

# Education Focus



## Partnerships between education providers and local businesses encouraged in recent UKCES Report

As schools, colleges and universities look to enhance employability of learners seeking employment, a Report which was released recently by the UK Commission for Employment and Skills ("UKCES") looked at the perceptions and experiences of businesses which work with school leavers and how these can be improved in the future. The Report suggested that some businesses feel school leavers are poorly prepared for work with common complaints including a lack of work experience, together with poor attitude, motivation, numeracy and communication skills.

The Report highlighted the benefits of businesses engaging with schools at an early stage as a way of helping close the gap between business needs and education provision, making sure enough young people are thinking about careers in relevant sectors, and improving recruitment as part of businesses' commitment to the communities in which they operate.

This reflects a recurring theme we have seen from clients across a range of sectors in that engagement between

young people and businesses in the run up to them leaving full time education can assist greatly with their employability in the future. This is echoed by James Wates (the Commissioner at UKCES) who stated in the Foreword to the Report:

*"The core truth is that businesses and schools working in partnership produce substantial benefits for everybody involved: most importantly, young people's awareness and experience of the workplace. However, the fact that businesses continue to identify the*

*barriers and improvements needed, confirms the need for more action to be taken by businesses, schools and organisations working in this area, to remove the barriers and challenges."*

A number of our education clients have been looking at innovative ways of delivering education to young people, directly addressing the issues raised in the Report. We have for example advised on a number of studio school applications and have seen a marked increase in interaction between education providers and the business community which we believe will directly benefit learners, businesses and the community at large.

*John Flanagan*

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## Look out for our Team focus

Rollits' Education Team comprises a team of specialist lawyers experienced in dealing with the full range of issues that affect education providers. In future issues of Education Focus we are going to feature interviews with some of the members of the Team so that they can

share their thoughts on how they see the sector is developing. The first will be with Tom Morrison, a Partner in Rollits and the Head of the Education Team, who will talk about recent trends in contracting within the education sector, and between the sector and private businesses.

## Consent now required for use of biometric information by colleges and schools

Schools and further education corporations which operate biometric identification systems for learners aged under 18 need prior parental permission as of 1 May 2012 under the Protection of Freedoms Act 2012, which has recently received Royal Assent.



The Act covers a number of issues, including the future appointment of a Surveillance Camera Commissioner and the protection of property from disproportionate enforcement actions. One of the most interesting outcomes of the new legislation (particularly to parents) is that colleges and schools which use biometric data relating to under 18s must obtain parents' written consent to such activities. For example, some education providers use fingerprint recognition technology when allowing access to buildings or borrowing library books.

The consent of both parents is required except in certain circumstances such as where a parent cannot be found or where the child's welfare requires that a parent should not be contacted. Even if the parents provide consent, learners themselves can still object. Consent can be withdrawn at any time and providers must make alternative access facilities available if a learner or parent has objected.

Tom Morrison



## Court of Appeal supports activities outside the classroom

With an ever increasing "blame culture" many education providers have become reluctant to offer younger learners the opportunity to take part in activities outside of college or school premises. However a recent decision by the Court Appeal has dismissed attempts by the father of a pupil injured during a swimming lesson to extend the boundaries of negligence, recognising the detrimental effects that such an extension could have upon the willingness of education providers to allow learners to participate in external activities.

A pupil from a junior school in Basildon, Essex attended swimming lessons at a local pool. The school was under the control of Essex County Council but the pool was operated by a different local authority. The swimming lessons were provided by a third organisation which in turn, employed its own lifeguard and swimming teachers. Sadly, as a result of an incident during the swimming lesson, the pupil suffered severe brain injuries.

It was argued by the child's father that Essex County Council had a non-delegable duty of care to the pupil. He argued that this duty was not merely a duty to take care but a duty to provide that care is taken by others. If this argument was to have been accepted, it would have pushed the boundaries of the long established laws of negligence. The Court of Appeal dismissed the argument that Essex County Council's duties

extended to a duty to provide that care is taken by others. In doing so, it was noted that a non-delegable duty should not be imposed where an injury is suffered in circumstances over which the Defendant has no control and furthermore that it would not be appropriate to alter this position particularly in light of the "chilling effect on the willingness of Education Authorities to provide valuable education experiences".

The decision does not alter the existing legal position in relation to the obligations of education providers and the duties which they owe to their learners. What it does is to recognise the importance of activities outside the classroom and that such activities should not be restricted for fear of legal action in the event a child is injured due to events beyond its control.

Caroline Hardcastle

# Changes to Independent Schools' Standards anticipated September 2012

Independent Schools in England – including academies – are required to adhere to the standards prescribed in the Education (Independent Schools' Standards) (England) Regulations 2010 ("the Regulations"). The Department for Education ("DfE") published a consultation on revision of the Regulations on 25 April 2012 seeking views on amendments to the standards to be met by Independent Schools. The consultation closed on 5 June 2012. This article looks at the Regulations as they currently stand and some of the proposed changes.

Section 157 of the Education Act 2002 requires the Secretary of State for Education to make regulations prescribing standards for Independent Schools in England. As a result the Regulations cover:

- the quality of education;
- the spiritual, moral, social and cultural development of pupils;
- the welfare, health and safety of pupils;
- the suitability of proprietors of Independent Schools and staff;
- premises and accommodation;
- the provision of information by Independent Schools; and
- the manner in which Independent Schools handle complaints.

The Regulations apply to all Independent Schools in England although some of the provisions do not apply to academies; in legal terms, academies are regarded as Independent Schools even though they are state funded. Given the number of schools that have converted, or are in the process of converting, to academy status there will be many more Independent Schools that are affected by the Regulations than would have previously been the case.

## The consultation is proposing the following changes to the Regulations:

### New Early Years requirement

Independent Schools are subject to the Early Years Foundation Stage ("the EYFS") introduced by the Childcare Act 2006. A separate review of the EYFS last year recommended that Independent Schools should be able to seek exemption from the learning and development requirements of the EYFS where there is evidence of high quality and parental support for the approach, and a means of being confident that quality would be maintained. These recommendations are currently under consideration and DfE has stated that further consultation with key parties is needed. The consultation is anticipating the changes which would need to be made to the Regulations in the event that the EYFS exemption is implemented. DfE is therefore proposing that the Regulations will include an additional standard to secure regulatory oversight for the education of children aged from three until they reach compulsory school age if the EYFS exemption is agreed.

### Requirements for preventing extremism

The Regulations include provisions in relation to the spiritual, moral, social and cultural development of learners. Changes are being proposed to these provisions to

address concerns about extremism being promoted in schools. Therefore DfE intends to clarify the existing requirements and place some additional requirements on Independent Schools to promote fundamental British values, respect for civil and criminal law and a requirement to present political issues in a balanced way.

DfE has also emphasised the need for the Regulations to require Independent Schools to encourage learners to understand how they can contribute to community life. The proposed changes to the Regulations (as stated by DfE) are intended to ensure that "community" is interpreted as "those people living or working in the same area, irrespective of their religion or culture".

Many academies will already be required to adhere to similar requirements under the terms of their funding agreements with the Secretary of State for Education. Therefore most academies will notice little difference when any changes come into force.

### Welfare, health and safety

The Regulations set down standards with regard to the welfare, health and safety of pupils. The consultation published by DfE requires schools to take a more proactive stance in terms of drawing up and implementing their own strategies relating to welfare (including anti-bullying policies) and health and safety as opposed to simply relying upon guidance.

For example, it is proposed that the Regulations be augmented to include a new overarching welfare, health and safety standard relating to premises. The consultation states that this will require schools to focus on the effect that the standard of premises has on the welfare, health and safety of learners. DfE wishes to compel schools to be proactive about their strategies and policies in terms of welfare, health and safety and to actively implement their own strategies as appropriate. Clearly such issues are absolutely paramount to running an effective school and the majority of Independent Schools will be doing this already.

### Timetable

The consultation ended on 5 June 2012. DfE is proposing that the target date for amendments to the Regulations to come into force is 1 September 2012 (subject to satisfactory completion of regulatory and parliamentary procedures). DfE acknowledges in the consultation that this is a shorter period than normal, but it will enable it to publish (subject to the results of consultation) the finalised Regulations in sufficient time to inform Independent Schools of the new requirements to apply from the start of the academic year.

Gerry Morrison



## TUPE and Collective Consultation

The Department for Business, Innovation and Skills ("BIS") has issued a call for evidence, seeking views on the effectiveness of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE 2006") given concerns that the regulations are overly administrative and in fact go further than the Acquired Rights Directive intended. There is a real feeling that TUPE 2006 is not "fit for purpose".



In particular, the government is seeking views on the impact for businesses of the inclusion of service provision changes within the scope of TUPE 2006 and how the interaction of TUPE 2006 and collective redundancy consultation could be improved. This will clearly have a huge impact on the education sector as re-awarding of contracts (particularly in the context of outsourced delivery of services such as catering and cleaning) and the ever-present uncertainty in funding with the associated impact on staffing levels is a common theme within the sector.

In addition, the consultation obligations become complicated where redundancies arise as a result of a TUPE transfer or as a result of an organisation entering into insolvency procedures. BIS therefore asked prospective employers to identify issues which they might have on how TUPE 2006 and the collective consultation rules fit together.

The closing date for responses was 31 January 2012 and we now wait to see if the expected formal consultation will follow.

Ed Jenneson

## No Green Deal delay

In the previous edition of Education Focus we discussed occupation issues which can arise when making full use of an education provider's property assets. Another aspect that all college and university Estate Managers are tackling is the energy efficiency of their buildings.

The requirement for each college and university to have in place Display Energy Certificates for those buildings it uses itself is well known. Most people are equally aware of the need for all owners of properties wishing to sell or let a property to provide an Energy Performance Certificate (EPC) to the buyer or tenant. An EPC measures the energy efficiency of a building on a scale of A (most efficient) to G (least efficient) and provides recommendations on how to improve the building's energy efficiency and reduce energy bills.

The Energy Act 2011, which came into force on 18 October 2011, aims to improve the environmental performance of properties as part of the Government's "Green Deal" initiative. Under the new Act, the Government is required to introduce new regulations by 1 April 2018 which will prohibit landlords, including colleges and universities, from letting commercial properties with the lowest EPC ratings, thought to be those falling within bands F and G.

The Government has not yet indicated when it intends to introduce the new regulations or what the requirements under the regulations are likely to be. Therefore we do not yet know which

## Rollits speak at Education Law Association

Rollits' Education Team was asked to present at the Education Law Association's conference held in May 2012. Two members of the team, Tom Morrison and Caroline Hardcastle, spoke to an audience of other sector-specialist solicitors and barristers, as well as representatives from a range of providers and local authorities.



buildings will be exempt from the regulations, what level of improvements will be required or what the sanctions will be for non-compliance.

However this is not an issue that can be ignored. Estate Managers will need to consider and plan ahead: when the regulations are brought into force colleges and universities may well be required to take action in order to be able to let or sell inefficient parts of their property portfolios.

Chris Crystal

## Information

If you have any queries on any issues raised in this newsletter, or any education matters in general please contact Tom Morrison on 01482 337310 / 01904 625790 or email [tom.morrison@rollits.com](mailto:tom.morrison@rollits.com)

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A list of members' names is available for inspection at our offices. We use the term 'partner' to denote members of Rollits LLP.