

Vetting and Barring Scheme

VBS launched to work alongside CRB.

Effective Date of Termination (EDT)

When is the EDT?

Interim Management Evolves

What do Career Interims offer?

Holiday and sickness absence

Sick workers must be allowed to defer holiday leave. Following on from the Stringer case, questions were asked as to what is the position where a worker's pre-arranged annual leave coincides with a period of sick leave. This case also considers the Stringer judgement in relation to where a worker is "unable to take leave through no fault of their own".



Background

In this case, Mr Pereda had annual leave booked for the period of 16 July to 14 August. However, following an accident at work on 3 July he was unable to return to work until 13 August. His employer refused his request to designate a future period for annual leave. Eventually the case ended up at the European Court of Justice (ECJ) which considered whether Mr Pereda did have the option to designate an alternative period for the exercise of his right to annual holiday. The

ECJ said yes. Workers who do not wish to take holiday leave when sick, must be granted their holiday leave for a different period, if necessary carried forward into a subsequent leave year.

This case was brought about in Spain where workers have to have written authorisation for leave two months in advance and, once agreed, it is written in stone, therefore it is a different position than that in the UK. However the ECJ ruling does affect the UK.

It appears from the ruling that a worker is not only entitled to postpone holiday because of sickness, but also where a worker falls ill while on annual leave. In those circumstances the worker must be allowed to reschedule their annual leave on return to work.

The Court have again emphasised that the right to annual leave under the Working Time Directive is a right to time off for "a period of relaxation and leisure", which differs from sick leave which is a period for the worker to "recover from being ill".

The decision appears to be incompatible with the UK Working Time Regulations (1998), which specifically prohibits workers from carrying over holiday to a new holiday year. The judgment suggests the regulations do not properly reflect the directive.

Initial thoughts

This ruling may well give rise to abuse, where a worker who is sitting on the beach can call in sick for the day and the employer has to then postpone the leave to a later date. For those employers with favourable sick pay schemes they may see patterns emerging that will need investigating that suggest abuse of the sickness scheme. However, for those that pay Statutory Sick Pay, the abuse of this may not be as great as initially thought. The worker cannot be paid

twice (holiday and sick pay), therefore employers will be within their rights to ask the worker to pay back the annual leave in order to give SSP instead (remember the first 3 days are not paid, and then it's £74.15 per week) so leaving the worker worse off.

If employers do begin investigations of abuse, it is worth remembering that for many workers who holiday abroad and who are ill, they will process costs through their insurance company as treatment overseas is normally very expensive. Thus on return, if there are grounds to suspect that the system has been abused, employers could suggest that the worker could better support their case with evidence obtained through their insurance company, and if they are unwilling/unable to provide this it can be taken into consideration in any decision.

Practical Considerations/FAQs

1. Whether this applies to the 4 weeks' European annual leave, the 5.6 weeks' UK annual leave, or contractual annual leave.

At this time there is general consensus that it only applies to the 4 weeks' European annual leave.

2. What can employers who offer Occupational Sick Pay do to limit abuse?

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It could be said that this is no more open to abuse than workers who call in for the odd day off work. Monitoring of sickness patterns will still be critical, as always, and action taken will be through the disciplinary procedure.

3. When does this take effect?

For public sector employers, regardless of what UK law says, they must give effect to the Directive rather than UK law and allow leave to be carried forward immediately. For private sector employers they may be able to argue against leave being carried forward, but this has a risk as the tribunals may well reinterpret the Working Time Regulations to give effect to European law, despite the clear wording.

4. What process should be followed?

Workers who are on annual leave must follow the normal sickness absence reporting procedures, and after 7 days obtain a doctor's note. This may cause difficulties next year when the 'Fit-Note' is introduced, especially if it states the worker can do some work, and the employer could legitimately require the worker to do that work rather than stay at home or on holiday.

It may be time to consider adjusting policies to state that there may be times at management discretion where a one day sick note may be required. However, there will still be problems obtaining this if the worker is on holiday overseas.

For more information contact us on 01403 892920.

Pensions – if making changes you must consult

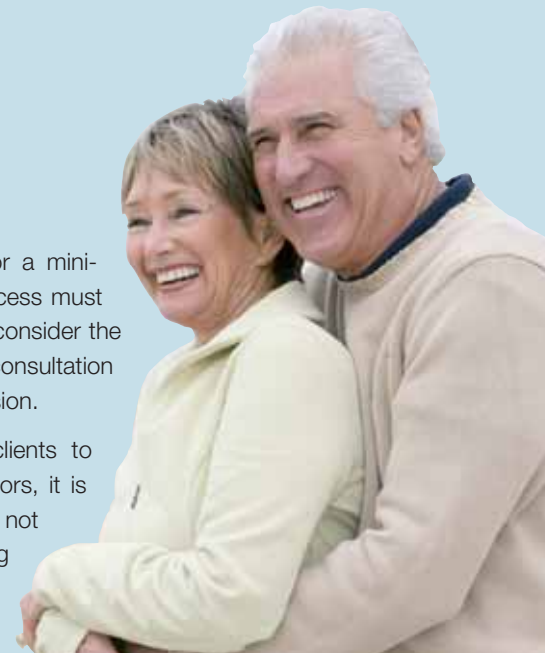
Earlier this year the Pensions Regulator took powers to fine employers up to £50,000 if they fail to properly consult staff on any changes proposed to pension schemes. Current legislation requires employers with 50 or more staff to consult with “affected members” – that means current and prospective members of pension schemes offered by the employer – when any changes are being considered.

The list of issues on which staff must be engaged, having first been given all the relevant information, background, proposed dates for changes to be implemented etc, is not exhaustive but includes, for example, any increase to normal retirement age; any changes to contribution rates; the closing of schemes to new members; changes to benefits from schemes; and the operation of schemes such as changes of current benefits to those related to defined contribution basis.

“Failure to properly consult staff could result in a fine of up to £50,000”

All consultation periods have to be for a minimum of 60 days. The consultation process must be meaningful and the employer must consider the comments made by staff through the consultation and respond before making a final decision.

With changes being considered by clients to current provisions across different sectors, it is imperative that the need to consult is not overlooked in the rush to change existing arrangements.



Childcare vouchers

The government has announced that it intends to close to all new claimants the tax and national insurance relief on childcare vouchers from the start of the 2011 tax year and that the relief will be completely withdrawn by 2015. It is expected that there will be further details from the government on the details of their plans shortly. However we recognise the campaign to stop the changes continues to gather momentum.



Redundancy Pay

For those made redundant on or after 1st October this year, the maximum amount of a week's statutory redundancy pay has increased from £350 to £380.



When is the Effective Date of Termination (EDT)?



- Is it the date the employer writes and sends a letter of dismissal?
- Is it the date the letter of dismissal is delivered?
- Is it the date the employee opens and reads the letter of dismissal?

The background

In the case of *Gisda Cyf v Barratt* (2009), Ms Barratt was summarily dismissed for gross misconduct following a disciplinary hearing on 28 November 2006. Ms Barratt was informed of the decision by a letter from Gisda Cyf, which

was written and sent by recorded delivery on 29 November 2006. The letter was delivered on 30 November 2006, but was signed for by a family member as Ms Barratt was visiting her sister in London. Ms Barratt did not read the content of the letter until her return on 04 December 2006.

Ms Barratt subsequently submitted a claim for unfair dismissal and sex discrimination. The tribunal had to make the decision as to whether the claim had been submitted within the three month time limit and this was dependent on the effective date of dismissal (EDT). Had the EDT been on 29 November 2006 or 30 November 2006, the dates that the letter had been written, sent and delivered, the claim would not have been submitted in time. However, had the EDT been on 04 December 2006, the date that Ms Barratt had read the letter and was aware of the decision, the claim would have been submitted in time.

The decision

The Court of Appeal agreed with the decision of the employment tribunal and the Employment Appeal Tribunal (EAT) that the EDT in the case of *Gisda Cyf v Barratt* was 04 December 2006, the date that the letter had been opened and read by Ms Barratt. The Court of Appeal held that the letter had to have been read or that there had at least been reasonable opportunity for the letter to have been read.

There are exceptions, of course, which are if the employee had gone away deliberately to avoid reading the letter, as in the case of *Brown v Southall & Knight* (1980), or had avoided reading the letter on their return.

Implications

Sending a dismissal letter by recorded delivery is no guarantee that the letter will be read by the employee, as in the case detailed above where the letter was signed for by a family member

whilst Ms Barratt was away from home.

The importance of the EDT in relation to bringing claims within the required three month time period is clearly highlighted above. Other factors that require consideration in relation to the EDT are:

- Whether an employee has reached one year's service with their employer for the purpose of obtaining the right to make the claim.
- From an employer's practical point of view, when to end pay and benefits.

Recommendations moving forward

Whilst there will always be some ambiguity around the EDT, there are some steps that can be taken to minimise the uncertainty in any future cases:

- The most obvious solution is for the dismissal to take place on a face-to-face basis, followed by a letter of dismissal as confirmation. This is also best practice in line with the ACAS Code of Practice.
- Where this is not possible, written confirmation of receipt of the dismissal letter should be acquired.
- As an absolute minimum, a phone call to the employee should take place to confirm receipt of the dismissal letter, or the letter should be sent by recorded delivery where it has to be signed for or at least hand delivered.

If you would like to discuss any article in this newsletter, please call 01403 892920.

Interim Management

Introduced in the UK in the late 1980s, Interim Management was used as a solution to provide temporary cover to fill gaps in recruitment, typically at management level. Twenty years on, Interim Management is seen to offer a much broader range of disciplines, where Interim Managers are taken on as 'consultants' to manage projects to improve business performance.

Whilst Interim Management has evolved, is it still viewed as a matter of providing temporary cover or is it now seen as a contributing business function?

The nature of the Assignment itself gives a clear indication as to the approach that organisations have to Interim Management; recognising the benefits and added value that can be delivered through the supply of a Career Interim. Organisations are looking for solutions to business improvement, change management, explicit project management, crisis management, learning and development and much more that can be delivered within a value-for-money framework.

With the harsh economic climate, organisations cannot afford to make mistakes and need to optimise business performance. Where the necessary skill set and expertise is not within the capabilities of the Senior Management Team, the appointment of a Career Interim provides an objective, unbiased solution to delivering effective strategies for results, which importantly does not affect the headcount budget.

The matter of 'temporary cover' is still as important as it has ever been. It can take six months to fill a vacancy and it only takes 48 hours with a Career Interim and they can make an impact im-

mediately. The appointment of a Career Interim in such situations ensures business continuity and performance – but now is delivered with added value which is recognised as a contributing business function.



A successful Career Interim has experience that exceeds expectations; they are only as good as their last job and of course require excellent references so organisations can be confident that they will give of their best.

Importantly, Career Interims have to start delivering straightaway and need to show results on a daily basis. They are resourceful and don't mind

being constantly accountable. They work hard and often deliver a full week's results in a three to four day period. Ultimately, Career Interims are specialists in their field, have excellent interpersonal skills, thrive on their reputation and possess the drive, ambition and dynamism to deliver effective business solutions.

Whilst the benefits of Interim Management are clear, sourcing and appointing the right person to do the job is a factor that must be considered, and choosing an Interim Provider is paramount to the process.

Insight Executive Interims prides itself on delivering a service that is built on speed, quality and expertise.

Speed: Within 48 hours of an initial enquiry, CVs of recommended candidates are provided to the client.

Quality: Prior to registering candidates on our Executive Interim Database, candidates go through a thorough face-to-face interview process enabling the validation of competencies and experience and importantly references. We offer psychometric profiling of our candidates as an additional information resource to clients providing detailed background information, which otherwise may not be gleaned from the client interview process and assists in obtaining the right fit for the organisation.

We communicate regularly with the client and Career Interim throughout the life of the Assignment and ensure quality control and the achievement of key deliverables.

Minimum Wage increases

From the 1st October 2009 workers aged 22 and over are entitled to £5.80 per hour but those aged 18 or over but under 22 are entitled to £4.83 per hour. Workers under 18 who are no longer of compulsory school age, other than apprentices aged 16 and 17 who are excluded, are entitled to £3.57 per hour. This means that the fulltime (37 hour) salary must be above £11,159.20 and all clients are urged to review their point points to ensure compliance.

Expertise: We are experts in our chosen market sector in the provision of Interims and Human Resource and Management Consultancy services and have successfully fulfilled a significant number of assignments.

Insight Executive Interim's success is built on our reputation and our ability to relate to the client and understand their needs. We offer a highly professional service where our clients have the confidence in our ability to deliver time after time.

If you would like further information about the services offered by Insight Executive Interims or for an informal discussion, please contact Julie Chmiel on 01403 892910.

Vetting and Barring Scheme

The 12th October saw the launch of the new **Vetting and Barring Scheme (VBS)** which will work alongside the current CRB scheme. The scheme applies in England, Wales and Northern Ireland, with Scotland having a separate but aligned scheme that is designed to complement CRB checks. Anyone included on a barred list in Scotland will be barred from working with children and/or vulnerable adults across the UK.

Background

The Safeguarding Vulnerable Groups Act (2006) was passed as a result of the Bichard Inquiry arising from the Soham murders in 2002.

Recommendation 19 of the Inquiry Report highlighted the need for a single agency to vet all individuals who want to work or volunteer with children or vulnerable adults and to bar unsuitable people from doing so. The Act was created in response to recommendation 19 of the report and the ISA was set up to fulfill this role across England, Wales and Northern Ireland.

What is the purpose of the ISA?

The Independent Safeguarding Authority (ISA) has been created to vet and register all individuals wanting to work or volunteer with children or vulnerable adults and will work hand in hand with the CRB, which will be responsible for the application and monitoring of the scheme.

The aim is to hold not only information about criminal convictions, but also 'soft intelligence' relating to the unsuitability of individuals to work with children. This information will come from general police information including cautions, concerns reported by Local Authorities, professional bodies, members of the public and employers.

Using this information ISA will decide on a case-by-case basis whether each person is suitable to work. According to ISA only applicants who are judged not to pose a risk to vulnerable people can be ISA-registered. Once the scheme has been fully rolled out, employers who work with vulnerable people will only be allowed to recruit people who are ISA-registered.

The benefits of the Scheme include better sharing of information, portable registration status for employees and volunteers, and clear decisions on who is unsuitable to work with vulnerable groups.

What does this mean for employers?

Anyone working (or volunteering) to work in a 'regulated activity' must be registered and it will be illegal to employ anyone to do such work if they are not registered. Employers will need to ensure that the registration check is part of their recruitment procedure.

According to the ISA website, 'Regulated activity is any activity which involves contact with children or vulnerable adults', and is when the activity is frequent (once a month or more) or 'intensive' (takes place on three or more days in a 30-day period).

Such activities include:

- Any activity of a specified nature which involves

contact with children or vulnerable adults frequently, intensively and/or overnight.

- Any activity allowing contact with children or vulnerable adults that is in a specified place frequently or intensively.
- Fostering and childcare.
- Any activity that involves people in certain defined positions of responsibility.

Therefore, it will cover for example, those working in hospitals, clinics, schools, care homes, community care, nurseries and prisons. In terms of 'people in certain defined positions of responsibility' this will include positions such as a school governor, director of social services and trustee of certain charities.

There is a further tier called 'controlled activities'. Controlled activity is much more limited in scope, this is when this type of activity is 'frequent' (once a month or more) or 'intensive' (takes place on three or more days in a 30-day period).

According to the ISA website, Controlled activities include:

- Frequent/intensive support work in general health settings, the NHS and further education settings.
- People working for specified organisations with frequent access to sensitive records about children and vulnerable adults.
- Support work in adult social care settings

This is more limited in its scope, and covers work where there is an opportunity for contact with children or vulnerable adults, or access to their

records. This covers those who work in health care, ancillary workers, and social care, and it might cover the work of cleaners, caretakers, catering staff, receptionists, car park attendants, shop workers etc.

In Wales, regulations concerning controlled activity are more stringent than those in England, and anyone who has committed any of the most serious offences and is included automatically on the barred list will not be allowed to work in controlled activity.

One of the main elements of the scheme is to ensure that information is shared between various agencies/organisations and new legislation has been introduced which requires certain organisations to refer relevant information.

Employers will have a duty to make a referral to the ISA if a person is removed from regulated or controlled activity (or would have been removed had they not left voluntarily) because they 'harmed, or posed a risk of harm to a child or vulnerable adult'. When this applies, the employer making the referral must provide all the information it has from a prescribed list which will include items of information about the identity of the individual and about the conduct or allegation. (The ISA have stated that it is their intention to explain the meaning of "harm" as fully as possible in guidance).

The following organisations have a legal obligation to refer relevant information about an individual to the ISA:

- adult/child protection teams in local authorities;

- professional bodies and supervisory authorities named in the Act;
- employers and service providers of regulated and controlled activity; and
- personnel suppliers.

All other employers of those working with children and/or vulnerable adults may refer relevant information to the ISA if they are concerned about their actions/behaviour.

The following organisations may refer relevant information to the ISA:

- all other employers of those working with children and/or vulnerable adults;
- parents/private employers. However, their information should be referred to a statutory agency (for example, the social services or the police), who will investigate the matter and refer information to the ISA, if appropriate. (Members of the public may also refer information to the ISA in this way).

Failure to report will be punishable by a fine if they don't have a reasonable excuse.

What is the timeline?

The scheme will be phased in over a 5 year period. The ISA website gives a comprehensive timeline that employers need to follow.

FAQs

Do I still need to apply for a CRB?

Yes, whilst the ISA check will reveal if a person is barred from working with children and/or vulnerable adults, that person could be registered with the ISA but still have a criminal record that would make him or her otherwise unsuitable to do a

particular job. The enhanced level CRB check will reveal if a person has a criminal record or any non-conviction information.

From October 2009

- Increased safeguards will be introduced, such as a wider definition of "Regulated activities", further enhancing protection of children and vulnerable adults.
- The three current barring lists (POCA, POVA and List 99) will be replaced by the creation of two new barred lists administered by the ISA rather than several government departments. Checks of these new lists can be made as part of an Enhanced CRB check.
- Employers, social services and professional regulators have a duty to refer to the ISA any information about individuals who may pose a risk ensuring potential threats to vulnerable groups can be identified and dealt with.
- There will be criminal penalties for barred individuals who seek or undertake work with vulnerable groups and for employers who knowingly take them on.
- The eligibility criteria for Enhanced CRB checks will be extended to include anyone working in a regulated position.

From July 2010

- Those who are new to the workforce, those who are changing roles to take on regulated activity and those changing jobs whilst working in regulated activity may apply for ISA registration. Those who currently work

with vulnerable groups but are staying in their current role will not have to become registered until later in the five year phasing period.

- Individuals can apply for ISA-registration and a CRB check (including an ISA check) on one new application form.
- When a person becomes ISA-registered they will be continuously monitored and their status reassessed against any new information which may come to light.

From November 2010

- So as not to disrupt normal recruitment over the traditionally busy summer period, the legal requirement for employees to register with the VBS and employers to check their status will come into force in November 2010.

From 2011

- Existing employees and volunteers with no CRB check must apply for ISA registration.
- Existing employees and volunteers with CRB checks will also need to apply for ISA registration, starting with staff whose CRB checks are the oldest.

The CRB website states, "Standard CRB checks will no longer be available for those working with children or vulnerable adults. Standard CRB checks will no longer reveal information held on the old lists or the new Children's and Vulnerable Adults' Barred lists and therefore, if you are en-

titled to check the new Children's or Vulnerable Adults' barred lists, you must apply for an Enhanced CRB check".

Do I still need to check references since employers have a referral obligation?

Yes, this process does not affect the need for employers to continue to check previous employment history and references carefully.

What issues should I be addressing now?

- Who will pay the £64 cost to register with the ISA, this is in addition to the enhanced CRB check (currently £39). In some of the lower paid professions, this cost will be a big concern (it equates to approximately 13 hours work at NMW rates).
- Who in your organisation will be responsible for identifying which roles are "regulated" and "controlled" activities and what is the process for doing this?
- Are your recruitment, transfer and promotion procedures up to date and Scheme compliant?
- Continued employment for new recruits will be conditional upon ongoing registration. What process will be put in place/over what time period for this be carried over to existing staff?

For more information: <http://www.isa.gov.org.uk>

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Employee Wellbeing key to future business success!

With the challenges of the current economic climate resulting in an increasingly competitive business environment, organisations need to recognise that the health of their greatest resource i.e. their employees can have a massive impact on their future success.

The Government has clear objectives with respect to reforming health in the work place. This includes replacing the sick note with a 'Fit Note' and enhancing the role of the NHS as a 'Fit for Work' workplace service. This is a clear indicator that health and wellbeing at work should be firmly on the agenda of the long term strategic plan of businesses.



A further recent study commissioned by the Department of Work and Pensions shed more light on the benefit that comes with addressing wellbeing in the workplace. The study looked at determining what the return would be on investment from wellbeing programmes. The lowest figure in cash terms was £2.50 for every £1 spent and when a programme was put in place it had the effect of reducing absence due to sickness by between 10% and 36%.

The findings of this recent research are hard to ignore. It should also not be forgotten that a Wellbeing programme can be a pro-active element of the management of your business. A healthy workplace will prevent illness from arising

A recent survey indicated that businesses gain 20% more from staff if they, the employers, have a healthy approach to work and actively support their employees in this area. The research found that 9 out of 10 companies believe there is a direct connection between the wellbeing of staff and performance and that a healthy work life balance reduces absence and increases productivity.

in the first place. It can enhance an employee's positive perspective with regard to their job and the workplace environment, and adds to the 'feel good' factor in terms of employee engagement.

It is, therefore, key that companies fully understand the relationship between work and health. Improving training of those stakeholders who have direct management responsibility will make them more confident and forward thinking with regard to dealing with wellbeing. Managing absence and, in particular, having a robust monitoring mechanism, can highlight potential health issues facing the organisation allowing for preventative measures to be introduced before organisational performance is damaged. Any programmes that are put in place must be communicated to all staff and especially the "what's in it for me" factor should be promoted. Without this, staff will not embrace the programme and its strategic objectives will not be achieved.

An area that merits individual mention is mental health. Having a fully developed course as part of a wellbeing programme cannot be stressed enough. This should be used to manage stress within the business and promoted to all employees. Line Managers should be fully equipped to deal with situations as they arise and staff given the confidence that they will be supported throughout.

In addition to adopting a Wellbeing strategy, the following points should be considered:

- establish a working party that will develop a Wellbeing strategy and plan and make sure that all groups across the organisation are represented;
- make sure that those who have the ability to make decisions regarding such a programme are kept updated throughout the process to ensure their commitment to the strategy;
- give the responsibility for Wellbeing within the organisation to a Senior Manager;
- ensure communication is effective. Staff need to know the Wellbeing programme is (a) of strategic importance and (b) what the exact details are so that full engagement can be sought;
- review what is in place now. Is the approach right and do the activities and procedures match the objectives? A gap analysis should be carried out to identify what, if anything, is in place now and what is required in the future programme of Wellbeing initiatives;
- following the gap analysis devise an action plan that clearly states what the key actions and priorities are;
- be bold in starting the programme;
- once the programme is in place it should be reviewed on a regular basis and an evaluation system put in place to ensure that the objectives are being met.

Wellbeing can be seen as the "nice to have" part of the relationship an organisation has with staff but if Wellbeing is treated as an equal to all other strategic business objectives the investment will be one that makes commercial sense and will help organisations not just through the good times but the bad times too.

Project 4 Africa - Dinner ... with a difference!

Insight is delighted to be hosting an unusual and innovative event for this fantastic charity trying to build a school in Malawi, one of the poorest countries in Africa, by the end of September next year.

21st January 2010 is a date for your diary. So why a dinner with a difference? The reason is because the dinner will include a lively debate between Lord Falconer (previously a Home Office Minister and the last Lord Chancellor) and Martin Narey (Chief Executive of Barnardo's and previously Chief Executive of the National Offender Management Service and Director General of the Prison Service). They will debate on a topical subject, probably related in some way to social exclusion, and everyone will have their chance to talk with and influence our eminent speakers.

Tickets will not be cheap but every penny of profit from the evening will go directly to the building project. Included in the ticket price will be:

- Dinner with a difference at the imposing Leonardslee House built in 1852 and situated in the heart of the famous Leonardslee Gardens in West Sussex.

- A four course dinner, including wines and liqueurs.
- Opportunity to hear, and take part in, the debate between Lord Falconer and Martin Narey.
- Overnight accommodation in a luxurious hotel.

This is a unique event and one which will directly make a difference to the lives of children in Malawi. If you would like to come along tickets are available from Insight's Chief Executive, Richard Purchase on 01403 892922. If you can't make it but would like to make a charity donation to Project 4 Africa or receive more information we at Insight will be pleased to pass on your cheque. This year, as in previous years, Insight won't be sending Christmas Cards but we will send a donation to Project 4 Africa instead. Please join us in supporting those who can't enjoy the opportunities we have.



First 4 classrooms officially opened in October 2009

<http://www.project4africa.co.uk>

Contacts

Head Office

Leonardslee House
Brighton Road
Lower Beeding
West Sussex
RH13 6PP

Tel | 01403 892910
Fax | 01403 892919

Cardiff Office

3 Alexandra Gate
Ffordd Pengam
Tremorfa
Cardiff
CF24 2UD

Tel/Fax | 02920 472374

Croydon Office

Grosvenor House
125 High Street
Croydon
CR0 9XP

Tel | 020 8726 8636
Fax | 020 8726 8603

Glasgow Office

Centrum Buildings
38 Queen Street
Glasgow
G1 3DX

Tel | 0141 548 8042
Fax | 0141 548 8001

Kent Office

60 Bell Road
Sittingbourne
Kent
ME10 4HE

Tel | 01795 434230
Fax | 01795 431066

For further information or to book your company event, call 01403 892910.

CONFERENCE
FACILITIES



website | insight-hr.co.uk
email | info@insight-hr.co.uk