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EMPLOYMENT LAWYERS ASSOCIATION RESPONSE

CONSULTATION ON THE FUTURE OF APPRENTICESHIPS IN ENGLAND: NEXT STEPS FROM THE RICHARD REVIEW

WORKING PARTY RESPONSE

Introduction

The Employment Lawyers Association (“ELA”) is a non-political group of specialists in the field of employment law and includes those who represent Claimants and Respondents/Defendants in the Courts and Employment Tribunals. It is therefore not ELA’s role to comment on the political merits or otherwise of proposed legislation, rather than to make observations from a legal standpoint. ELA’s Legislative and Policy Committee is made up of both Barristers and Solicitors who meet regularly for a number of purposes including to consider and respond to proposed new legislation.

A sub-committee, chaired by David Widdowson, was set up by the Legislative and Policy Committee of ELA, to respond to the consultation document “The Future of Apprenticeships: Next Steps from the Richard Review”. Its report is set out below.

The Future of Apprenticeships: Next Steps from the Richard Review

Many of the questions posed in this document relate either to matters of policy or seek feedback from employers of apprentices on their experiences. We have limited our comments to those which have a legal dimension.

Question 1: How can we ensure that every Apprenticeship delivers substantial new skills?

One possible route would be a legally based obligation. The legal requirements under the Apprenticeships (Form of Apprenticeship Agreement) Regulations 2012 for the form of apprenticeship agreements under the Apprenticeships, Skills, Children and Learning Act 2009 are limited. The only stipulation as to content is that it must contain a statement of the skill, trade or occupation for which the apprentice is being trained. If to that were to be added a requirement, for example, that a schedule of the training to be provided be included as part of the contract, together perhaps with a statement as to the outcome of the apprenticeship, then that would provide a clearly mutually understood set of obligations.

Question 2: How should we invite and enable employers to come together to design new standards for Apprenticeships?

Employers may not require a significant level of inducement to take part in the design process for new standards. It is our members' experience that Employers are likely to consider workable, effective and well designed apprenticeship standards to be in their interests and therefore appreciate the opportunity to shape the design of the appropriate qualification rather than be forced to work with central standards which may not reflect their own priorities within the industry or the practicalities of training.

A practical consideration will be to create appropriate and diverse pools from a range of employers in a particular area to ensure that new standards are suitable for all employers and not just larger businesses.

Question 3: What are your views on the proposed criteria for Apprentice standards as set out above?

The criteria recommended within the Richard Review appear logical and sufficient to create robust and effective standards. We would, however, add that a criterion to add would be to ensure that employers comply with the Equality Act 2010, and ensure that the standards are not directly or indirectly discriminatory.

Employers should not seek to limit the age of applicants for their schemes on the basis of funding eligibility, as this may discriminate against older applicants. In addition, apprenticeship standards should be drafted with the risk of disability discrimination in mind. Employers should be aware of their duty to make reasonable adjustments, which may be relevant when considering the training and qualification aspect of the standards.

Consideration should also be given as to whether the achievement of a particular standard will be deemed a condition of the contract thus providing grounds for termination if not reached.

Question 4: Should there be only one standard per Apprentice occupation/job role?

The Richard Review recommends that there be only one Apprenticeship standard for each occupation or major job role. Whilst we agree that to streamline the process in this way is likely to be attractive to employers, any standard developed would need to be non discriminatory, and take into consideration that apprentices may be of differing gender, age and other protected characteristics.

We would therefore be concerned that a 'one size fits all standard' would not fully take into account the differing needs and requirements of all apprentices, and an employer's obligations under the Equality Act 2010.

Question 5: Should there be only one qualification per standard?

We have no observations on this question.

Question 6: How should we manage the transition from the current system of Apprenticeship frameworks to a new system of employer-designed Apprenticeship standards and qualifications?

To the extent that any legislation seeks to alter the current system account will have to be taken of rights under existing contracts to ensure that these are not infringed. Status of apprentices under both the existing and any new framework would need to reflect the current position in terms of status, particularly in relation to an employer's obligations under the National Minimum Wage Regulations.

Question 7: How can we make sure that the new standards stay relevant to employers and are not compromised over time?

We have no particular comments on this question other than to observe that employer engagement on this is likely to be conditioned by the extent to which they have involvement in the process of setting and reviewing standards. As noted above members of our working party report the concerns of SMEs that this process should not be dominated by large sectoral employers.

Question 8: How can we ensure that employers are better engaged with the development and oversight of the assessment in Apprenticeships?

We would repeat our comments on employer engagement at questions 2 and 7 above.

Question 9: How could employers best be involved in the practical delivery of assessment?

See below

Question 10: How can the independence and consistency of assessment in Apprenticeships be further improved?

See below

Question 11: How should we implement end point assessment for Apprenticeships?

See below

Question 12: How should we implement grading for Apprenticeship qualifications?

If the process of assessment is to be undertaken by a body other than the employer (albeit a body to which employers have input on the assessment process and criteria) then the link between the assessment and its impact on the employer-apprentice relationship will need to be considered. If assessment, for example, determines whether an apprentice continues in employment or may be terminated, this will need to be taken into account. As noted in our response to question 1 above, the existing requirements on contracts are minimal and consideration could be given to a template contract which contains the necessary terms to give effect to the proposals in the Richard Review but which otherwise are easily adaptable to the particular employer's needs.

Question 13: What are the specific obstacles to all Apprentices achieving level 2 English and maths as part of their Apprenticeship, and how could these be overcome?

We have no observations on this question.

Question 14: How would a requirement to have all Apprentices achieve level 2 in English and maths impact on employers, providers and potential learners? What are the risks and potential solutions?

We have no observations on this question.

Question 15 – What further steps, by government or other could encourage greater diversity and innovation in training delivery to help apprentices reach the standards that employers have set?

We have no observations on this question.

Question 16 – What approach would work best to ensure apprentices benefit from time to train and reflect away from their day to day workplace?

Again this seems to us to be best dealt with by standard terms in an apprentice contract.

Our members' experience is that employers' main concerns are surrounding the cost of employing and training apprentices. To be effective, there therefore has to be a balance between the potential gain the apprentice will receive from off-site learning against the potential financial loss suffered by the employer. Given costs currently appear to be a high priority for employers, this balance could be addressed by changing the current funding arrangements for training. Current funding arrangements are based predominantly on the age of the apprentice. Arrangements could instead be structured in such a way as to ensure that all 'mandatory training' is paid for by the government with only a percentage of 'voluntary training' being recoverable (regardless of the age of the apprentice).

Employers also need to have confidence in the quality of the learning which its apprentices are receiving. This is likely to be conditioned by the extent to which they are involved in the design of external training and assessment. Employers need to genuinely believe that the learning which its apprentices are receiving from external training providers goes above and beyond what it is able to provide internally.

Question 17- Should off-site learning be mandatory?

If assessment is to be handled by an external agency then it will be important to ensure that each apprentice has an equal opportunity to meet the standards required. To some extent this can be dealt with by the template contract to which we have referred above. An element of external validated training would also contribute to this and reduce the possibility of litigation by an unhappy apprentice who has failed an assessment but believes this is because of the poor training offered internally by the employer.

Our members' experience from industry is that, given each apprenticeship lasts for at least a year and often longer, there is certainly scope to ensure that each apprentice, at some point during their apprenticeship, receives some form of mandatory off-site learning. A mandatory learning period would provide some certainty that the balance between external and employer-based training is managed. If off-site learning is not mandatory, we think there is a real risk that not only will apprentices not benefit from interaction with their peers but also that their learning may be somewhat limited in terms of experience and view point.

Question 18 – How can the process for approving training providers be improved to help employers find high quality, relevant training?

We have no observations on this question.

Question 19 – Do you believe that a kitemarking scheme for your sector or profession would add value and be supported?

We have no observations on this question.

Question 20: What more can government do to facilitate effective third party/external use of its data to better inform individuals and employers about Apprenticeships?

We have no observations on this question.

Question 21: What approaches are effective to inform young people and their parents about the opportunities provided by an Apprenticeship?

We have no observations on this question.

Question 22: How can we support employers to engage with learners of all ages to provide information about Apprenticeship opportunities?

We have no observations on this question.

Question 23: Do you consider that the proposals set out in this document would have a positive or negative impact on any group, including those with protected characteristics? Please provide any comments or evidence you have for your answer and set out which aspects of the reforms will impact and how these impacts might be managed.

We have commented above on the need to ensure that the provisions of the Equality Act 2010 are observed in the following areas:

- access to apprenticeships
- setting of standards
- the criteria and process of assessment

This might be achieved by making the relevant bodies that will be setting these standards and assessments subject to the public sector equality duty under s149 of the Equality Act 2010. The existing legal regime would cover the employer-apprentice relationship.

Question 24: Do you have any further comments on the issues in this consultation?

We have no further comments.

Members of the Working Party

David Widdowson	Abbiss Cadres LLP (Chair)
Gemma Cawthray	Veale Wasbrough Vizards
Rebecca McGuirk	Trowers and Hamblins LLP
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