Education Law

NEWS AND ADVICE FROM BIRKETT LONG

"Coasting" schools and academies

The education and adoption bill has been published, with Education Secretary, Nicky Morgan, saying that it will "sweep away bureaucratic and legal loopholes" that previously prevented schools from being improved.

The main provisions of the bill are:

- Rather than the current position, where the Secretary of State can issue an academy order to convert a school which has been rated inadequate by Ofsted into an academy but does not have to, now such schools will be subject to an academy order.
- Warning notices will be issued to coasting schools. At the moment there is no definition of what "coasting" means. This is to be defined in regulations after a consultation in the summer.
- If a school has been rated inadequate by Ofsted (and is therefore subject to an academy order), there will be no requirement to consult on the conversion to academy status. The governing body and local authority must take all reasonable steps to facilitate the conversion and there will be the power for the Secretary of State to direct a governing body and/or a local authority to take specific actions to facilitate the conversion process.

There is clearly a renewed push for schools to convert to academies, from a Government whose stance on education became one of their flagship policies during the coalition. The bill has not yet been passed, but it seems unlikely at present to come up against much resistance, meaning that many schools are going to be affected by this. It may also mean that many schools will also reconsider whether now is the time to convert.

Please get in touch if you would like one of our education experts to speak to your governing body about the academy conversion process and what conversion would mean in practice for your school.

Emily Brown
01206 217317
emily.brown@birkettlong.co.uk

Skills audits

For anyone involved in a school governing body, reviews of it and its future should be undertaken regularly. The Department for Education has released guidance for governing bodies regarding their constitution, including what needs to be considered and how they should be considered. It is statutory guidance so governing bodies and local authorities must have regard to it.

Examples of some of the points that must be considered include the following:

- Governing bodies should be no bigger than necessary to secure the range of skills they need. Smaller governing bodies are often likely to be more cohesive and dynamic.
- A key consideration in the appointment and election of all new governors should be the skills and experience that the governing body needs to be effective.
- Governing bodies should use a skills audit to identify any specific gaps that need to be filled in the skills, knowledge and experience of existing governors.
- Governing bodies should publish on their websites information about their members and their register of interests.
- Governing more than one school can generate a more strategic perspective and more robust accountability through the ability to compare and contrast across those schools.
- Governing bodies should review their effectiveness regularly, including the extent to which their size and structure is fit for purpose and whether their members have the necessary skills.

Please contact our education expert, Emily Brown, if you would like a free copy of a skills audit and matrix for your governing body to use, or if you would like a copy of the statutory guidance from the Department for Education.

Bare essentials

The cost of staff on strike

How do you calculate how much pay should be withheld from staff who go on strike? Three teachers, who had been on strike for a day, claimed that the college that they worked for had withheld more pay than it was entitled to in respect of that day.

The teachers argued that the amount that should have been withheld for a day's pay should have been 1/365th of their annual salary, simply dividing their salary by the number of days in a year. The college, however, had based its calculation on a 5 day working week, multiplying it by the 52 weeks in a year, making the sum to withhold 1/260th of their annual salary, a larger sum than if they had used the 1/365th calculation.

This case went to the Court of Appeal, which has confirmed that the college was correct; they had deducted the correct sum.

Emily Brown
01206 217317
emily.brown@birkettlong.co.uk

The do's and don'ts of Ofsted inspections

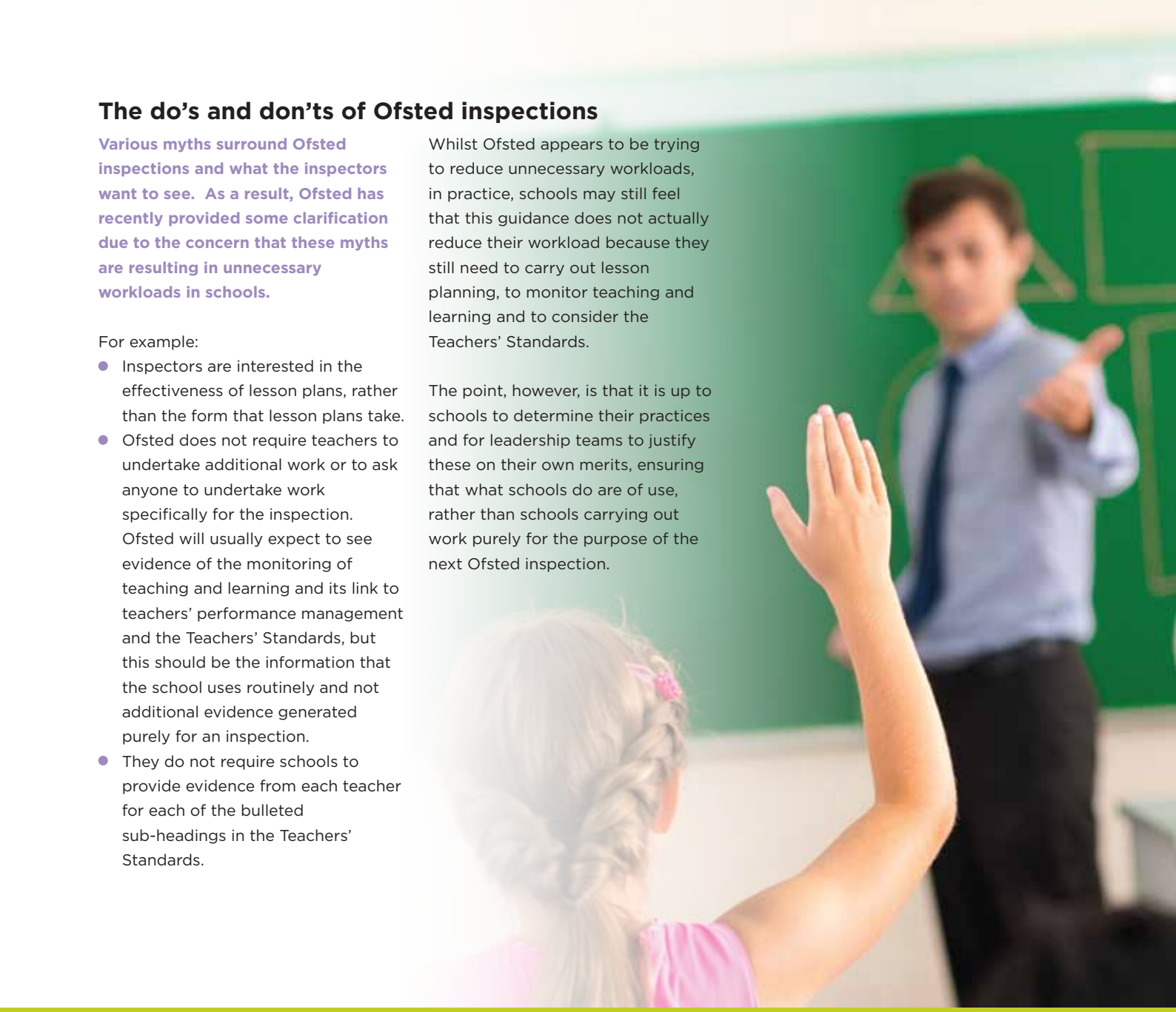
Various myths surround Ofsted inspections and what the inspectors want to see. As a result, Ofsted has recently provided some clarification due to the concern that these myths are resulting in unnecessary workloads in schools.

For example:

- Inspectors are interested in the effectiveness of lesson plans, rather than the form that lesson plans take.
- Ofsted does not require teachers to undertake additional work or to ask anyone to undertake work specifically for the inspection. Ofsted will usually expect to see evidence of the monitoring of teaching and learning and its link to teachers' performance management and the Teachers' Standards, but this should be the information that the school uses routinely and not additional evidence generated purely for an inspection.
- They do not require schools to provide evidence from each teacher for each of the bulleted sub-headings in the Teachers' Standards.

Whilst Ofsted appears to be trying to reduce unnecessary workloads, in practice, schools may still feel that this guidance does not actually reduce their workload because they still need to carry out lesson planning, to monitor teaching and learning and to consider the Teachers' Standards.

The point, however, is that it is up to schools to determine their practices and for leadership teams to justify these on their own merits, ensuring that what schools do are of use, rather than schools carrying out work purely for the purpose of the next Ofsted inspection.



Meet the team

Amanda Timcke

Amanda is a specialist commercial property solicitor with particular experience of secured lending arrangements, corporate support on acquisitions and disposals, and a variety of leasehold and freehold work for SMEs, quasi-public bodies, investors, pension fund providers, local government and developers.

She has a particular interest in the law relating to rights of way, towns and village greens and the education sector, having been appointed by the local authority as a primary school governor. She completed a detailed analysis of access rights over village greens as part of her Masters in Law qualification with Anglia Ruskin University.

Prior to joining Birkett Long, Amanda spent over a decade in private practice and a period working in the public sector.

She joined Birkett Long in November 2013 as a solicitor in the commercial real estate team, before becoming an associate in January 2015.

Amanda Timcke
01206 217310
amanda.timcke@birkettlong.co.uk

in brief

Allegations of misconduct

Allegations made against a member of staff in a school, college or university can be very damaging to everyone involved. These are not easy situations to deal with, but particularly so if the individual seems to have deliberately not told you about those allegations.

In those circumstances there might be the temptation to dismiss that individual, and with the issues that have emerged in recent years regarding safeguarding, you would not necessarily be blamed for a knee-jerk reaction because you do not want to take a chance on the allegations being true or not. However, management must be aware that accusations of an incident taking place, or even the hiding of them by the individual concerned, may well not be enough of a reason to dismiss that member of staff.

If you have an express term in a contract or a clear statement in a policy that requires staff to tell you about any allegations made about them, then you may be within your rights to consider a dismissal.

However, a recent employment law case has confirmed that if there is not such an express term in the contract of employment or it is not set out clearly in a policy, a tribunal will not help the employer by implying into the contract a term that the employee should have informed their employer about the allegations. As a result, in those circumstances any dismissal of the member of staff on the basis that they hid the allegations is likely to be held to be an unfair dismissal.

In the case in question, an academy concluded that a member of staff had deliberately decided not to inform them that he was working at another college outside of his hours at the academy. In addition, he had also not informed the academy about an allegation of sexual misconduct which had arisen at the college.

The academy felt that hiding his other job and the allegations amounted to acts of gross misconduct and so he was dismissed. However, the teacher then went on to succeed in a claim of unfair dismissal. There had been no express term in his contract which required him to disclose that information, nor had there been a clear statement in a policy.

Whilst in some circumstances it can be implied that an employee is under a duty to disclose their own misconduct, there is no law that an employee must disclose to their employer allegations of wrongdoing.

This case reminds us that contracts and policies must be prepared carefully so that a requirement for staff to disclose to you any allegations of misconduct, as well as whether they are working elsewhere, is made clear. It also reminds us that before dismissing for misconduct, management should ensure that they have read through their own policies to check the reasons for dismissal stated therein.

Your action plan:

- Review all policies and contracts to check what they say about this type of situation.
- Consider whether they should and can be changed.
- Keep this case in mind when potential disciplinary matters arise and take advice about which you are confident.

BIRKETT LONG LLP

PHOENIX HOUSE
CHRISTOPHER MARTIN ROAD
BASILDON SS14 3EZ
T 01268 244144

ESSEX HOUSE, 42 CROUCH STREET
COLCHESTER CO3 3HH
T 01206 217300

NUMBER ONE, LEGG STREET
CHELMSFORD CM1 1JS
T 01245 453800

E EDUCATIONLAW@BIRKETTLONG.CO.UK
WWW.BIRKETTLONG.CO.UK

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