

## Employment

March 2010

### Education sector focus - Buckland v Bournemouth University Higher Education Corporation

In a decision which encroaches upon the topical issue of academic freedom, the Court of Appeal has ruled that a Professor was entitled to resign and claim constructive dismissal after his exam papers were re-marked without his consent. The Court accepted that the Professor's academic integrity had been seriously called into question after the Programme Leader expressed concern that 14 out of his 16 of his students who were resitting his course had failed, and re-marked his papers.

In reaching their decision the Court of Appeal overturned the judgement of the EAT which we discussed in a previous [Education Alert!](#) A novel legal point which had emerged from the EAT decision, was the fact that the University avoided liability for the dismissal because their investigation into the Professor's complaints was seen to "cure" the breach. The Court of Appeal has now decided that the Inquiry's report, although vindicating Professor Buckland, could not cure the University's fundamental breach of the employment contract. Once a breach has taken place, it cannot be undone.

The case emphasises that proper procedures should be followed and Lecturers and Professors should be kept informed if a decision is taken to re-mark their students' papers and change gradings. The Tribunal accepted that excluding the Professor undermined his position with his colleagues and students. Although this was not mentioned as an issue in this case, if there is political pressure on departments to achieve a designated pass rate, then this type of internal grievance may become more prevalent.

This Alert! is correct to the best of our knowledge and belief at the time of going to press. It is however written as a general guide, so it is recommended that specific professional advice is sought before any action is taken. We are required by law to protect personal data.

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If you would like any further information on any of the areas covered in this Alert!, or any other Employment issues, please call the person at D&W with whom you normally liaise, or one of the following specialists:

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