



EDUCATION SECTOR ALERT



The School-College Review

The Government's intention is to increase the participation of under-16's in college education. In this Client Alert we consider some of the risks and legal ramifications of this, from the college's perspective. We have not considered here the equally important question of funding. However it will be clear that increased risks and responsibilities require to be factored into the ongoing discussions about funding.

One clear risk for colleges is the increased duty of care that results from the presence of under-16's in the college environment. Colleges are traditionally adult environments and, under the Government's social inclusion policy, they are increasingly open to all sections of the population. Colleges will therefore require to think through the service provision to under-16's, in particular, the risk factors in relation to physical or other harm that could occur to under-16's while they are under the care and control of the college.

The duty of care is based on common law rather than legislation, and is not clear-cut. What the duty of care requires depends on the particular facts and circumstances of every case. It will, however, require the college to exercise a higher degree of vigilance in relation to under-16's, than the college requires to exercise in relation to the general population of adult students.

It is established law that a college has a contract with its adult students. By means of this "contract", the college can set limits on its duties and responsibilities, to some extent at least. However, although this point may be argued in the courts at some point in the future, it appears unlikely that there is a contract between the college and a child under 16, and accordingly no such limits can be set by agreement with a child.

The duty of care and the absence of a contract with the child mean that the college may require to establish a different care and service profile for under-16's.

Equally importantly, it will be necessary to establish where the liability lies in the event that the child suffers harm while on the college premises, or if there is a perception of inadequate services by the college. If an under-16 student has a complaint, the parent could lawfully make a claim against the college. The college may in some cases feel justified in passing the claim to the relevant Local Education Authority ("LEA"). Conversely, if the parent claims against the LEA, the LEA may expect in some cases to have some recourse against the college.

What is clear is that consideration must be given, sooner rather than later, to the question of where responsibility and liability rests as between the college and the LES, as well as the parents, and the schools if relevant. This may be best achieved under a Service Level Agreement between the college and the LEA. The colleges may wish to resist any moves that encourage the LEA's to attempt to take back some control over the provision of college services to under-16's. It will clearly be of concern to colleges to see the separation effected in 1992 being gradually eroded, with power and control reverting to the LEA's.

Clearly these and other issues are relevant to the ongoing school-college review being run by the Scottish Executive, which is due to end around 25 February. The resultant Strategy will be very important for the future shape of service provision in colleges.

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Want More Information?

Should you wish to discuss further any of the issues raised by this Alert, please contact any member of the Thorntons Education Law Unit.

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