

Education Focus



A new programme of traineeships

The Minister for Skills Matthew Hancock has published a framework for delivery of a new programme of traineeships. These will be introduced from August 2013, with the aim of improving the skills required in the workplace with emphasis on English and Maths abilities.

Part of the apprenticeship family, in the first instance traineeships will be available for 16-19 year olds and young people under the age of 25 with a Learning Disability Assessment. They are aimed at young people who are not currently in work (or work less than 16 hours per week) or have little work experience.

The traineeship will last for a maximum duration of 6 months with a work placement element. The traineeship may conclude earlier than the 6 month period if the young person moves into employment, an apprenticeship or further education/training, or all elements of the traineeship programme are completed.

providers who have achieved an Ofsted inspection grade of Outstanding or Good in response to a call to ensure that traineeships are a high quality option from the outset (the "Quality Criteria"): a restriction which has met with much criticism by providers who do not hold this grading and are therefore unable to deliver traineeships during this academic year. Subject to that Quality Criteria, education and training providers that currently deliver provision for 16-19 year olds and hold a contract with the Education Funding Agency will be eligible to deliver.

As we go to press, the framework published by the Government still leaves questions unanswered: in particular, the challenge facing providers and employers as to how to structure the required content to ensure quality and relevance for the future workforce traineeships.

Lottie Pigg

Exam information

The quality of teaching and learning is arguably coming under closer scrutiny than ever before, not least from students who are becoming more vocal consumers of education services.

So what rights do students have to see information about their exam performance? Usually students will be looking for detailed exam marks, exam scripts, comments of examiners, minutes of examination appeals panels or providers' policies and procedures relating to marks and appeals. Whilst students do have a general right of "subject access" to their personal information under the Data Protection Act 1998, providers are sometimes able to lawfully withhold certain types of data such as exam scripts, and there are exemptions available for delaying publication of results. Importantly, comments recorded by an examiner about the performance of a student in an examination may well be disclosable, whether or not they are written on the script.

Tom Morrison

The work placement element will be for a minimum period of 6 weeks (up to a maximum of 5 months) and could comprise more than one host employer. At the conclusion of the traineeship, even if there is no vacancy, the Government expects that the trainee will be guaranteed an interview with the work placement host (or lead work placement host should more than one host provide work placement).

The core content of the traineeship will consist of 3 elements: a high quality work placement (to develop workplace skills); a focused period of work preparation training (such as CV writing, interview preparation, job search and inter-personal skills); and English and Maths qualifications (with a requirement to study English and Maths unless the trainee has already achieved GCSE grade A*-C).

Providers and hosts will have the freedom to bring the core elements together and flexibility around any additional content. It will therefore be important for providers and hosts to work together to design the content and delivery method for the traineeship.

Controversially, in 2013/14 the delivery of traineeships will be limited to those

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Developments in property law

Chris Crystal, a property specialist in Rollits' Education Team, looks at recent trends in managing education providers' estates, third party occupation and issues around the "green" agenda.



What are some of the current trends you are seeing with education providers and property?

Education providers are really focussing on their estates more than ever, maximising the efficient use of space they currently have and thinking of innovative ways of taking new space to best serve the ever changing needs of the individual providers. For example, we have seen providers who are short on space within their existing estates taking space in shopping centres, using those high footfall areas literally as shop windows or spaces where prospective students can go to find out more about what is on offer. Many providers find themselves with the opposite problem: too much space, or rather that they are spread out across too large an area such that it is being underutilised.

All education providers want and need to make best use of their physical assets, so an increasingly common theme is to try to condense activity into smaller spaces and potentially free up entire buildings for disposal. This can be an attractive way of finding a cash injection but is clearly impacted by the location of the building, its potential other uses and the state of the market. As an alternative, with the constant need to maximise income streams it is tempting to allow third parties to use empty space in the estate and as a result utilise property resources as fully as possible.

What are the main considerations in allowing third parties to occupy part of an education provider's estate?

Avoiding giving the third party more than you bargained for! Any frustration caused by the delay in getting proper documentation agreed is in my view outweighed by the knowledge that the third party won't obtain legal rights to remain in occupation of a space beyond the term originally envisaged and that as many eventualities as can be reasonably anticipated are covered. For example it is important to make sure that contributions toward expenses of the whole building are payable by the third party, such as costs of heating, security and maintenance.

Education providers are usually at the forefront of implementing 'green' policies in respect of their estates – what are the recent issues to be aware of?

There has been more tinkering with the rules relating to Display Energy Certificates (DEC) and Energy Performance Certificates (EPC). Most estate managers are fully aware of these already and most education providers will need to display a DEC and on new lettings/sales provide an EPC.

Buildings over 500sqm which are occupied by public authorities and are "frequently" used by the public will require a DEC. From 9 July 2015 the measurement for useful floor area will reduce to 250sqm, resulting in more buildings being caught.

If you have an EPC a sensible approach is for an EPC to be displayed but, currently, the regulations do not require new EPCs to be commissioned for this express purpose. However we expect that this may be changed in the future.

There has been a lot in the media about 'the Green Deal' which came out of the Energy Act 2011, which aims to improve the environmental performance of properties. One of the issues which arises is that by 1 April 2018 (or possibly even earlier if some lobbyists are successful) there are due to be regulations introduced which will prohibit landlords, including education providers, from letting commercial properties which fall below a pre-determined level of energy efficiency.

Although there are bound to be some exemptions we don't yet know what work will be required to bring buildings up to the necessary level, nor what the punishment will be for failing to do so. The issue for estate managers is ensuring that they are making buildings efficient enough or face parts of the estate becoming almost unusable and whether the costs of the former make the latter the most attractive option.

So in summary, and as budgets continue to come under pressure, a provider's estate will be increasingly looked upon to provide not only efficiency savings but also to facilitate new income streams. The life of an estate manager has never been a dull one!

Acquisitions and disposals – a step-by-step guide

Our education sector clients are increasingly finding themselves in a position where they wish to either divest themselves of part of their activity but not subcontract it for a particular reason, or wish to acquire, (for example), a training provider or the whole or part of another organisation for strategic reasons.

In a series of articles our the corporate experts in Rollits' Education Team will break down the acquisition/disposal process in a chronological order setting out the typical key elements and points to look out for at each stage in a transaction. Whilst every transaction is of course different, and the various stages have varying levels of significance depending on the circumstances, the process generally follows the steps set out below.



Typically, the legal team advising on an acquisition/disposal will be corporate experts within the Education Team who will project manage and work in conjunction with the Team's governance, property, employment, commercial and regulatory lawyers. The Team's key role is to ensure that all elements of the transaction are fully covered in a coordinated fashion by lawyers who have worked with the sector for years and who are well-equipped to spot issues at an early stage given their experience of the sector. Other advisers we would typically expect to work with in such transactions are the client's accountants, property consultants, actuaries and bankers.

In the next edition of Education Focus we will look at the first key step, which is considering the issues around how providers might deal with ensuring a cultural fit whilst achieving a strategic fit and how these can sometimes be a tension between the two.

Richard Field/John Flanagan

The key steps we will be considering in the series

1. **Acquisitions** – cultural fit versus strategic fit;
2. **Share sale versus business and assets sale;**
3. **A brief guide to non-disclosure agreements/confidentiality agreements;**
4. **Heads of terms** – how to ensure clarity at an early stage;
5. **Financial, legal and commercial due diligence explained;**
6. **Disclosure process** – why is this so important?
7. **Incentivising sellers** – earn-outs; and
8. **Protection of goodwill/controlling sellers post completion** – restrictive covenants.

Portable DBS checks

As we go to print in June 2013, the Disclosure and Barring Service (which replaced the Criminal Records Bureau at the end of last year) launches a new service called the Update Service. Previously referred to as a Portable DBS check, from 17 June 2013 a job applicant will be able to subscribe to the Update Service. This means that for an annual subscription fee of £13, the DBS will store and update the job applicant's DBS Certificate online.



If the job applicant subscribes to the Update Service, a prospective employer can request a copy of the applicant's DBS Certificate and with their permission carry out a free online check with the DBS to see if any new information has come to light since the issue of the Certificate.

It will be wise for education providers to keep evidence of any applicant's permission to access the Update Service. The DBS will not proactively continue to update the provider should the status of the applicant change. Providers may therefore wish to consider whether a periodic review is undertaken to check the Update Service. Providers will need to keep in mind that should such a periodic review be implemented the employee's permission will still need to be obtained for these periodic reviews.

The Update Service is optional and whilst it is free for providers to use, applicants will have to pay the annual subscription fee which may result in low take up.

In the absence of an applicant joining the Update Service (and paying the annual subscription fee), prospective employers will need to ensure the DBS check is complete via the usual application route, bearing in mind that the DBS Certificate will now only be sent to the applicant directly not to the prospective employer.

Ed Jenneson

New single-tier state pension to add to pensions costs

The announcement in the Queen's Speech of a new single-tier state pension, designed to give all employees with a full national insurance contribution record a weekly pension of £144, will increase the costs of education providers and their employees when it is introduced in April 2016. This is because contracting-out of the state second pension will be abolished, with the resulting withdrawal of the rebates from national insurance contributions currently in place for contracted-out schemes.

For employers, it has been estimated that the abolition of the employer rebate (currently 3.4%) will increase pensions costs by around 10%. Employees' costs will also increase, as their contributions will rise by 1.4%, the amount of the current employee rebate. Contributions are capped at the upper earnings

accrual level (currently £40,040), limiting the amount of increased contributions for employees to £454 annually. Most employees will actually receive a higher state pension when they retire, but teachers' unions have already raised concerns about the change, and have advocated pay rises to counter the

increased contributions payable from this change as well as from the new public service pension schemes that are being introduced.

The legislation bringing in the single-tier scheme will include a statutory power for private sector employers to amend scheme rules to adjust future benefits or to increase employee contributions to offset the additional cost to employers. However, as the Government has previously guaranteed the provisions of the reformed public service pension schemes for 25 years, no such changes will be possible to these schemes. This, together with the introduction of auto-enrolment, will mean additional costs for education providers with regard to pensions, whether that be in the Teachers Pension Scheme or the Local Government Pension Scheme.

Craig Engleman



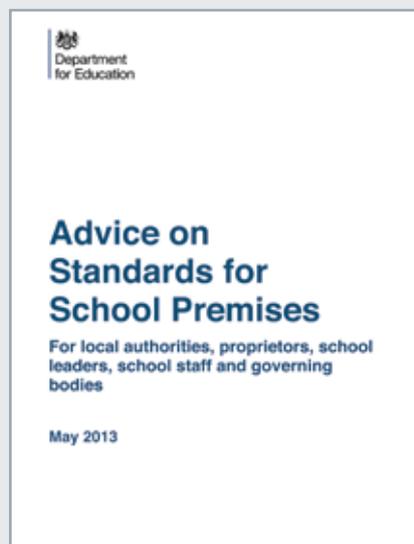
Department for Education advice on standards for school premises

The Department for Education updated its guidance on the standards for school premises in May this year. The guidance is intended primarily for local authorities, proprietors, school leaders and governing bodies.

It aims to summarise the obligations and duties in relation to the School Premises Regulations 2012 along with Part 5 of the revised Education (Independent School Standards) (England) Regulations 2010, the latter of which came into force on 1 January 2013.

The guidance also provides references and links to other areas of legislation and guidance relating to school premises.

The Department states that the Regulations attempt to simplify the rules and allow more flexibility. As in other situations this may be seen as a laudable aim, but it can lead to confusion as to what is actually allowed. For example, there is an attempt at clarifying what provision being 'suitable' means. It is suggested this means schools must take into account the age, number and sex of pupils, and any special requirements they have, when determining whether provision is 'suitable'. Whether this helps or hinders interpretation is an interesting question!



The guidance is due to be reviewed again in May 2014 and is currently available as a download at <http://tinyurl.com/rollitsDfE>

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 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 18 June 2013.

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