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ArtsEd Independent Investigation

Public Statement

October 2021 by Rebecca Tuck QC

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Overview

Rebecca was appointed Queen's Counsel in 2020; she is an employment and discrimination law specialist and is head of the Employment Group in Old Square. She appears regularly in the Employment Tribunal, EAT, High Court and appellate courts. She has particular expertise in industrial relations, acting in injunction proceedings when industrial action is proposed. She is also frequently instructed outside the litigation process, as an investigator, advisor, mediator or to determine grievance or disciplinary issues.

Rebecca is an experienced fee paid employment judge, and wrote for Harvey for 12 years. She regularly lectures on employment law.

She has been recognised as a leading practitioner in *Chambers & Partners*, *The Legal 500* and *Who's Who Legal* for many years. This year she was noted as **"an extremely knowledgeable and tenacious barrister, with a confident engaging delivery [who] really deserved her elevation to QC"**.

Expertise

- Employment & Discrimination
- HR Professional Support
- Investigations
- Professional Regulatory & Discipline

Recommendations

"She knows employment law inside out and is a very engaging barrister." "She's always able to distil quite complicated matters and make them sound very simple." *Chambers & Partners* 2021

"An extremely knowledgeable and tenacious barrister, with a confident, engaging delivery. She really deserved her elevation to QC." *The Legal 500* 2021

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1. Introduction

- 1.1 On Friday 4th June 2021 I was instructed that in October 2020 a number of individuals had made complaints of historic misconduct at ArtsEd. These complaints related to the higher education provision only and resulted in an internal investigation. At the end of May 2021 and beginning of June, other former staff members contacted the Head of HR at ArtsEd, and raised allegations of a similar nature to those made the previous October, albeit in some instances relying on second hand accounts received from former students. There were also very many broad ranging allegations of serious misconduct including by current staff members. At this time, the trustees determined that an independent investigation would be appropriate, and I was subsequently instructed.
- 1.2 An email address was set up for me to be able to receive any reports from those with information about ArtsEd, on either an anonymous or named basis. A public statement advertising this was placed on the ArtsEd website. I received emails from 67 individuals, overwhelmingly ex-students but also including some former staff members. 21 people emailed setting out positive experiences of ArtsEd / the teaching staff; the others set out concerns / the wish to speak to the investigator and were invited to interview. Given the volume of interviews, Ben Jones, a barrister at Old Square Chambers was also instructed by ArtsEd to assist me. Ben Jones and I interviewed 35 individuals in late June and early July. Subsequently, I emailed three current students whose names had been given to me and interviewed two of them. I also interviewed 15 current or former staff members. At the request of one of those being investigated, I conducted a further interview with a student in August 2021, and interviewed another former student who emailed me in August 2021. In total 54 individuals have been interviewed.
- 1.3 I have taken into account all of the information provided by the former students and staff in formulating allegations, and in reaching findings have considered their accounts as well as the replies given by staff members. I have applied the civil standard of proof and considered whether, on a balance of probabilities, a matter alleged is more likely than not to have occurred. At the conclusion of this investigation, I will pass all data I hold to Fieldfisher solicitors who will retain it securely thereafter.
- 1.4 In On 9 August 2021, I prepared an interim report for the Trustees, concerning five individuals. On 23 September 2021, I provided a confidential report to the Trustees setting out in full my findings. An anonymised summary report was also prepared which could be shared, as the Trustees deemed appropriate, with ArtsEd's regulators. My terms of reference also request that I prepare a Public Statement – being a summary of the conclusions from my report to the Trustees, capable of being published without contravening data protection laws. This document is that Public Statement.
- 1.5 The issues contained in my report are not limited to ArtsEd and there has been wide-spread media coverage about UK leading drama schools who have faced serious allegations of misconduct by students and/or teachers over the last two years. A recent report from ALRA (Academy of Live and Recorded Arts) found limitations in the way that complaints and allegations are dealt with in the industry. ALRA considered that it appeared there had been a "a systematic failure of leadership which needs to be addressed urgently across the industry to ensure that culture change can take place to provide a safe but stimulating educational environment for the performing arts". I share

the concerns about the failure of leadership, and the need to ensure learning environments are safe for students.

1.6 Recurring themes have been raised by very many of those who sent emails setting out complaints and concerns about their experiences at ArtsEd. The concerns and complaints raised I found could largely be placed under the following headings:

- (a) A sexualised environment
- (b) Staff student "relationships", socialising and drug taking
- (c) Lack of regard to student wellbeing
- (d) Favouritism and bullying
- (e) Body image
- (f) How staff misconduct was handled
- (g) Lack of supervision of creatives

1.7 I have found cause for concern under each one of these headings for the reasons that I have explained to the Trustees. I considered whether the misconduct identified pertained to individuals or tended to show systemic issues, and I consider that there has been a mixture of the two. Where there were instances of individual misconduct, I had concerns as to why these matters were not reported and whether that was a matter of culture. This has informed my recommendations.

1.8 Of the ex-students who were interviewed, 18% graduated between 2009 and 2012, almost 50% graduated between 2013 and 2016 and just under 25% between 2017 and 2020. Those who graduated in 2019 / 2020 have obviously had extremely limited opportunities to make any start in the industry given Covid lockdowns, and it was notable that the more recent graduates I spoke to expressed a high level of apprehension about speaking out. Nevertheless, only five students sought complete anonymity (some wanted partial anonymity). I am grateful to all those who spoke to me and to Mr Jones whether on an 'open' or confidential basis.

2. Recommendations

2.1 I have set out below areas where improvements should be made:

2.1.1 It has been culturally acceptable for staff and students to socialise and drink together, leading to a blurring of appropriate and professional boundaries. That has been evident in both face-to-face and electronic communications. Endeavours in recent years to bring about changes have not been sufficiently rigorous or consistent in application.

2.1.2 The approach to recruitment, appointment and induction of staff has historically been poorly administered, although improvements have been made by the current Head of HR.

2.1.3 Whilst steps have been taken to improve employment policies (and I use the word "employment" broadly as this must also apply to freelancers), the implementation and dissemination of such policies has not been sufficiently thorough.

2.1.4 When misconduct on the part of freelancers has been identified, formal procedures have not been followed; this has led to a failure to ensure that any student support needed is provided, and that appropriate lessons are learnt.

- 2.1.5 Whilst staff members have emphasised to me the extensive facilities available to support any students who sustain physical injuries, historically in practice a number of students have felt pressurised to continue to perform, on occasion leading to lasting damage.
- 2.1.6 I consider that improvements have been made in recent years to the care shown towards students as regards to their mental health; it is important that the current, largely on-line facility is reviewed and consideration is given to whether it is sufficient.
- 2.1.7 Staff with pastoral responsibilities report that they have had no training or support to prepare them for the role. They must be provided with sufficient training, and if they are required to give out their mobile telephone numbers to students, they should be provided with "work phones".
- 2.1.8 Staff members have emphasised to me that in relation to body image, students must be "fit for purpose", but certainly historically, regrettable language has been used. Nutritional teaching ought to be embodied within the curriculum.
- 2.1.9 Within any institution there will inevitably be departures from the standards of conduct expected; what is crucial is that in such situations there is a complaints procedure which is understood and utilised without fear of negative repercussions for the complainant.
- 2.1.10 Finally, the issue of "safeguarding" is more nuanced within Higher Education than it is within educational settings for under 18s (or vulnerable adults). It is however important that appropriate boundaries between staff and students are maintained, and set out in policies including the staff/student relationship policy and harassment policies. Thereafter it is vital such policies are disseminated and consistently applied.

2.2 Oversight:

- 2.2.1 Initially trustees should be selected to lead a task force to consider the areas I set out below, namely (i) staff, (ii) student wellbeing and (iii) complaints. This task force ought to then develop an action plan, including a timetable, to set out the steps which will need to be taken to achieve the necessary improvements.
- 2.2.2 Ultimately, it is the Trustees who have independent control over, and legal responsibility for the management and administration of ArtsEd. I therefore recommend that on the agenda for three areas, should be consideration of how ongoing oversight by the Board of Trustees is to be assured.

2.3 Staff:

- 2.3.1 There must be an objective of ensuring consummate professionalism throughout the staff body. This requires consideration of any further steps in addition to those set out below which may be taken. Any initiatives must be measurable so that compliance with the objective can be monitored.
- 2.3.2 *Staff policies and procedures* have been improved, particularly in the period since the October 2020 investigation. Steps should be taken to ensure a comprehensive suite of policies are adopted. Each policy should be dated and have a date set for its review.
- 2.3.3 It should be emphasised to staff that a zero tolerance approach will be taken to any illegal drug use.
- 2.3.4 Thereafter, it is of crucial importance that *staff training* is given in relation to the policies, and that the underlying principles are understood and adopted by everyone concerned. This must include staff/student relationships and communication policies.

- 2.3.5 *Electronic communication:* Staff and students during the 2020/21 academic year have communicated via social media platforms including Instagram and WhatsApp – the latter meaning that staff and students have each other's mobile numbers. Consistent guidance and instruction needs to be provided to staff (and students). Thereafter steps need to be taken to monitor compliance.
- 2.3.6 *Pre employment checks:* I am aware that improvements have been made when freelance staff are engaged in terms of identity checks, vetting checks and so forth. I recommend consideration be given to an audit to ensure that up to date information and contracts are held for all those engaged in the delivery of HE at ArtsEd.
- 2.3.7 *Inductions:* All new staff - as well as "freelancers" or "creatives" who have contact with students - should undergo an induction process, and the task force must consider who is best placed to deliver this and in what format.
- 2.3.8 *Ongoing staff training:*
- (a) *Race:* Four students of colour from different year groups made complaints of racism; whilst I have not upheld any allegations of specific racist comments against particular staff members, I do consider that the "unconscious bias" training which staff have told me they have undertaken, should be continued and developed. I am aware that there is an Equality, Inclusivity and Diversity (**EID**) Co-ordinator; consideration should be given to whether that post holder is best placed to ensure that annual training includes an appropriate EID slot.
 - (b) *Preparation for "the industry":* There have been a number of allegations that certain practices or behaviours have been justified because it is preparing students for "what is required for the industry". Inevitably, tutors who come from "the industry" into teaching will have an increasingly dated experience. Consideration should be given to tutors having a programme of periodic workshops/ lectures with choreographers, producers and directors, who are working in musicals in the West End, that have a predominately diverse cast. These should focus on the different kinds of shows and casts that are required for those shows and would serve to ensure that tutors remain abreast of what they are actually preparing the students for and how the industry is changing – for example in terms of how feedback is delivered, body type, casting and ability

2.4 Student wellbeing:

- 2.4.1 *Nutrition:* A plan should be drawn up setting out how the approach towards teaching students about an appropriate approach to nutrition during their training, will be delivered – and monitored thereafter. Whether it is appropriate for this to fall on the gym instructor /wellbeing officer, or whether outside resources, for example visiting nutritionists should be utilised, should be considered.
- 2.4.2 *Injury prevention and injury rehabilitation:* Alongside nutritional advice, direction and guidance on appropriate training to avoid injury should be emphasised to students. As set out elsewhere in this report, whilst staff point to a measures in place to support returns to performance from injury (e.g. subsidised physiotherapy or sports massage appointments on site), accounts from ex-students suggest that in at least some cases students have felt pressurised to continue to perform. Consideration should be given as to how to embed into the culture of ArtsEd the need for students to ensure they do not exacerbate any injuries sustained. Whether permission to take dance rest should rest with just the Head of Dance – or if it does whether there should be a right of appeal – should be considered within this review.

2.4.3 *Mental good health:* I was sent information which is now provided to incoming first year students, this includes information signposting them to sources of support. I also understand that the gym supervisor /wellbeing officer offers some generic support to students. These are both positive, but it appears to me that there is a need for proper support from a qualified mental health professional such as a psychologist. I am aware that over recent years there have been changes from ad hoc availability of a counsellor off site, to a psychologist being engaged two days per week on site. I understand that most recently this changed to an online provider. As should always be the case with a new provider, a review of whether this is providing the level of support needed should be undertaken at specific, set intervals. Consideration should also be given (particularly given the disruption the current cohort of pupils have suffered during Covid lockdowns) to whether regular student questionnaires would be beneficial.

2.4.4 *Pastoral responsibilities:* Heads of year have pastoral responsibilities, but several post holders have expressed a lack of training or support in how they undertake this role. Consideration should be given to what training those with pastoral responsibilities should have – for example enhanced safeguarding training and mental health first aid training. One former Head of Year suggested consideration of the availability of the equivalent to a clinical review by an external peer¹. If ArtsEd require Heads of Year (or indeed any other staff) to provide mobile telephone numbers to students, those staff members ought to be provided with "work phones", and a code of conduct as to when they are / are not expected to make themselves available.

2.5 **Complaints procedures:**

2.5.1 *Complaints from staff:* Staff must be empowered to "call out" any practices they consider to be inappropriate without fear of victimisation. In the first place, I consider that a whistleblowing policy should be considered as part of the review of policies and provision of training set out above. More fundamentally, some former staff members have expressed their views that it was impossible to challenge the Director of Musical Theatre/Principal and both former staff and students have said in their opinion, it could be "cult like". It is important to create an environment in which 360 degree feedback is not only permitted but encouraged. This will undoubtedly take time, and it will be important to have specific objectives and regular reviews.

2.5.2 *By students:* Similarly students must know that they can raise "issues" or "complaints" at an appropriate level without fear that it will impact on decisions such as casting or grading. It is essential that an appropriate complaints procedure is in place, and that investigations are properly documented. Regular reviews are required to enable identification of any common themes which emerge to ensure that issues are dealt with promptly at an appropriate level. I note that within the Acting Department, a number of undergraduates used their student representative to pass on collective issues; I recommend consideration be given to formalising a process whereby students can seek appropriate Student Union support.

2.5.3 Both staff and students should have the ability, if they cannot raise issues internally, to be able to approach a named Trustee. Again, it must be emphasised that responsibility ultimately lies with the Trustees, and it is important to ensure there is appropriate oversight.

¹ <https://phoenixdramatherapy.co.uk/self-care-and-supervision-for-school-staff/>