

CAYMAN ISLANDS EDUCATION LAW REVIEW 2007

CONSULTANTS' FIRST REPORT

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INTRODUCTION AND THANKS

It is with great pleasure that we present our first report to the Minister for Education, the Hon. Alden McLaughlin. In doing so, we wish to express our most sincere thanks to all who made a contribution to our visits to Grand Cayman from 6 to 9 March and from 24th to 27th July 2007. These proved to be exciting and fascinating visits. We were very generously welcomed by the Minister himself and all his staff and colleagues in the Department for Education. The programmes for our visits were both busy and intense but we have no complaints about that, for they fulfilled admirably our need to inform ourselves on the task we have been delighted to undertake. The hospitality of our welcome could not have been bettered.

In mentioning particularly those with whom we came into closest context, we show no lack of gratitude to all those whom we met and forged new friendships and those behind the scenes who contributed to such successful visits. Our particular thanks go to Nancy Page for her patient organisation of our flights and accommodation in February/March, to Vaughan Carter for so quickly putting us at our ease on our first arrival and for all his wise and considered guidance on many occasions since; to the Chief Officer, Angela Martins, whose wise and careful guidance will, we know, lead the Island's Civil Service to the achievement of the goals for the country's education service in the future; to Gareth Long whom Graham met in London in January 2007 and whom we met again in George Town in July and in London in September; to Shirley Wahler whose contributions on our second visit in July following her appointment were so perceptive, valuable and forward looking; to the country's Attorney General, with whom we enjoyed lawyers' conversation over a most excellent meal during our first visit; and, of course, to the Minister himself, whose passionate commitment to the evolution of a world class education service in the Cayman Islands provides the inspiration and leadership to what promises to be a historic development for the pupils, students and all the people of the Islands.

We thank too the interviewers at Rooster Radio 101.9 and at Cayman Radio, who did their jobs both graciously and incisively in questioning us on the purpose and objectives of our task during our two broadcast interviews in the course of our first visit.

The Minister will also no doubt forgive us for mentioning finally the many educators' parents and students we admit to having cross-examined in our effort to discover their deepest feelings about the need for change and their views about how new education laws could assist in achieving the required change.

We hope that with this report and further work we may be called upon to do, we may repay the hospitality and enormous assistance so freely and openly given to us during our visits.

For our part, we gained confidence during our first visit that the task set for us is both manageable and constructive. Within our report we describe the basis of our remit and we offer our belief that we are in an excellent, perhaps unique, position to deliver what is expected of us. With, together, 50 years of hands-on experience of working in education law through many complex changes and developments in UK education law, we are delighted and privileged to have the opportunity to make our contribution to a milestone development in the Cayman Islands.

We made, and explained, our commitment to the principle that however radical or revolutionary the changes about to take place in the Cayman Islands will be, they must be rooted in the traditions and culture of your country. In a world now making demands for education on a global basis, clearly any government set upon the course, which the people of the Cayman Islands now wish to follow, must receive wisdom from other countries in which education systems are already in a highly developed state. However, equally, it is important that what is put in place should reflect the aims and aspirations of the people for whom the education service is provided. That is why it is essential that we should view those aims and aspirations at close quarters. The policies to be adopted are those which the elected government of the Cayman Islands seeks and for which that government is accountable to its electorate. We cannot and must not seek to export alien systems to the Islands. Ours is only to advise and make recommendations on those structures, rules and regulations which we believe will best facilitate the achievement of your policies.

THE CONSULTANTS

Graham Clayton

Graham Clayton is Senior Solicitor at the National Union of Teachers, an organisation representing the interests of qualified teachers in England and Wales. Graham is a graduate in law from Cambridge University who qualified as a Solicitor of the Supreme Court in England in 1974. He trained in the international law firm, Richards Butler & Co and spent two years practising as a solicitor in that firm from 1974-1976, when he joined the NUT as its Solicitor. He became the NUT's Senior Solicitor in 1987, at which point he oversaw the development of a unique legal services structure, establishing 12 qualified solicitor posts operating within the NUT, delivering legal services to 280,000 teachers from the NUT's Headquarters in London, from its nine regional offices throughout England and its Wales Office.

Graham's responsibilities are at the highest levels within the NUT structure. He has responsibility for all legal aspects of the Union's work across all its departments and is directly responsible to its General Secretary, Steve Sinnott and to the NUT's National Executive Committee.

Over the 31 years Graham has spent at the NUT, he has acted in many of the leading precedent cases in UK education law. He has personally advocated several of these cases before the Employment Tribunals and in the Employment Appeals Tribunal for England and Wales and he has supervised other cases considered and reported out of the Court of Appeal, the House of Lords and the European Court of Justice. In 2004, the NUT legal team was awarded the Employment Team of the Year by the UK's 'Lawyer' magazine in competition with several of the UK's largest and best known law firms. It is the only team of its kind to have secured such an award.

Amanda Brown

Amanda Brown is the Head of the NUT's Legal and Professional Services Department. Amanda is a law graduate and a qualified UK Barrister who holds an LLM in European Law. She has worked for the NUT for 15 years, having come from a background of

advice work in the voluntary sector, working in a local advice agency and later in the national office of Citizens Advice as the legal services officer. She specialises in employment and discrimination law as well as education law, and heads a team of legal staff who provide second-tier support to Union caseworkers in England and Wales. She has represented members in test cases at all levels of the court system, including the House of Lords and European Court of Justice.

From 1944 to 1988, the UK statutory framework for the UK education service was to be found in the radically reforming Education Act 1944, with which Graham worked for 12 years. This Act laid the foundations for the post war public education service in England and Wales.

The years from 1988 to 2007 have seen a previously unprecedented growth in UK education law. Since 1988, England and Wales have seen 19 pieces of primary legislation up to the Education and Inspections Act 2006, five of these involving large scale reform. The Government of Wales Act 1998 began a process of devolution of legislative responsibilities, including significant responsibilities in relation to education, to the Welsh National Assembly. Graham's experience covers the whole of this period and Amanda's the greater part of it. Their knowledge of the primary legislation and the regulations made under it from 1944 to 2007 is probably unique amongst legal practitioners. Throughout the legislative processes, culminating in the enactment of the legislation, from 1988 to 2007, both Graham and Amanda have made significant contributions to its development and their advice to and representation of teachers in England and Wales has been very significantly influenced its implementation.

Both Graham and Amanda have written extensively on education law in England and Wales and have made several appearances as expert commentators on UK national radio and television.

Sarah Morgan

Sarah Morgan is the Solicitor for Wales for the National Union of Teachers in England and Wales.

Sarah qualified as a solicitor in 1997, having obtained her Bachelor of Laws degree at Cardiff University and subsequent studies at the College of Law in Guildford.

In her role as NUT Wales Solicitor, Sarah deals with all aspects of employment law, including claims for unfair dismissal, discrimination, breach of contract and personal injuries, on behalf of primary and secondary education teachers.

In addition, given the increasing devolution in education law from the UK Parliament in London to the Welsh Assembly Government in Cardiff, Sarah is involved in advising the NUT on legislative and policy issues in Wales.

Sarah is a member of the Association of Personal Injury Lawyers, the Employment Lawyers Association and the European Trade Union Committee on Education, Legal Experts Network.

BACKGROUND TO THE STUDY

The request from the Cayman Islands Government for advice and assistance was first received by Graham on referral from the Innovations Unit (as it then was) of the UK Government Department for Education and Skills and was taken up by him with the NUT General Secretary, Steve Sinnott. The referral from the Innovations Unit was, it is understood, endorsed by Professor Stephen Heppell who had already been giving advice to the Cayman government.

In consequence of the referral, the Minister for Education, the Chief Officer, Mrs Angela Martins and the Chief Education Officer, Gareth Long met with Graham Clayton and Steve Sinnott in London on 12th January 2007. This meeting set a precedent for discussions extending beyond their originally scheduled timings as interest in and enthusiasm for the project grew quickly in the minds of Steve Sinnott and Graham Clayton.

During the course of this discussion, Steve Sinnott explained the importance to the NUT's international work in education and it was clarified that both the Minister and Mrs Martins had met Steve previously most recently at the Commonwealth Education Ministers Conference in Cape Town in December 2006. Steve Sinnott offered the support and assistance of the NUT to the Cayman Islands in the reform of its education laws on an expenses only basis – a proposal warmly and gratefully received by the Minister.

It was then further proposed that Graham might assemble a small team to take this project forward and the expertise and experience of Amanda Brown was immediately added with Steve Sinnott's approval. The expertise and expertise of other senior NUT colleagues, other than lawyers, would also be available to assist in the consultancy process as it developed. Particular interest was, for example, shown in the well developed expertise of the NUT in relation to teacher professional development and school self-evaluation.

Arrangements were then made for our visit to George Town in March 2007.

DOCUMENTS EXAMINED

Prior to our first visit we were provided with the opportunity to study the following documents:

- Education Law 1999 Revision
- Early Childhood Law 2003
- Bill for a Law to Provide for Education and Training and for Incidental and Connected Purposes – Working Draft April 2005
- People’s Progressive Movement Campaign 2005 Manifesto
- National Consensus on the Future of Education in the Cayman Islands – October 2005
- Education Conference 2006 – Programme
- Report on Early Childhood Law and Regulations December 2006
- Bill for a Law to provide for the Regulation and Management of Early Childhood Institutions December 2006
- A new curriculum for the Cayman Islands January 2007

During the course of our first visit we were provided also with the following documents which we have since studied:

- Public Service Management Law 2005
- Public Service Management Law 2005 – Personnel Regulations
- New Model of Governance for the Education System of the Cayman Islands September 2006

- Revised Standards of Practice in the Management of Child Abuse Referrals for the Cayman Islands
- Collective Bargaining Agreement between the Government of the Bahamas and the Bahamas Union of Teachers
- Cayman Islands Government Employment Agreement
- Report of the Educators' Conditions of Service Task Force March 2007
- Education Law Draft with Suggestions from Private Schools Association March 2007

We have in addition considered a number of documents available to from the Cayman Islands Government website and other "Googled" sites

FIRST VISIT

MEETINGS IN GEORGE TOWN 6-9 MARCH 2007

Our schedule of meetings in George Town was thorough and intensive. A copy of the schedule is appended as Appendix 1 to this report. We are immensely grateful to the Cayman participants in these meetings. We are conscious that we subjected many of them to cross-examination and we have greatly admired their readiness to respond as openly and constructively as they did. We can only hope that we were able to put these colleagues at their ease despite the intensity of some of our questioning. They may be comforted in the knowledge that they made an enormously constructive contribution to our study and, if our purpose proves to have been well performed, to the future of Cayman Islands education.

SUMMARY OF MEETINGS

Deputy Chief Officer

We were welcomed to George Town on the evening of 6th March by Mr Vaughan Carter Deputy Chief Officer, Mr Gareth Long, the Strategic Development Advisor (Education) being in London whilst we were in George Town. No meeting had been scheduled for that evening but our travel weariness was quickly dispelled as we began an animated and very valuable scene setting discussion with Vaughan Carter. Vaughan remained with us through many of our subsequent meetings and his very valuable assistance will be referred to several times in this report.

Acting Chief Education Officer

Our first scheduled meeting was with the Acting Chief Education Officer, Mrs Francine Gardner. We were immediately impressed by Mrs Gardner's commitment to education and to the Cayman Islands and its people. She described to us a classic phenomenon about decision making in an environment in which there is little clarity in decision making and accountability structures. In these circumstances, there is a natural tendency for

decision making even on the most mundane questions to drift upwards to the higher levels of authority. Once this happens those upon whom the decisions fall become subject to conflicting and competing influences so that those at intermediate levels of management become fearful of assertive management. This in turn leads to dislocation in the processes of implementing decisions as those responsible for implementation find themselves remote from the decision making authority and uncertain as to the purpose. Valuable time is wasted in the duplication of processes and the opportunity for strategic planning at the higher levels of authority is denied. Self-confidence in decision making authority at the point at which decisions might, most effectively be made is seriously diminished, communication back through the system becomes confused, ad hoc and apparently disconnected from stated purposes and objectives and often too late for effective implementation at classroom level.

During the discussion with Mrs. Gardner, Vaughan Carter explained to us the proposed school governance model involving the creation of better manageable units for education policy implementation under the direction of learning community leaders, responsible for clusters of units. Whilst we agree that this will be a significant advance in devolving decision making closer to the point of implementation, there were aspects of this which we felt we needed to examine in greater depth. This we were able to do successfully on our second visit in July. We will return to this later in our report.

Overall, our time spent with Mrs. Gardner tended to confirm suspicions we had formed from our study of the existing education law and the 2005 draft to which again we will return in more detail later.

There was some confirmation too of the frustration we felt was being experienced by the Minister himself about how to secure systematic change leading him to seek the kind of assistance we offer. It was evident that whilst clearly the desire for reform is passionately felt and probably universally accepted by the education stakeholders, there is great frustration over the absence of structures whereby the desired change can be achieved.

Schools Inspectorate

We met next with the Chief Inspector, Mrs. Helena McVeigh, and members of her inspection team. Again, we found ourselves to be in discussion with a highly competent team of professionals committed to the achievement of excellence but again frustrated by their apparent inability to secure consequences from their judgements. We were told that recommendations from inspectors had a tendency to 'disappear' without being activated and without any obvious means for tracking them.

The inspection team gave the impression of working to a model for inspection strongly influenced by methodologies in England and Wales, though obviously rather less critical than perhaps is the case in England and Wales. The members of the inspection team clearly felt their role to be positively supportive up to a point. Only at a high level of critical analysis did they feel the need to be demandingly stringent in their recommendations for action.

We believe the ethos and approach of the inspection team to be good, but again there is clear and serious need for mechanisms to be introduced to ensure that their efforts are brought to positive conclusions in the form of clear action plans and strategies. We were also concerned on our first visit that the extent of the UK influence failed to acknowledge very significant differences in the means by which the outcomes of inspections could lead to remedial action where problems had been identified. It was necessary for us to revisit this at some length on our second visit.

Our meeting with Inspectors covered also questions relating to the formation and development of the Cayman Islands National Curriculum. We have no doubt that a supportive legal framework is needed for the National Curriculum but we also believe that this framework should be such as may allow the curriculum to evolve. Indeed, this is a theme we would wish to encourage on a number of the issues for our consideration. Further, although the suggestion was actually canvassed at a later meeting, we mention at this point that some consideration may be given to the inclusion of Cayman Island studies within the National Curriculum framework as a means of asserting and reaffirming the importance of Caymanian identity and traditions to future generations. This would be consistent with our belief that the country's education service should continue to find its roots in Caymanian identity which we found, in our brief visit, to be

rich. Again, whilst it is clearly desirable that reform should equip the islands with a modern and thriving education service with lessons learned from established structures which have been successful elsewhere. The Caymanian identity should not be subsumed in the process. The presence of Sarah on our second visit enabled parallels to be drawn with the Curriculum Cymreig (Welsh). We return to this in our summary of the second visit.

Early Childhood Unit

We were pleased then to spend time with Kate Marnoch discussing the work of the Early Childhood Unit. We had had the opportunity prior to this discussion to examine the November 2006 draft Early Childhood law providing for the licensing and inspection of childcare facilities in the islands.

We found it necessary at first to wrestle with the fact that many of the functions described by the draft Early Childhood law are, in the UK and elsewhere, primarily considered to be social welfare rather than education functions. We did, however, quickly appreciate that in the present state of Caymanian governmental structures child welfare and child related social service functions are combined. We also recognise of course that, in the UK, the Office for Standards in Education (OFSTED) now has the inspection of pre-school facilities within its remit giving clear recognition to the importance of education in its broadest sense in the early years.

However, at the end of our first visit we sensed some real tensions in the relationships between the role of the state in infant safety and welfare, essentially a “social service” function and early years education, obviously an education function. This again was something we revisited extensively on our second visit.

We give discrete attention to this area in our recommendations.

Members of the Legislative Assembly

We then moved to meet with Legislative Assembly members for a valuable reflection on the common aspirations of local legislation for Caymanian education. It is to them that the task of debating and approving new legislation will fall.

Though we saw amongst the Legislative Assembly members evidence of the not unhealthy differences of opinion which are a feature of legislatures in representative democracies, clearly the consensus in favour of reform is broad based.

It is correct then that both the form and mode of implementation of new education laws should be subject to scrutiny by and debate amongst the elected political leaders, both those aligned with the group that supports the proposals and those who may have questions and reservations about it.

The reform upon which the Caymanian Government has embarked is clearly radical, even perhaps fundamentally so in the sense that it represents a seismic shift in approach for the education service. It is as if the service has been locked like tectonic plates which have suddenly shifted to create new demands and expectations. The task of regulating to meet those demands is complex.

This is not patronising comment in our part. It is very necessary comment in the light of the recommendations we make, and we summarise the point here with the intention of expanding on it below. It is the theme of our recommendations that the first stage of a new education law framework should created the legal authority for 'government' of the education service enabling it to breathe in its own vitality. We do not expect it to be lengthy or detailed but only to provide authority and direction for government with provision for proper democratic accountability. If this course is followed, then plainly scrutiny through the use of accountability mechanisms will be crucially important. Error and unaccountable authority combined together have only the effect of consolidating error into practice which then becomes extremely difficult to correct.

We therefore, and for good reasons well understood by constitutional lawyers, encourage the strong reaffirmation of consensus amongst members of the Legislative Assembly in favour of education law reform and the suppression of any sense of rivalry

that may be felt after the 2005 election – but equally we encourage the promotion of an accepted culture of constructive scrutiny of the measures to be taken under the enabling legislation we recommend.

Minister, Chief Officer and Attorney General

Our schedule provided us then with the opportunity for a working dinner with the Minister, the Chief Officer and the Attorney General. This provided an ideal opportunity for the kind of evaluation of our first impressions that was necessary at that point.

A particular focus of our discussion on that occasion was the role of the Education Council whose Secretary we were due to meet the following day.

We concede readily that we had been confused by the Education Council. It was revealed by the existing law to be the controlling Council for the education service but we were unable to establish its origins or its provenance. Despite being constituted of some of the Island's most expert and experienced figures in education, its function appeared to have reduced to decisions on a narrow range of issues which, though very important, could hardly be described as strategic in the development and management of the education service as a whole. The talents and knowledge of its members appears to be sadly under utilised. It was later described to us as "the arm of the Minister" but we could find little to justify that description in its relationship with a minister in a reforming government. We will have much more to say about the Education Council later. At this stage, we will only say that despite the serious lack of clarity about its current role and status, we do not recommend its abolition. On the contrary, we identify a reformed Education Council as a core participant in the developments to take place.

Rooster Radio 101.9 and Cayman Radio

Early on the morning of 8th March, Graham joined the Minister in a Rooster Radio 101.9 talk show, the first of two radio interviews scheduled for the day. We were pleased to note that both appeared to attract large listener audiences, Amanda joined the second of these talk shows on Cayman Radio. Both overran their time. We thank the presenters

both for their welcoming good humour and for their perceptive and incisive questioning. We also thank the listeners who called in with their questions. Again, we identified an encouragingly broad concern and consensus in favour of change.

The overrunning of the Rooster Radio show left Amanda to meet with the Labour Consultant on TVET and to conduct the first part of a meeting with Mrs Jennifer Smith, Secretary of the Education Council.

Technical and Vocational Education and Training (TVET)

On the morning of 8th March, whilst Graham was at Rooster Radio, Amanda met with the Labour Consultant on TVET to discuss the current TVET structure and plans for further development and streamlining of provision, in order that we could consider how this might best be reflected, if necessary, in regulations.

The 2005 draft Education and Training Bill proposed the establishment of a National Training Board whose function would be to advise the Minister on technical and vocational education and training issues and to carry out any other functions as required by the Minister. The Board would be comprised of representatives of the Labour Ministry, Department of Employee Relations, the Chief Education Officer, President of the University College of the Cayman Islands, along with representatives of employers, employees and TVET experts.

The Bill also proposed that committees of the Board could be established to undertake research, make arrangements for accreditation, and advise the National Training Board.

Amanda discussed with the Labour Consultant whether the framework proposed by the 2005 Bill would best meet the requirements for a new education and TVET structure. They agreed that the crucial feature of an effective structure must be the ready availability to the Minister of prompt and detailed advice on the wide range of issues to be covered.

An alternative structure was discussed, with responsibility for decisions remaining with the Minister and with coordination between officers of the various Departments involved

on policy recommendations. Flexibility would be built in with a structure allowing those officers to be further advised on relevant issues by ad hoc advisory committees with the approval of the Minister according to need.

We did not generally think it advisable to create a plethora of councils, agencies and accreditation bodies. Though this may prove valuable at a later stage in the legislative programme, it is better, in the initial stages, that the authority of law should be given for governmental departments to make rapid progress on a broad front to promote institutions which may later be given a more distinct statutory status.

However it became apparent after we made some more detailed observations on TVET to Angela Martins and Vaughan Carter, that this is complex in the reform process. Clearly there have been uncertainties over whether TVET is primarily a labour issue or an education issue. We needed to spend a good deal of time revisiting this on our second visit.

Education Council

We met with Mrs. Jennifer Smith, Secretary of the Education Council. Our meeting with Mrs Smith was otherwise largely confirmatory of the impressions we had formed about the role of the Education Council. It was described to us as “an arm of the Minister” but under the existing law, it is not. It appears, in fact, to be rather more a semi-autonomous governing council for the education service and we suspect that its origins may lie in measures designed to create an intermediate stage between colonial authority and local democratic government. That suspicion makes us a little wary of intervening in the constitutional status of the Cayman Islands, but we are encouraged to view the democratically elected government as now authoritative in local law making. We proceed on that assumption.

We quickly formed a view that the Education Council is, in need, of at least fundamental reform. There is nonetheless something in its history which could have great value in the future. We explored the detail of this extensively on our second visit and we return to this later in the report.

‘Private School’ Representatives

Our meetings in the afternoon of 8th March put us on a learning curve about structures with which we did not expect to be naturally familiar. The first of these meetings was with representatives from the Private Schools Association. As this turned out, what was described to us was by no means as unfamiliar as we had imagined.

The UK too has a tradition of church involvement in the provision of education. Indeed historically in many countries, the churches have been the driving force for mass education. As state governments, sometimes rather belatedly, accepted responsibility for secular provision of education as a public service, the churches naturally wished to safeguard their own achievements and the ethos they had developed in their schools. The churches perceived something of a threat in the move to state maintained public education.

In the UK these differences were resolved at the time of the enactment of the Education Act 1944 by what is still known as the ‘religious settlement’. The statutory architecture which reflects that settlement is still in place and indeed has now significance as the UK tackles the need to respond to the legitimate demands from non-Christian communities for a place in the UK’s publicly maintained education system.

It was from the private school representatives that we encountered deep suspicions about the proposed reforms of the Cayman Islands’ education service.

Public Meeting

Our opportunity to participate in a public meeting at the Mary Miller Hall on the evening of 8th March was very welcome. This was the one opportunity, apart from the callers to the two radio interviews, we had to listen to the popular viewpoint. Attendance at the meeting was not large but those who did attend clearly came with a positive and constructive desire to participate. In view of the interest we know to have been shown in the broadcast talk shows, we did not take the size of the attendance at the public meeting to be an indication of popular apathy.

Some of the contributions made at the public meeting were anecdotal and case specific, but no less forceful for that. They illustrated again the existence of a reform consensus and the need for clarification of rules and regulations and their accessibility to the community. There was a particular focus on the needs of the 'sister islands', Cayman Brac and Little Cayman and an important mention of the need for performance management systems specifically tailored to teachers. This is a matter to which we will return.

Human Resources

We met next with the recently appointed Human Resources Officer, Glenda Dilbert Davis.

It is probably inappropriate for us to express praise for individuals, but we feel bound to say that Ms Davis impressed us. In our assessment of the needs of the Islands' education service this post was much needed and we are very confident that Ms. Davis will make a very significant contribution to the necessary changes. We will expand below on our view of the 2005 draft education law, in particular the way in which it attempts to particularise the job descriptions of important post holders within the system. At this point, we only draw attention to our theme that much of this should be moved out of the statutory framework into the area of contract law, that is law governing commitment by agreement. In this area, human resource management has a major and creative role. We believe that this is language readily understood by Ms. Davis and a process which she is both ready and eager to take forward. We see no need to regulate extensively in this area. Employment agreements, contracts of employment in UK legal terminology, provide the best legal mechanism for creating the environment in which teachers and education administrators acquire and take on responsibility and accountability for the decisions by which progress is made. A human resource manager of the calibre of Ms. Davis will, we are sure, take this forward without the restraints of excessive and prescriptive regulation.

Teachers Representatives

We met next with three colleagues described to us as teacher representatives. They were, however, not representative of teachers in any sense that they held a mandate to speak for members of the Islands' teaching force but rather contributors to our work selected in the belief that, from their knowledge and experience, they could most helpfully represent views commonly held by teachers. We felt confident that they did so.

Once again they described a lack of co-ordination and communication about the aims and objectives of the education service as a whole and once again we respond to their concerns. Clearly very valuable work is being undertaken in schools by dedicated members of the teaching force. Clearly too, significant steps are being taken to organise at school level for the achievement of targets by reference to assessments and evaluations of progress. This must now be systematic and reinforced by some degree of regulation.

We, of course, bring to this debate a background of experience in education law within the largest organisation of teachers in the UK. We, nonetheless, carefully avoid attempting to impose an influence on the Cayman Islands to accept and adopt teacher unionisation. That is a matter of policy. It is not part of an established tradition as it is in the UK and we suspect that there may be sensitivities about the politics of trade unionism in some quarters.

We are not, however, ashamed or embarrassed to address this question from the point of view of law, regulation and structure.

A theme we articulated many times during our visit is that there should be a much broader participation in authoritative decision making if the energies that exist to achieve the desired objectives are to be released. Teachers and other staff members, and all other stakeholders, should be provided with opportunities to engage constructively in positive development. There should be mechanisms which enable participants to gain a sense of ownership of progress each according to his or her role. It is plain that there is great energy and enthusiasm for reform and, this being the case, we do not say that organised representation of stakeholder group is, in any sense a pre-requisite to

success, but we believe that giving developments of this type some encouragement will enhance success.

We were told and we were pleased to be told that the Cayman Islands is compliant in its domestic law with International Labour Office (ILO) Convention 98 concerning the Principles of the Right to Organise and to Bargain Collectively. We were also told that attempts have been made to establish formally constituted organisations of teachers in the past but there has been little enthusiasm to do so.

We doubt that this apathy will continue. It is a natural tendency that greater structural organisation of decision making authority is matched by organisation of response. This natural tendency is very far from unhealthy. On the contrary, it helps to create an environment for constructive dialogue between government and authority on the one hand and stakeholders on the other. Active participation in such dialogue in turn helps to create that sense of ownership of the outcomes which we believe will be very significant in achieving the desired aims.

The institutions within which such dialogue takes place cannot be created by law. It is very important that organised stakeholder participation in dialogue is rooted in a will of members of the stakeholder units to join together in organisations and to choose their representatives independent of law enacted at the initiative of government. It is not, however, wrong that there should be regulated mechanisms for encouraging representative participation in dialogue. We shall, therefore, be recommending that the new education law should include measures to create consultative forums on an assumption that greater organisation in education government and management will quickly be matched by organised representation of the consultee groups.

We expect this to become most speedily evident in the teaching force. Teachers are members of a naturally articulate profession and, when enthused with an opportunity to participate and gain ownership of the outcomes of their own efforts, they will in our experience seek means for the expression of collective opinion articulated by representations chosen by them according to the rules of their own organisation. Whether or not Cayman government chooses to embrace such a development is a matter of policy but we have no hesitation in saying that we would consider it to be a very positive feature of our theme to encourage the release of energy and creativity into

the system and we certainly will not be recommending the insertion into the law of legal obstacles.

Parent Representatives

Our time spent with parent representatives was further revealing. The concerns expressed were not unfamiliar as those of actively participating parents the world over. In this case, they had a special resonance when put together with the structural problems we had detected.

Regulating for the teacher/parent relationship is very difficult and in general it is better not attempted. Parental expectations of any education service are diverse, sometimes contradictory and often conflicting. The creation of a structure of rights and duties as between teachers and parents is rarely helpful and tends to be the source of disputes over meaning and interpretation rather than of co-operation, partnership and common purpose. In the UK, attempts at regulation have swung like a pendulum between an emphasis on the rights and choices of parents on the one side and the powers and authority of teachers on the other. The concentration on parents as consumers drawing up standards by the exercise of choice in an education market naturally favoured the articulate and better placed and was quickly supplemented by a top down and hardly critical system of quality control.

More recently in the UK, the inspection system has shifted to a more supportive model and the pendulum has swung in favour of an assertion of teachers' disciplinary authority as an antidote to growing disrespect towards the status of teachers.

The parent representatives repeated the desire for an accessible set of rules and expressed concerns about the impact of disruptive minorities in the pupil population, in their view insufficiently addressed. One point made with considerable force was that teachers generally need to develop a much improved consumer orientated ethos in their relationships with parents. Measurement of achievement is opaque. No doubt a parent is delighted to be given the news that his or her son or daughter has been awarded A grades but surprised when suddenly a C grade appears amongst the As. It is not

enough, say the parents, that the only supplement to these grades is the assertion, “Your daughter is doing fine; your son’s doing OK?”

We sympathise. We treat this problem, as we should, as one of system deficiency. Regulation in this area must create the environment in which a mutually constructive parent/teacher partnership can be nurtured and can develop. We do not propose that law enacted in the legislative assembly should attempt to delineate roles and responsibilities to govern this partnership. Such an approach will only result in documentation that will gather dust in a government filing cabinet quickly to be forgotten. Rather the law should require the establishment of benchmarks and reference points around which parents and teachers can enter into constructive dialogue to enhance their respective contributions to the education of the child and student.

We found on our second visit some interesting possibilities for promoting positive parental participation. The better understanding we then achieved of the Learning Communities’ role in the Governance Model showed us the extent to which parents and the wider community can be encouraged to play a greater role in education. Also our searching enquiries into the inspection system, in the Cayman Islands context, gave us an insight into the ways in which positive responses to inspection reports could involve positive engagement with the parent community. We explain this later in the report.

Student Representatives

Our final meeting on 9th March was with present and recent former students, products of the Islands education service. Had these four young people been the only group we met, we would have been fully justified in wondering for what possible reason we had been invited to assist in the reform. These three young women and one young man are surely the best advertisement for the Islands’ education service that any Caymanian could hope for.

We know, however, from our brief, confirmed by our own direct perceptions, that fundamental change and development is needed. What these young people and others like them represent is the potential that exists for all. Their ideas, which they are able to articulate so clearly and so confidently are both rooted in the culture and traditions in which they were raised and yet modern and worldly wise even to the point of challenging

the Chief Officer on a thorny problem which currently she has to address. She must deal with that with all her wisdom and knowledge of just how thorny the problem is, but the clarity of youth shown by the students on what purpose education ought to serve bodes well for the future when there are young Caymanians of this calibre to take this forward into the next generation.

ONGOING DISCUSSION

The Hon. Minister, Chief Officer and Deputy Chief Officer

We turn then to the impressions we formed from our discussions with Mrs Martins and Vaughan Carter who attended some of our meetings and with whom we were able to step back at various points to evaluate our progress.

It is rarely appropriate for 'statute' law to regulate for specific posts within a public service structure. However high may be the level of responsibility and authority attaching to these posts, they are employments and as such are best regulated by contract with the flexibility which that allows rather than by rigid statutes.

There are however exceptions. The office of Chief Officer is one such exception. It is currently held by Mrs Martins and though the law must refer to the post not to the postholder, we will for convenience describe it here using the feminine pronouns.

The Chief Officer is of course a very senior civil service employee and as such like any other employee, she is required to carry out her work to the satisfaction of her employer. Though the Legislature Assembly may wish to approve conditions for her employment, this is not a matter upon which the Legislative Assembly needs to enact law.

The Chief Officer is, however, more than an employee. Whether the functions she performs have developed as a result of the confidence placed in her or are part of an established design, we do not know but we believe it to be entirely right for the future that the Chief Officer should have these functions. She is the funnel in an hour glass between the political and the administrative and we believe it to be essential that this role is identified in the statutory framework.

There must be a channel through which reports pass to the political pass to the political overseers of the education service to inform their deliberations as they expand the law in the form of secondary legislation, regulations and orders. Through the same channel must pass directions for the implementation of politically formulated policy directives. We hope that Mrs Martins will agree with our perception that this encapsulates the role

she performs in practice and it is the role we believe should be consolidated in legislation.

We are in the hands of the Attorney General as to how exactly legislation identifying the roles of political and administrative office holders should be expressed according to the constitution of the Cayman Islands. We may need to learn more of that if we are to assist in drafting. We are aware already that the mode of expression of power to make secondary legislation is that this is done by reference to the Governor in Cabinet. Such constitutional forms must of course be followed but we would like to see that, where possible, the role of the Minister should also be identified in the legislation.

The Minister of Education, the Hon. Alden McLaughlin is identified as the driving force for the proposed reform. No doubt he will personally wish to continue to guide policy for its implementation as his electoral mandate demands. He will no doubt also wish to hand over the same reforming impetus to his successors at such time as he or the electorate chooses. The law will correctly provide the authority for any Minister to do so, and indeed provide for his accountability to Cabinet and to the Legislative Assembly.

SECOND VISIT 24 – 27 July

Following our first visit, we transmitted from London our evaluation in the form of an early draft report asking for comments. We were gratified by the welcome given to this document, though we knew that its contents were likely to provoke further thought on some of the more difficult questions. It was as a result of that we were invited to make a second visit and we readily agreed that this would be valuable. Amanda was unfortunately unable to make this visit but Sarah Morgan was able to bring her considerable experience particularly of the development of the education service in Wales after devolution of legislative authority from Westminster to the Welsh Assembly Government. There are significant parallels between what has happened in Wales as a result of this devolution, which in itself reflects the re-emergence of a Welsh identity, and what is happening in Cayman.

Our second visit was as stimulating as the first, focussed, as we were, on issues identified in our first draft. The programme for our second visit is at Appendix II and in addition we had the opportunity to visit, out of term time of course, several schools including the schools on the George Hicks campus. These visits were extremely valuable in setting our work into a real context and in particular were of great assistance to us in discussions later that day with Stephen Heppell.

We had the added advantage of Gareth Long's presence and the participation of the recently appointed Chief Education Officer, Shirley Wahler. Gareth accompanied us on our school visits and was very helpful in explaining to us much about these schools. Gareth's strategic insight into the reform process was an immensely valuable addition to discussion and Shirley's clearly dynamic and expert analysis of her role in the reform proved both positive and exciting.

Our second visit also coincided with a visit of Professor Stephen Heppell who has done so much to inject practical solutions into the aspirations of the Minister and his senior colleagues. It is to the "architecture" of Professor Heppell's contribution that we make our own contribution and though the opportunity for discussion with Professor Heppell was brief, it was sufficient to acquire a better understanding of his underlying thematic approach.

Our agenda took a form different from that for our first visit. It was of course issue led and we did not compartmentalise our discussions. By this means, we were able to explore inter-relationships between different features and elements of the overall structure so causing us to revisit on the second day of our visit subjects which we discussed at some length on the first day. This was highly productive in achieving a balanced perspective of the structure as a whole. We nonetheless, for the purpose of this report, summarise these discussions by subject.

Education Council

The high level of frustration felt because of the lack of clear identity and purpose of the Education Council was clearly reaffirmed. It is a frustration to which an inevitable reaction is to contemplate its abolition. No firm view had been taken to support abolition but such a sentiment could be understood in circumstances in which it cannot be detected that the Education Council does anything by reference to the roles which it has traditionally performed which cannot be done by a newly streamlined Department for Education Services and its offshoots.

We do not favour abolition. We think that, whatever its origins, the Education Council must have been created as a forum for the expression of community and stakeholder interests in the education service. We also think that that core function is as important to the new education service as once it must have been considered important to meet demands for popular influence on the service. The Council's true and important role may regrettably have decayed, but that in itself does not give cause for abolition. Rather it gives cause for reaffirmation and revitalisation of its core purpose in the new structure. There is nothing to be gained by the abolition of an established body which may have been trusted at least to exist as a scrutineer of governmental and administrative decisions.

We therefore invited discussion of reform of the Education Council. A valuable theme developed in this discussion was that the Council would not serve a purpose of real value in the education service of the future by having responsibility for the making of decisions which are clearly administrative. A Department for Education Services accountable to a democratically elected Minister and Cabinet now has all the necessary legitimacy and mandate to make such decisions for and on behalf of the Islands' people.

The redistribution of these functions will enable a revitalised Council to refocus on the important role of being the Government's popular consultative body.

Our recommendations later in this report derive from these discussions.

Tertiary Education

Discussion of tertiary education brought into question matters which had not figured significantly during our first visit. We had noted then that, for obvious reasons, the Cayman Islands are very likely to attract private international providers of tertiary education. This is already happening. During our second visit the implications of this development came into sharp focus. It is the desire of the Caymanian Government to provide an effective high quality education service for the people of the Islands. It is therefore important to the success of that aspiration that the initiative in tertiary education should not pass to external providers with their own diverse systems of accreditation so forcing the Caymanian government to follow externally dictated systems of qualification and accreditation rather than applying its own locally determined systems valuing the history, culture and identity of the islands. Without meaning to use the language provocatively we understand this as a kind of 21st century education colonialism which cannot be consistent with the government's project.

That does not mean that the government does not welcome external providers to the Cayman Islands. We certainly saw no evidence of such isolationism. The perceived risk is that if the issue is not addressed by government the Caymanian identity and high quality of provision for long term Caymanian residents to which the government is committed in its reforms, may be subsumed under external influences.

Our discussions demonstrated what a very finely tuned balance this must be. Shirley Wahler's analysis is particularly carefully informed and considered. From personal experience of negotiating with US universities, she was able to articulate clearly the kind of domestic quality control regulation which would unacceptably deter positive external interest in developing educational facilities in the islands. Much of our discussion had centred on regulation of the quality and standards of "teachers" in tertiary education in

the Cayman Islands. The question was as to whether a qualification and standards based teacher registration regime could realistically be extended to teachers in the tertiary sector.

Shirley Wahler's view that this is not realistic is compelling. It is indeed difficult for example, to imagine US institutions being prepared to subject their individual recruitment choices to a Caymanian registration veto.

The discussion moved away from individual teacher registration to discussion of a legally prescribed Caymanian standard for tertiary education institutions. However again the feeling was that the rigidity of such a system would operate as a deterrent to external providers whom the government would in fact want to welcome.

This in turn led to some discussion as to the appropriateness of Caymanian accreditation of institutions according to standards considered appropriate by the Cayman Islands government rather than of the individuals teaching within them.

We were mindful in this discussion of the approach adopted in UK law to the establishment of so called "Academies", often described as state funded private secondary schools. We certainly do not advocate such a system for secondary education in the Cayman Islands. They are rejected in Wales and Graham has no enthusiasm for them in England. However the legal mechanism by which they are established on the basis of a negotiated contract between the state and the Academy provider rather than under a statutory regime, offers a possible solution to the Cayman Islands problem in tertiary education. This kind of arrangement would enable the government to set common standards within appropriate contractual arrangements. We expand on this in our recommendations.

Special Education

Our meeting with Brent Holt was largely confirmatory, though some interesting refinements were added to our initial ideas. We had thought that, unusually, the UK statutory model which is already paralleled in many countries, would be suitable for import, in a simplified form, into Cayman law. That was confirmed and Brent expressed, as an American more familiar with rights based legislation, his interest in and support for

our duties based approach. We did however realise that, in terms of practical detail more modifications of the UK model than we had thought, would be necessary. It is, for example, probably impractical for there to be a Special Educational Needs Co-ordinator in every school. However, given the role of the Learning Community Leaders in the Governance model it is probably also unnecessary.

Brent seemed to favour the US concept of individual intervention plans above the UK concept of “statementing”. The differences we understand are subtle. It was not something which appeared to disturb our approach to the proposed new primary legislation. Brent was naturally supportive of the principle that some legal process must exist for scrutiny of “statements” or intervention plans with which parents are not comfortable. Again our original view that the UK model of a quasi-judicial special educational needs tribunal might be imported for this purpose was seen to present practical problems of scale. However our discussion on this question moved rapidly on to consideration of a part administrative adjudication process to scrutinise disputed plans for meeting the individuals child’s special needs.

Early Childhood

In the course of our first visit and in the preparation of the first draft of our report, we had identified some technical problems in the draft early childhood law. We know from our second visit that these will be addressed and so, for completeness only, we draw attention to these technical problems in an Appendix to this report.

More substantially we had been concerned at an apparent lack of clear distinction in the legislative framework as between the social services elements of infant welfare and protection and pre-school and early years education. It was necessary to revisit this on our second visit.

It was evident that our point had been understood, that it had been the subject of some thought and that this would remain an issue for Shirley Wahler’s further consideration at a relatively early point in a five year legislative plan. However there is a strong case, which we accept, for not disrupting the already settled arrangements for combining infant welfare and education within a unit of the Department for Education Services whilst other broader reforms are being embedded. Our recommendations for the short to

medium terms will reflect this though we add thoughts for consideration in the longer term.

Inspections

We enjoyed the opportunity to meet again with Helena McVeigh. Helena's sense of frustration over the effectiveness of her team in terms of outcomes from the considerable effort which they put into their work is very understandable. She is right. She and her team members have a vitally important role in securing accountability within the system and they must be able to identify measurable results.

The Cayman Islands Schools Inspectorate is less than a decade old and it has not so far had a full National Curriculum against which to measure standards. It seems to us that Helena McVeigh and her team have worked very hard in these circumstances to introduce an effective inspection system into an environment in which it does not actually fit. It became even more apparent on our second visit that the expectations of the inspections system are very "English" (notably, as Sarah contributed, not Welsh) on the basis that the differences between England and the Cayman Islands are differences only of scale.

We believe that the differences are rather more significant than that. Because of the difference in scale, there are very real differences in enforcement mechanisms as between the English "OFSTED" (Office for Standards in Education) regime and that which is possible or desirable in the Cayman reform model. End of key stage pupil testing and league table publication of results which accompany the OFSTED inspections regime in England and the statutorily controlled system for publication of inspection reports are all features of a means of informing parental choice. Parental choice then creates a kind of education market in which, it is assumed, quality will thrive.

A market enforcement system of quality control is not the chosen course for the reform of educational provision in the Cayman Islands. An education market approach can hardly be considered desirable in an education service the size of that of the islands. It is rather the more collegiate, cooperative and mutually supportive approach inspired by Professor Stephen Heppell which is being adopted. That has to be right for the Cayman

Islands at this point. The reform is a mission in the pursuit of a common purpose of excellence for all Cayman children. The government is there to inspire and provide leadership in the achievement of the desired goal. It is neither necessary nor appropriate to set schools in competitive relationships as they leapfrog each other to achieve the goal of excellence.

This analysis has important implications for the inspectorate in the Cayman Islands context. We were very glad to be able to explore it further with Helena together with Shirley Wahler and our recommendations reflect the outcomes of that discussion.

Curriculum

It had been intended that in our discussion with Helena we should revisit some questions relating to the National Curriculum, but time did not permit this. We had however already encouraged the inclusion in the statutory National Curriculum of Cayman Islands studies. We believe this to be an important feature of a law which should have clear identity and foundations in Cayman culture and traditions, repeating here our theme that the education law should not simply be imported from the UK nor from anywhere else. As we have mentioned above, Sarah took the opportunity to draw attention to the Curriculum Cymreig which, in responding to the growing popular demand for the revival of a Welsh identity, is now positively promoting the rediscovery of a rich and diverse cultural history in Wales. We urge that this be researched further.

TVET

Our need on our second visit to re-examine TVET centred on a question which was provoked by our report of discussions between Amanda and the Labour Consultant on TVET on our first visit. The revisited discussion on how best to deal with TVET within the legal framework was extensive and wide ranging. It is nonetheless fairly easy to summarise the conclusion. The question is in effect as to whether the development of Technical and Vocational Education and Training is best considered an education programme under the direction of the Department for Education Services or as a “labour” and employment based initiative under the direction of the Department of Employment Relations (DER).

There are good reasons why the DER should retain overall direction of TVET. The Department for Education Services needs a clear focus on the reform of primary, secondary and tertiary education and cannot easily be diverted into an area which traditionally has primarily been the concern of the DER. Obviously it will be necessary that TVET initiatives should be closely aligned to the reforms in primary, secondary and particularly tertiary education and there must be areas of common principle and commitment to the same general “direction of travel” towards the desired objectives. Law must support a single continuum in Cayman state education very much like that with which Sarah is familiar within the “lifelong learning” concept of education in Wales.

That however does not appear to us to make it necessary to situate primary responsibility for TVET within the Department for Education Services. Both departments are of course within the Ministry of Education, Training, Employment, Youth, Sports and Culture and we have been convinced that the necessary liaison within a single Ministry will be achieved to secure the necessary continuum and commonality of commitment. It is important that there should be an overarching plan but this is more a matter of organisation and policy rather than law.

On this basis, we feel that the law which governs the operation of the Department for Education Services need say relatively little about TVET leaving whatever else is necessary to employment based legislation. We will make suggestions for the education law which enable the Minister, by secondary legislation, to establish and promote supportive institutions for TVET within the framework for secondary and tertiary education whilst leaving the organisation and administration of TVET itself to the DER.

DOCUMENTS

We turn to the documents we have examined. We address two of these briefly here.

The Existing Law 1999 Revision

The Education Law (1999 Revision) is something of a patchwork of measures consolidating and revising three previous enactments. Its language is, at several points,

rather imprecise. It tends to be a set of general rules on matters which have from time to time received attention rather than a fully coherent structural enactment.

It does however contain many of the essential elements for an education service. It makes provision for -

- compulsory education with a duty on parents to register their children and secure their attendance at school
- school admissions
- religious instruction
- the licensing of teachers
- the registration of “private” schools
- the preparation and submission of reports

All these are matters which a new law will need to address. Many of them are matters upon which we discuss in some detail in this report.

We do not think therefore that the 1999 law should be ignored. Several of its provisions will need re-enactment in some form. We do however at this stage offer some guidance as to how we think the process of re-enactment might be approached.

“Rules” of the kind which make up much of the 1999 law are best made in secondary (Regulations and Orders) rather than primary legislation. The primary legislation gives authority for the making of these regulations and orders.

The law should also be guided by a strategy for what it is to achieve. It should be formulated so that it can be read as securing the gain for those whom it is intended to benefit. Accessibility in the law means that those stakeholders who do read it, or alternatively read Explanatory Notes which accompany it, can easily perceive the benefits which it is intended to give them.

The rules designed for this purpose should be brought together **for** their single purpose. They should not be, as they tend to be in the 1999 law (and indeed in the 2005 draft law), separated from each other as inserts to deal with some new issue that has gained attention. Primary legislation should give sufficient authority to enable most of these matters to be dealt with as matters of management and government.

We take, as an example of this, section 13(2) of the 1999 law together with section 26. What, taken together, this really means is that every school must be open for 38 weeks in every year providing a minimum level of secular instruction unless for good or urgent cause (in particular to avoid the spread of disease) the school must be closed. What is important to the reader, student, parent or other stakeholder in the education service, is that schools will be open and providing education and that they will only be closed when it is necessary to close them for an overriding reason in the public interest. It is not really necessary to enact law to justify the closure of a school to prevent the spread of disease any more than it is necessary to justify the closure of a school which has for example suffered a major fire. This is a matter of managing events that necessitate management measures.

The 2005 Draft Law

The 2005 draft law is not in a form we recommend, but it is not our intention in expressing that view to be critical of its authors, nor those who have an attachment to it. It represents an important step on the path to reform and contains much that expresses the principles, which we believe should guide reform.

Its one defect in our view is that it much more a thesis than a law, more a charter than a statute, more principled than structural.

This is not to say that there is no place for broad statements of rights and responsibilities. On the contrary, laws are inspired by a belief in principles. However, the design of legislation must be to give effect to those beliefs and principles, not merely to declare them. Declarations of rights and responsibilities are the stuff of constitutions and manifestoes. Legislation provides the means by which they can be assured.

Our approach to this is not theoretical. We have experience of dealing with the evolving European Union. The relationship between the law of the Union as a legal entity in its own right and the domestic law of the EU member states is very complex and there is no need to for us to examine it in detail in this report. What matters is an already well established point. A great deal of the 'law' of the European Union is declaratory of rights and responsibilities but without structural legislation in the EU member states it cannot take effect. It needs clear structures for enforcement and accountability enacted in the domestic legislation of the member states according to their own diversely different institutional traditions.

Those institutions of course include the courts with jurisdiction in each EU member state but in reality the courts are only the last resort in dispute resolution and in securing rights. Mostly the enforcement of legal rights and duties is achieved by structures of accountability operating within every day work and social relationships and supported by contractual relationships between individuals.

The design of the 2005 draft Cayman education law leans far too heavily on the law it was intended to replace. It is in large part an expanded version of the existing law. That will not serve the desired purpose.

We take as a particular illustration of this point the idea that the law should be written in a form which confers upon every child the right to education.

We respectfully disagree with that proposal.

The Cayman Islands Government accepts its obligations under international human rights conventions and the United Nations Convention on the Rights of the Child. We have not explored how these obligations are built into the domestic law of the Islands, but, in any event, statements as to the right to education are matters for legislation which specifically addresses fundamental human rights. The way in which this is done within a framework of domestic law governing a state is well illustrated by the UK Human Rights Act. This Act schedules the European Convention on Human Rights but the main body of the Act focuses on the legal mechanisms by which those rights are secured. The

structure acknowledges by implication that pious statements however worthy and correct offer nothing unless there is a machinery of law and structure to secure them.

So it is with state domestic education law. The right to education is an accepted obligation. There is no need to repeat it in an education law and to do so may be misleading. The purpose of state domestic law is to establish the duties and the structures which secure the right to education in practical terms.

This approach is consistent with English legal traditions which we believe to be shared in the Cayman Islands. The alternative approach, the constitutional rights approach is perhaps best exemplified by US law and that of post-revolutionary European democratic republics. That may be entirely appropriate and satisfactory in large centralised or federated states but it depends for enforcement on the existence of complex and not easily accessible constitutional court structures.

The UK experience of the Human Rights Act tends to underline the point. Initially upon its enactment, a wave of new litigation was anticipated but, in practice, the UK courts have largely taken the Human Rights Act as a reinforcement of long established common law principles.

There has also been much debate amongst UK lawyers of the significance of law in one area which creates a right rather than imposing a duty. Employees have a legal right not to be unfairly dismissed from their employment. This contrasts with a duty on employers not to dismiss unfairly. In practice, this almost unique provision in English law has come down to not much more than a question about where the burden of proof lies in an individual case and it is surrounded by more detached legislation and case law which concentrates on the duties of employers rather than the rights of employees.

Legal duty is the foundation of accountability – either to the legal system or through critical accountability. It is easier to demand and secure answers to a question as to whether a specific duty has been performed than it is to establish whether a right expressed in broad generalities has been satisfied.

For all these reasons, we adopt a duties based, rather than a rights based, approach. We believe that an early point in the new Cayman Islands education law, a provision should appear along these lines.

1. It shall be the duty of the Minister for Education, in the exercise of the powers conferred upon him by this or any other enactment to promote the education of the people of the Cayman Islands and, for that purpose, to ensure the provision within the Cayman Islands of sufficient schools and other educational institutions.
2. The schools and other institutions so made available shall not be regarded as sufficient unless they are sufficient in number, character and equipment so as to afford for all pupils and other persons for whom education may be provided such opportunities for education and training as may be desirable in view of their different ages, abilities, aptitudes and needs and the periods for which they may be in receipt of such education or training as the case may be.

If, notwithstanding our duties based approach, it is felt to be necessary for presentational reasons to include reference to the right to education there may be added to the above.

3. The duty imposed upon the Minister for Education under this section shall further be discharged in accordance with the obligations of the government with regard to education and the rights of the child under international treaty and convention.

A LEGISLATIVE PROGRAMME

We believe that the legislative process will involve more than one stage. The first piece of legislation should be largely enabling and need not itself be lengthy or detailed. It should confirm a place with the necessary institutions and reporting and accountability structures and authorise the making of regulations.

A five year legislative plan should be devised. This should be done under the overall direction of the Chief Officer reflecting Ministerial objectives and should be placed before the Legislative Assembly for approval, alongside the new law to be enacted.

Working units should be established within the department to identify areas for regulation by way of secondary legislation. A programme for their work should be incorporated into the legislative plan. This work should be co-ordinated by an appropriate senior officer on behalf of the Chief Officer and the work should be carried out in close liaison with the Office of the Attorney General having responsibility for advising on the form and structure of such secondary legislation.

We cannot be precise about the number or scope of these legislative working groups but we anticipate that they must include the following:

- curriculum and inspectors;
- tertiary education;
- state assisted schooling;
- home schooling.

There should be ongoing evaluation of the impact of the initial legislation in its first year concluding with a comprehensive evaluation reported to the Legislative Assembly and published. This should inform an assessment of the need for any new primary legislation and a programme for the enactment of Phase II primary legislation should be built into an updated form of the legislative plan. We do not anticipate with certainty that new primary legislation will be needed but we think that this is highly likely for example to

deal with more advanced forms of school based funding and budgeting mechanisms for the settlement of teacher employment issues and home school relationships. It is possible that by this time there will be a better developed demand for stakeholder commitment to and participation in the education service on a more organised basis. If so, further primary legislation will then be needed to institutionalise arrangements for stakeholder participation and consultative processes. We believe that a timetable should be set for the enactment of Phase II primary legislation early in 2009.

It is premature to anticipate a Phase III primary legislation programme but we believe that a consolidation process is likely to be necessary in 2012. We would expect that by that date it should be possible to enact comprehensive legislation based on the experience of the preceding five years and accurately reflecting developments in the profession begun in 2007. A target to enact by 2012 a comprehensive education law for a generation should at least influence progress from this point forward.

We set out as Appendix V our suggestions for a five year legislative plan though we anticipate that this may be subject to substantial amendment depending upon organisational arrangements within the Ministry and locally determined priorities.

THE EDUCATION LAW 2008

As already indicated, we believe that the Education Law 2008 should be largely enabling. It must authorise government to govern the reform process.

In making this recommendation, we sound a cautionary note. Enabling legislation involves a significant degree of trust and confidence. When government secures authority from a legislative body to give the status of law to its decisions, there is a substantial shift of power away from the legislative. The dangers in this are self-evident to anyone with a mature democratic instinct. We have dealt earlier in this report with the risk of consolidating in perpetuity into laws which become difficult to change.

On the other hand it is well recognised that at times it is necessary to authorise government in the driving seat of reform. Our recommendations accept that this is the case now in the project to be undertaken in the Cayman Islands but we urge all those involved in the legislative process at this point to show sensitivity to the risk of error, to welcome consultation and be ready to respond constructively to dissent. We have commented several times on the obvious consensus that exists for reform and we have deliberately avoided undue criticism of the 2005 draft legislation which we know to have been prepared with an underlying commitment, not dissimilar from that of the Hon. Minister in the present government. It is from that consensus that we confidently believe the necessary structures will derive.

We have been very much assisted in our approach to the structure of a new education law by a paper prepared for us by Vaughan Carter and headed Cayman Islands Education Law Review. We have referred to it several times in formulating our proposals for a structure.

Structure

We make the following suggestions on structure:

- Chapter I

Part I

Provisions laying down the duties of:

- a. the Minister;
- b. the Chief Officer;
- c. the Education Council

Part II

Provisions defining the types of schools and other educational institutions.

Provisions relating to the licensing and registration of schools.

Part III

A provision for compulsory education with modifications to allow for home schooling together with provisions prohibiting charges for education in government schools

- Chapter II: Provisions relating to the National Curriculum
- Chapter III: Provisions relating to the Schools Inspectorate
- Chapter IV: Provisions relating to the training and qualifications of teachers
- Chapter V: Provisions governing admissions to schools
- Chapter VI: Provisions governing the funding of schools
- Chapter VII: TVET
- Chapter VIII: Tertiary (Higher) Education

- Chapter IX: Early Childhood Years
- Chapter X: Provisions for special educational needs
- Chapter XI: Miscellaneous provisions
- Further Definitions section

We use this structure as a template for our recommendations.

Chapter I Part I - Basic Duties

Chapter I should begin with a short but no less purposeful statement of the prime duties of the Minister. This is not mere polemic. It is intended to create a benchmark for the judiciary to hold the executive to account at the initiative of every citizen who has access to the judicial system. In practice, this kind of legislative provision is rarely used but the important point is that it can be. For the purpose of exemplifying our approach, we focus on a provision which we believe should appear in the first Chapter of the new law.

We have said that the law should refer directly to the role of the Chief Officer. We anticipate a provision which may look something like:

1. There shall be a Chief Officer appointed to the government civil service on such terms as may from time to time be approved by the Legislative Assembly and whereby the holder of the office may be accountable, through the Minister for Education to the Governor in Cabinet. References in this law to “the Chief Officer” shall mean the person appointed under this section.
2. It shall be the responsibility of the Chief Officer to exercise oversight of the administration of the education service and the implementation in the Cayman Islands of the laws relating to education enacted by or under this or any other enactment.

3. The Chief Officer shall at least once in each year prepare and submit to the Minister for Education a report containing such information as may from time to time be requested by the Minister and at least the following:
 - a. information describing the standards of achievement of pupils and students in receipt of education in the government and assisted schools, together with such information as may be available about the achievements of home schooled pupils and other pupils educated otherwise than at schools;
 - b. information as to the work of the Department for Education during the preceding twelve month period and the measures taken to secure the implementation of any national strategy for education as may be applicable to that period;
 - c. information as to the measures to be taken and the targets to be achieved in the implementation of any such national strategy in the ensuing twelve month period.
4. There shall be appended to each Annual Report of the Chief Officer under this section:
 - i. a report of Chief Inspector of Schools as to the outcome of inspections conducted during the preceding twelve month period;
 - ii. a report on tertiary education in the Cayman Islands for the preceding twelve month period.
5. Copies of the reports of the Chief Officer under this section shall be placed before the Legislative Assembly. Following receipt of such a report the Minister for Education shall cause the report to be published and be publicly available.
6. The Governor in Cabinet may make regulations as to the form and further content of reports to be prepared under this section.

We have elsewhere dealt with the role of the Chief Officer which we believe to be pivotal. The above suggested provision reflects that but we also offer it as an example of the kind of provision we believe should appear at several different points in the 2007 law. It has three features:

- a statutory requirement that an office or institution should exist;
- a broad statement of the role to be performed;
- the mechanisms of accountability for that role; and
- a power to regulate in more detail for the role and accountability by secondary legislation.

This is a design we recommend.

The reformed role of the Education Council should be that of the Minister's senior consultative body. It should be redefined and reconstituted on that basis and its title should reflect its function. It should therefore be called the Education Advisory Council. It should be chaired by the Chief Officer. Its members should be appointed by the Governor, acting on the recommendations of the Minister, from amongst senior figures within the broad range of stakeholder groups. Provision should be made for the Council to meet on a minimum number of occasions in each year and at such other times and for such purposes as the Minister may require.

The Education Advisory Council may provide advice on strategic policy across the education continuum. Sub-committees may be formed for particular subject areas and the sub-committees should be given power of co-option of additional members.

In the discharge of all its functions, the Council should be defined as making recommendations to the Minister for which the Minister would be accountable in the usual way of Cabinet and to the Legislative Assembly. The Council should be renamed the Education Advisory Council.

We raise one other point in this context. We are not aware that there has been a debate in the Cayman Islands about whether teachers could face a penalty of deregistration for conduct considered to be incompatible with registered teacher status. If this is to be considered, the Education Advisory Council could well have a significant role, but if so this should be carefully regulated to ensure compliance with rules of natural justice in the consideration of allegations that required standards of conduct have not been met by a teacher if, in extreme cases, this could result in deregistration, thereby affecting the livelihoods of teachers. If this role is to be developed, the hearing of cases should be delegated, in accordance with regulations, to a sub-committee of the Council. Such hearing committees should be chaired by a member of the Council but should be made up of teachers in the majority so providing for peer judgement. Teachers may be co-opted onto these hearing committees for this purpose.

The Council should report annually and its report should be annexed to the annual report of the Chief Officer. It should additionally report to the Minister with advice on such specific subjects as the Minister may commission from it.

Little of this needs to be in primary legislation. We anticipate only a provision in the new law along the following lines.

1. There shall be a body to be known as the Education Advisory Council which shall have the functions for which this law provides and more generally the function of advising the Minister for Education on matters relating to the exercise of his powers as may be provided by regulations made under this section.
2. The Governor in Cabinet may make regulations as to the constitution and proceedings of the Education Advisory Council, as to the matters which it may be called upon to consider, the manner and frequency of its reports and such other matters as the Minister for Education may consider desirable.
3. The Minister shall, before any regulations are made under this section, consult the Education Advisory Council and such other persons or bodies as he considers desirable.

Chapter I Part II Definitions and Structures

The provisions in this part should define the schools and other educational institutions within the system both by age range and by type of school. We think that an appropriate provision may be something like the following:

1. In this law:

- ‘primary education’ means education provided for children between the ages of *[to be inserted]* and *[to be inserted]*;
- ‘secondary education’ means education provided for children and young persons between the ages of *[to be inserted]* and *[to be inserted]* and other children and young persons for whom it is expedient to provide education in secondary schools;
- ‘tertiary education’ means education provided for young persons between the ages of *[to be inserted]* and *[to be inserted]* and other persons for whom it is expedient to provide education in tertiary education and institutions;
- ‘technical and vocational education’ means education or training provided for any person, whether of primary, secondary or tertiary age or otherwise, for the purposes of developing skills appropriate for use in any employment, trade, profession or business undertaking; and
- the terms ‘primary’, ‘secondary’, ‘tertiary’ and ‘technical and vocational’ as applied to pupils, students, and other persons and to schools, colleges and other educational institutions should be construed accordingly.

2. The schools and other educational institutions shall be further categorised according to their character as follows:

- ‘government school’ means a school, the funding for which is wholly provided from resources available to the government of the Cayman Islands;

- ‘assisted school’ means a school, the funding of which is provided in part from the resources available to the government of the Cayman Islands;
- ‘independent school’ means a school wholly funded other than from resources provided by the government of the Cayman Islands.

3. In this law:

- ‘school’ means an educational institution for providing primary or secondary education or both primary and secondary education and shall, except where the context otherwise requires, include a unit at which education is provided for pupils of primary or secondary school age otherwise than at an institution at which education is normally provided for pupils of that age.

It will have been noted that this formulation adopts our view of the need to distinguish between different types of school which together are presently known as private schools. It also refers to a funding scheme for which we recommend provision to be made in Chapter VI.

A provision authorising regulations to govern the licensing and registration of schools is also needed here. We suggest:

1. No person or body may manage nor participate in the management of any school or other institution for provided primary or secondary education in the Cayman Islands unless licensed so to do under a licence of the Minister for Education.
2. The Governor in Cabinet may make regulations as to the granting of licences under this section as to the conditions to be satisfied upon the granting of licences and as to the revocation of licences.
3. It shall be the responsibility of the Minister for Education to maintain a register of persons and bodies to whom licences have been granted under this section and to make the same publicly available.

4. A person or body to whom authority has been given to engage in the management of a school or other education institution prior to the coming into effect of this law should be deemed to be licensed under this section as from that date.

Chapter I Part III - Attendance and Charges

Compulsory Attendance

This will be the short and already familiar provisions for compulsory school ages, supported by provisions requiring parents to ensure school attendance under penalty of prosecution and fine.

There should also be provision in this Chapter governing the powers of attendance officers with an authority to make regulations as to their functions and powers.

Home Schooling

There will of course also be a need here to make provision for the duty to secure school attendance to be modified to permit home schooling. We think that there is, as was suggested to us, justification for regulating home schooling. This may be controversial, but it does have to be understood, again in this context, that the state does have a responsibility for all children within its jurisdiction. We suggest that the section of the law imposing the parental duty to secure school attendance should be made expressly subject to a further section which may be –

- (1) The duty imposed by section [*] (duty of parent to secure school attendance) may be waived or modified under an exemption authority in any case in which the Minister is satisfied that education suitable to the age, ability, aptitude and needs of a child in respect of whom the authority is given is available to be provided for that child at the place where the child is normally resident or at the home of

another person approved by a parent or legal guardian of the child concerned.

(2) An authority given under this section may specify such conditions and impose such requirements as the Minister, on the recommendation of the Chief Officer, may think fit for the benefit of the education and welfare of the child.

(3) An authority given under this section shall be without prejudice to the operation of any provisions of the Early Childhood Institutions (Inspection and Registration) law 200? or of this or any other enactment relating to the inspection and registration of early childhood institutions.

(4) The Governor in Cabinet may make regulations as to the following matters, that is to say

- the manner in which application may be made for an exemption authority under this section,
- the information to be provided upon such an application,
- the matters which may be taken into account in the consideration of an application,
- the duration and renewal of any authority which may be given

and as to such other matters as may be prescribed

Provision should also be made in this part that no charge may be made (other than perhaps in respect of the children of expatriate parents) for education in any government school and for appropriate provisions for charges in assisted schools. This is not quite as simple as it may first appear even for government schools. It is certainly easy to provide

—

1. No charge may be made for admission to nor for the education provided at any government school in respect of any child to whom this section applies.

However there may then be a need to make further provision as to what is meant by “admission” and “education” for this purpose. Perhaps “education” would not extend to such items as school meals and other sustenance provided for children at school, nor perhaps for travel and accommodation expenses for school taking part in a non-curriculum school journey or outing, nor perhaps for items made available in connection with voluntary events taking place at schools and school concerts or productions. Perhaps it might be appropriate for charges to be made for special tuition e.g. instrumental music tuition provided at a school other than as part of the normal curriculum. There may perhaps also be out of the ordinary public examinations for which preparation may be offered in schools but which are not part of the ordinary examination system for which pupils generally are prepared.

It may therefore be necessary to add further provision to the above –

2. Subsection 1 shall not have effect so as to prevent charges being made to secure reimbursement to the funds available to a government school of expenditures incurred from those funds in respect of any item such as is mentioned in subsection 3 nor to prevent pupils or their parents or legal guardians being required to pay the costs of any such item as a condition of participation in any activity for which such cost is to be incurred

3. The items referred to subsection 2 are –

[to complete according to policy]

5. The Governor in Cabinet may make regulations whereby the items mentioned in subsection 3 may be amended, varied or added to and whereby any hardship or inequality of treatment of any pupil which may be suffered as a result of a requirement for a payment under this section may be alleviated.
6. This section applies to [to be completed according to policy]

So far as assisted schools are concerned, they do charge and we cannot at present see a base for regulating their right to do so. In so far as government may wish to match charges to funding assistance, this is a matter to be dealt with in funding agreements. We must however return to the status of the assisted schools at much greater length below.

There is nothing to be added under this heading in relation to the non-assisted independent schools. Their charging arrangements are a matter for agreement between the relevant school authorities and parents.

Chapter II: National Curriculum

We recommend that provisions in this chapter give authority for a national curriculum in government schools and a pupil achievement evaluation regime. This would not necessarily be mandatory in assisted and independent schools but it is not unreasonable that the government should be able to apply standardised outcome requirements and make provision for commonly applied assessment mechanisms. The precise requirements are not a matter for us but rather for educationalists and those familiar with the needs of children in the Cayman Islands. For our part, we recommend:

1. that provision be made to breakdown the years for which provision is made in schools into that number of stages considered appropriate with basic curriculum requirements for each stage;
2. that provision be made for baseline assessment of skills upon entry into the education system and for evaluation of standards of pupil achievement at the end of each stage. Education managers in the Cayman Islands will no doubt be aware of the models for such a regime which have been tried and tested and of their merits and demerits. We only urge that in legislating for this regime, flexibility is retained to amend and develop the regime based on experience. It may not even be necessary to include within the primary legislation any more than a provision:

“The Governor in Cabinet may make regulations requiring:

- a) that the standard and level of achievement of each pupil be assessed at the end of each key stage; and
- b) that the outcome of such an assessment be made available to the parents or guardians of a child to whom the assessment relates in such manner and together with such further information as may be prescribed.

Chapter III: Inspectorate *

We believe it to be appropriate that the Office of Chief Inspector, like that of the Chief Officer, should be an exception to the standard principle that the roles and job descriptions of civil servants should not be described in legislation. This is necessary to mark out a degree of independence for the Chief Inspector to exercise her judgement and report free of inappropriate direction and influence. The Chief Inspector cannot be a mouthpiece neither for the Minister nor for the Chief Officer. The critique of standards and practice which she may present her report must be a fair reference point for accountability.

At the same time, the members of the Inspectorate must, in inspecting and reporting on individual schools, operate within a framework overseen by the Chief Officer and the Director of Education Services. Too great a degree of independence for the inspectorate presents risk of conflicts over policy and “direction of travel”.

A further feature of the views conveyed to us by the Chief Inspector was the need to secure outcomes from inspections and reports.

Finally, we feel that there is a need to respond to the views expressed by the inspectors themselves and echoed by others that their role should be seen as school supportive in the first instance with the perhaps harsher inspectorial role being introduced only when judged to be necessary in view of the severity of identified problems or the future of supported remedial measures.

* We are aware that since we began preparation of this report the office of the Schools Inspectorate has been renamed the Education Standards and Assessment Unit and the inspectors may become Assessors. We welcome that change as far better descriptive of the concepts we are ourselves recommending, but rather than alter our report to accommodate it, we use the former descriptions and titles.

These balances and emphasises are not easy to encapsulate in regulation. We believe that much of what is necessary is best achieved through wise and constructive co-operation involving the Chief Officer, the Director of Education Services and the Chief Inspector (as renamed). We believe that the education law should, therefore, be broadly limited to the following:

- a. to give established statutory status to an office of Chief Inspector of Schools;
- b. to describe the role of the holder of this office "in his capacity as chief inspector of schools" to:
 - i. cause inspections of schools to be carried out at intervals of no more than 4 years and at such other times as he, in his discretion, may consider necessary;
 - ii. to report to the Chief Officer on the outcomes of such inspections;
 - iii. to report annually to the Chief Officer on standards of education in Cayman Islands schools generally in such manner as may be prescribed by regulations;
 - iv. to carry out and report on research on matters relating to education in the Cayman Islands as may from time to time be required.
- c. to authorise members of the inspectorate having the authority of the Chief Inspector and Schools Support Officer to enter onto school premises, and to examine and require the production of documents for the purposes of an inspection; and
- d. to make it an offence to obstruct a duly authorised inspector in the carrying out of a school inspection.

A further provision would then provide for remedial action to be taken upon a report of a school inspector requiring such action to be taken. Precisely what measures may be available to require the action to be taken are a matter for local consideration but whatever may be decided should be backed up with the force of law. We anticipate requirements of increasing severity, e.g.,

- a. the Chief Inspector may include within a report of a school inspection a statement of:
 - i. any deficiencies in the provision of education at the school identified during the course of the inspection;
 - ii. the measures required to be taken to remedy such deficiencies; and
 - iii. the timescale in which any such measures are to be taken.
- b. in the event that remedial measures are specified in an inspection report, the Chief Inspector shall cause a further inspection to take place at the end of the period in which such measures are required to be taken so as to ascertain:
 - i. whether measures have been taken as required; and
 - ii. the effectiveness of such measures.
- c. in the event that upon re-inspection it is determined that the required measures have not been taken or, if taken, have not been effective and the Chief Officer is satisfied that it is necessary so to do, the Chief Officer may appoint a suitable person to attend at the school, for such period as may be considered appropriate with authority to give directions for the implementation of such remedial measures as may then be considered necessary.

Of course if it is identified that deficiencies are attributable to the acts, omissions or faults of an individual employee, disciplinary action in an employment context may be necessary, but this is a matter aside from the process suggested above. This process is

rather intended to address systematic and structural deficiencies not attributable to the faults of any single employee.

There may then follow a separate provision dealing briefly but significantly with the support side of the role of the support and inspection team. We see this very largely as a matter for service management rather than for legal regulation. We suggest:

1. The Chief Inspector of Schools may at any time and in such manner as he may consider appropriate, offer advice, guidance and support to school principals [and/or learning community leaders] as to measures for the improvement of educational standards in schools generally or in any one school and it shall be the duty of the principal of any school in receipt of such advice to have regard to any such advice and guidance in carrying out the responsibilities of his employment.

We appreciate that provisions of this kind may well need modification, adaptation and/or amplification to include the learning community leaders having regard to their role in the governance model. We shall return to this in what we have to say about this model.

Chapter IV: Teacher Qualification and Regulation

There are many good reasons for regulating the qualifications of teaching and this is not only for the benefit of education managers and consumers. For teachers themselves, the restriction of certain activities to those who are formally qualified is a mark of status and profession and members of other senior professions. Formal professional qualification is not a guarantee neither of quality, nor of respectability, but it is in general a sound basis for earning trust and confidence.

We, therefore, agree that the law should continue to provide for a scheme of formal qualification of teachers and should require that no person may be employed to work as a teacher unless he or she is qualified in accordance with the requirements of regulations and registered to work as a teacher in the Cayman Islands.

It is also necessary to define what employment as a teacher means. This is not as easy as it sounds. The verb “to teach” has a simple dictionary definition and so defined it as

an activity carried out by most of us at some time. Its meaning for the purposes of the education law cannot be as in the dictionary.

The definition in UK law is controversial and we would wish to avoid that controversy. We prefer the following:

“A person is ‘employed to work as a teacher’ in any case in which the performance of the duties of his employment depends on the application of skills derived from specialist training of the kind leading to an approved teaching qualification.”

Provisions will, of course, be needed for the approval and recognition of teaching qualifications obtained both in the Cayman Islands and elsewhere. This may, however, be done by regulations authorised by the primary legislation. We recommend that the scheme should provide for the approval of qualifications by the Minister acting on the advice of the Education Advisory Council. In the very large majority of cases, this will be a formal endorsement by the Minister of a verification process undertaken by the Education Advisory Council Secretariat but we believe it to be an important contribution to the status and professional self-esteem of teachers that they should hold a certificate of authority to teach from the Minister himself.

We have suggested earlier that the Education Advisory Council may also have a responsibility for a professional disciplinary process in relation to teachers. If this is considered desirable then it is in this Chapter that the authorisation of this process should appear. We anticipate a provision of this kind.

1. It shall be the responsibility of the Chief Officer to maintain the register of qualified teachers authorised to teach in schools in the Cayman Islands.
2. The Minister for Education may require the removal from the register of authorised teachers if the name of any person whose conduct or lack of suitability in any other respect renders him unfit to continue to be employed as a teacher in a school.

3. The Minister for Education shall not exercise the power conferred on him by this section otherwise than upon a recommendation of the Education Advisory Council made following a hearing conducted by a committee of the Council constituted for the purpose at which the teacher concerned shall have had the opportunity to be heard in defence of any complaints or allegations which may be made against him.
4. The power to make regulations in relation to the proceedings of the Education Advisory Council under section ** [referring back to the relevant provisions in the appropriate Chapter] shall extend to the making of regulations governing the constitution and proceedings of disciplinary committees under this section and may further authorise the Education Advisory Council, after conducting a hearing under this section to issue warnings, reprimands and other sanctions short of de-registration as may be prescribed.
5. There shall be a right of appeal to the [appropriate] court of the Cayman Islands against a decision of the Minister under this section and against any decision of the Education Advisory Council resulting in a financial penalty.

It has been established practice in UK law to make regulations governing the physical fitness of teachers, but this has become controversial following the enactment of laws prohibiting discrimination on grounds of disability. The two sets of laws do not sit easily together. We do not see a need for such regulation. If lack of physical fitness is believed to present genuine difficulties affecting the health, safety and welfare of children this can be dealt with in an employment context.

We must also touch here on what we know to be a very sensitive area, protection of registered teacher status from discrimination on grounds of religious belief (or the lack of it) or on grounds of lifestyle. As lawyers working with a developed framework of UK anti-discrimination laws, our natural tendency is to the view that matters of personal belief and lifestyle should not in themselves be restraints on the practice of a profession from which livelihood is derived. It is, however, clearly apparent that the adoption of a position in Cayman Education law may be profoundly offensive to the sincerely held beliefs of many in the 'private' school sector who make a vital teaching contribution to the Islands' education service.

They made clear their respect for other beliefs and lifestyles whilst adamantly asserting their right as providers of faith based, indeed Christian education, to continue to make their provision according to their own deeply held religious convictions. Clearly that must in return be respected by the law. We, therefore, recommend that professional registration should be legally protected against discrimination on grounds of religious belief or lifestyle, but this cannot extend to employment in assisted and independent schools which have a religious character. We recommend that, provided that the “exemption” for assisted and independent schools with a religious character is precisely defined and broad protection against unfairness in dismissal of employees in these schools is retained, the law should reflect this approach.

Chapter V: School Admissions

There is one area in which we felt some sense of denial on the part of managers of the Islands Education Service. We understand it, but we believe it must be overcome. Every society, every education service has ‘missing’ children, children who for some reason, and despite the legal requirements for compulsory education, simply escape the net.

The very fact that they are ‘missing’ children is an indication that they may be difficult to accommodate. Tracing them and introducing them to education is difficult.

These are matters of policy and management and not, therefore, matters for us. Our concern is that the regulation of school admissions should provide simple and straightforward access to the system.

The law should, therefore, identify where authority for managing admissions to the government and assisted schools should be. We anticipate that for government schools this is likely to be within the Department for Education Services and for assisted schools, it is likely that the proprietor or Governing Board will be the admissions authority.

The provisions in primary legislation may be relatively short with further detail to be added by regulations authorised by the primary legislation. We think, however, that the

primary legislation should impose a duty on the assisted and independent school authorities and to notify the Minister (the Department in reality) of such information relating to admissions as he may require in accordance with regulations. This requirement should operate as a condition of the statutory licence to operate as a provider of education. By this means the Department will be in a position to track every child.

Regulations will also provide for the transfer of records.

There is also a serious and rather difficult point that needs to be made here with cross reference to what we have said above in relation to free education in government schools and charges and to what we have to say below in relation to the funding of assisted schools.

It is obviously desirable, and indeed the Government is obligated by its commitment to international convention, to provide access to quality education for all. This does not of course require government to act to prevent parents from choosing to pay for a style of education alternative to that provided by the state if they so wish and obviously a preference for faith based education above secular state education is a very well established reason for this kind of choice.

However in a system fairly evenly divided between fully maintained and fee earning schools, all this is not at all easy to manage. Should there be a sudden large scale exodus away from fee collecting schools towards the fully maintained schools, the system would be thrown into some chaos. Against the background of experience this may be thought to be only a remote possibility, but the law must anticipate such remote possibilities, and self evidently with the target being fixed on the creation of a world class government funded education service in the Islands, that which may now be considered remote may quickly become a foreseeable reality.

It does therefore seem impractical in context that law should give an absolute guarantee of a right of admission to government schools for every child. Whilst that may be the desirable objective, it seems that it must, at least for the present, be qualified in the Cayman Islands for purely practical reasons.

We suggest therefore that the law must give authority for regulations to be made governing admissions criteria with rules for prioritisation on admissions up to a point when a government school may have to be defined as “full”.

Chapter VI: Funding of Assisted Schools

There are again significant policy issues to be addressed in relation to this Chapter. We recommend that at this stage the law should give authority for regulations and it may be necessary for provisions in this Chapter to be delayed by a provision to the effect that they shall not come into force until a date to be appointed by order.

We recommend that initially the new law should simply give authority for financial assistance to continue, e.g.,

1. The Minister for Education may make grants to such persons or bodies having responsibility for the provision or management of a school or other educational institution in the Cayman Islands as he thinks fit.

We think that, at some stage, it may be appropriate to extend this simple provision into a rather more formal funding scheme. This however may require more detailed policy consideration locally. Should it be thought desirable in policy terms that there should be a scheme then this should be established by secondary legislation for which the primary legislation would provide as follows -

1. As from the coming into effect of this section, the Minister of Education may make grants to persons and bodies having responsibility for the provision or management of a school or other educational institution in the Cayman Islands in accordance with a scheme for the funding of assisted schools for which provision may be made by regulations..
2. The Governor in Cabinet may make regulations governing a funding scheme under this section.

3. Regulations under this section may provide for the terms and conditions applicable to any grant under this section and may authorise the making of different provision for different types of school and for different levels of grant according to different terms and conditions.

Under the heading “School Admissions” we have foreseen a need to reassess the relationship between the government and the assisted schools which accept fees. We now expand on that at length.

We have no doubt at all that the availability of particular styles of educational provision, particularly that which operates on strong religious, we will say Christian, values has monetary worth for many parents. This tradition in the Cayman Islands remains strong and its strength should continue to be respected.

However a question must arise as to whether the willingness of parents to pay fees to the assisted schools is, at least in part, dependent on a belief that they are better than government schools. Once the perceived obstacles to high quality education for all in the government schools system are removed, changes in popular preference in favour of free education must be anticipated. The authorities which sponsor the assisted school have no choice but to recognise this. They cannot want their traditional status to become an obstacle to the achievement of high quality for all.

For their part, the assisted school leaders must therefore come to terms with the responsibilities of the government in international law and convention and its accountability for the performance of its electoral mandate. The government accepts responsibility for every child and young person in the Cayman Islands and the value to the social fabric and economy of the Islands which depends on the outcome of their education. It is now a clear legal duty of governments in international law to promote the education of children and young persons and to secure so far as is possible equality of opportunity. The time in which educational provision is the independent preserve of largely unregulated providers, whether motivated by entrepreneurial gain or community concern, is now past. Government has the responsibility and the desire to focus its attention on the education of children and young persons in the society for which it governs and to do so it must legislate and regulate at least for shared and commonly defined aims and objectives.

In return, government needs to demonstrate to the assisted school sector its respect for the contribution it has made out of that sector to Cayman Islands education and the diversity it offers, and which no doubt it will continue to offer. Rather than regulating to prohibit, we shall recommend that government should in due course regulate to permit and by doing so draw the subsidised school sector into a comprehensive education service devoted to the needs of all children. We do not even wish it to be inferred from our approach to distinguishing between different schools in what is now called the private sector, that there is no case for continuing subsidy to the profit making schools in that sector. That is entirely a matter of policy. What we do say is that wherever government chooses to subsidise, it has the right to secure value for what it spends from the public purse. This value is that which is derived by government in its pursuit of the aims it has for the people of the Cayman Islands as a whole.

Church involvement in education in the Cayman Islands differs from that which was put in place by the 'religious settlement' and the 1944 Education Act in the UK, in that faith based schools in the Cayman Islands are funded by the collection of fees supplemented by government subsidy. In the UK, the state meets the running costs of most faith based schools as 'voluntary aided' or as 'voluntary controlled' schools. The financial contribution made by the churches themselves differs as between these two types of school.

UK legislation makes the same provision for secular education in faith based schools as it does for the rest of the UK's state maintained schools. All are part of the state education service. Special statutory provision is however made for religious education in faith based schools, for pupil admissions and for staff recruitment and employment. The governing bodies of voluntary aided (and some so-called 'foundation schools') have greater autonomy than the governing bodies of voluntary controlled schools. In particular, the governing bodies of voluntary aided schools are clearly identified as the employers of teachers who work in those schools with the right to include provisions in employment agreements requiring a faith commitment from those teachers employed to give religious instruction and a moral obligation provision applicable to other teachers – though individual personal beliefs and convictions are legally protected.

These are complex arrangements which deal with a relationship itself of great complexity. We do not recommend that they should be adopted in the Cayman Islands. We do not detect any such need for such detail now nor do we anticipate such a need in the foreseeable future. We think only that there are concepts which have guided the UK church and state partnerships in education, the study of which may prove very beneficial to the development of such a partnership in the Cayman Islands.

We repeat that it is not for us to interfere in matters of policy. We do however see in the issues serious potential problems for the future legal framework. We are confident that with mutual respect and frankness in discussion, the 'private school' representatives and the Cayman Islands government will successfully negotiate the terms of their future partnership. We do urge that as they do so both the leaders of faith based education in the Cayman Islands and senior government representatives should seek to engage in a dialogue with their UK counterparts about how best they may take forward the education partnership between the churches and secular government.

These are matters for more detailed consideration at a later stage in the legislative programme. There are more immediate measures necessary.

First we feel that the statutory definitions of what are presently called the private schools must be changed. They are not, in fact, 'private' by reference to a dictionary definition. The greater problem however is that the term 'private schools' currently covers schools of very different types which it may well be felt should be very differently dealt with by the law.

There are certainly two categories, perhaps three or more. The distinction between 'private schools' operated for profit and those which are not has already been identified and the Cayman Islands government has begun a reflection on whether it is right for government resources, derived from revenue collective, should ever, when tracked, constitute additions to private profit.

We do not, however, believe that this simple distinction is sufficient. There needs to be a further examination of what 'for profit' means. Profit, simply defined, is the excess of income over expenditure. This is not, of course, what figures in the policy debate. Rather what is significant is the question of who takes the material benefit of the excess

of income over expenditure. At one end of the spectrum of possibilities is the school owned and run commercially by its proprietors. Education provided in these schools is a service commodity. The personal wealth of the proprietor or providers is contingent upon the success of the school, the attractiveness it has to fee paying 'consumers' and the level of fees it can charge in its market. It is understood in most developed education systems that this is a sector very largely independent of government, not subsidised from public sector resources. Wherever public sector resources do pass into the hands of such independent entrepreneurs the government or other public sector authority is accurately defined as a 'purchaser' whose rights of control are governed by contractual agreement. We have seen this type of arrangement in the UK in the so-called 'assisted places' scheme and more recently, though in a more regulated form, in the development of so-called academies.

Between this extreme and, at the other end of the spectrum, the wholly state maintained school, there are several possibilities about how money provided by the public sector may be traced to its final destination. It may be that, the state subsidy provided to faith-based schools in the Cayman Islands does no more than enable the providers to balance income against expenditure. In other cases it may be that the subsidy results in an excess of income over expenditure (profit) which is then turned to the benefit of the relevant church. It may be again that the state subsidy enables the school authority to pay higher salaries than would otherwise be possible i.e., the totality of the income is applied ultimately for the personal benefit of individuals.

Whatever policy decisions may be made in this area, we consider it essential that there be a structure of legal regulation which is both transparent and accessible. It must define the different types of schools with which it deals and it must provide for the establishment of funding formulae, whilst retaining sufficient flexibility for the ongoing development of constructive partnership.

Chapter VII: TVET

We have anticipated our proposals for TVET provision within the reports above of our visits to George Town. We believe it to be correct that primary responsibility for employment skills related education and training should remain with the Department for Employment Relations, and on this basis the provisions of the education law should be

limited to authorising the establishment and development of TVET supportive facilities within the secondary and tertiary sectors.

We anticipate a provision in this Chapter of the law as follows -

1. It shall be the duty of the Minister for Education, in the exercise of the powers conferred on him by this enactment, to have regard to the desirability of ensuring that the education provided in secondary schools and other educational institutions providing secondary or tertiary education, shall facilitate the entry by pupils and students into technical and vocational education and training schemes for which provision may be made by any enactment.
2. In discharging his duty under this section, the Minister may –
 - a) direct that there be provided in any secondary school or tertiary other educational institution such courses providing technical and vocational education and training as he may consider appropriate;
 - b) subsidise from monies available to him for the provision of secondary schools and tertiary education institutions, and by way of grant or by any other means, schemes whereby such education or training for pupils in attendance at such schools and other institutions may be provided at such workplaces as may be considered appropriate for the purpose.
3. The Governor in Cabinet may make regulations as to the matters mentioned in subsection (2) and in particular as to the manner whereby grants, subsidies and any other form of assistance may be provided, and requiring that such grants

subsidies or other forms of assistance shall be made available only on such terms as may be prescribed.

On this basis employment related legislation may then deal more extensively with TVET provision. This of course is beyond our present remit. We do however make a few points about how what this parallel legislation might deal with having regard to our concern that there should be a single continuum of lifelong education provision notwithstanding that primary responsibilities may lie with different departments of the Ministry

A. Amanda's discussion with the TVET Labour Consultant included an extensive reflection on the National Training Board envisaged by the 2005 law. It was generally a tendency of the 2005 draft to seek to create new Quasi Autonomous Non-Governmental Organisations (QUANGOs), in the case of TVET, the National Training Board. We rather feel that in adopting this approach the authors of the 2005 draft have perhaps fallen victim to the idea of importing structures and mechanisms from other jurisdictions, particularly that of the UK, where they appear to work. As we make clear when dealing with Special Educational Needs, we do not reject that approach entirely, but even where it is adopted, there should be simplification to fit the circumstances of the Cayman Islands.

QUANGOs can be a very good thing where there is a need to break up a very large, very complex and very diverse public services into manageable units. Their disadvantage is that their existence in itself creates a necessity for co-ordination which increases in proportion to the number of QUANGOs in existence. Justification for the creation of these organisations is always a matter of balance between the advantages in terms of manageability and the disadvantages arising from a lack of co-ordination or "joined up thinking".

What we believe to be very clear, and we have made this point elsewhere, is that at a time of reform, the higher priority is to achieve clarity of leadership and single focus, reducing the need for inter-office and inter-departmental co-ordination to the minimum necessary maintain a reasonably free flow of ideas. Sector regulating QUANGOs may very well be high on the agenda towards the end of the legislative programme we recommend. Now is not the time for them.

We believe rather that the Department for Employment Relations, closely coordinating relevant work with the Department for Education, (together part of the same Ministry), is well equipped to oversee and to co-ordinate new developments in TVET with advice from such committees as it may be considered appropriate to establish with governmental authority and with the power to commission research and reports in discrete areas of provision.

B. We do recommend that any provisions of employment related legislation making provision for workplace based TVET must include a power to make regulations as to the suitability of workplaces as education and training locations, and with some measures regulating their association with secondary and tertiary education establishments. We feel it to be important that the desired “lifelong learning” continuum in state sponsored education provision is supported, though not necessarily in onerous detail, by a regulatory regime giving the Minister powers of intervention for quality control and health and safety purposes, the latter being particularly significant in relation to your persons undergoing workplace based training.

Chapter VIII: Tertiary Education

Our main focus of attention has been on primary and secondary education and, at this stage, we are much less well-informed about tertiary and higher education in the Islands. We know there is a commitment for its development.

Presently the Islands Government sponsored tertiary education centres on the University College of the Cayman Islands (UCCI). It was established in 1975 as a Community College. In 1985, it was amalgamated with other post-secondary institutions to form the Community College of the Cayman Islands. In 1987, it was re-established by an Act of the Legislative Assembly and by a further Act in 2004 it became the University College of the Cayman Islands. It is governed by a Board of Governors and by its Academic and Advisory Committee. It admits students to degree, certificated and professional courses.

There is much to be done in relation to primary and secondary education and we believe that it is upon this that a new education law should concentrate. That is not, however, to

say that we take the view that there is little to be done in relation to tertiary education. On the contrary, we believe that there may be interesting times for tertiary education in the Cayman Islands in the foreseeable future.

New attitudes to higher education are developing. Graduate and under-graduate education is being seen as a market commodity with large international conglomerates demonstrating their readiness to purchase the benefits of higher education research and study. Perhaps, predictably, the US appears to be leading the promotion of this approach within global economic forums.

With our background, we have some philosophical objection to this trend but we clearly cannot ignore the fact that the attractiveness of the Cayman Islands as a place to study and work may well mean that the Islands' government will wish to be a participant in this debate at some point in the future. For the present, however, the priority is to develop tertiary education and training on under-graduate, certificated and professional courses for the benefit of the people of the Cayman Islands. With that, we are ourselves comfortable.

The 2005 draft law contained five clauses dealing specifically with tertiary education (Clauses 66-71). They provided for the Governor in Cabinet to establish and maintain "an institution of higher education at such places as the Minister may determine" and for the establishment of a Tertiary Education Council.

We think that the establishment of a Tertiary Education Council at this point may well be a wise advance (though it could well be constituted as a committee of the Education Advisory Council), but we believe that the five clauses in the 2005 draft could be much abbreviated to achieve the desired objective.

We have also mentioned, in reporting on discussions, the suggestion that the Government may effectively secure such standards of tertiary education as it considers desirable through contractual arrangements with non-governmental providers rather than through a regulated registration or licensing regime. We propose that a power to do this should be incorporated into the law

We, therefore, propose that provisions along the following line should now be considered -

- 1 (1) The Minister for Education may cause there to be established and maintained such institutions for providing tertiary education in the Cayman Islands as he considers desirable.
- (2) The Minister for Education may enter into agreements with third parties for the establishment and maintenance in the Cayman Islands of institutions such as are mentioned in subsection (1)
- (3) The Minister for Education may make grants to persons and bodies having responsibility for the conduct and management of institutions for providing tertiary education in those mentioned in sub-section (1) as he thinks fit.
- (4) The Governor in Cabinet may make regulations as to the conduct and management of institutions for providing tertiary education; as to the manner whereby grants may be made under sub-section (2) and as to the conditions which may be imposed on the making of such grants.
- (5) Regulations under this section may make different provisions for different institutions and for different courses of study to be provided at such institutions and may, in particular, provide for the Board of Governors or trustees of a government maintained or grant assisted institution to report to the Minister for Education in such manner, on such subjects and at such intervals as may be prescribed.
- (6) Any tertiary institution in existence upon the coming into effect of this law including, in particular, the University College of the Cayman Islands, shall be deemed to be established by this law and regulations made under this law may be applicable to it.*
- 2 (1) There shall be a body to be known as the Tertiary Education Council which shall have the function of advising the Minister for Education on matters relating to tertiary education provision in the Cayman Islands.

(2) The Governor in Cabinet may make regulations as to the constitution and proceedings of the Tertiary Education Council; as to the matters which it may consider and as to the manner and frequency of reports which it may be called upon to provide.

We expect there to be a need to revisit tertiary education provision within two to five years with the possibility that it may then be appropriate to distinguish in statutory terms between technical and vocational, education and training, and education on courses leading to the award of degrees. It may well be appropriate at that stage to enact an entirely separate Further and Higher Education law.

*Note: We have not examined the 1987 and 2004 Acts establishing and renaming the UCCI. We are not, therefore, certain that this is sufficient. It may be necessary to re-enact the earlier legislation more fully.

Chapter IX: Early Childhood Years

The Early Childhood draft law of November 2006 described essentially an inspection licensing and registration system for child carers and child care institutions. As discussed in our report above of the interview with Kate Marnoch, we are not all clear what place all this really has in an education and training law.

We think rather that there should be a separate law making provision for licensing and registration of carers and child care institutions.

That would then leave important matters relating to education to be addressed in the education law.

The education features of early children law can then be dealt with in the education law in its Chapter X. It is rather unusual in formulation of statutes, but we see no real objection to the inter-relationship between the two laws being established in the Cayman Islands by a provision appearing near to the end of the Early Childhood Institutions (Inspection and Registration) law as follows:

“This law shall be read together with the Education Law 2008 which makes further provision with regard to education in early childhood institutions.”

Turning back to Chapter IX of the Education and Training law, we recommend that this should include provision as follows:

1. No institution may be registered as an early childhood institution under the provisions of the Early Childhood Institutions (Inspection and Registration) law 2007, unless the Chief Officer is satisfied:
 - a. that such arrangements as may be considered desirable in accordance with a national policy for early childhood education approved by the Minister for Education have been made in relation to the institution in question;
 - b. that any person employed to work as a teacher in any such institution is a fit and suitable person holding such qualifications as may be prescribed under section 25 of the Early Childhood Institutions (Inspections and Registration) law 2007.
2. An inspection of an early childhood institution conducted under sections [A] or [18] of the Early Childhood Institutions (Inspections and Registration) law 2007 may include inspection of the educational facilities provided in the institution.
3. An application for registration may be refused or registration may be suspended or cancelled as the case may be for a reason relating to education in an early childhood institution as it may be refused, suspended or cancelled for any other reason for which the Early Childhood Institutions (Inspection and Registration) law provides.
4. Regulations made under section [27] of the Early Childhood Institutions (Inspection and Registration) Law 2007 may include regulations relating to education provided or to be provided in an early childhood institution.

Chapter X: Special Educational Needs

Much of what we have to say about special educational needs is the obvious. Our brevity does not however signify that we think this unimportant. It is simply the case that the law for a mature education service must have something to say about special needs education.

We hasten to insert here that we use the term “special educational needs” because it is one with which there is familiarity in the UK and we continue to use the term in this section of our report. That said, it is not a term we prefer. Every child, every student, is “special” in an education service and we are not comfortable with language which tends to suggest that there are “ordinary” children and “special” children. We will welcome a better expression which may locally be thought more appropriate in the Cayman Islands.

We did not have the opportunity during our March 2007 visit to explore in depth the provision presently made for children with special needs in Cayman Islands schools. In particular, we do not know the extent to which, if at all, the Cayman education authorities have engaged with the debate that has continued for many years about ‘inclusion’ that is to say whether children with special needs should be taught and catered for separate from the mainstream or integrated into mainstream education with special attention being given to their needs in that context.

Though there are, of course, many ‘special schools’ in England and Wales, the inclusionist approach is generally much preferred in the education system. Teachers and senior education managers in the Islands are no doubt familiar with the arguments in the debate. It is generally acknowledged that the inclusionist approach is rather more difficult to manage and needs more regulation. It is relatively easy to make legal provision simply for the establishment of ‘special schools’. Ensuring that special needs are met in mainstream schools requires a rather more complex set of specific requirements.

There are at least three essential features of a statutory regime governing provision for special educational needs:

1. a definition of what special educational needs are. Legislation for England and Wales deals with this as follows:
 - a child has ‘special educational needs’ if he has a learning difficulty which calls for special educational provision to be made for him;
 - special education provision means educational provision which is additional to, or otherwise different from, the educational provision made generally for children of his age.
2. statutory duties upon the political head of the education service in government to make provision for special educational needs; and
3. a means of detecting special educational needs in a child, preferably in a close partnership arrangement with parents.

It is immediately apparent that the statutory definition of special educational needs in the law of England and Wales is somewhat circular. It is, however, enough for its purpose because it underpins a legal and education management framework which is considered broadly successful. The important elements of the definition are in the phrases “additional to or otherwise different from” and “children of his age”. Those phrases identify that provision exceptional to the mainstream must be made and it must be age related. This recognises that special needs do not necessarily prevail throughout the years of schooling. They must be met for any period during which they are identified.

The legal and management framework, underpinned by this definition has the following features:

- a procedure for the identification of special needs leading to a formal written statement in consultation and partnership with parents;
- a distinct legal process enabling parents to challenge the judgements of authorities as to the need for special provision;

- a requirement that every school must have on its staff an appropriately qualified person to act as special needs co-ordinator in the school; and
- a statutory Code of Practice containing very detailed provision on meeting special educational needs.

We depart here to some extent from our principle that we should not seek to export systems from the UK to any other jurisdiction. We do so in relation to special educational needs because there is general acceptance in the UK that the basic features of this framework appear to work effectively to address a need for which any mature education service committed to the interests of every child should provide.

That said, we think that in the Cayman Islands context, the essential features of a special educational needs structure can be legally expressed in a much simplified form.

There should be a statutory duty placed on the Minister for Education to exercise the powers conferred on him with a view to ensuring that suitable provision is made for children with special educational needs.

The law should define special educational needs and we recommend positive consideration of the England and Wales formulation.

The law should provide that any child who may be considered to have special educational needs shall be assessed either at the initiative of the Principal of the school he attends or at the request of the child's parent. If special needs are then identified, this should lead to a formal written statement.

The law should require that in every school there should be a suitably qualified person having responsibility for the identification of children with special educational needs and for co-ordination of work on special educational needs within the school. Unless, as a matter of policy, there is considered to be good reason why this should not be the case, we recommend that this person must be a qualified teacher with additional training.

The law should provide a means by which parents may dispute decisions with which they do not agree. In England and Wales, this is the independent Special Educational

Needs Tribunal having the features and formalities of a court. In the Cayman Islands, as we have suggested in our report of the discussions with Brent Holt on our second visit, we recommend that this function should be undertaken by an adjudicator's office established for the purpose.

The law should provide for a statutory Code of Practice. Into this would go much of the fine detail about how special educational needs should be identified catered for and managed.

The law should then finally authorise the making of regulations as to the various matters dealt within the primary legislation, e.g., regulations as to:

- the form of statements of special educational needs and the matters to be taken into account in their preparation;
- the procedures governing the operation of the office of a special needs adjudicator;
- the qualifications, training and requirements of special educational needs co-ordinators; and
- the form and content of the Code of Practice.

The primary legislation should not be lengthy nor unnecessarily detailed. Its design should be to create the most basic structures leaving flexibility to education service managers in government to respond to need through secondary legislation and better still through the Code of Practice.

Chapter XI: Miscellaneous Provisions

Into this Chapter should go:

Corporal Punishment and Pupil Discipline

1. Abolition of corporal punishment and other matters relating to pupil discipline – it has recently, and rather belatedly, been accepted in UK law that the old English common law principle governing the relationship between teachers and pupils – the ‘in loco parentis’ principle – is long out of date and largely meaningless in a modern education environment. It has been replaced by several rather complex measures giving to teachers a statutory right to discipline pupils.

Most of these measures are necessary only because of the complexity in school governance structures in England and Wales. A much simpler approach can be recommended for Cayman Islands law. We appreciate, however, that in dealing with the disciplinary authority of teachers and other school staff members generally, it may be necessary to make different provision for government, assisted and independent schools. The assisted and independent school authorities are, we think, likely to wish to retain some autonomy in relation to disciplinary matters. We will assume that in our recommendations.

As to corporal punishment, we believe it justified to outlaw it in all schools. It is well established in UK law that corporal punishment is a human rights issue not one of preference for different disciplinary regimes in education which parents may choose. We suspect that there may remain pockets of opposition to the abolition of corporal punishment in the Cayman Islands making this something of a sensitive issue, but we believe that they should be confronted positively. The abolition of corporal punishment in schools is a cultural marker. The existence of a corporal punishment regime in schools is now perceived in the UK as a right once conferred upon teachers to deploy violence as a means of effecting discipline and that is not now regarded as an accepted feature of the culture of a modern education service founded on values of respect for the individual. Law which governs a system based on these values rightly excludes injury to the person in all forms as a method of retribution or deterrence.

We, therefore, suggest:

1. Corporal punishment shall not be permitted in any school in the Cayman Islands.

2. There shall be for every government school a written pupil behaviour and discipline policy.
3. It shall be a condition of a grant of government funding to an assisted school that there shall be for that school a written pupil behaviour and discipline policy.
4. The pupil behaviour and discipline policy for a school may have application to the conduct of a pupil at school, whilst a pupil is engaged in activities away from school premises arranged as school activities and also to the conduct of pupils at other times and in other places when it is considered appropriate in the interests of the education of the pupil or the protection of the reputation of the school that the policy should be so applied.
5. In the preparation and revision from time to time of a pupil behaviour and discipline policy for a school regard shall be had:
 - a. to the wishes of parents of pupils in attendance at the school;
 - b. to guidance which may from time to time be given by the Minister for Education on matters relating to pupil discipline and behaviour.
6. A person employed to work as a teacher at a government school shall, unless the Principal of the school for good reason otherwise decides, have the lawful authority to effect discipline in accordance with the school's pupil behaviour and discipline policy and, for that purpose, in particular give directions to secure compliance with any rules for which the policy provides and to impose penalties for non-compliance with such rules and directions.
7. The Principal of a government school may authorise persons on the staff of the school to effect discipline with the same authority as is conferred on teachers by sub-section (5) provided always that:

- a. such a person is in the opinion of the Principal a fit and suitable person to exercise such authority;
 - b. each such person has undergone training in matters relating to pupil behaviour and discipline; and
 - c. the exercise by such a person of disciplinary authority in relation to pupils remains at all times under the supervision of a person employed to work as a teacher at the school as to the education considerations to which regard must be had.
8. Subject to sub-section (8), a person employed to work in an assisted school shall have lawful authority to effect discipline in accordance with the pupil behaviour and discipline policy as may be conferred upon him or with the approval of appropriate body.
9. The Minister for Education may direct that the power exercisable by an appropriate body under sub-section (7) shall not be exercised so as to give disciplinary authority to any person or class of persons who, in the opinion of the Minister, may be considered unsuitable to hold such authority.
10. A person employed to work in an independent school shall have lawful authority to effect discipline in relation to pupils at the school as may be conferred upon him by the appropriate body.
11. In this section, 'appropriate body' means the Governing Body or Trustees of the school or such other persons or body having responsibility for the conduct of the school.

2. Use of School Premises

We suggest:

1. The Governor in Cabinet may make regulations as to the use of the premises, equipment and facilities of a government school other than for the purposes of education.
2. The Minister for Education may enter into agreements with the Governing Body, the Trustees or other appropriate persons or bodies in relation to assisted and independent schools for the use of the premises, equipment and facilities of those schools other than for the purposes of education.
3. Regulations under this section may, in particular, provide:
 - a. for such premises to be available outside normal school hours for use for meetings, social functions and other activities beneficial to the community in which the school is situated;
 - b. for such premises to be available for use in connection with elections;
 - c. for the fees which may be charged in connection with use other than for the purposes of the school and for the recovery of expenses;
 - d. for the making of rules governing the health and safety of persons using the premises and for the protection of the equipment and facilities on the premises.

[etc as considered appropriate]

3. 'Sister Islands'

We have been encouraged to include within the law specific provision relating to Cayman Brac and Little Cayman, and we agree that there is a great deal to be gained from doing so to demonstrate clearly that attention must be given to their needs. We have not, unfortunately, had the opportunity to visit either of these islands and we cannot, therefore, offer any specific views as to what those needs

may be. We believe, nonetheless, that reference should be made to them in a 'miscellaneous provision'.

We suggest:

Cayman Brac and Little Cayman

1. It shall be the duty of the Minister for Education in the exercise of the powers conferred on him by or under this and any other enactment relating to education, to have regard and to cause regard to be had to the educational needs of the people of the islands of Cayman Brac and Little Cayman and, in particular, to those needs which may be peculiar to those islands or in any other way different from the educational needs of the people of Grand Cayman.
2. The Governor in Cabinet may make regulations whereby any provision of this law may be added to, varied or disapplied in relation to Cayman Brac and Little Cayman or either of them in any case in which it may be considered beneficial to education in those islands to do so.
3. Regulations under this section may further provide for the establishment of such institutions, advisory and other councils, and other bodies having functions relating only to education in Cayman Brac and Little Cayman or either of them as may be desirable.
4. Nuisance and Disturbance on School Premises

Our attention has been drawn to a few specific issues about disruptive behaviour on school premises other than by pupils. We feel that this may be addressed effectively in a broad provision.

1. It shall be an offence punishable on conviction by [the penalties to be considered] for any person other than a pupil or a person employed to work at the school, to cause or create a nuisance or disturbance on the premises of any school or otherwise to act on school premises in a

manner disruptive of the education provided in a school or injurious to pupils or persons employed to work at the school.

2. The Governor in Cabinet may make regulations as to activities in which persons other than pupils and persons employed to work at the school may be permitted to engage without being deemed thereby to be guilty of an offence under this section.

It will be apparent that this formula would allow regulations to be made, for example, to govern the activities of vendors on school premises.

Other Matters

There are further matters we need to address

School Governance Model

We have so far made only passing reference to the school governance model. The reason for this is that we see no real reason to legislate for it. We have reflected carefully on this. It does not seem to us that anywhere within the model is there a need to confer statutory powers. Government in the shape of the Department of Education Services manages the Service. There is no multi-layered structure of authoritative bodies whose relationships with each other need to be directed by regulation. The statutory powers and duties of the Minister, discharged on his behalf by senior civil servants within the department are entirely sufficient to enable those officers to create and secure the implementation of a governance model in government schools.

Central to the governance model is the appointment of learning community leaders and campus directors. Their appointment under appropriate employment conditions and with appropriate job descriptions will install the model.

Further in so far as it is considered desirable to extend the principles of the governance model to the assisted school, this is achievable through agreement on the conditions applied to grant assistance. The measures we propose are sufficient to authorise this arrangement.

Our message, therefore, so far as the creation of learning management units is conceived is simply 'Get on and do it'.

That said, we do add a few thoughts of our own about the proposed governance structure. We have not had the opportunity to study in depth the principles which underpin the model and we feel that, even if we did, we would be rather out of our depth in the terms of the educational management principles on which it is based. These have obviously been considered thoroughly and expertly. Our comments are limited to those which we can make from the point of view of management accountability.

In this respect we do think it important to maintain safeguards against risks which, in our experience, exist in the breaking up of large administrative units into smaller ones.

We certainly agree with the creation of learning units (communities) of better manageable size. We know from educationalist colleagues the value in education of the sense of belonging, and that sense is far better and more easily developed in learning communities of manageable size. We are not at all surprised that a model based on unit sizes of 250 students should be considered correct for Cayman Islands Schools.

There must, however, at all times be certainty in decision making authority and for co-ordination in the pursuit of overall aims and purpose. Commitment to these principles is crucial to the effectiveness of our approach to the legal construction.

These are objectives which are always difficult to make compatible. This has proved to be the case in the UK as the tide of legislation has ebbed and flowed between the high water mark of erecting school units encouraged to compete and the low water mark of authority intervention to ensure consistency in the pursuit of a universal high standards objective. Wrestling with this systematic contradiction is probably one of the main reasons why the education service in England and Wales is now regulated in such volume and complexity.

In the Cayman Islands, the challenge, readily now accepted, is to apply the proposed school governance model to a system already rife with uncertainty about authoritative decision making which suffers from upward drift of responsibility graphically explained to us by both the Chief Education Officer and members of the Schools Inspectorate. It is clearly understood that the school governance model will not have the success it deserves if it exacerbates that problem.

It was clearly apparent to us that all this had been carefully thought through in developing the governance model. As a result, we are not now presumptuous in drawing attention to it. We do so because we believe it to be important to emphasise that understanding. Job descriptions for learning community leaders and campus directors ensure that there are built into the governance model frequent opportunities to co-ordinate effectively whilst preserving the learning community identities so enabling their considerable advantages to be realised more effectively. The learning community

leaderships themselves understand that they will be instruments for the delivery, in their own communities, of a centrally determined vision and strategy rather than competitors for popular preference.

They must also have a clear responsibility for the implementation of outcomes from the inspection system. We have recommended that the Director of Education Services should be the recipient of inspection reports, with obligations for which she is accountable, to report on measures she takes to implement recommendations of the inspectors. She must have a clearly reliable means of ensuring delivery of these measures through the learning community leaderships and they must in turn be responsive to parental wishes and aspirations within their communities.

This then is a model capable of delivering the desired excellence in educational provision.

Education Appeals Committee

We do not think this is necessary. We do not think that it will add value to the structure. Rather we think that its existence may add an element of instability and uncertainty to decision making. It is natural that those who are not content with decisions and judgements made by “authorities” will wish to ascend to the highest level of appeal simply because it exists. They cannot be blamed for doing so. The issue is whether such bodies actually need to exist.

We have seen that the Minister himself and the senior departmental officers enter on this project with great commitment, conscious of their responsibility and we believe that the Cayman Islands people can have confidence in their judgements in government without the need for external quasi-judicial mechanisms operating independently of government

We recognise of course that good government is not a matter of trust. There must be both law and democratic accountability which imposes restraint on excess and error in government, but we do not think that this is best achieved by the creation of unnecessary and unelected quasi-judicial bodies. We have recommended a structure in which government may govern tempered by duties for which the Minister, the Chief Officer and through them the senior managers in the Department for Education and in

schools will have accountability both in terms of line management and political accountability. We think that these recommendations are appropriate to enable the business of government of the education service to be conducted efficiently.

In some areas there is of course need for the opportunity to be given to individuals to be heard as they present their cases and their arguments. We have recommended that a reformed Education Advisory Council, through the establishment of new committees, has a trusted record to expand into this role. As it would be reconstituted, as a consultative council, its decisions and those of its committees would be for report to the Minister for endorsement. It is the Minister's endorsement which would give these decisions their lawful and democratic authority and it is the Minister who would be accountable. We would not expect that the Minister would depart from a recommendation formally made to him by the Education Advisory Council on a matter affecting the interests of any individual pupil, parent or employee without having the ability to explain that decision convincingly to Cabinet, to the Legislative Assembly and to the electorate.

SUMMARY

We have not attempted in this Report a comprehensive examination of every provision which the new law must contain. We know that there are a number of other provisions to which attention will need to be given. Indeed, there are a number of issues identified in Vaughan Carter's paper which we have not addressed.

We have rather tried to provide guidelines, illustrated by specific suggestions of how an effective new education law might be shaped to achieve the desired objectives and with some of the main themes examined and discussed.

It is on this basis that we invite consideration of our Report. We are aware that, in part, we consolidate thinking and discussion that has already very constructively taken place amongst the leaders and stakeholders in the Islands' education service. In other part, however, we present different ideas and approaches to the issues. We hope that what we have to say here will move things speedily forward to the next stage.

We are ready, of course, to participate further in this exciting project as may be requested of us. We believe that at this point is necessary and appropriate for a new draft law to be written based on the themes we have explored, if accepted. We will then welcome the opportunity to work further on that draft either at a distance or, if appropriate, on a further visit to George Town. The target for enactment of a new law to become effective in the beginning of 2008 remains in our sights.

We also reaffirm the offer made by Steve Sinnott in January 2007. There are other areas, not to be dealt with in terms of law, in which the NUT will be very pleased to assist if requested – not by any means least, matters relating to performance management, teacher professional development and school self-evaluation in which NUT colleagues of ours have extensive experience.

We now offer our First Report to the Hon Alden McLaughlin, Minister for Education, Training, Employment, Youth, Sports and Culture in the Government of the Cayman Islands.

APPENDIX I

Schedule for First Visit March 2007

Schedule for Graham Clayton and Amanda Brown

	Wednesday, March 7	Thursday, March 8	Friday, March 9
Morning	8.30am-9.00am at Ministry Deputy Chief Officer (VC) <i>Indicative subjects for discussion:</i> <i>Introduction and Context</i> 9.00am-10.00am at Ministry VC & Acting Chief Education Officer <i>Indicative subjects for discussion:</i> <i>New Governance Model for Education Services</i> <i>The Significance of Learning Communities</i> <i>Responsibilities of the Chief Education Officer</i> 10.30am-11.30am at Schools' Inspectorate Chief Inspector of Schools and Inspectorate Team <i>Indicative subjects for discussion:</i> <i>Placing Inspections on a Legal Footing</i> <i>Monitoring and Enforcing Recommendations from Inspectorate's Reports</i> 11.30am-12.15pm at Schools' Inspectorate Curriculum Review Team <i>Indicative subjects for discussion:</i> <i>National Curriculum</i>	7.00am-8.30am at Rooster 101 Radio with Minister (to be confirmed) <i>Indicative subjects for discussion:</i> <i>Reform of the Education Law</i> 9.00am-10.00am at Ministry Meeting with Labour Consultant on TVET <i>Indicative subjects for discussion:</i> <i>Management of TVET in the Jurisdiction</i> <i>Creation of a National Training Agency and/or Accreditation Council</i> 10.00am-11.00am at Ministry Jennifer Smith – Education Council Secretary <i>Indicative subjects for discussion:</i> <i>The Role of Education Council</i> <i>Scholarships and Grants</i>	8.30am-10.00am at Ministry Glenda Dilbert Davis and Teachers Representatives <i>Indicative subjects for discussion:</i> <i>Human Resources</i> <i>Rights and Responsibilities of Teachers</i> <i>Barbados Union of Teachers Document</i> 10.30am-11.30am at Ministry Parents Representatives <i>Indicative subjects for discussion:</i> <i>Rights and Responsibilities of Parents</i> 11.30am-1.00pm at Ministry Lunch with Student Representatives <i>Indicative subjects for discussion:</i> <i>Rights and Responsibilities of Students</i>
Afternoon	12.15pm-1.00pm at Schools' Inspectorate Kate Marnoch - Early Childhood Unit <i>Indicative subjects for discussion:</i> <i>Interface between new Education Law and Early Childhood Legislation and Regulations</i> 2.00pm-3.00pm at the LA Presentation to the LA <i>Indicative subjects for discussion:</i> <i>Reform of the Education Law</i> 6.30pm at Grand Old House Dinner with Minister, CO and AG	12.30pm-1.30pm at Radio Cayman Talk Today with Minister <i>Indicative subjects for discussion:</i> <i>Reform of the Education Law</i> 2.00pm-3.15pm in Ministry Conference Room Private Schools Association <i>Indicative subjects for discussion:</i> <i>Rights and Responsibilities of Private Educational Institutions</i> 3.30pm-4.30pm at the Ministry Home Schooling – Samantha Tibbetts and Majorie Ebanks <i>Indicative subjects for discussion:</i> <i>Regulation of Home Schooling</i> 7.00pm at Mary Miller Hall Public Meeting <i>Indicative subjects for discussion:</i> <i>Reform of the Education Law</i>	3.10pm Plane Departs

APPENDIX II

Schedule for Second Visit July 2007

Programme for Visit of Graham Clayton and Sarah Morgan 24th July – 27th July 2007

Tuesday 24 th July		
15.55	Arrive at Owen Roberts Airport GCM	BA 0253 – VC to collect
16.45	Check in at Marriott Beach Resort	GC Reservation #80601692 SM Reservation #80602374
17.30	Refreshments and briefing	

Wednesday 25 th July		
08.15	Pick-up from Marriott Beach Resort	VC to collect
08.30	Meeting with Hon. Minister, Chief Officer, Chief Education Officer, VC & GL	Ministry Conference Room
12.00	Lunch	
13.00	Continuation of Meeting with Chief Education Officer, VC, GL and Brent Holt (Head of SEN Services)	Ministry Conference Room
14.00	Tour of Schools	GL to conduct tour
15.30	Continuation of Meeting with Chief Education Officer, Chief Inspector and VC	Ministry Conference Room
16.30	Review of day	
17.00	Return to Marriott Beach Resort	
19.00	Dinner at Grand Old House with Hon. Minister, Hon. AG, Chief Officer, Chief Education Officer, Professor Heppell, VC, GL & Representative from Legislative Drafting	Provisional reservation for 10

Thursday 26 th July		
08.15	Pick-up from Marriott Beach Resort	GL to collect
08.30	Meeting with VC and Representative from Legislative Drafting	VC's room
10.00	Break	
10.30	Meeting with Hon. Minister, Chief Officer, VC	Hon. Minister's room
12.00	Lunch	
13.00	VC's room in Ministry available for use	
14.00		Ministry staff to check-in for flight to Little Cayman

Friday 27 th July		
8.30	VC's room in Ministry available for use	
12.00	Check-out time at Marriott Beach Resort	
16.00	Check in at Owen Roberts Airport GCM	BA 0252
18.00	Departure from Owen Roberts Airport GCM	

APPENDIX III
Education Law 2007
Proposed Structure

Chapter I:

Part I

Provisions laying down the duties of:

the Minister;

the Chief Officer;

the Education Council

Part II

Provisions defining the types of schools and other educational institutions.

Provisions relating to the licensing and registration of schools.

Part III

A provision for compulsory education with modifications to allow for home schooling together with provisions prohibiting charges for education in government schools

Chapter II: Provisions relating to the National Curriculum

Chapter III: Provisions relating to the Schools Inspectorate

Chapter IV: Provisions relating to the training and qualifications of teachers

Chapter V: Provisions governing admissions to schools

Chapter VI: Provisions governing the funding of schools

Chapter VII: TVET

Chapter VIII: Tertiary (Higher) Education

Chapter IX: Early Childhood Years

Chapter X: Provisions for special education

Chapter XI: Miscellaneous provisions

Further Definitions section

APPENDIX IV
Early Childhood Law 2007
Technical Issues

We suspect that the mixing of social welfare and education concerns in the November 2006 draft Early Childhood law may have produced an unintended result. The draft provides for the licensing and registration of early childhood institutions. We assume that the intention is to require inspection and licensing of all settings in which children under the age of eight are looked after including home settings in which, for reward, child minders look after children.

The draft does not, however, appear to achieve that. The lengthy definition of 'early childhood institutions' in Clause 2 has the effect that if the institution does not in fact provide care, stimulation, education and socialisation, then it is not subject to the inspection, licensing and registration regime. We rather think the intention is that an early childhood institution will not secure registration unless it makes this provision. If we understand this correctly, the draft does not do that.

The matter is further complicated by the fact that Clause 2 also contains a definition of 'child minder' implying that a 'person' who is a child minder is quite distinct from an institution or 'setting'. However, only Clause 9 of the draft law refers to 'child minders' on their own premises and this only provides that there shall be a register. It does not provide, in any way, for the regulation of child minders as such. Clause 25 (2) (r) does authorise the making of regulations "regulating child minders including the registration process for child minders" but this can only be "for giving effect to the provisions of this law". Since the law would apparently only deal with child minders in Clause 9, the effects of this are very difficult to construe.

Our main theme in the body of our report is that there should be a distinct Early Childhood Institutions (Inspection and Registration) law. This should define an early childhood institution as follows –

"early childhood Institution" means an establishment in which children under the age of 8 are looked after

a child is “looked after” if responsibility for his welfare is undertaken by a person other than the child’s parent or legal guardian in -

- (i) a day care centre,
- (ii) a school which offers child care or education for children under compulsory school age,
- (iii) a school which offers child care for children of compulsory school age but under the age of 8 for purposes other than education,
- (iv) that person’s home, the person concerned being a child minder for reward and the child is placed in the care of that person for periods exceeding 2 hours in any day.

There is then no need separately to define “child minder” nor any need for Clause 9 of the November 2006 draft.

The rest of the Early Childhood Institutions (Inspection and Registration) law should then focus on the inspection registration and licensing regime. Much of the November 2006 draft law will work well for this purpose but without unnecessary references to education.

APPENDIX V

Suggested phases for five year legislative plan

Phase 1 Autumn 2007 to end of 2008

Autumn/Winter 2007-08	-	Enactment of Education and Training Act
Winter Spring 2008	-	Appointment of secondary legislation working units
Summer 2008	-	Reports of secondary legislation units
Summer/Autumn 2008	-	Preparation and enactment of essential secondary legislation with priority given to - National Curriculum Special Educational Needs Education Advisory Council Home Schooling Inspections

Phase 2 2009 - Any essentially required second phase primary legislation

Preparation and enactment of second priority secondary legislation with particular attention to –

Teacher registration
Tertiary
TVET

Winter/Spring 2008/2009-	Office based legislative impact review followed by any necessary new enactments
Spring 2009	- Governance structure impact review followed by any necessary secondary legislation
Summer 2009	- Stakeholder consultation on review of school funding.
Autumn 2009	- Legislation consequent on funding review
Autumn 2009	- Preparation for full legislative impact review

Phase 3 2010

Spring/Autumn 2010-	Full legislative impact review including stakeholder/public consultation.
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Autumn/Winter 2010 - Necessary emergency secondary legislation consequent on impact review

Phase 4 Autumn 2010 to Autumn 2011 - Consolidation phase

Phase 5 Autumn 2011 to Summer 2012
Preparation and enactment of comprehensive consolidating primary legislation