



Freeth  
Cartwright  
LLP

# Further Education Review

## Welcome to the first edition of Freeth Cartwright's Further Education Review

*From our work within this sector we have noted the challenges that this sector is facing and look forward to working with you to help FE organisations be 'fit for the future'.*

As always, we welcome any comments, queries or a general discussion in terms of issues you are facing and how we might be able to provide assistance.

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## FE Sector facing the challenges

*Freeth Cartwright with Accountants Bentley Jennison and Aspire, Achieve Advance LLP recently presented a series of seminars entitled 'Being Entrepreneurial in a Public Sector Environment and Taking Employer Engagement Forward'. Both these events were introduced by Steve Broomhead, Chief Executive of the North West Development Agency and a College Governor himself. They were attended by over 40 key decision-makers from the FE sector.*

The events sought to identify opportunities for the sector to meet these challenges and provided an outline guide to development opportunities.

These are incredibly challenging times for FE Colleges.  
The challenges include:

- *'The Demographic Time-Bomb'. For example my own County is facing a reduction in the number of 16 year olds by 22% over the next 10 years*
- *Government money being spent on Building Schools for the Future and Academies*
- *Forthcoming abolition of the LSC*
- *The new Diploma courses being operated by schools individually or as "federations"*
- *Site disposals in a falling market*
- *Potential reduction of capital allocations*
- *Change in the compulsory school (or college) leaving age*
- *Recent mergers and the creation of "super-colleges"*



## So how can Colleges face these challenges and maintain relevance?

A number of key suggestions for strategies raised at the events were as follows:

- *Make your marketing world-class. For example if you were an employer looking for information on workforce training, how easy would you find your website to navigate? Could you find out what was available without having to fill out a lengthy enquiry form?*
- *How good are your people at going out and speaking the language of business? Do you have an employer engagement expert who has spent time out of the education environment?*
- *Do you know who the key players are in your market? Could you gear-up to service their requirements on a local, regional or national basis?*
- *Do you know your specialities? It might be better to have a key speciality and sell it across the UK than be mediocre in a range of subjects*
- *Do you know where future demand is going? For example over the next few years 750,000 HGV drivers across the UK will be requiring a new qualification. Carers of older people and those with disabilities are obliged to have an NVQ level 2 qualification*
- *Is there scope for forming joint ventures with public or private sector bodies to develop a market? If so how should they be organised and what consents are required? What lessons can be learned from the Public-Private Partnerships operating within the NHS and Local Government?*
- *Do you need to form a separate company or other corporate entity?*
- *How can you develop new ventures whilst maintaining proper and effective corporate governance?*
- *How can you incentivise personnel to develop your business?*
- *Are your premises fit for purpose?*
- *Where you have developed "intellectual property" - for example learning materials, are you protecting and seeking to exploit these?*
- *Are there private sector providers that would sell all or part of their business to you? If so how do you value that business, negotiate the best terms and keep the deal "on-line"?*

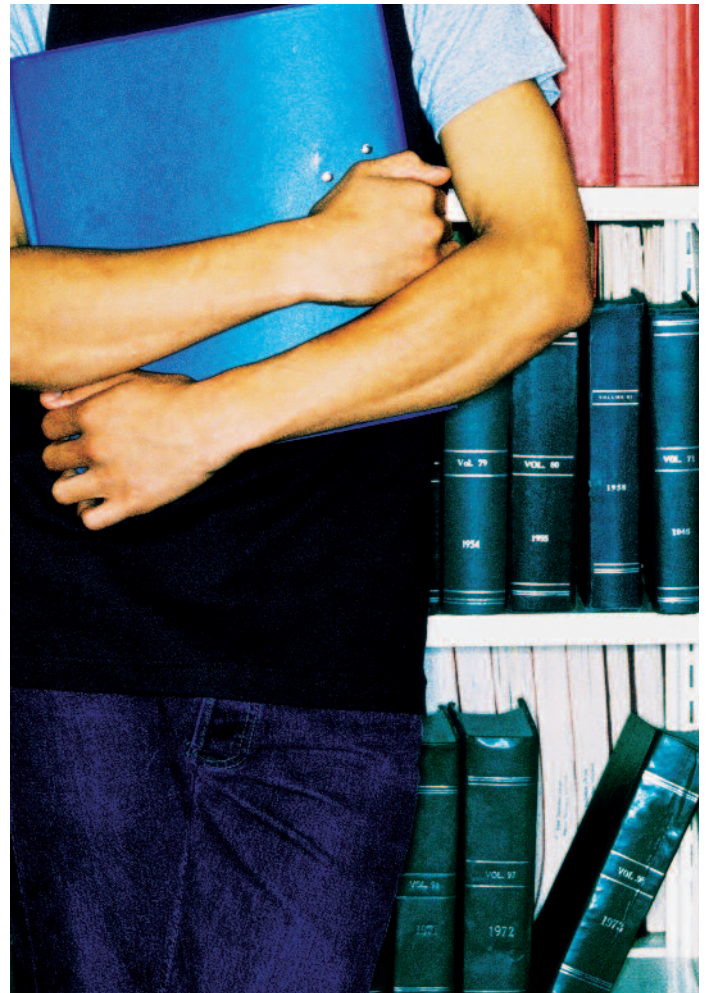
Our event was only a short outline of the potential opportunities and the presenters look forward to discussing these opportunities with FE Colleges.

For more information please contact

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## Age discrimination: traps for the unwary

*In a time where landmark employment law rulings seem to hit the papers every other day, it is unsurprising that the impact of the Age Discrimination Regulations, now two years old, have created thorny issues for FE Colleges in the way they recruit, promote and dismiss their staff.*

A key issue which affects all these aspects is length of experience. Experience is often intrinsically linked with age, but colleges need to determine how to recruit and retain the most suitable staff for their vacancies without falling foul of the age discrimination laws.

### Job Advertisements

Whilst most employers have realised that advertisements calling for "young" or "mature" individuals are no longer acceptable, many recruiters still specify a minimum (or maximum) number of years' experience for candidates to be suitable for the role.

Although no age category is specified, referring to a particular number of years of experience could still effectively exclude younger or older candidates, who would either have too few or too many years' experience for the role.

The recent case of *Rainbow v Milton Keynes Council* is an example of an employer being caught out by a discriminatory job advert. Mrs Rainbow, a 61 year old applicant with over 30 years' experience in teaching, did not get shortlisted for a teaching position which was advertised as suiting someone "in the first five years of their career".

The tribunal determined that there had been indirect discrimination against Mrs Rainbow and that if costs were to be used as justification then the employer would have to show that it was "more or less compelled" to take the discriminatory action to lower its costs.

#### Action points:

- *Avoid any reference to a specific number of years' experience when recruiting*
- *A candidate with vastly greater experience than had been envisaged for the role should not be excluded from interview on the basis of being 'over-qualified'.*

### Redundancy Procedures

When deciding selection criteria for redundancies, many employers have avoided using length of service as a selection criterion, fearing that this would be considered in breach of the age discrimination legislation, a landmark ruling last month established that this was not necessarily the case. The High Court, in the case of *Rolls Royce v UNITE* agreed that giving extra points for length of service was justified, even if it intrinsically favoured older workers, as older workers may find it more difficult to find new work after being made redundant. However, the High Court indicated it would not have been acceptable if redundancy selections were determined solely by length of service.



### Promotions and Retirement

The thorny issues of promotions and retirement are often interlinked. Some colleges aim to retire all academic staff at the age of 65. However, such a strict retirement policy may create tensions among staff. The Open University's policy recently came under the spotlight when it emerged that new, strict criteria had been introduced to determine whether associate lecturers would be permitted to continue working past age 65. Lecturers could only be kept on if they fulfilled a critical business need, worked in an area of skill shortage or needed to complete time-limited development work. However, many academic staff complained that such a policy was depriving students of the quality of teaching and teaching experience to be gained from long-serving teaching staff.

### Statutory Retirement Procedure

*The employer is to inform the employee, between 12 months and 6 months before the expected date of retirement, of their statutory right to request to work beyond the normal age of retirement.*

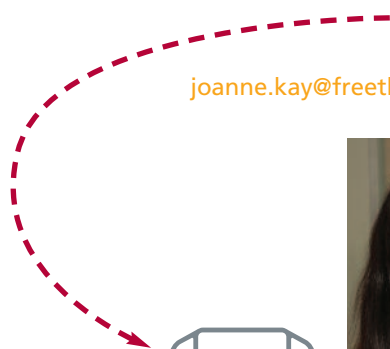
*If an employee makes such a request, the employer is required to consider the request. However, there is no statutory obligation to consider the request fairly or reasonably, or to give employees any reason as to why their request was refused.*

*This means there is nothing, strictly speaking, to prevent an employer setting tight retirement criteria which most employees are unable to meet.*

In all issues of recruitment, retention and dismissal of staff, the priority for most colleges will be retaining the best quality staff and maintaining staff morale. However, colleges will need to tread carefully through the legal landmines to ensure they achieve these goals without finding themselves at the wrong end of an Employment Tribunal claim.

For more information on Age Discrimination or HR Issues please contact:

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# Why should FE bodies take any note of the Charities Act 2006?

## Aren't FE institutions exempt from the Act?

That's right. FE institutions previously fell outside the scope of the Charity Commission's monitoring and investigative powers because of the assumption that another government department or public authority adequately oversaw them.

FE bodies remain exempt but, with effect from this year a principal regulator will be given responsibility for monitoring compliance with Charity Law - the Learning and Skills Council (LSC).

The Charity Commission will be able to investigate an exempt charity at the request of the LSC but will be required to consult with the LSC before exercising any of its powers in relation to the exempt charity.

## But what's going to change?

Day-to-day, possibly not a lot. The high profile topic for debate in charity circles and the media has been the question of "public benefit" but we don't see this as a real issue for FE Colleges because:

- *the FE sector is highly regulated;*
- *the public benefit of your work is so self-evident; and*
- *there are already in place government-set targets.*

But, in a keenly-contested marketplace Governors should always be looking for that competitive "edge". The LSC will require charity trustees to comply with their legal obligations in exercising control and management of the charity and, in the case of an FE College, the governors are the charity trustees. So it will be even more important for governors to be fully aware of their duties under charity law. Why not see this as an opportunity for your College rather than as yet another layer of compliance to deal with?

## Go on... a couple of pointers

A key theme of the Act is to devolve more administrative powers away from the Charity Commission to those who are responsible for a charity's general control and management, here the Governors. So, for example, there is greater flexibility to change a charity's constitution, to pay trustees for their services (but not when just acting as trustees / governors) and provide indemnity insurance.

The creation earlier last year of the Charity Tribunal may present FC Colleges with a creative opportunity to influence the agenda. It gives charities and other affected parties the chance to challenge Charity Commission decisions in a cost-effective way. So let's say a comedy festival sought charitable status because it was "promoting arts & culture" (one of the new categories of charitable purpose) but this was refused. An FE College which ran tuition courses on comedy writing might have something to say about that in support of the festival and could give evidence in the Charity Tribunal in its support- and gather the plaudits as a result. Seriously!

If you ever receive legacies or might do so in the future and you merge with another FE College consider, as a post-completion step, whether you can register the merger with the Charity Commission. It doesn't cost anything and may mean you receive an unexpected windfall.

## What should we do next?

No-one is saying that the implications will be dramatic for FE Colleges but they are worth monitoring. As a first step, why not have a look at the useful Charity Commission / Cabinet publication "Charities Act 2006: what trustees need to know" and think what that might mean for your College:

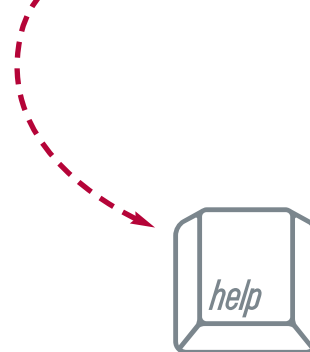
[http://www.cabinetoffice.gov.uk/~media/assets/www.cabinetoffice.gov.uk/third\\_sector/charities\\_act\\_interactive%20pdf.ashx](http://www.cabinetoffice.gov.uk/~media/assets/www.cabinetoffice.gov.uk/third_sector/charities_act_interactive%20pdf.ashx)

If you'd like a confidential, no obligation chat to see if you might be missing a trick, feel free to call:

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*Whilst every effort has been made to ensure the accuracy of this review, it does not provide complete coverage of the subjects referred to, and it is not a substitute for professional legal advice and should not be relied upon as such.*

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