerable children
- no significant consultation had taken place with local head teachers and other key stakeholders prior to the proposals being published
- no equality impact assessment has been conducted on the impact on staff and education provision, as is required by statute, on the proposals as they were developed
- no information whatsoever is provided on how these proposals meet the cost objectives of a 10% saving **or** what additional costs might result to Kent CC from the shortcomings identified by staff and summarised in this response

Aspect has made clear our members wish to engage, even at this late stage, in a constructive dialogue to ensure that the achievements of recent years are not lost and that any future structure, staffing and skill mix is capable of meeting the objectives of these proposals.

We welcome the offer to meet with staff in specific teams in the immediate future. However if those meetings are to play a constructive role in amending what we regard as currently inadequate proposals, then the consultation must be meaningful and demonstrate that the questions and views arising from the skills and experience of the professional workforce within the Learning Group – and those of the head teachers, other teachers and other stakeholders affected by these changes - have been drawn up and taken note of, so that the best interests of the county's children are looked after.

Association of Professionals in Education and Children's Trusts
March 20th 2010

PROPOSED ACTION PLAN FOR CREATION OF NEW WARWICKSHIRE ADVISORY SERVICE

CONSULT WITH SCHOOLS

Senior officers of the LA ensure schools are aware of implications of LA's proposal to eliminate the national strategy and possibly other advisory teams

Head of the CYPF change programme, in collaboration with other appropriate senior officers of the LA, carries out needs analysis. This determines not only what schools believe now that they will require, but also takes an "over the horizon" look at their likely needs for school improvement advice, support and training two or three years in the future.

Officers establish the size of the definite financial commitment schools are prepared to make in the next financial year in order to retain a Warwickshire service in the short term. They also estimate the likely size of the market for education advice and support in the future and the market share an in-house advisory service would be likely to retain in the medium term

CONSIDER THE LA'S LIKELY REQUIREMENTS FOR ADVISORY SERVICES

Senior officers of the LA ensure that elected members are aware of the implications of the elimination of adviser support

Officers consider the LA's likely requirements for commissioned school improvement services, both in routine, proactive situations such as catalysing school to school support networks, and in emergency response, for example to support failing schools

DRAFT A BUSINESS PLAN TO ENSURE ZERO RISK TO LA

Officers draft a business plan for a new Warwickshire advisory service. This must be sustainable and carry no risk for the LA. The organisation is likely to consist of a small core of permanent advisers, a larger team of independent consultants on annualised days contracts, and an outer circle of independent associates who are commissioned only when required.

The leadership of the core team must be structured to combine sound business processes with an ethos that ensures the organisation is properly responsive to the needs of schools and to the position of the LA as champion for children.

The size of the core team and the first round of annualised days contracts will be fixed by the financial commitments from schools to ensure zero risk to the LA. Any additional business for which there is medium term certainty could be taken up by further annualised days contracts, but other bookings would be fulfilled by individual commissions to associates.

CREATE MANAGEMENT BOARD AND RATIFY BUSINESS MODEL

The leadership of the organisation should report to a management board. The board will be responsible for ensuring the organisation fulfils its purpose and that the LA continues to bear no financial risk.

The board should have representative headteachers and officers of the LA.

APPOINT STAFF TO NEW ORGANISATION

The management board should draw up the job description and person specification and appoint the manager for the new organisation

The manager, in consultation with members of the board, should appoint the permanent core team members

The core team should set up appropriate procedures for appointing appropriate consultants and associates with the organisation being fully operational by April 2011

ENSURE BUSINESS PROCESSES REMAIN ROBUST

The leadership team should report at regular intervals to the management board. The board will be responsible for ensuring the organisation gives value for money to schools while continuing to pose no financial risk to the LA, that the organisation has effective procedures for quality assurance for all of its work, and that there is effective continuing professional development for all advisers, consultants and associates.

Aspect
September 2010

The Public Sector Equality Duties and Financial Decisions

An Advice Note for Public Authorities¹

The recent downturn in the economic climate is likely to have a significant impact on public authorities. Financial constraints have already resulted in many authorities making important decisions about their operation and the services they provide. These decisions include efficiency drives; budget cuts; reorganisations and relocations; redundancies²; and service reductions.

The Equality and Human Rights Commission is concerned that some decisions may have a disproportionate effect on different groups of people, and may be contrary to the statutory equality obligations to which public authorities are subject.

Recent press reports substantiate these concerns, by suggesting, for example, that women are more likely to be affected by redundancies than men, as companies revise their maternity and flexible working policies in an attempt to save money.³

While acknowledging the difficult economic environment in which public authorities are now operating, the Commission is emphasising the mandatory nature of the equality duties, and the importance of public authorities meeting their duties when making significant decisions.

¹ This document is not a definitive statement of the law. Authorities should consult with the relevant Acts, Regulations and statutory Codes of Practice.

² The Commission has recently published guidance on redundancies and equality issues, *A short guide to managing the downturn and preparing for recovery*. See <http://www.here4business.net/a-guide-to-redundancy/>

³ See <http://www.timesonline.co.uk/tol/news/politics/article5581549.ece>

The equality duties

A positive duty on public bodies to promote race equality was introduced in 2001⁴. A duty to promote equality for disabled people came into effect in December 2006⁵, and this was followed by a duty to promote gender equality which came into effect in April 2007⁶.

While each duty places distinct legal obligations on public authorities, collectively the duties have the common aim of ensuring that the public authorities work to eliminate discrimination and promote equality in their activities.

This means that when developing proposals and making policy decisions, including those about finance and service provision, public authorities must comply with their statutory equality duties. Public authorities must ensure that decisions are made in such a way as to minimise unfairness, and do not have a disproportionately negative effect on people from different ethnic groups; disabled people; and men and women.

Case study: Harrow⁷ - the importance of taking public sector equality duties into account

To make savings in light of budget deficits, the London Borough of Harrow proposed to restrict the provision of adult care services to people with critical needs only.

A consultation and an equality impact assessment were carried out regarding the proposed change. During this process, concerns were identified that the proposed decision would have a differential impact on particular groups of disabled people.

A report on the issues, including analyses of the results of the consultation process and the equality impact assessment, was then considered at a Cabinet meeting, where the Council decided to effect the proposed change. However, the Disability Equality Duty, and the specific obligations it places on the Council, was not explicitly brought to the Councillors' attention when they made the decision.

⁴ Race Relations (Amendment) Act 2000

⁵ Disability Discrimination Act 2005

⁶ Equality Act 2006

⁷ R (Chavda and others) v London Borough of Harrow [2007] EWHC 3064 (Admin)

The Council's decision was challenged by service users. The Court held that elected members could not come to a balanced conclusion without being aware of what its responsibilities were under the Disability Equality Duty. As a result, the decision to restrict adult care services was held to be unlawful.

The equality duties are legal obligations which should remain a priority, even in times of economic difficulty. The duties are an invaluable tool to help ensure that decisions do not create or perpetuate inequality.

To ensure that they have complied with the equality duties, and to ensure that any decision made do not unfairly discriminate, public authorities should carry out robust equality impact assessments, and consult and involve relevant stakeholders, as part of the decision-making process.

Equality Impact Assessment

A key requirement of the public sector duties is for public authorities to carry out equality impact assessment for all relevant policies and decisions.

When public authorities are making financial decisions, it is vital that such decisions are equality impact assessed; the impact assessment being carried out when policy is initiated, as a central part of the policy development process.

As well as being a legal obligation under the public sector duties, equality impact assessment is an invaluable tool to assist authorities in ensuring that the interests of all groups are properly taken into account when difficult choices about resources are required.

Case study: Southall Black Sisters⁸ - the need to impact assess decisions

Southall Black Sisters (SBS) provides specialist services to Asian and Afro-Caribbean women, particularly in relation to domestic violence issues.

In June 2007, Ealing Council announced proposals to move away from funding particular organisations (such as SBS), towards

⁸ R (Kaur) v London Borough of Ealing [2008] EWHC 2062 (Admin)

commissioning services (including domestic violence services) following a competitive bidding exercise.

Despite concerns raised during consultation that plans had not been equality impact assessed, and that commissioning could disadvantage grassroots community initiatives, Ealing decided to press ahead with its proposals.

During discussions about criteria for commissioning domestic violence services, SBS had highlighted the adverse impact the criteria could have on pre-existing domestic violence services provided to women from ethnic minority communities, and so an equality impact assessment should be carried out.

Ealing carried out belated impact assessments on proposals before deciding to proceed with the existing domestic violence services commissioning criteria, resulting in two SBS service users launching a judicial review of the decision.

Ultimately, Ealing conceded these submissions and withdrew from the case. However, in an oral judgement, Lord Justice Moses reiterated the importance of undertaking an equality impact assessment, and also the importance of carrying out an impact assessment before policy formulation.

Impact assessment requires public authorities to consider all relevant, available information in order to anticipate any likely negative impact on people from different racial groups; on disabled people; or on men and women; and seek to avoid that negative impact by taking alternative courses of action wherever possible.

For example, the equality duties require public authorities to consider the potential impact of redundancies or reductions in service on race relations. If ethnic minority staff are disproportionately affected by a 'last in first out' redundancy policy, could this lead to tensions or a sense of grievance in the community, as well as potentially being indirectly discriminatory?

Similarly, under the Disability Equality Duty, public authorities are required to promote disabled people's participation in public life. 'Public life' is defined very broadly in the statutory Codes of Practice⁹ and can include

⁹ For both the England and Wales, and Scotland, Codes of Practice, see www.equalityhumanrights.com/en/forbusinessesandorganisation/publicauthorities/disabilityequalityd/Pages/Codesofpractice1.aspx

participation in tenants' associations, school councils, or in public appointments. Decisions which restrict disabled people's ability to participate in such forums, for example by restricting access to community transport, may hamper an authority's ability to meet its statutory obligations. Such decisions may also inhibit the organisation's ability to promote positive images of disabled people.

So in making a decision regarding funding or service provision, public authorities must assess the potential impact of that decision, both positive and negative, as regards race, disability and gender. Where further action is required, public authorities must take this into account. Should a public authority be unable to avoid any potential negative impact which arises as a result of the decision, this must be a key consideration of future action, such as considering the effect of the decision when the financial situation has improved.

The reality is that, in times of financial constraint, public authorities will have to make difficult and often unpopular decisions regarding funding and service provision. The public sector equality duties do not prevent authorities making these decisions, provided that decisions are taken in accordance with the duties.

The importance of consultation and involvement

Under Gender Equality Duty, public authorities must consult staff, service users and other relevant bodies. Under the Disability Equality Duty, authorities must promote disabled people's participation and involve disabled people. Involvement requires much more active engagement of disabled stakeholders than consultation.

Public authorities should consult and involve relevant stakeholders before making important decisions. By effectively consulting and involving stakeholders, as an integral part of their decision-making processes, public authorities will be able to make better decisions by getting a clearer picture of the main equality issues in their work; gathering evidence to use in carrying out impact assessments; and increasing transparency and openness in decision-making.

Conclusion

Considering the economic climate public authorities are facing it is more important than ever that authorities meet their statutory equality duties when making decisions, particularly those regarding finance or service provision.

All such decisions should be subject to robust impact assessment, which should entail a sound consideration of relevant data to identify if the decision may have a negative impact on particular groups, and seek to avoid this. The decision-making process also requires effective consultation and involvement with stakeholders to identify and address relevant issues. When decisions are made, decision makers must have the relevant data, including the results of equality impact assessment, and of consultation and involvement, before them to ensure they reach an informed decision.

Not only are public authorities under a legal obligation to meet the duties, but the duties also constitute a tool for better decision-making, ensuring that decisions are taken in an accountable manner and do not adversely affect different ethnic groups; disabled people; or men and women.

guardian.co.uk

Suffolk's plan to outsource services is a mixture of inspiration and desperation

Public spending crisis seems to offer Tory-run councils an ideological opportunity to change the face of local government

Patrick Butler

guardian.co.uk, Thursday 23 September 2010 20:53 BST



Suffolk county council's headquarters in Ipswich. Photograph: Alamy

Suffolk's "virtual" council is not a new idea. It's been a municipal fantasy for the Tories for three decades, ever since Margaret Thatcher's [local government](#) minister, the late Nicholas Ridley, outlined his minimalist vision of a local authority that employed practically no one.

Ridley's 1980s riff on the Tory theme of the small state was the small council, staffed by a tiny band of administrators, who met once a year to agree contracts with the private companies who would provide refuse collection, schools, social work and other core services.

His vision never came to pass, despite the efforts of an enthusiastic minority of councils. There's been tinkering with contracting out – always opposed by the unions, and held back by EU employment law – but no fundamental reshaping on the radical scale now envisaged in Suffolk.

What has changed is the sheer size of the public spending cuts forced on local councils, and the speed at which they must be achieved. Local authorities facing drastic budget reductions of up to 30% over the next three years have realised that the sums won't add up simply by trimming here or there.

As a result many town halls – of all political hues – are considering the kinds of profound changes that before the age of austerity would have never got beyond the pages of the thinktank pamphlet: outsourcing services on a grand scale, selling off municipal assets, merging education departments with neighbouring councils, clubbing together to share everything from chief executives to "back-office" payroll services, floating off staff into so-called John Lewis-style worker co-operatives.

These changes are a mixture of inspiration and desperation. Some may lead to better, cheaper services. Others could lead to catastrophe. The consequences of this rapid, largely unstrategic shakeup – its effect on democratic accountability, its economic impact on areas where the council is the largest local employer – are unclear.

Some experts say restructuring on this scale is hard enough at the best of times. Service transformation, the argument goes, happens most effectively when there is money to oil the wheels of change. Blair could have done it in the age of plenty seven years ago; now

the piggy bank is empty. Councils are not yet allowed to raise money on the capital markets, and are prevented from putting up council tax.

Change on this scale is hugely expensive. Redundancy payouts in local government – while not as generous as in the civil service – are typically equivalent to two years' salary. In theory outsourcing transfers costs and risk to the private sector. Done badly, councils end up paying more, locked into costly, underperforming long-term contracts, or trapped in legal challenges brought by trade unions.

Nor is there any guarantee that the private companies and charities will be queuing up to take the contracts. Transferred council workers by law keep their council terms and conditions and must be offered "broadly comparable" pensions – requirements that often end up as outsourcing dealbreakers.

For Tory-run councils, such as Suffolk, the public spending crisis seems to offer an ideological opportunity to change the face of local government. Making it a reality will not be easy.

Patrick Butler is the Guardian's head of society, health and education

Ads by Google

Free Cisco Support...

Talk to a Cisco engineer for free! We'll give you an hour, worth £100

www.nowcomm.co.uk/ciscosupport

Managed Disaster Recovery

Quick and easy IT recovery Site replication, reduce risk

FrontierTechnology.co.uk

Payroll Services UK

Reliable outsourced payroll service in the UK for 1 or more employees

www.askthebosspayroll.co.uk

Comments in chronological order (Total 1 comment)

Post a comment

E Staff

C Contributor



Chuffy

24 September 2010 11:49AM

What is the role of elected councillors in a fully outsourced authority?

Surely this is classic back-of-a-fag-packet stuff of the type that Eric the Egg has been spouting since May.

Recommend? (0)

[Report abuse](#)

[Clip](#)

| [Link](#)

In order to post a comment you need to be registered and signed in.

[Register](#) | [Sign in](#)

[Post a comment](#)

guardian.co.uk © Guardian News and Media Limited 2010



4 Conclusion

Summary

4.1 We hope that you find this guide to be a useful aid when confronted with a local proposal to restructure education and children's services. It will be further updated as we obtain feedback on its practical application.

4.2 Public policy encourages the practice of employers and unions working together to deal with employment-related matters, and local authorities and related organisations ought to be seen as exemplars of good practice. However, experience shows that practice can vary widely between authorities. A prerequisite for success is to have previously established a good working relationship with your employer in terms of consultation on workplace issues, which can establish a culture of open debate. This requires a certain degree of participation in industrial relations activity at the level of the individual local authorities, and an effective trade union organisation to support it. Membership of Aspect with its network of local representatives, supported by our team of regional officers, provides the necessary means to create that important union machinery which protects the interests of local members and the services that they provide as far as is possible in the current climate.

Aspect, Woolley Hall, Woolley, Wakefield, West Yorkshire WF4 2JR
tel 01226 383428 **fax** 01226 383427 **email** info@aspect.org.uk **website** www.aspect.org.uk