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# 3HR Legal Weekly

## Business Reorganisation: restructuring, redundancy or dismissal?

Running a successful and growing business essentially requires getting the most out of all the parts of the business and this often involves business reorganisation. Reorganisation of a business can present significant challenges for employers as many options are available and it is often not clear-cut as to which option suits best. You can consider the following as a starting point:

### Q. What is the first step I should take when contemplating a business reorganisation?

A. It is almost always sensible to have a preliminary meeting with your legal advisers to discuss what options are available to your organisation when considering reorganisation for financial or other strategic reasons. This should have the effect of clarifying your approach and thereby saving you time and money.

### Q. What are the differences between business reorganisation, restructuring and redundancy?

A. We are often asked how business reorganisation, restructuring and redundancy differ. These terms may sound similar but they do have different meanings.

'Business reorganisation' does not have a legal definition and its dictionary meaning generally refers to 'organising differently, often involving extensive and drastic changes'. Business reorganisation may therefore include various methods, such as restructuring, redundancies, outsourcing, or mergers and acquisitions. Technically "restructuring" has a specific meaning in the context of insolvency law and involves agreements with an organisation's creditors. However, it is more commonly used as a term to describe the situation in which a company wishes to reorganise its business in order to increase efficiency. This often translates into a "headcount reduction"

'Redundancy' refers to a situation in which someone loses their job because their employer does not need them. The legal definition of 'redundancy' includes three types of situation: business closure, workplace closure, and reduction of workforce. Redundancy is a form of dismissal and the dismissal of an employee will be by reason of redundancy if it is 'wholly or mainly attributable to' the employer closing its business, its workplace or having a reduced requirement for employees. Dealing with redundancy can often be overwhelming for both employers and employees. Employers must ensure that they follow fair procedures to avoid unfair dismissal claims. Employees subject to redundancy have a number of rights such as redundancy payments and consultation rights, and both employers and employees need to understand what they are.

### Q. Redundancy or an alternative form of dismissal?

A. Redundancy is one of the potentially fair reasons for dismissal. Other reasons include capability or qualifications, conduct, statutory restriction and 'what is known as some other substantial reason'. An employer may have a situation where they can argue that an employee was dismissed not because of redundancy but because of 'some other substantial reason' arising from a business reorganisation. If correct, the employee would not be entitled to a redundancy payment. Employment Tribunals will always question whether the definition of redundancy is met (as explained above). This situation will of course require detailed consideration of all the relevant legal issues.

Business reorganisation can often involve changing terms and conditions of employees. If the employees do not accept such changes, the employer can potentially lawfully dismiss them if it can show the reorganisation is for sound business reasons and such changes are necessary to meet the business needs. However, even in these circumstances, dismissed employees may still be able to claim they were dismissed by reason of redundancy and the employer can face unfair dismissal claims if it has not followed the appropriate redundancy procedures.

It is critical to assess your requirements and identify the best option to suit your organisation at the outset to maximise your intended outcome and minimise risks. We can provide expert legal advice on business reorganisation with a commercially focused and practical approach.

**Thomas Miles**  
Solicitor  
thomas.miles@3hrinsurance.com



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The registered office is New Broad Street House, 35 New Broad Street, London EC2M 1NH, registered in England and Wales no: 08198795  
Tel: 0207 194 8140 Web: [www.3hrlegal.com](http://www.3hrlegal.com)