



Education Law

NEWS AND ADVICE FROM BIRKETT LONG

Data protection in schools



Given the sensitivity of the information that schools and other education institutions hold about pupils and staff, the issue of personal information can be particularly tricky.

Who would have thought ten years ago that we would be considering how biometric systems are used in schools to get food from the school canteen or to take books out of the library!

Schools have to be clear and transparent about how personal information is held and used, and therefore need a "fair processing notice", sometimes called a "privacy notice". This should be given to parents and pupils before, or as soon as, you obtain their personal information. These days, we usually see it on the school website, but you could also think about putting

it in a school diary, on a school or staff notice board, in an induction pack for staff, in a school prospectus or in an information pack. The Department for Education has published suggested wording that can be tailored for your school, but do make sure that it covers all situations that it needs to, taking advice when needed. Does it cover permission for event photography? Do you have CCTV? Do you ever publish exam results in the media?

Schools must also notify the Information Commissioner's Office (ICO) that they are "data controllers",

and are processing personal data, but the ICO is still finding that schools are not notifying them of all of the purposes for which they are processing personal information. This can be resolved through updating the ICO, for example, to let them know that you now have CCTV.

There are plenty of myths regarding data protection, such as parents and teachers can never take photographs at the Christmas play. Not true - although there are some sensible steps to take first to make sure you are compliant and no one is put at risk, which is exactly what the Data Protection Act and the Protection of Freedoms Act were really meant to be about.



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Ofsted - new rules for schools

At a conference to headteachers, early years professionals and college principals back in June, Sir Michael Wilshaw announced that as of September 2015, a new inspection framework for Ofsted inspectors would take effect. It is called the Common Inspection Framework (or CIF), and will be used during all Ofsted inspections going forward for all of the education services which Ofsted inspects, including non-association independent schools.

What does this mean for schools now it is here?

Firstly, the areas that Ofsted will look at are:

- Overall effectiveness
- The quality of teaching, learning and assessment
- The effectiveness of leadership and management (the curriculum will be inspected as part of this area)
- Personal development, behaviour and welfare
- Outcomes for children and learners
- The effectiveness of early years and sixth form provision (where it applies)

So far, nothing particularly groundbreaking – these are all areas that we would expect (and hope) that inspectors would look at.

However, if your school has been judged ‘good’ at its last inspection, the next inspection could be quite different for you. Instead of the current system, “short” inspections will take place around every three years.

Short inspections will last only for one day and be led by one or two inspectors (bigger teams will be used for further education colleges). Individual graded judgements will not be given, and no changes in grade for “overall effectiveness” will be made. The idea is that Ofsted’s starting point will be that you are still “good”, with a focus on making sure that your standards have been maintained.

At the conference, Sir Wilshaw praised excellent leaders in education, and felt that there should be an atmosphere “in which honest, challenging, professional dialogue can take place” – he does not want leaders to have anything to fear from being realistic and open with inspectors, hoping that they are able to identify “any weaknesses in their provision – as well as strengths – based on their own evaluation”. In these inspections, Ofsted will be checking that leaders have identified key areas of concern and that they have the capacity, ability and a plan to deal with them.



Update

Coasting schools

Our last newsletter discussed the conversion of “coasting schools” into academies. We can now update this with a definition of what “coasting” means. Schools will be eligible for intervention if they fall below the following levels for three years:

- Primary schools with fewer than 85% of children achieving an “acceptable secondary-ready standard” in reading, writing and maths, and that have seen “insufficient” pupil progress
- Secondary schools with fewer than 60% of students achieving five “good” GCSEs or where a below

average proportion of pupils made “acceptable” progress. From 2016, the coasting level for secondary schools will be based on Progress 8 (school governors - if you do not know what Progress 8 is yet, you must find out!)

Schools falling within these categories will be offered support and be required to produce an improvement plan. If it is considered that a school will not be able to do this, the school will be converted into an academy.

A full inspection may be triggered if inspectors believe that a change of grade may be necessary, or where they feel that more evidence is necessary to confirm the main judgement. In that case, the visit will convert to a full inspection and continue, usually for an additional day.

Outstanding schools (other than special schools, PRUs and maintained nursery schools) will continue to be exempt from the usual routine of inspections, but Ofsted can inspect if it is noted that performance has declined or where other concerns are raised.

If a copy of the new separate inspection handbook which applies to your establishment has not made its way to your desk yet, you can find copies on Gov.uk or you can contact Emily Brown, our Head of Education.

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redefining lawyers

Whether he's heading out to a client meeting, helping the kids with a tricky piece of homework or practising the saxophone, education team member Martin knows how to get the most from his day.

Even though he may be one of the busiest people you know, he simply refuses to cut corners when it comes to looking after his clients.

Martin is an employment law expert and can help with all kinds of legal issues that may arise in the education sector.

It's not just about knowing the law.

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in brief

Did you get legal advice on your building contracts?

The last few weeks of the school summer holidays would have been a busy time for schools as construction works are finalised before the new school year starts. Building work within the education sector has continued thanks to the Priority Schools' Building Programme. The original scheme saw 260 schools being provided with £4 billion worth of financing for building works; the second phase will see a further 277 schools receiving £6 billion.

However, how often do the people at schools responsible for spending this money - people such as head teachers, governors and facility managers - take legal advice on the contracts that govern those works? More often, legal advice is received from the architect who designed the works and not from a lawyer.

An architect is usually the first point of call for a project as they are involved from the initial point of design. That, of course, is one of the exciting parts of a construction project. However, what form of contract do you use for your contract with the architect? The architect will usually suggest using the RIBA Form of Appointment but this is often suggested simply as a footnote in a fee proposal letter.

The RIBA Form of Appointment is generally seen in the construction industry as being unduly favourable to the professional consultant as most of the risk is placed on the client. The duties for carrying out the work are not particularly high or burdensome; the client must pay quickly and has a limited right to withhold payment, and architects can terminate at will by giving reasonable notice. In addition, there will be a cap on liability. These and other issues can be unfair to a client and it may be better to use a different form of contract - one which many architects and other professional consultants are happy to accept.

There is then the question over the form of contract that governs the building work. There are many standard forms, such as JCT and NEC. These are not perfect and have not been drawn up for the specific circumstances of the works which are being carried out. Although the standard forms of contract can be appropriate as a starting point, it is often best to include amendments that give the client more protection and which can tailor the contract to the specific needs of the parties.

If you would like to discuss any issues relating to existing or proposed building contracts, please contact Peter Allen.



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The Essex Teaching Awards 2016

Don't forget that the nominations are now open for the Essex Teaching Awards 2016. Anyone can nominate staff working or volunteering within educational establishments in the Essex local authority area. You can read all the terms and conditions on the Essex County Council website. Entries must be submitted by 5pm on 13 November 2015. Good luck!