

# LPC Member and Officer Briefing Employment Law Matters

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In Partnership with Clyde & Co LLP

November 2022

# In our time together

1. Welcome
2. Background and changes to LPC support from PSNC
3. Clyde & CO LLP Expert Session covering:
4. Liability for LPC members
5. LPC portal and advice for all LPCs in England
6. LPC restructuring – TUPE, redundancy and dealing with issues
7. Support commissioned by PSNC
8. Additional support and costs
9. Questions
10. Close



# What decisions are required by LPCs and contractors at a local level?



1. Does our current structure match that of the NHS?
2. Are we the right size?
3. Are we being effective and efficient with our finances?
4. What are we called?
5. How big is our LPC committee?

# What needs to happen?

1. Engagement with neighbouring LPCs to discuss boundaries – with the suggested aim that LPCs should be co-terminus with one (or more) ICSs
2. Development of proposal/recommendation for LPC [developed by Officers and CO or a small working group]
3. LPC meeting to discuss and agree answers to the previous questions; boundaries, name of LPC, size of committee. These will form part of the LPC Model Constitution. (October/November 2022)
4. Engage with contractors to explain the rationale for the new LPC Model Constitution and the reasons for an extension of the term of the current LPC.
5. Special meeting of contractors – at least 28 days later (January 2023). Motions on; model constitution, delaying end of current LPC term by 3 months (until 30th June).

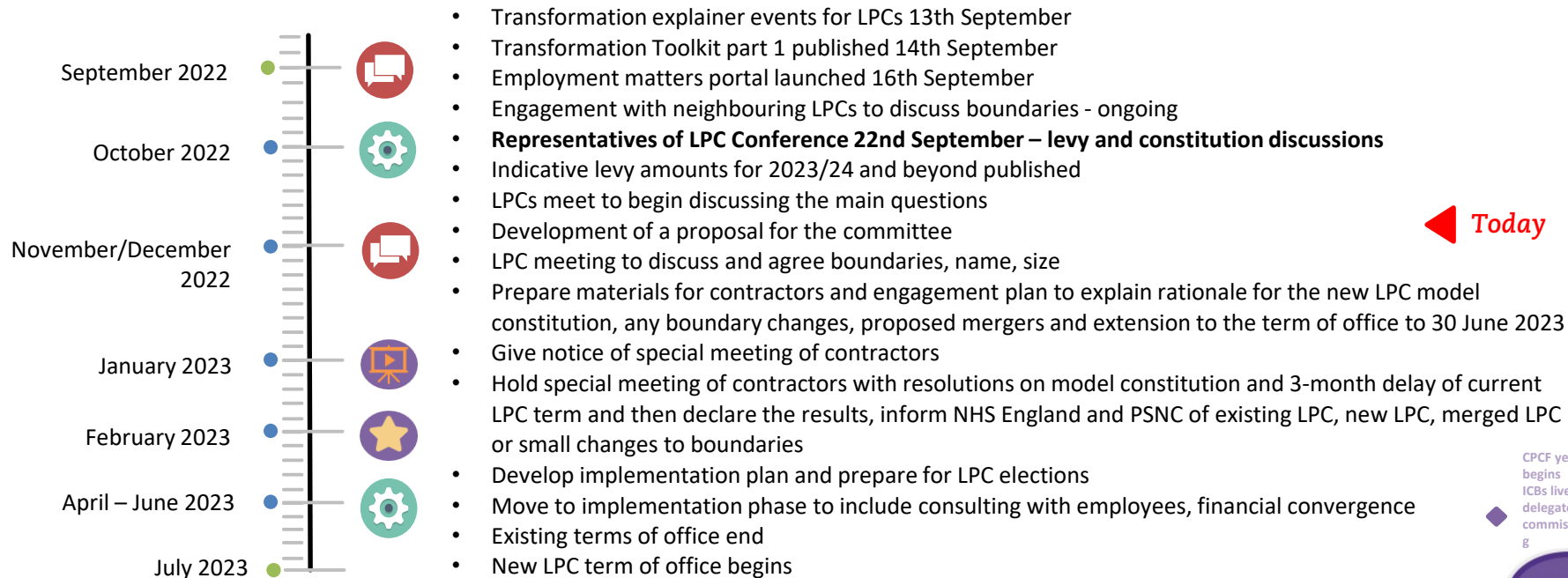
# What needs to happen?



6. Develop an implementation plan to cover the period between February and 30th June 2022 (template to follow)
7. Consulting with employees and others if needed
8. Engagement with contractors
9. Financial convergence – levy, reserves, transformation costs
10. LPC elections

# Model Timeline for change

## Transforming Pharmacy Representation Programme



◀ Today

CPCF year 5 begins  
ICBs live with delegated commissioning



# LPC Support: Transformation toolkit



- LPC RSG implementation stepwise briefing and checklist including suggested strategic questions for consideration, case for change
- Stocktake, options appraisal, and tools
- Terms of reference for a Transformation Steering Group
- Draft project plan
- Standard budget template
- Asset and contracts register
- And finally this week – Special meeting templates
- Support for employment matters

# Growing LPC Support



- An important recommendation of the Review Steering Group (RSG) was for PSNC to provide support that standardises practices across the LPC network in line with good practice on HR and finances.
- This was in response to the Independent Review into PSNC and LPCs that concluded this was an area in need of attention as part of strengthening good practice in relation to governance and people.
- In September 2022, PSNC commissioned Clyde and Co LLP to provide all LPCs in England with an employment law portal, containing confidential legal advice notes and template documents on employment law topics, which you and other officers from your LPC should now have full access to.
- In future it will be mandatory to adopt standard HR finance and HR templates as LPCs adopt new constitutions early next year.



# LPC Chair Networking Group



- A Gaggle Email Group for LPC Chairs has now been set-up and notifications will be sent this week.
- This follows significant feedback from LPC Chairs that they would like more opportunity for peer support and to have a clear line of contact with PSNC about matters relating to the LPC Chair role.
- When surveyed, LPC Chairs broadly agreed that a specific Gaggle Group would be the best and simplest way to enable enhanced networking among Chairs.
- The Gaggle Group is primarily intended to provide a forum for LPC Chairs to share information and learnings related to their role as Chairs and to enable greater peer support between Chairs.

An overhead photograph of several people sitting around a white table in a meeting. The image is partially obscured by a large teal rectangle on the right side. Visible people include a man in a blue shirt, a man in a purple sweater, and a woman in a grey blazer. There are papers, a laptop, and a smartphone on the table.

CLYDE&Co

# LPC Member and Officer Briefings on Employment Law Matters

Clyde & Co LPC support in partnership with the PSNC

Tom Saville and Sarah Begg

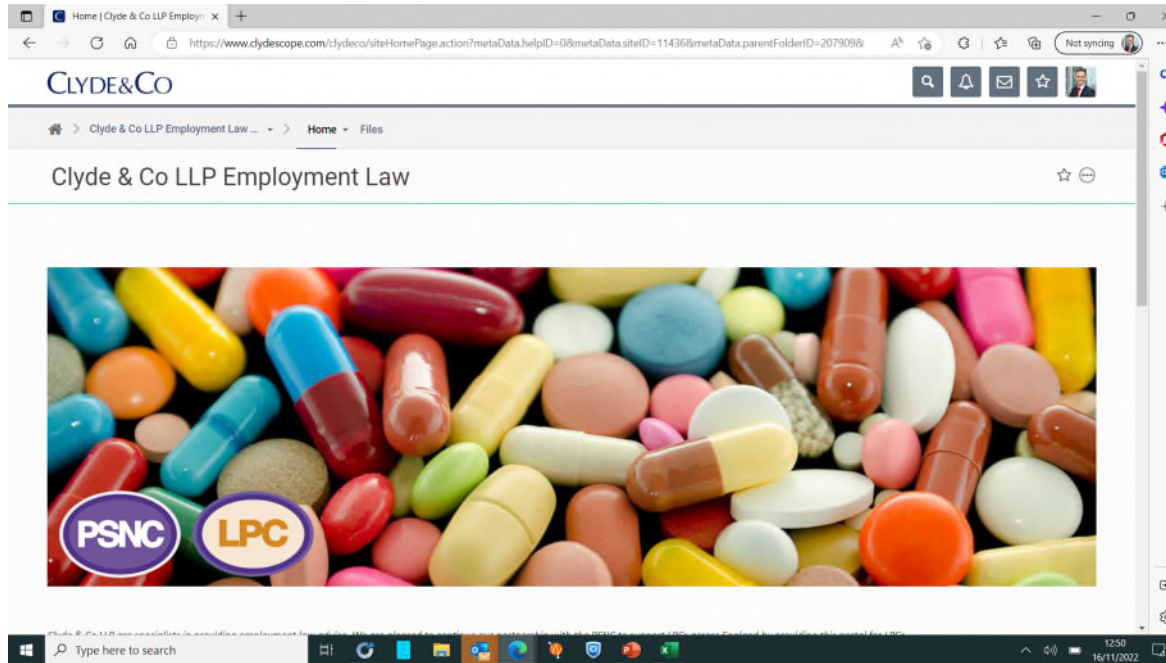
November 2022

# Clyde & Co LPC support in partnership with the PSNC

- ClydeScope Portal
  - Legal advice on core issues
  - Guides to processes, including grievance, disciplinary and redundancy
  - Suite of redundancy template documents
  - Key template documents
- Restructuring training
- Access to specialist employment law advice and support



# ClydeScope Portal



# Advice notes

Guidance on  
employment  
status

A quick guide to  
collective  
redundancies

Redundancy  
process flowchart

Guidance on the  
redundancy  
process

Advice on the risk  
of liability

TUPE note also coming soon...

# Key template documents

Staff Handbook

Contract of  
Employment

Consultancy  
Agreement

Settlement  
Agreement



# Redundancy suite of documents (1)

- At risk of redundancy letter (standard and for unique roles)
- Details of vacancies/ alternative employment
- Guidance for 1st consultation meeting
- Letter confirming discussions at 1st consultation meeting and invite to 2nd consultation meeting
- Selection criteria guidance
- Selection criteria matrix
- Guidance for 2nd consultation meeting

## Redundancy suite of documents (2)

- Invite to outcome meeting
- Guidance for outcome meeting
- Dismissal letter
- Settlement Agreement

### Where an appeal is lodged:

- Invite to appeal meeting
- Guidance for appeal meeting
- Appeal outcome letter



# Access to specialist employment law advice and support

## Option 1

*£500 plus VAT for the year*

£250 plus VAT “pay as you go” on an hourly basis

## Option 2

Inclusive advice  
and support

What if my LPC has no subscription and an issue arises?

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Also available from Clyde & Co LLP and its partners

- Health and safety risk assessment
- Incorporations
- Commercial Contracts
- Pensions advice
- HR Consultant – investigations, mediations
- Immigration advice
- Employer's and public liability advice
- Health and safety



# Thank you. Any questions

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# LPC restructuring: TUPE, redundancy and dealing with issues

Tom Saville and Sarah Begg

November 2022

# LPC restructuring

Where LPCs plan to restructure, it may cause employment to be transferred from one LPC to another and / or a reduction in need for employees

As specialist employment lawyers, we have provided advice, guidance and a suite of documents on the ClydesScope portal

Clyde & Co will provide today's virtual training session for all LPCs covering an overview of restructuring and redundancy processes

Clyde & Co can be available for subscribed LPCs to give bespoke advice where issues arise

# Session overview

- Liability
- Employment status
- TUPE
- Individual redundancy consultation – stepping through the process
- Frequent issues that arise
- Collective redundancy consultation – when does it arise?
- Additional support
- Questions



Personal liability for  
members



# Liability for LPC members

Unincorporated  
associations

Membership to an  
LPC provides no  
particular  
protection

The LPCs are not  
a legal entity so  
cannot limit  
liability

Claims are  
enforceable  
against members  
directly, who  
ultimately hold  
the liability

Individual  
contributions  
may need to be  
made toward any  
court or tribunal  
awards

# Employment claims

- 2 years' qualifying service for right not to be unfairly dismissed
- Redundancy a potentially fair reason for dismissal
- Dismissal must be fair in all the circumstances
- ACAS Code does not apply but must follow fair procedure – right to be accompanied and right to appeal
- Discrimination, victimisation and whistleblowing claims



# Liability for LPC members

- Employment Tribunal claims have the potential to amount to:
  - **one year's loss of earnings;**
  - **injury to feelings** awards up to around **£49,300**; and
  - unlimited compensation for **discrimination and whistleblowing** claims.



Employment status

# Employment status

Only employees should be included in any TUPE or redundancy process

Employees are afforded the highest level of protection in employment law

Employees benefit from the right to a statutory redundancy payment and the right not to be unfairly dismissed

# Employment status

- Who is an employee?
  - Written contract
  - Personal service in return for remuneration
  - Degree of control
  - Other factors consistent with the employment contract
- Who is not an employee?



TUPE

# TUPE

- What is the **purpose** of TUPE?
- What is the **effect** of TUPE?
- **When** does TUPE apply?
- **What happens** when a TUPE transfer takes place?
- What is the LPC's duty to **inform and consult**?
- What are the main **costs implications** of TUPE to an LPC?
- What are the **risks** of getting it wrong?





# TUPE: Duty to inform and consult

- The **Transferor** (and potentially the **Transferee**) must **inform** and, if appropriate, **consult 'employee representatives'**.
- If fewer than **10 employees** and no recognised trade union or existing rep's?
- What should the employees be “**informed**” of?
- What should rep's or employees be “**consulted**” about?
- **Measures**
  - Proposed redundancies will constitute a measure
  - Others
- **Financial penalty**

# TUPE and redundancy overlap

- Dismissals will be **automatically unfair** if the sole or principal reason for the dismissal is the transfer itself.
- Unless there is an **economic, technical or organisational reason (ETO reason)** entailing changes in the workforce
- Any proposed redundancy will be a **liability for the Transferee**
- The **Transferee should inform the Transferor** of all intended **measures** so it can consult upon them for the purposes of **TUPE**
- Any proposal for redundancy will constitute a **measure** (thus triggering a consultation requirement under TUPE for the Transferor)
- Opportunity for **informal joint approach** between Transferor and Transferee covering **both:**
  - **TUPE consultation; and**
  - **redundancy consultation** prior to the transfer (if clear as to **ETO reason(s)**)

Individual redundancy  
consultation

# The basics

2 years' qualifying service for right not to be unfairly dismissed

Dismissal must be fair in all the circumstances

Redundancy is a potentially fair reason for dismissal

ACAS Code does not apply but must follow fair procedure

Discrimination, victimisation and whistleblowing claims

# Redundancy definition

## When is there a genuine redundancy situation?

- If an employee is dismissed because/mainly because:
  - the committee has/will cease to exist
  - the committee has/will cease to exist in the place where they work
  - the requirements of the LPC for employees to carry out work of a particular kind have ceased or diminished/are expected to cease or diminish



# Avoiding redundancies

- This may include creating a more flexible workplace involving **job shares or part-time working**.
- Alternatively, the LPCs may invite employees to **volunteer for redundancy**, with the incentive of an enhanced payment.
- If this option is taken it is important the employees understand that the decision as to who is selected for redundancy remains at the **LPC's discretion** and that the LPC can refuse applications from employees whom they need to retain due to their key skills or experience.
- **Settlement Agreements**



# What is a 'fair procedure'?

- redundancy has to be the **genuine reason** for the dismissal
- identify an appropriate **selection pool** and establish fair and **objective selection criteria**
- **apply selection criteria** fairly, reasonably and objectively
- **notify** all employees at risk of redundancy
- hold **individual consultation meetings** with affected employees
- consider suitable **alternative employment**
- offer **right to appeal** once decision has been taken

# Selection pools

- Define the **appropriate pool** from which redundancies will be made
- No fixed rules
- Tribunal can't substitute its own view of the appropriate pool
- Grouping or category of employees doing the **same or similar work**
- LPC to “genuinely apply” its mind to who should be in the pool
- If in doubt include more people in the pool
- Possible to have **a pool of one**





# Bumping

What is bumping?

You should consider bumping, but don't have to do it

It can often be unfair

If bumping an employee, do so with caution

# Selection criteria

- adopt reasonable criteria for selection
  - Skills, experience and qualifications
  - Appraisals
  - Absence records
  - Disciplinary records
- Selection criteria – key point
  - Objective criteria
  - Take care to avoid discrimination (e.g. on age, sex or disability grounds)
- When applying the criteria, take care to ensure that:
  - the facts relating to the employees are correct
  - you can substantiate the application of the selection criteria

# Consultation

## **First meeting (the “at risk” meeting):**

- notified of potential redundancies;
- the reason for the redundancies;
- how the pool has been defined;
- the selection criteria used;
- employee is provisionally at risk of redundancy;
- why they have been selected;
- options for avoiding redundancies/any alternative employment; and
- timeline for the redundancy consultation process.

**Second meeting** - deal with any further questions or queries

LPC must have an open mind throughout the process

# Suitable alternative employment

- **Suitable alternative employment** potentially includes:
  - roles with an associated LPC
  - temporary vacancies
  - a different job title or grading
  - roles requiring retraining
- What is suitable alternative employment?
- objective factors:
  - terms and conditions; skills, aptitudes and experience; job requirements
- subjective factors:
  - personal circumstances

**Unreasonable refusal** of a suitable offer of alternative employment may lead to the loss of their right to a statutory redundancy payment

# Dismissal

- To be confirmed in writing
- Employee to be given:
  - contractual or statutory **notice**
  - a statutory **redundancy payment**
  - **enhanced** redundancy pay – see contractual documents
- The employee has a **legal right to reasonable time off** during their notice period to find alternative employment.
- Opportunity to **appeal** the dismissal
- Failing to offer the right to appeal may affect the overall fairness of the dismissal.

# Costs and calculations

## Statutory redundancy pay

- An employee will be entitled to a statutory redundancy payment if:
  - dismissed by reason of redundancy; and
  - at least 2 years' continuous employment
- The appropriate amount is equal to:
  - 1.5 weeks' pay for each year of service after age 41;
  - 1 week's pay for each year of service between ages 22 and 40; and
  - 0.5 week's pay for each year of service under the age of 22.
- Subject to maximum 20 years' service and **£571** cap on gross weekly pay.
- Current maximum SRP (from 6 April 2022) is therefore **£17,130**



Frequent issues that arise

# Common queries

- We understand that we should use **objective selection criteria**, but don't think that will work here, what do you suggest we do?
- If individuals provisionally selected **do not have the specific skills and experience for the new roles**, does this change anything?
- What steps should you take if an employee raises a **grievance** during a redundancy process?
- How do you deal with **absent employees** (e.g. on long-term sick leave on maternity leave or about to go on maternity leave)?
- What if someone raises a **DSAR**?
- What if someone **complains of discrimination** during the process?



# Collective redundancy overview

# When are collective redundancy obligations triggered?

- Where an employer...
- ...proposes to dismiss...
- ...as redundant...
- ...**20 or more employees**...
- ...at **one establishment**...
- ...within a period of **90 days or less**.



Employment law support

# Clyde & Co LPC support in partnership with the PSNC

- **ClydeScope Portal**
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  - Suite of redundancy template documents
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- **Redundancy training**
- Access to **specialist employment law advice** and support



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