

Schools face explosion of litigation

There is an increasing incidence of cases involving 'educational negligence'. But, asks Keith Carter, can courts put a price on a lost career?

Lawyers have been accused of fuelling Britain's compensation culture by targeting schools and encouraging parents to sue over trivial playground injuries. Last week Neil Primrose, the Headteacher of Norlington School for Boys in Waltham Forest, East London, called for government action to protect schools and other public services from the growing threat to their time and resources.

The Secondary Heads Association has also expressed concern over an explosion of actions, encouraged, it says, by the "no win, no fee" arrangements which now dominate the personal injuries market. But the increasing number of claims are not just over injuries. Parents are challenging schools' decisions over issues such as exclusions, and even over their core business, education. Claims have successfully been brought which accuse schools retrospectively of failing to recognise pupils' special educational needs.

The claim brought by a dyslexic woman, Pamela Phelps, then 26, against the London Borough of Hillingdon for failing to diagnose her dyslexia led to a landmark ruling by

approach arise because the cases are genuinely different or because the teaching profession is seen to have a lesser duty of care than the legal or medical professions? Or, as is often argued, because the influences on one's life are so wide an evaluation of loss is too speculative?

If a boy were destined to become a labourer, some would argue that undiagnosed dyslexia would have little effect on his earning capacity. But it may be more accurate to say that his writing difficulties would reduce his chances of becoming a foreman where it is necessary to complete worksheets and read plans, tasks that would enhance earnings.

In thinking of quantifying educational loss, there can be three kinds of case: those where an individual's capabilities or potential have not been maximised but where no calculable loss can be established; those who have suffered a career setback but whose loss can be rectified through extra study; and those whose life chances have been irreversibly damaged.

Assuming educational negligence exists, one approach to determine loss of earnings may be to look at the General Household Survey, which confirms that earning capacity increases in proportion to qualifications. A negligent education may also lead to a "loss of career". To become a nurse, you need five GCSEs A-C, while to become a lawyer, at least three A levels and a degree are



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Students join in tribunal scheme

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III THE RACE OF INCREASING CLAIMS

the law lords in 2000 that schools have a duty to ensure children with special needs receive proper help — and that children denied that help can sue local education authorities. The case has not opened the floodgates. But the number of alleged negligent educational cases has grown. These range from an un-expected disability to wrong advice about which course to take and inadequate or no teaching.

Such claims raise the spectre of hordes of actions if a child fails to attain the crucial grades needed for a particular career. Can such cases be negligence — or are they merely symptomatic of today's blame culture? And to what extent can schools be held liable? The answer may be found by looking at the effect the loss of an education has on the individual, especially in a society that rewards academic attainment with a high-earning career.

Then there are those who are failed by the system more dramatically. Poor behaviour at school is typical of those with undiagnosed or poorly treated learning problems where frustration and failure engender underperformance.

Until now, negligent educational cases have been dealt with differently from other claims of professional negligence. The courts have preferred to assess damages by way of a lump sum rather than a conventional multiplier/multiplier approach. Does this divergence in

damages vary the nature, in all cases, the loss can be quantified.

It might also be argued that an inadequate education causes a "loss of a chance", an approach that has been used (in the Doyle v Wallace personal injury case). Perhaps, with appropriate education, the chance might have existed for the individual to take up a career with a higher, and quantifiable, level of earnings.

In clinical negligence and professional negligence cases, as well as in personal injury matters, the courts rely on labour-market analysis to quantify losses. But in negligent educational matters, this approach is abandoned. Lord Simonds, in the case of Cutler v Wandsworth Stadium Limited (1949), noted: "If a statutory duty is prescribed but no remedy by way of a penalty or otherwise for its breach is imposed, it can be assumed that a right of civil action accrues to the person who is damaged by the breach."

It is clearly possible, therefore, to quantify loss as a result of a local authority's negligence in providing an adequate education. Whether such claims would succeed is another matter. But as the damages at stake may be substantial, schools have good reason to hope that the courts will take a robust approach in the face of increasing claims that they have been negligent.

The author, head of Keith Carter & Associates employment consultants, has written and lectured widely on employment issues. A conference on Loss of Education will be held on May 23 at the Business Design Centre, London N1

BRING SOLICITORS AND STUDENTS TOGETHER TO HELP CLIENTS IN RENT ASSESSMENT CASES

Student-solicitors will be briefing student-barristers free of charge in cases this autumn before the London Rent Assessment Panel (LRAP).

The College of Law scheme, which could go nationwide, will see students defending tenants against landlords, or vice versa — and even taking on cases where they are up against a fully qualified barrister.

The venture is the first to use student-barristers and solicitors together in pro bono work. It follows the move this September of the College's 120 Bar students from Chancery Lane to its main campus at Store Street where they will join more than 1,000 students training to become solicitors. If successful, students could be appearing nationwide before the panel, which handles 55,000 cases a year.

The scheme builds on a pilot tribunal representation scheme which has involved barrister-students on the college's Bar vocational course (BVC) since November. They help with advice and representation at the LRAP's weekly drop-in centre.

Sarah Macdonald, head of the college's BVC, said: "Members of the public cannot get legal aid for tribunal representation so those who couldn't afford a lawyer had to represent themselves. This could put them at a disadvantage if the other



Lees and Cook: helped a client get a reduction in service charges

side was represented by counsel." Stephen Hingworth, the college's pro bono co-ordinator and tribunal service supervisor, said: "To date we have seen about 31 clients and have participated in 11 hearings. The feedback from the tribunal has been very positive — it wants to help parties present cases in the most efficient manner. There's also been informal feedback on the students' performances that has been very complimentary."

Elisabeth Lees and Vicki Cook were among students involved in the programme. "I wanted to get the practical experience and be able to help people who often don't know what's going on," said Lees. She and Cook represented a client

who believed the service charges she was paying for her accommodation were unreasonable. As she had already paid she had to go to court to dispute the charges and was unhappy about doing this. Lees and Cook were able to persuade her that there was nothing to lose by going and that she could benefit.

"At first the landlord was not prepared to give away anything but once we had negotiated for a while he agreed to compensation of £500 in return for our client agreeing not to push proceedings nor mention the issue again," said Lees.

"It was quite stressful and we had so little time to prepare, but afterwards we were incredibly pleased, particularly as we had won the settle-

Professor Richard Gimnes, tor of the college's pro bono service and clinical education, said that "substantial fact management in a relatively narrow field of use, which is ideal for solicitor students". The scheme gave trainees opportunities for advocacy cause they had rights of audience in an informal setting where student involvement was welcomed.

COLLEGE UP

LAW is rated one of the top career choices by 11 to 16-year-old girls, according to a survey by leamdirect, the online learning network. Real-life or role models such as Charlie Booth, QC, or Ally McBeal may have boosted the popularity of law, it says.

Among 11-year-olds, law was rated eighth most popular choice. But by 16, it had moved up to sixth place. Law was even more popular in the North of England, with 11-year-olds rating it fifth — but it was not rated at all among young people in the south Midlands Wales. The report also finds that in the 1950s, law did not rank at all among either girls' or boys' top ten choices, when favoured careers at 11 included nurse, secretary, hairdresser, ballerina or nun, and at 16 hairdresser, scientific nurse, secretary and "a mum".