

Morgan Cole



schools

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delivering high quality legal services from offices in wales and southern england



schools



dedicated, focused legal advice

Morgan Cole is a successful, enterprising law firm that provides an extensive range of legal and consultancy services to clients in both the public and private sectors.

We employ more than 400 people in offices throughout Wales and southern England. Amongst our staff we have more than 50 partners, assisted by in excess of 200 lawyers.

We are recognised as a leading provider of specialist legal services to the education sector, servicing clients in both the independent and the maintained sectors over a wide geographical area. Our education team is strong in experience and acutely alive to the particular issues that face education institutions today as they endeavour to deliver complex professional services from a finite resource base. Schools, colleges and universities are under scrutiny as never before from their many stakeholders, and stand in need of a first class legal service to support their activities.

We offer a flexible, responsive service that aims to provide quality and value by demonstrating our creativity and commercial acumen and by always providing pragmatic advice.

Morgan Cole has had extensive experience with legal issues affecting nursery, primary and secondary schools, and also the further and higher education sectors. On the basis of this experience, we would currently identify the following as key areas of importance:

- Constitutional and charity law issues.
- Issues surrounding admission of pupils and students, curricular requirements and contracts with parents and students.
- Teacher and staff employment contracts, including issues surrounding retirement ages and pension arrangements, together with developments in employment law and professional conduct.
- Health and safety aspects of educational activities and expeditions.
- The impact of the Human Rights Act and child law with particular reference to pastoral concerns, including bullying in schools.
- Property management and development issues including planning, construction, landlord and tenant affairs.
- The treatment of personal information, including data protection.
- Issues connected with intellectual property created by staff or students, including ownership, protection and exploitation.
- Procurement contracts, especially for IT hardware and services.



constitutional and charity law matters

Morgan Cole can provide specialist advice on constitutional issues for educational establishments, including governance and probity; we can help with the auditing of policies and can work with clients to ensure overall compliance with relevant legislation.

Examples of our recent activity in this area include the following:

- Advising a variety of educational charities, including the governing body of an independent school, on changes to their founding statutes and regulations, involving in one case the passing of secondary legislation.
- Advising on the implications of changes to charitable status, with particular reference to the 'public benefit test' and its impact on fee-charging charities such as independent schools.
- Advising on and drafting standard academic validation and franchising agreements.
- Advising on procedures for academic appeals, in terms of assessing fairness and openness, taking into account the requirements of the Human Rights Act.
- Advising on statutory and other duties of charity trustees (e.g. Companies Acts and charity legislation requirements; personal liability of charity trustees; compliance with Charity Act requirements in relation to disposal of land; accounting and reporting requirements).
- Advising on the latitude available to an independent school for utilising marginal capacity in its assets for purposes of income generation, including advising on trading activities and the introduction of an affinity card.
- Advising on and dealing with Charity Commission inquiries and investigations, including instructions on the consequences of such inquiries.
- Charity administration, including preparation of annual returns and reports.

admissions, curricular requirements and contracts

Schools and colleges in both the independent and maintained sectors have had to come to terms with a rapid growth in the number and variety of disputes surrounding the admission of pupils and students - issues connected with academic selection, sexual or ethnic discrimination and the rights of the disabled, among others. There has also been a marked growth in the number and range of disputes of a contractual nature, often involving problems over the payment of fees.

It can no longer be considered sufficient for an educational institution to offer its teaching on a 'take it or leave it' basis. Expectations about the content of courses, their suitability for the needs of the students applying to take them, the quality of the delivery, and the efficacy of the outcome, have all been transformed during recent years, with the result that schools, both collectively and individually, have become subject to altogether new forms of scrutiny, and possibly to claims for compensation if their pupils and/or their parents are dissatisfied with the results of their experiences.

Morgan Cole has been involved in many such cases, including the following:

- Legal challenges to schools concerning admissions policies and practices.
- Assisting numerous educational institutions in actions for recovery of fees. We have a dedicated debt recovery team with wide experience in this area.
- Acting for educational institutions in disputes relating to internal disciplinary inquiries and proceedings.
- Advising and acting in disputes between institutions and students or third parties concerning the unauthorised use and occupation of school and college premises.
- Duty of care owed to students including in particular the duty owed on field trips.
- Advising on the implications of recent legislation for the assessment and evaluation of special educational needs, and the curricular implications for the institutions concerned.
- Representing a secondary school in court proceedings brought by pupils for negligence, breach of contract, and misrepresentation for allegedly failing to deliver on curricular and on advertised course content.
- Advising on a claim brought by a student for lost opportunity/loss of future earnings as a result of an alleged failure to comply with examination board requirements.

schools



employment issues

The turbulent expansion and, sometimes, contraction of educational establishments has been a feature of recent years, and employment related issues have consequently become prominent in their importance.

Our employment, pensions and benefits group provides a comprehensive range of services in this area, acting for many schools and colleges. The team is recognised nationally by Chambers and Partners legal directory for its 'innovation' and its ability to provide 'professional advice, good service and commercial solutions to problems'. The team has extensive experience of providing effective advice and representation to the education sector.

The group is particularly active in providing advisory training facilities for clients. We run a series of training seminars aimed at our education clients to inform them on the key issues including parental leave, part-time and fixed-time work, regulations, discrimination updates, data protection and human rights, disciplinary and grievance procedures. We also undertake extensive contract audits to ensure school contracts and policies comply fully with legal requirements.

The Climbie and Bristol Inquiries together with the establishment of the Better Regulation Taskforce have re-enforced the need for public confidence in the regulation of professionals who care for children and young people. An understanding of the required professional conduct and the increasing role of regulatory bodies is essential, particularly in the area of professional competence.

Our team advises the regulatory bodies for teachers, social workers, nurses and midwives and can utilise that experience for our clients in the education sector.

Morgan Cole's activity in this field has included:

- Representing numerous educational institutions in disciplinary proceedings against academic staff.
- Acting for schools in discrimination proceedings brought by staff members, including representing them in the industrial tribunal.
- Advising schools on converting fixed-term contracts to indefinite appointments, and on the new requirements necessary to allow a request for flexible working.
- Administering the change of retirement age from 60 to 65 years.
- Advising an educational institution on a union dispute involving strike ballots and industrial action.
- Representing an educational institution in connection with whistle-blowing complaints under the Public Interests Disclosure Act 1998.
- Advising on implementing a retirement age policy with staff older than 60 years.
- Reviewing the Working Time Regulations in relation to holiday pay and entitlements for part-time employees.
- Advising on the interpretation of the Fixed Term Contract Regulations and the impact on staffing issues.



schools

health and safety

Health and safety considerations and associated risk management have risen to the fore in workplaces of every sort over the past few years. The strict obligations imposed by the Health and Safety at Work Act apply as much to schools as they do to commercial and industrial enterprises - perhaps even more so, given the special duty of care that rests on those responsible for young people who are potentially at risk.

Morgan Cole has a regulatory team which advises on all aspects of compliance in this field, and where accidents happen, helps to deal with the investigating authority. Our aim is always to keep the risks of prosecution and damage to reputation down to an absolute minimum. In addition to advising on policies and compliance, we can assist with the formulation of emergency response plans to cover the event of a serious accident. We can also provide advice about the levels of preparation, consultation and assessment that should precede any school expedition or tour.

Recent experience includes:

- Advising a school on the legal implications following the death of a pupil in a shooting accident which was fully investigated by the police.
- Advising numerous schools on the particular requirements under health and safety legislation to take special care for the safety of young people and also vulnerable members of staff such as pregnant employees.
- Acting for schools in connection with complaints and claims made in relation to school trips.
- Advising schools on suitable policies for conducting school trips and other health and safety related matters.



liability, human rights and children's law

The Human Rights Act, and the general change in the climate of expectations over recent years, have necessitated a transformation of attitudes in educational institutions over matters of pastoral and disciplinary significance.

Morgan Cole has considerable experience of working with educational establishments on the management and resolution of issues in these fields and in related academic areas also.

Our solicitors are experienced in dealing with criminal issues of the sorts which can arise in educational establishments and handling consequential police involvement; examples of such issues might be episodes of bullying, dishonesty or drug abuse. We are particularly conscious of the paramount need to protect reputations wherever possible and our solicitors' extensive experience in criminal law work can provide clients with both reassurance and guidance when it is most required.

Our dedicated team combines many years of practical experience and expertise in the law relating to children and young people, with the knowledge of the emerging requirements of the whole system transformation of children's services set out in Every Child Matters: Change for Children Programme. Members of our team edit the [Encyclopedia of Social Services](#) and [Child Care Law and Cross on Local Government Law \(Child Care Section\)](#) and are well placed to keep clients apprised of developments in this area.

We can assist in negotiating the requirements of the Children Act 2004 and the statutory guidance issued and its interaction with the Education Acts, so that clients can plan strategies and implement systems to deliver the required change in their organisations.

We have the added advantage of combining expertise across the education, social care and health sectors, so that we are well versed in multi-disciplinary approaches both in terms of service delivery and safeguarding the promotion of children's welfare.

We can advise on all aspects of the Children Act 1989 and 2004, child protection and on process (including governance, systems for managing abuse and drafting information sharing protocols). We have experience in inquiries set up by the Children's Commissioner for Wales and by central government.

We provide advocacy and advise on special educational needs tribunals, inquiries, coroners inquests, family, civil or criminal proceedings. We provide support and advice for individual members of staff required to give evidence or reports.

Recent instructions from education clients have included:

- Advising a school on an incident of bullying reported to the police to include assisting the school in dealing with the police inquiry and resolving the incident without formal proceedings being brought.
- Assisting numerous schools on various occasions to deal with allegations concerning the supply and possession of controlled drugs both on and outside school premises and providing assistance throughout the police enquiry.
- Acting for schools preparing and implementing suitable drugs policies.
- Advising on disability issues relating to students.
- Advising on the human rights implications of disputes relating to the granting of academic qualifications.
- Co-ordinating advice to a professional in a child protection investigation who was being defamed on an international website by a parent pressure group.
- Advising on legal requirements and legal status of students under the age of 18.
- Being involved in investigations and inquiries into allegations of paedophilia, child sexual abuse and misuse of computer equipment for child pornography.

schools

property management & development issues

Morgan Cole has wide experience of complex development work, as well as landlord and tenant, acquisitions and disposals for educational institutions.



Recent activities have included:

- Development of an estates strategy for a major educational establishment.
- Assisting with acquisitions of land for student accommodation, including contaminated sites requiring remediation.
- Assisting with sales and auctions of surplus land.
- Advising on the legalities on new builds and development of teaching facilities and grant-funded research facilities.
- Advising on the creation of complex leasehold structures on multi-party/used sites.
- Carrying out deeds audits.
- Assisting with voluntary registrations and reconstruction of title.
- Acting for a large boarding school purchasing the freehold title of school premises previously held on a long lease.

information governance

Most institutions are aware of the Data Protection Act and the Freedom of Information Act, but it is very common to find uncertainty about their precise applications.

Morgan Cole can advise from a wide range of experience, which includes:

- Advising on issues relating to access to employee and student records.
- Undertaking data audits and designing data protection policies.
- Advising on the use of CCTV systems within school grounds.



intellectual property

As noted in the published Sainsbury Report, the ability of universities and higher education institutions to support the application of new knowledge depends increasingly on the effective management of intellectual property. The same considerations can apply also to schools, where intellectual property is increasingly being generated through the use of information technology.

In response to this challenge, which is endorsed by both the Government and the Patent Office, Morgan Cole has developed a service specifically aimed at educational institutions concerned with the management of intellectual property. We work with the institution concerned to put in place appropriate intellectual property management, disclosure and incentive structures, advice on preferred exploitation strategies and a detailed IP policy. We also prepare training materials for staff and students, deliver training seminars and assist chosen personnel to ensure the ongoing education of students and staff in all relevant aspects of IP management.

Other specific intellectual property issues which can arise in an educational environment include an establishment's possible exemption from copyright legislation in relation to copying copyright material for teaching purposes. We can advise on all such issues arising from the Copyrights, Designs and Patents Act 1988.



procurement contracts

The commercial business of an educational institution must take into account the requirements of governance, probity and vires, and our team members have the advantage of experience across the public and private sectors in this field of work.

Our aim is always to find means of enabling clients to implement innovative commercial ideas which are compatible with appropriate educational objectives, and which will assist in bringing about growth, rising standards and income generation. We are prepared to work in close collaboration with business consultants if desired.

Examples of recent advice given include:

- Advising on and drafting relevant documentation in relation to a major venture in technology.
- Planning website architecture of schemes of distance learning in such a way as to reduce the risk of creating contractual obligations online.
- Drafting an agreement for warehousing of books and other published materials.
- Advising in connection with the acquisition and maintenance of IT systems.
- Advising on the branding of school logos and memorabilia.



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