



EDUCATION NEWSLETTER

November 2010



Welcome to CFR's Education newsletter in which we, the education team at CFR, provide insight and commentary on legal issues which may be of interest or concern. In this issue we highlight the alternatives to redundancy as schools and colleges come under major financial pressure. We also examine the issues for schools regarding the impending charities legislation and report on two interesting cases.

The team sheet on the final page gives our team members all of whom are lawyers with particular expertise in their field and who have a focus on the education sector. I hope you find this of interest.

Michael Black, Head of Employment

PULLING BACK - ALTERNATIVES TO REDUNDANCY

In light of the impending cuts and growing financial pressure that schools face it is clear that there is a greater focus than ever before on saving costs and unfortunately job cuts among teaching and non-teaching staff are more prevalent. The threat of redundancy is looming across the education sector and while many schools follow good employment practice, unfortunately far too many organisations fail to comply with the basic statutory requirements. In August 2009, a teacher who had been made redundant from Rockport School in Holywood won £56,500 as the school did not have a written redundancy policy. The Tribunal ruled that the teacher was dismissed without regard to due process and that the redundancy exercise conducted by the school was a sham. The teacher had worked for the school for 19 years.

It is not always possible to avoid making redundancies but by following best practice, an employer maximises the opportunity for alternative solutions to be found. An employer must also have regard to the legal obligation to do everything practicable to avoid redundancy. Ensuring a shared, transparent and timely redundancy procedure is in place is vital. When redundancy is being considered, governors and senior management should take a whole school approach and should look beyond the specific posts which are nominated for redundancy. For example, just because there are insufficient numbers in one department does not mean that that an individual should be dismissed by virtue of redundancy. It may well be that the person carrying out that role has the necessary experience and skills to be employed elsewhere in the school. Indeed, other colleagues may be planning to retire or to terminate their employment with the school on other grounds and so a vacancy could arise which could be filled by the employee who is at risk of redundancy.

The "whole school" approach is based on an assessment of the school's needs and curriculum requirements. One common approach is for employees to be invited to complete a skills audit developed in consultation with staff. Before considering any compulsory redundancies all staff should be invited to apply for voluntary redundancy. Having completed a curriculum needs audit and skills audit, a discretionary voluntary redundancy could be offered to staff generally and this may indicate possible redeployment opportunities. If there are no volunteers or appropriate matches then the skills audit can be utilised to establish which staff have the most to offer to the school. Involving staff helps to engender collective responsibility and good communication will ensure minimum surprises. In short, it is important to have a fair and transparent redundancy procedure with provision for early and meaningful consultation with staff and their representatives.

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CHARITABLE LESSONS FOR SCHOOLS IN NORTHERN IRELAND

The implementation of the Charities Act (Northern Ireland) 2008 has been delayed due to a technical issue with the wording of the Public Benefit Test (for further information please see our article entitled '[Changes to Public Benefits Test in Northern Ireland](#)' at www.cfrlaw.co.uk).

Until this issue is resolved it is not possible to predict exactly how the Charity Commission for Northern Ireland will determine whether an organisation can become, or continue to be a charity in Northern Ireland.

At the end of September 2010, the Attorney General called for a hearing into the Charity Commission for England and Wales' public benefit guidance alleging it created "uncertainty as to the operation of charity law in the context of fee-charging schools". This is partly in response to the controversy resulting from the Charity Commission for England and Wales' recent assessment of five independent charitable schools which has prompted an application for judicial review by the Independent Schools Council. The assessment found that two of the independent schools were not being administered for public benefit. The two schools plan to provide new or additional bursaries to be financed by fundraising and will also rely on the educational benefits they will provide to the local community to meet the requirements of the Charity Commission for England and Wales. The involvement of the Attorney General and the Independent Schools Council shows how controversial the meaning of public benefit can be and the potential difficulties for schools trying to pass the public benefit test. The result of the legal challenges may be that the Charity Commission for England and Wales' guidance on public benefit may need to be rewritten.

Also, four independent schools in Scotland were assessed as not meeting the Scottish public benefit test when they were found not to provide public benefit following a rolling review by The Office of the Scottish Charity Regulator. The four schools were required to produce a plan showing how each school proposed to increase facilitated access arrangements for the benefit provided. The schools were given a number of years to implement these plans to ensure that the schools meet the public benefit requirements of the charity test under Scottish law.

Schools in Northern Ireland should review how they demonstrate and provide public benefit and may wish to consider steps to expand some activities for the benefit of the public which can include bursaries, attempts to engage with the local and wider community, sharing of facilities, cooperation with other local schools, sharing of teaching material, joint use of teaching resources and other activities which should be noted and recorded.

Until further information is provided on how the public benefit test will operate in Northern Ireland schools should make themselves aware of the Court's decision on the Charity Commission for England and Wales' guidance and how the Charity Commission for England and Wales and The Office of the Scottish Charity Regulator determine whether schools in Great Britain are charities.

LORETO GRAMMAR SCHOOL

In 2004, The Loreto Grammar School, Omagh, was promised a new build on its existing site with a £14.6m investment through a public private partnership. In the years following this decision, plans for a shared education campus on the site of the old Lisanelly military barracks emerged. Over the summer, the Education Department announced that eight schools, including Loreto Grammar, had been rejected for new building plans as they did not comply with the Department's requirements. Minister Caitriona Ruane subsequently stated her favour for the shared education campus in Omagh.

On 21 September 2010, Loreto Grammar School won High Court permission to challenge the decision by the Department not to pay for a new school. Mr Justice Treacy granted leave to seek judicial review with a full hearing expected on 9 November 2010.

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CHIEF INSPECTOR'S REPORT 2008-2010

The Chief Inspector of the Education and Training Inspectorate, Stanley Goudie, has launched his biennial report, for the period between 2008-2010.

Mr Goudie's findings outline that the local education system has improved in many areas and he praised initiatives that are helping to emphasise and raise the standards of education, such as the Every School a Good School initiative introduced last year by the Department of Education. The Chief Inspector also praised the success of improvements in the teaching and learning strategies used in the majority of schools and the effective implementation of pastoral care systems. In the further education sector, colleges were recognised for dealing with the increase in enrolments and improving the quality of provision across the skills areas. The quality of the Training for Success and Apprenticeships NI programmes were reported as satisfactory or better in over three-quarters of those inspected.

However, there are some areas outlined in the report that are a cause for concern. Mr Goudie highlighted the continuing problem of the quality of leadership in around 25% of the schools inspected. He further stated that there is a 'mixed performance' in relation to the quality of provision for those with Special Educational Needs (SEN) and that the needs of the growing number of children with SEN must be met effectively.

The report has been welcomed by the Education Minister Catriona Ruane who acknowledged the improvements and reiterated her commitment to further advances in standards.

TEACHER ON TRIAL

A principal has been found guilty of breaching the Health and Safety at Work Act by failing to take reasonable care for the safety of his students.

The jury at Liverpool Crown Court heard that Mr John Summerfield, the school head of Sacred Heart Catholic College, Crosby, Merseyside, took pupils onto the flat roof of the school during an exam party. The area was normally out of bounds but Mr Summerfield had taken the pupils on to the roof to show them renovations to the building.

Joel Murray, who was 18 at the time of the incident, fell through a skylight on the roof on to the corridor below. The fall resulted in multiple injuries to Mr Murray including a fractured skull, broken ribs, a perforated eardrum and permanent damage to his eye.

During the trial the prosecution argued that as Mr Summerfield was one of few who held a key for the locked door leading to the roof and that opening this door showed a lack of "reasonable care". The court also heard that some students may have been "slightly inebriated" as a small amount of alcohol had been consumed. Although Mr Summerfield had warned the pupils to stay away from the skylight, the jury agreed with the prosecution; that Mr Summerfield should never have taken the pupils up onto the roof in the first instance.

Judge Nigel Gilmour QC stated that, "He was doing what he thought would increase the enjoyment of the evening for some of the pupils and, in doing that, he didn't really think about the safety aspects of taking them on to the roof."

Mr Summerfield will be sentenced at Liverpool Crown Court on 29th October.

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