

# Education Focus



## Preparing for Auto Enrolment

All employers will need to enrol their workers into a pension scheme that meets certain minimum requirements, with the largest employers already required to do so from October 2012. Smaller employers will be staged in at later dates, with the smallest employers required to enrol employees by April 2017. Each employer will have a 'staging date' which is broadly based on the number of employees on 1 April 2012.

These requirements will apply to education providers, and for providers that employ staff direct this means that each will have a separate staging date. Most staff employed by colleges for example will belong to either

the Teachers' Pension Scheme (TPS) or, for non-teaching staff, the Local Government Pension Scheme (LGPS). All staff will need to be automatically enrolled in one of these schemes from the staging date, or another scheme

that meets the minimum requirements. Employees may 'opt-out', but if they do, they must be automatically re-enrolled after three years.

The TPS has produced a toolkit that will help employers in implementing auto-enrolment for their teaching staff, and whilst there is nothing equivalent for the LGPS, there is other useful information produced by the Pensions Regulator on its website.

Although for some smaller education providers this date is some way away, all organisations should be preparing themselves and seeking help in getting ready for this new regime.

*Craig Engleman*

## Getting ready for the new CIO

After prolonged delay, it appears as though the charitable incorporated organisation (CIO) is almost finally upon us. Nick Hurd, Minister for Civil Society confirmed that the supporting legal framework needed to give effect to the CIO was laid before Parliament on 30 October 2012.

The CIO will be a new legal structure (first introduced by the Charities Act 2006, but now regulated under the Charities Act 2011), designed specifically and only for charities. It will have the benefits of its own legal identity and limited liability for its officers, but will be solely registered with, and regulated by, the Charity Commission. The CIO will not be a company and will not need to have regard to company law.

Some colleges, training providers and schools may wish to consider the new structure if setting up subsidiary charities to ring-fence funds, hive off risk or carry

out additional charitable activity under a separate brand. The debut of the CIO will add to the range of structural options available to charities.

It has been agreed that the CIO will be implemented in stages so as to not overwhelm the Charity Commission which will be responsible for registering CIOs. The Cabinet Office has published an indicative timetable for the phased introduction of CIOs which is available to download on the Charity Commission's website [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)

*Gerry Morrison*

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# Q&A



## What trends have you seen recently in the context of contracting in the education sector?

*I think that there has been an increasing appreciation that contracting runs as a thread throughout the sector. Education providers have long recognised that they are entering into traditional contractual arrangements such as basic procurement of goods and services, software implementation and support and outsourcing of activities such as cleaning and catering. At its most basic level, any arrangement relating to*

## Visit our brand new website

Technology and design move at a fast pace, and our website had become rather dated. We felt it was time to refresh the design of the site and to make some key improvements to explain more fully who we are and what we have to offer.

The new site design provides visitors with improvements in navigation, appearance and accessibility. Additions include a dedicated section for our sector specialisms and a directory of all of our people.

Please do go online at [www.rollits.com](http://www.rollits.com) and have a look at it and give us your feedback. We hope you find it useful.



## Contracting in the education sector

Tom Morrison, Partner at Rollits and Head of the Education Team, leads a team of nine sector specialists who are highly experienced in advising education providers on a full range of legal and sector issues. In this Q&A he looks at how contracts help to regulate the relationships amongst education providers, and between education providers and the private sector.



*the provision of education has a contract at its heart, whether in the form of a Learner Agreement, arrangements with employers, funding agreements with the State or sub-contracted provision of education with training providers. We have seen providers from across all parts of the sector take a closer look at what they are signing up to, and what they are asking others to sign up to, in the knowledge that they either want to drive a positive behaviour by having an appropriate contract in place, or manage a situation by making use of robust provisions in the contract.*

## Have you seen many instances of good practice that can be shared?

*Plenty. Colleges and universities have had to manage complex contractual situations for a lot longer than academies, but there are common themes that permeate the sector. I have seen colleges in particular tighten up their sub-contracted provision in order to reinforce the degree of control they have over quality and improve procedures around contract management and record keeping. Well-drafted contracts make life easier when it comes to protecting the college as lead provider and making sure that all the paperwork is in order before funds are drawn down. I think there is also increasing awareness that TUPE can rear its head in unexpected ways, and there are a number of ways this risk can be better managed by getting the relevant contractual provisions in place at the front end of the arrangement rather than trying to deal with it in the face of a transfer taking place based on historic and less favourable terms.*

## What have you seen go wrong?

*Insourcing has caught out a number of education providers recently – where a provider has taken a service back in-house and inadvertently inherited a workforce it did not realise it would be taking. TUPE is a highly fact-sensitive area of law, and there are often issues around fragmentation of roles, changes in the nature of provision etc.*

*Separately we have seen examples of providers going to some effort to get the front end of their contracts right but it then going wrong when the schedules have been completed in a manner that clashes with the front end. To try to head that off we always offer to look at the completed contract as a few minutes spent doing that can save a huge amount of unnecessary hassle down the line.*

## What do you think will happen next in terms of contracting in the sector?

*I believe that we will see continued escalation in contracting between the education and private sectors. There is already a great deal of interaction between lead providers and private training providers, and indeed a large number of private providers are now contracting with the SFA (albeit fewer, but with higher contract values, since the new minimum thresholds came into force). Many lead providers are looking at their provision to make best use of their own workforces, but there will in my view always be an argument for private training providers to bring economies, expertise and flexibility where the numbers just do not add up for direct delivery. That does not mean that the private training providers have to be owned privately though – indeed we have acted on several acquisitions of private training providers by colleges where the intention is that the profits made by the wholly-owned non-charitable subsidiary training provider are passed to its parent college under the gift aid scheme, mitigating the effects of corporation tax.*

*At the same time, providers are working ever closer with each other and all of this means making sure that those relationships are effectively regulated through advantageous contractual provisions. The trick in all of these situations is making sure that providers can make best use of contracts to drive positive behaviours, manage expectations, work through situations and if all else fails either pursue or defend claims.*



## OFT urges reduction in cost of uniforms

The Office of Fair Trading has written to nearly 30,000 primary and secondary schools asking them to review their uniform policies in order to help families reduce their costs. The OFT conducted a survey of schools and found that uniforms which can only be purchased from certain suppliers or the school shop (accounting for 74% of schools surveyed) can cost £5 to £10 more than if families are able to freely shop around.

Whilst schools and other education providers with uniform policies clearly want learners to be dressed consistently, the OFT believes that they can be dressed smartly without the need for a single supplier being appointed. The issue of cost does not just affect classroom uniforms; it applies to sports kits and other standardised clothing, for example in relation to college catering and beauty courses. There can be good reasons for sourcing from a single clothing supplier, and education providers are well-versed in getting best value for their learners, but in light of the OFT's concerns providers may wish to consider whether there is anything else they can do to ease the financial burden on learners and their families by revisiting their uniform policies without eroding the benefits sought from instituting the policy in the first place.

Tom Morrison

## Collective redundancy and the definition of "establishment"

When an organisation is proposing to make redundant 20 or more employees in any 90 day period that organisation must comply with the collective redundancy obligations as set out in the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA). Central to any collective redundancy situation is what constitutes an "establishment" for the purposes of considering the total number of proposed redundancies and whether the obligations under TULRCA arise. This is particularly pertinent where an education provider has for example multiple sites across different geographic locations.

In the recent case of Renfrewshire Council v Educational Institute of Scotland, teachers from a number of schools in Renfrewshire brought a complaint to an Employment Tribunal on the basis that the collective redundancy consultations under TULRCA had arisen. The teachers argued that the "establishment" at which they worked was the Education and Leisure Service of Renfrewshire Council, and not their individual schools.

In the first instance the Employment Tribunal agreed with focusing on the fact that the teachers could theoretically be instructed to work elsewhere under the mobility clauses in their employment contracts and that the Council had central control over issues such as the recruitment, movement and dismissal of teachers and the funding of each of the schools. The Employment Appeals Tribunal (EAT) disagreed with this interpretation concluding that the definition of "establishment" is predominantly concerned with the place of work to which the employees are assigned (in this case the schools).



The EAT gave additional guidance specifying that just because something is capable of being an "establishment" doesn't necessarily mean that an employee is assigned to that particular "establishment". They were keen to emphasise that a decision as to what constitutes an "establishment" is heavily fact dependent.

Lottie Pigg

## Estates: planning policy for education providers

With the grant of Royal Assent on 15 November 2011 the Localism Act introduced a new layer of planning policy within the existing planning framework known as Neighbourhood Planning. This is likely to impact on education providers' Estates strategies where neighbourhood issues can be a concern. The practical implication is that a Neighbourhood Plan could potentially provide an established masterplan for the development of an education provider's site or campus that will allow future works to be undertaken without having to go through such intense consultation and costs at every stage of expansion. Should a site earmarked for development be located within a parish then enquiries would have to be made

with the Town or Parish Council as to whether a Neighbourhood Plan could be prepared and, if so, whether site could form part of the Neighbourhood Plan. Equally, where an education provider's site is located in an area without a parish there does not appear to be any reason why the education provider itself could not be the driving force behind the creation of a Neighbourhood Forum and thereafter influence the content of the Neighbourhood Plan.

For more information please see the Articles section of our new website at [www.rollits.com](http://www.rollits.com) where you will find a more in-depth analysis of the new regime.

David Myers

# Congratulations to Rollits Award Winners

Our congratulations go to students Polly Sykes of Harrogate College and Clare Webster of Hull College for winning the Rollits Award for Business and Enterprise. Since completing her Business & Management Degree, Polly has become motivated by the idea of setting up a project to provide supported employment for people who

have disabilities, putting to good use both her past experience of working with people with disabilities and her newly acquired business skills and knowledge. Clare graduated with a degree in Computing and is currently looking at opportunities to develop her career. Congratulations to both on their achievements.



Tom Morrison of Rollits and Harrogate College student Polly Sykes



Caroline Hardcastle of Rollits presenting the Award to Hull College student Clare Webster

## Riseholme College joins the Bishop Burton College family

**RISEHOLME**  
College

a part of Bishop Burton College

One of the country's best-known agricultural colleges has now taken over delivery of further education courses at Riseholme College near Lincoln. The FE provision at Riseholme transferred from the University of Lincoln to Bishop Burton College on 1 August 2012, at which point Riseholme College formally became part of Bishop Burton College. Rollits is proud to be part of the College's team which secured the transfer. Bishop Burton College Principal and Chief Executive Jeanette Dawson OBE commented: "A lot of people have very fond memories of their time at Riseholme and our job now is to build on that goodwill. There are some very exciting times ahead and when we look back in years to come this takeover will, I'm sure, be seen as hugely important in the history of both colleges."

## Hull Studio School opens

Congratulations to Hull Studio School which has opened the doors on its first academic year. Rollits is very proud to have advised the Studio School's sponsor Hull College in establishing the HCUK Trust, which operates Hull Studio School, in order that this innovative approach to education could be brought to Hull. Before the School opened there were only 12 other Studio Schools in the country. It will in some respects be run as a business, with young people treated as employees and getting involved with other businesses in the region. Rollits feels that initiatives such as this are key to the future development of the country's workforce, helping to equip our young people with the skills they need to succeed in the workplace.



## IP workshops and mock Employment Tribunals at Leeds City College



Andrew Digwood, an intellectual property specialist and dispute resolution Partner at Rollits, has been helping fledgling creative businesses supported by Leeds City College and the Net315 project understand the complexities of copyright, designs and trade marks law. A combination of interactive group sessions and one-to-one consultations has helped the individuals behind the businesses gain a better understanding of how they can use the law to maximise the protection given to the results of their creative efforts.

Meanwhile, employment law specialists Lottie Pigg and Ed Heppel have sat as Employment Judges in mock Employment Tribunals at the College to enable students to hone their advocacy skills.

## 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

This newsletter is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form. Action should not be taken without obtaining specific advice. We hope you have found this newsletter useful.

If, however, you do not wish to receive further mailings from us, please write to Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

The law is stated as at 1 December 2012.

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