

APPRENTICESHIPS: GROW YOUR OWN TALENT FOR THE DIGITAL AGE

“Apprenticeships” was a buzz word for all the parties in the recent general election. Manifestos primarily portrayed the desire to increase the number of apprenticeships as a way of improving job prospects for school leavers; a section of the workforce particularly affected following the economic downturn. In fact, many employers, particularly in the tech sector, have for some time now already realised the potential for apprenticeships to provide a workforce with the skills necessary for the future success of their businesses and the sector as a whole.

Learning on the job

Apprenticeship is not a new concept; it has been around in one form or another for hundreds of years. The fundamental concept of an apprenticeship has always been combining genuine work experience with training to enable the apprentice to advance in their career. The current regime governing “approved” apprenticeships (those which attract Government funding and result in recognised qualifications for the apprentice) has been in place in England and Wales since 2011 and is based on apprenticeship “frameworks”, which dictate the structure and content of the training that must be provided to apprentices during their apprenticeship. The frameworks, developed by non-Governmental agencies in consultation with employers, are sector specific. The IT Software, Web and Telecoms Professionals framework, for example, allows employers to “pick and mix” from the elements within that framework in order to tailor the training to the specific role being undertaken by the apprentice. Provided the apprenticeship follows one of the recognised frameworks and meets certain minimum standards (noted below), employers can obtain Government funding towards the apprenticeship: currently the Government will meet the entirety of training costs for apprentices under 19 and up to 50% of the costs for those aged 19 and over. In addition to this, apprenticeship grants of £1,500 are also available to small businesses taking on apprentices aged 16-24 for the first time. In some areas, these grants have been devolved and offer greater incentives. For example, in London, employers with up to 249 employees are eligible for a grant of £3,000 per apprentice, with the grant being topped up by the European Social Fund.

The current framework regime sets minimum standards for apprenticeships, requiring that they last for at least 12 months (except in certain circumstances where the apprentice already has relevant qualifications) and include 280 hours of guided learning in the first year, 100 hours of which must be off-site training. The apprentice must also be employed for a minimum of 30 hours a week, including training time, and be engaged under an apprenticeship agreement (see **Getting the law right** below).

Until recently apprenticeships were available at three levels: intermediate (equivalent to five GCSEs), advanced (equivalent to 2 A levels) and higher (containing degree level content). The Skills Funding Agency gives examples of IT roles which may be suitable for each level of apprenticeship, with an intermediate apprenticeship being suitable for a support technician, an advanced apprenticeship for a software developer, and a higher apprenticeship for an IT project manager. However, the intention is that the frameworks can be adapted to fit any role within the relevant sector.

The future of apprenticeships

Following the general election, the new Conservative Government set a target of creating three million new apprenticeships by 2020. This increase is intended to replace low level Further Education courses which are not viewed as offering sufficient value to students or their eventual employers. To achieve this aim, the Government will place targets for recruitment of apprentices on public sector organisations and create an obligation under law for the Government to report on progress towards its target. In the last budget, plans were announced to levy large employers to create a fund to support apprenticeships. To offer further incentive, National Insurance contributions will be abolished on the earnings of apprentices aged under 25 from April 2016.

In May this year, changes to the legal regime governing apprenticeships came into effect in England, creating a new “standards” based regime that will sit alongside the existing framework regime during a transitional period, and replace it entirely from 2017. The new standards are intended to be developed with significant employer-input and be much more specific to particular roles within the relevant industry. So-called “trailblazer” employer steering groups have already developed standards including those for network engineers and software developers, with standards for infrastructure technicians, digital marketers, cyber intrusion analysts and digital business soon to follow. In September this year degree apprenticeships became available for the first time, providing a fully integrated honours degree with employers and higher education institutions collaborating to offer apprenticeships in roles such as business analyst, software engineer and IT consultant.

To accompany the new standards-based regime, a new funding model is in place under which for every £1 spent by an employer on training, £2 will be provided by the Government up to a possible cap of £18,000, depending on the type of apprenticeship. The new funding model also offers additional incentives for employers taking on apprentices between the age of 16-18, for small businesses, and for all employers on completion of an apprenticeship.

Employers leading the way

With the need for a skilled and plentiful workforce being key to the success of the UK tech sector, a number of employers, particularly large employers, are already wise to the benefits of apprenticeships. Companies such as Microsoft, Facebook and IBM all have developed apprenticeship programmes. Since 2010, Microsoft has run its Microsoft Apprenticeship Programme, through which 5,000 Microsoft Partners and customers have taken on 7,000 apprentices, with the apprentices gaining Microsoft accreditations on the completion of the apprenticeships. Employers already using apprenticeships report an extremely high level of satisfaction: a National Apprenticeship Service survey found that 96% of employers questioned considered they benefitted as a result of taking on apprentices. Microsoft’s research into its apprenticeship programme found that 92% of apprentices stayed with the company they trained with and that the vast majority of employers considered that the programme had a real impact on their business and the IT industry at large.

The enthusiasm for apprenticeships already appears to be spreading outside the large employers and amongst SMEs, with a recent CIPD report finding that a third of SMEs questioned were intending to hire apprentices, up from 22% in its 2014 report. The CIPD considers this is due to recognition by a growing number of employers that they need to develop talent to limit the potential for future labour shortages and pay pressures. However, the report also acknowledges there are concerns from SMEs over red tape and the job readiness of candidates.

The CIPD has produced guidance for employers, particularly SMEs, which includes advice on recruitment, getting buy-in from the rest of the organisation and supporting the apprentice throughout the apprenticeship. The Government also runs an apprenticeship recruitment site on which employers can advertise apprenticeships for free, creating a cost efficient recruitment process for employers of all sizes. In August this year, Tech London 500, an event organised by a consortium of apprenticeship providers, gave 500 businesses across the digital sector the opportunity to offer placements of two to six weeks to candidates across a number of roles including technical support, web design, web development and social media, in order to give employers who might otherwise be daunted by the idea of taking on apprentices the opportunity to engage with candidates and recognise the potential it could offer to their business. Since 2013, Tech City Apprentices, a scheme jointly funded by the Government and Hackney Council, has sought to offer 500 unemployed young Londoners a chance to work in some of the Capital's most exciting digital companies. Such schemes also offer employers the potential of increasing the diversity of their workforce and benefitting from a wider demographic of candidates, which in many cases may also reflect the demographic of the market in which the businesses operate and therefore provide valuable insight from within their own workforce.

Getting the law right

In order for an apprenticeship to be an “approved apprenticeship”, employers need to ensure that the agreements entered into with apprentices follow certain formalities. Under the current framework regime in England and Wales, this means that the agreement must specify that the apprentice is undertaking work for the employer and be in a prescribed form which:

- sets out the basic terms of employment required under employment law;
- provides a statement of the skill, trade or occupation under which the apprentice is being trained;
- provides that the contract is governed by the law of England and Wales; and
- states that it is entered into in connection with a qualifying apprenticeship framework.

Under the new English standards regime (which does not apply in Wales), the requirements are that the agreement:

- provides for the employee to work as an apprentice for reward in a sector for which there is an approved apprenticeship standard;
- provides that they receive training in order to assist them to achieve the approved apprenticeship standard; and
- satisfies other conditions set by the Secretary of State from time to time.

Whilst getting these formalities right is not onerous, failure to do so could be significant, both for the employer and the apprentice: any funding which the employer may otherwise receive for the apprenticeship may be affected and the apprentice may find themselves without formal recognition for the skills gained during the apprenticeship on completion. The contract may also be deemed to be a “contract of apprenticeship”, which is a common law concept and provides for potentially significant damages if an employer terminates the contract prior to the expiry of the fixed term apprenticeship, as the apprentice is entitled to claim damages not just for loss of earnings for the remainder of the term, but also for loss of training and damage to future career prospects.

Although the fundamental intentions of an apprenticeship differ from the normal employment relationship, apprentices are employees under law and therefore enjoy the same employment rights. However, the characteristics of an apprenticeship mean that employers may need to have specific regard to particular employment issues. Apprentices aged 16-18, and those aged 19 and over during the first twelve months of an apprenticeship, are entitled to an apprenticeship minimum wage, currently £2.73 (rising to £3.30 on 1 October 2015). After this the national minimum wage applies. The funding arrangements around both the framework and the standards-based schemes are clearly heavily age-related and incentivise employers towards taking on younger apprentices. However for employers to put an upper age limit on the apprentices they take on and discount applications from older candidates would constitute direct age discrimination, unless it could be objectively justified. Employers will also need to make sure that the terms offered to apprentices are consistent with those offered to other employees of similar status and length of service: given that the apprenticeship population is likely on average to be younger than the rest of workforce, any difference in remuneration and terms between apprentices and those in similar roles may result in claims for indirect age discrimination, again unless the difference can be objectively justified.

Although apprenticeships are by their nature fixed-term contracts, they are specifically excluded from protection under the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (the "Regulations"). Therefore apprentices cannot bring claims if they are treated less favourably because of their fixed-term engagement. Further, any time spent as an apprentice will not count towards a series of fixed-term contracts, which under the Regulations will automatically be converted to a permanent contract after four years.

Normal rules for dismissing an apprentice will apply, including the need for a dismissal to be for a potentially fair reason such as performance, misconduct or redundancy. As with the expiry of other fixed-term contracts, not keeping on the apprentice at the end of their apprenticeship will constitute a dismissal. Such dismissals will often be potentially fair as being for "some other substantial reason", however a fair process will need to be followed in any case. Of course, like other employees, apprentices will in most cases not accrue the right to claim unfair dismissal until they have two years' continuous service. However, with apprenticeships lasting up to four years, employers should always bear in mind the process being followed when dismissing apprentices.

In future, employers will also need to be aware of using the term "apprenticeship" if they are not following the statutory schemes, as the Government intends to give legal protection to the term apprenticeship, in order to give it a status as a recognised qualification similar to the existing academic qualifications and to avoid the abuse of the term by employers offering low grade courses.

Apprenticeships here to stay

The impetus gained by apprenticeships within the tech sector, and more widely, over the last few years seems set only to increase, as employers and applicants continue to recognise the unique advantage of apprenticeships in creating a workforce with skills tailor-made for the future of the industry.

Edward Arnold, Olswang LLP

The information contained in this update is intended as a general review of the subjects featured and detailed specialist advice should always be taken before taking or refraining from taking any action. If you would like to discuss any of the issues raised in this article, please get in touch with your usual Olswang contact. This article is taken from the Digital Employment blog article 'Apprenticeships: grow your own talent for the digital age' [here](#).