



Education Law

NEWS AND ADVICE FROM BIRKETT LONG

**£14.9 million
compensation**

Paid out to teachers last year

**Freedom of
information requests**

How exemptions may be used

**Is your school
up-to-date with
incident reporting?**

You can now report online

Are you Brexit ready?

You need to start planning now

Personal injury and discrimination in education

The National Association of Schoolmasters Union of Women Teachers (“NASUWT”) has released the latest figures in respect of compensation payments for teachers. NASUWT experienced a significant increase in cases and last year, a staggering £14.9 million was paid to teachers who faced workplace injuries and discrimination at work.

I set out some of these cases below, together with the compensation paid.

- A teacher who suffered from multiple disabilities was awarded the sum of £45,000 after being dismissed for querying the failure to put in reasonable adjustments at his place of work. Amongst other necessary items, the teacher requested that the disabled bays were kept free for those with disabilities, the removal of equipment in the classroom that was in his way, the installation of an interactive whiteboard and that he was allowed to sit on a stool.

Despite having knowledge of his disability, the school dismissed the teacher through their disciplinary procedure.

- A different teacher was awarded £10,000 after students had racially abused her over a dozen times during the course of 18 months.

Her employer did not take the correct action on dealing with the students’ behaviour and even failed to respond to her on some occasions. She ultimately left the school due to the poor response from her employer.

- Another teacher was awarded £9,611 from the Criminal Injuries Compensation Authority after she was physically attacked by a pupil who had a history of demonstrating aggressive behaviour. The teacher suffered lower back injuries and bruising. She was also left with PTSD following the event.

NASUWT commented that they have seen an increase in cases relating to unlawful discrimination by employers towards their staff. This goes to show that many schools need to ensure their policies are up to date and in line with current employment law legislation.

The fact of the matter is that more and more teachers are now able to claim damages in the workplace. Employers need to be fully aware of their responsibilities. They should take great care in dealing with matters such as those listed above. A failure to do so can have serious consequences including the issuance of court proceedings.

Birkett Long can assist schools in these types of discrimination matters in the workplace. We have a dedicated education team consisting of solicitors who specialise in business, civil

A number of educational institutions that we act for have received freedom of information requests. If a response to the request must be given, the information provided by the educational institution will be published and anyone can gain access to that information.

Freedom of information requests

Publicly available information can be prejudicial in certain respects, for example publishing certain information could restrict debate on a particularly important issue for an institution. Due

to this, our clients often look at the exemptions contained in the Freedom of Information Act in order to avoid publishing information.

Serious incident reporting



litigation, personal injury and employment law.

Should you require any legal advice, I would be happy to have an initial, no-obligation chat on the telephone to discuss your options.

David Feakins

01245 453870

david.feakins@birkettlong.co.uk



All charities with an income over £25,000 must report serious incidents to the Charity Commission. Such a threshold is likely to contain all charitable independent schools.

A serious incident is defined by the Charity Commission as any adverse event. This is likely to include any adverse set of circumstances even if they cannot be pinned to any particular event. The event or circumstance need not be actual or confirmed, merely an allegation is enough.

Events or circumstances which trigger reporting are those which result in or risk significant:-

- Harm to the school's beneficiaries, staff, volunteers or others who come into contact with the school (this would obviously include pupils);

- Loss of school money or assets;
- Damage to school property; or
- Harm to the school's work or reputation.

The Commission recently noted that educational charities may be under-reporting serious incidents relating to safeguarding. It is important that your school is up to date with its reporting of serious incidents and that its processes and procedures for making reports is up to date and effective.

The Charity Commission now has an online form which is the only accepted method of reporting an incident. The form must be used to give updates to any reports or submissions.

Thomas Emmett

01245 453847

thomas.emmett@birkettlong.co.uk

One particular exemption an educational institution may be able to rely on is contained in section 36 of the Freedom of Information Act, which states that a response to a request need not be provided where releasing information would cause "prejudice to the effective conduct of public affairs". It can be applied where disclosure of the information "would or would be likely to inhibit the free and frank provision of advice or ... exchange of views for the purposes of deliberation".

A straightforward example to illustrate where this exemption could apply is in the context of a maintained school and its governing body. If a governing body were to have a meeting to discuss if the school should convert to an academy, it is likely to be the case that minutes are made of the meeting upon which a

freedom of information request could be used so that a member of the public and the wider world could see them. However, it could certainly be argued for the purposes of the exemption detailed above that publishing such minutes would prevent or inhibit free and frank discussion, as the governing body may be concerned that what they say in any further meeting would become public.

In order to rely on the exemption, a qualified person for an educational institution must give their reasonable opinion as to why the exemption should be applied. For the purpose of a maintained school, the qualified person is the Chair of the governing body and, for academies, it is the Chair of the Board of Directors or the proprietor of the academy.

If you would like to discuss freedom of information requests or the exemptions under the Freedom of Information Act with an education law solicitor, please do not hesitate to contact me.



Thomas Emmett

01245 453847

thomas.emmett@birkettlong.co.uk



Brexit and the education sector

As of January 2019, there were nearly 147,000 EU students studying a higher education qualification in the UK, contributing £5.1 billion to the UK economy and supporting 20,000 jobs.



BIRKETT LONG LLP

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

1 AMPHORA PLACE
SHEEPEN ROAD
COLCHESTER CO3 3WG
T 01206 217300

FAVIELL HOUSE
1 COVAL WELLS
CHELMSFORD CM1 1WZ
T 01245 453800

E EDUCATIONLAW@BIRKETTLONG.CO.UK
WWW.BIRKETTLONG.CO.UK
TWITTER: @BIRKETTLONG
INSTAGRAM: @BIRKETT_LONG

Birkett Long LLP is authorised and regulated by the Solicitors Regulation Authority (Number: 488404)

Whilst every care and attention has been taken to ensure the accuracy of this publication, the information is intended for general guidance only. Reference should be made to the appropriate adviser on any specific matters.

© Birkett Long LLP 2019 We hope you find this newsletter of interest, but if you would prefer not to receive it or wish to receive a copy via email, please contact the Business Development and Marketing Team on 01206 217336.

Reference: NEWS/EDUCATION/AUTUMN2019

Research has revealed that 57% of Britain's schools, colleges and universities do not have a plan in place to deal with the impact of the UK leaving the European Union.

Independent schools in the UK are those likely to be most affected. The Independent Schools Council Census showed that 10% of students in the UK's independent schools are from overseas, compared to just 6% across the sector.

Some universities are giving guarantees to EU students who enrol prior to the UK leaving the EU. Brexit will not affect their status with regards to tuition fees. However, such guarantees may not extend to an unforeseeable change in visa regulations.

There is, of course, the impact on the teaching staff. One in ten of those that

have been surveyed confirmed that EU national staff were already planning to leave the UK, following Brexit.

57% of British schools and colleges currently employ EU nationals. Depending on the final agreement with the EU, there could be many establishments in the sector with recruitment issues.

For those educational institutions who do not yet have a plan in place, there are still plenty of opportunities to do so. Please contact me to find out how we can help.

Emma Wraight

01268 244149

emma.wraight@birkettlong.co.uk