

Restructuring in FE colleges

Whether as a result of mergers or adapting to new and changing demands in the further education sector, restructures cause great concern to staff. This factsheet is intended to assist ATL college reps in dealing with the issue and ensuring that restructures are carried out fairly and transparently.

Restructuring procedures

Some colleges may choose to call a restructuring process by a different name such as 'changes to working practices', or may deal with restructuring in their redundancy policy. However, all colleges should have an agreed procedure to handle restructuring. The procedure should include the following:

- the consultation process
- the provision of information
- ways to avoid potential redundancies
- how staff will be selected for new posts
- suitable alternative employment
- selection process for redundancies
- timescales
- redundancy pay
- notice periods
- appeals procedure.

Agreement on the procedure with ATL and other trade unions is vital for it to operate successfully. If you have no such procedure at your college then you are advised to consult with other union colleagues with a view to negotiating one. This should be done before any restructuring is announced.

Minimum guidelines have been issued by the National Joint Forum (comprised of the trade unions and the Association of Colleges). Entitled *Redundancy handling*, you can find the guidance at: www.atl.org.uk/help-and-advice/rights-and-conditions/rights-lecturers-FE.asp.

Consultation

Consultation with staff is an important part of any restructuring process. The existence of an agreed procedure for carrying out consultations can therefore be helpful. Consultation must be thorough, begin early and be undertaken in good faith. If redundancies are a possibility, then certain legal duties on consultation will also apply (see ATL's publication PE11: *Redundancy in further education*, available to download or order, free for members, at www.atl.org.uk).

The purpose of a consultation should be to explain and, where necessary, improve the proposed new structure, mitigating any negative effects wherever possible. Proper consultation isn't about introducing a fait accompli but about exploring all the reasonable alternatives. Undertaken properly, it should lead to better decision-making.

The restructuring proposal document will usually form the basis of any consultations. Sufficient time must be allowed, and the consultation process should be completed, before the new structure is published and the actual

restructuring process starts. If negotiations are still ongoing at the time consultations are due to end, then more time is needed and the consultation period should be extended accordingly.

Who should be consulted?

Consultation should always take place with trade union representatives. Consultation should also take place with individuals (including non-unionised staff). Most colleges will expect individuals to be represented in this process. Therefore all affected staff should be provided with full details of the proposals and be given clear information about the process of consultation, including timescales, and how comments and responses can be made.

Key questions

Key questions that need addressing in any restructure include the following:

- Why is restructuring necessary?
- What does it aim to achieve?
- How does it relate to the college's strategic plan?
- How will it work?
- Will it result in any genuine new jobs with different duties?
- Will the new jobs result in a heavier workload for the post-holder and, if so, what support and resources will be provided?
- How will the jobs be graded?
- How will people be appointed to the new jobs?
- Are the proposed selection criteria fair, consistent and appropriate?
- Will anyone be displaced?
- Will everyone still have a job at the end of the process?
- Can savings be made elsewhere (eg cutting growth expenditure, freezing recruitment)?
- Will the new structure really have advantages over the old?
- Will the new structure have any disadvantages?
- What timescale is envisaged and is it reasonable?
- What alternatives have been considered?
- How does the college intend to meet all of its legal duties?

It is not enough to have short answers to these questions. Ideally, the college should draw up a proposal document, clearly setting out the reasons for restructuring, the proposed new structure itself and the expected impact. This should then be explained in detail to union representatives and form the basis of consultations with a series of follow-up meetings thereafter.

If ATL reps are not satisfied with the level of information provided, or if you believe answers to be evasive or unjustified, then you should press the college until a satisfactory response is given.

Will anyone be made redundant?

It is very important to find out whether anyone could be made redundant in the restructuring process. Redundancy situations usually occur because of the closure of a college or department. However, restructures can also lead to redundancies because the need for work of a particular kind has ceased or diminished (or is expected to do so), or where fewer employees are needed (or are expected to be needed) to do the same work.

For example, if the number of heads of department is being reduced by one post, then there is a reduced need for employees to do this kind of work. As such, a redundancy situation exists. But if there is no reduction in the overall numbers of heads of department, any head of department who then loses his or her job in the new structure would, in a legal sense, not actually be redundant.

Timescales

Sadly, too many colleges try to move to a new structure in the shortest time possible. While some members may wish to get the process over and done with quickly, ATL reps need to adopt a more measured approach. This should be explained to members.

The main problems with rushing a restructure are that:

- posts are removed without providing sufficient notice in accordance with an individual's contract
- consultation is cut short, thereby making it less meaningful; or new appointments are made before consultations are even complete
- individuals are given insufficient time to make decisions affecting their own future, and are not properly consulted on an individual basis.

All of the above are potentially serious and could result in legal claims.

Union meetings

Once the consultation begins ATL reps should arrange a meeting for all ATL members to discuss the proposals. Such a meeting gives members the opportunity to put across their views. ATL's position on the restructure, and the union's response to it, will be shaped by those views.

Some members may not feel comfortable expressing their views in a public meeting, and should be given an opportunity to speak to the rep privately if they wish. Once the meeting has taken place, the ATL rep should begin to put together the concerns and comments from members and draft the union's response to the consultation.

Selection criteria and processes

In any restructure, the college will need to ensure that it has a proper balance of skills and experience in order to take the organisation forward. The usual selection methods are direct assimilation of individuals into appropriate posts or competitive interview. There may also be some ring-fencing of specialist positions. A more recent trend is the use of aptitude tests, a process sometimes managed by an external consultancy.

Whatever process is used, it must be fair. This means setting objective criteria that are easily measured.

When making the selection, a points system is often used in which the candidates are given scores against each of the stated criteria. This can assist in ensuring clarity and objectivity, and is therefore recommended by ATL as a mechanism for selection.

ATL does not recommend the inclusion of attendance and disciplinary records in selection criteria. Using absence records can be dangerous as it may discriminate against those who have been absent for very specific reasons, eg female staff absent for maternity reasons or those absent because of disabilities.

Criteria alone do not guarantee fair and reasonable selection. ACAS guidance says: "Even though the criteria may satisfy the test of objectivity, the selection will still be unfair if they are carelessly or mistakenly applied. Employers will need to demonstrate that there has been comparative analysis of the information relating to all in the unit of selection if qualitative criteria are used."

Put simply, all new posts should be filled in a fair and open manner. Job specifications and descriptions should be discussed during the consultation process, together with appropriate grading. ATL reps should press the college to produce guidelines on how selection criteria are to be measured and applied.

Enough time should also be allowed for members to consider all the available posts, and weigh them up against the alternative of possible redundancy. If some posts are to be re-graded at a lower level, then it is important that a reasonable period of salary protection is negotiated.

Where there is concern that posts are being engineered to exclude particular individuals from applying, this should be challenged. If someone is left without a job and therefore faces redundancy, any evidence that his or her selection for redundancy was unreasonable could result in a successful claim of unfair dismissal.

Good equal opportunities practice should be followed and appointments to new posts made in accordance with

established college recruitment procedures. This usually means using a proper selection panel, perhaps with a trade union observer.

Any testing methods used in the process must be appropriate and in line with normal college practice. ATL reps should be wary of the sudden introduction of a new method unless it can clearly be justified. This could be a particular problem if the college says it will be using outside consultants. It will be important to find out why they have been chosen, who they are, how much they cost, what experience they have, and how whatever they do will be consistent with employment law and best practice.

Finally, the selection process should have an appeals system built in to allow any question of unfairness to be challenged.

Job offers and suitable alternative employment

Job offers following a new structure will generally be of two types. Either someone is successful in obtaining a position for which they applied, or someone is offered a vacant post that may be at a lower grade and therefore on a lower salary.

If that happens ATL reps should seek to mitigate the drop in pay by attempting to negotiate a period of salary protection. Ideally, this will already have been agreed in principle during the consultation period.

Members considering the option of a lower paid post should be advised to find out how this might affect their pension. The Teachers' Pension Scheme website (www.teacherspensions.co.uk) has information on stepping-down procedures that may be helpful to individuals.

In a formal redundancy situation the college must seek to offer individuals facing dismissal any suitable alternative employment that is available. This does not mean any old job that is vacant. It has to be a genuinely suitable job (see ATL's publication PE11: *Redundancy in further education*, available to download or order as before).

Recognition

ATL is recognised nationally for collective bargaining in the FE sector. However, colleges have the autonomy to recognise unions locally and in some colleges ATL may not have local recognition. If this is the case in your college and you would like to discuss the possibility of local recognition, please contact ATL's national official for FE, Norman Crowther, at ncrowther@atl.org.uk.

Even where ATL is not recognised, this does not affect our ability to represent members on an individual basis.

Summary

When colleges are going through restructuring, members understandably look to their union for support and advice. Where a union, through their reps, is able to play a full part in the restructuring process, this demonstrates the union's effectiveness to members and gives members an opportunity to contribute. Consequently ATL reps are vitally important to union membership at such times.

Reps can draw on support from ATL where necessary to ensure that the restructuring process is carried out fairly and openly (see contact details below).

For more on ATL and the FE sector, go to ATL's website at www.atl.org.uk. Use the MyATL panel to choose your sector, role and location, and click on 'activate my defaults', which will give you a series of quick links to the information most relevant to you.



Need advice?

Your local ATL branch is available to help with queries, or you can contact ATL's member advisers on **020 7930 6441**, email: info@atl.org.uk or write to 7 Northumberland Street London WC2N 5RD

Don't forget you can also get lots of help and advice, as well as download copies of other ATL advice sheets, on our website at www.atl.org.uk

© Association of Teachers and Lecturers 2009. All rights reserved. Information on this sheet may be reproduced or quoted with proper acknowledgement to the Association.