

Ward Hadaway – Lawyers for Education

Insight: Education

Your monthly education sector news roundup

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Welcome

Welcome to the April edition of our monthly newsletter for those in the education sector. We hope you will find this a useful summary of latest developments in schools, further and higher education and the training and apprenticeships arena. If you have any comments on the format or want more detail about a particular subject, please do not hesitate to contact any of us.

What does the General Election mean for the education sector?

On 19 April 2017, the House of Commons approved the Prime Minister's call for a General Election on 8 June 2017. We have produced a summary noting some initial considerations for the education sector following the announcement.

Proposed legislation

The dissolution of Parliament on 3 May 2017 creates an uncertain fate for proposed legislation which is currently under scrutiny by the House of Lords and the House of Commons. Bills which are not passed prior to dissolution will be dropped but could be revived if the Conservatives are re-elected. It remains to be seen which Bills will make it through the "wash-up" – the period during which outstanding Bills are subject to intense negotiations before Parliament dissolves. This affects:

» The Higher Education and Research Bill

Designed to "increase competition and choice in the higher education sector, raise standards and strengthen capabilities in research and innovation", this Bill has been approved in principle by both the Commons and the Lords. However the provisions of the Bill have been controversial. Amendments passed by the Lords include preventing the Government from using the new teaching excellence framework to set universities' tuition fees, taking international students out of net migration figures and restricting the Government's plans to open up degree awarding powers and university title to new providers.

The popular expectation is that, rather than being scrapped, this Bill will get pushed through during the "wash-up" period, with a number of concessions made from all sides.

» The Technical and Further Education Bill

Proposing an overhaul to the regulatory regime for further education, this Bill lays the groundwork for the implementation of the post-16 Skills Plan, which is a key part of the UK Industrial Strategy. The Bill returned to the House of Lords on 25 April 2017 in the "ping-pong" process as both Houses look to reach an agreement. One point of contention is that the Lords are seeking to improve financial support for apprentices and boost careers advice provision, which has so far been opposed by the Government. However the process could end up leaving the Bill with insufficient time to gain royal assent before the dissolution of Parliament. A number of concessions will need to be made if the Bill is to reach the finish line.

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Party manifestos and campaigns

Education policy will undoubtedly be a significant feature of party manifestos. Announcements can be expected from parties on the following issues:

» Grammar schools

The Government's proposals to lift the ban on the creation of new grammar schools have proved to be controversial. Nevertheless, the policy is likely to be a key part of the Conservative Party's manifesto. A majority win on a pro-grammars manifesto would make it much easier for the Government to proceed with its plans for selective schools.

The Labour Party has condemned the Government's planned £500 million investment in grammar schools. It believes that "academic selection is a barrier to social mobility" and that a selective education system "will not provide the skills we need for a future economy".

» The National Funding Formula (NFF)

At the end of last year the Government launched a consultation on its proposed NFF. The response is yet to be published but it is expected that the NFF will feature as a commitment in the Conservative manifesto. In the face of continued cost pressures on schools, the Government has repeated that, at £40 billion, school funding is at its "highest ever level".

Labour, on the other hand, has criticised the school budget for not providing funding per pupil in line with inflation. Labour has voiced plans to create a "National Education Service". This would "restore democracy to education...restoring the role of the Local Education Authority". This proposal is yet to be fully costed but it is said to include free childcare, early years education and university tuition fees.

» Free school meals

Earlier this month the Labour Party announced that, if in government, it would provide all primary children with free school meals. This would be funded by charging VAT on private school fees, which Labour claims would raise £1.5 billion a year. This would be enough to cover the cost of the meals, which Labour estimates at between £700 and £900 million a year.

When questioned whether she thought charging VAT on private school fees was a good idea, the Prime Minister did not address the proposed policy directly but claimed that: "Schools would find themselves in a parlous condition if Labour were in government because of the way they would be running the economy".

Logistical and operational impacts for schools

The election will have practical effects for schools on a logistical and operational level:

» Many schools face two closures within one month

For thousands of schools the local government elections on 4 May 2017 and the general election on 8 June 2017 mean two closures to provide polling stations, causing disruption to pupils, working parents and carers. A campaign has been launched by one school leader urging schools to reschedule inset days to coincide with planned elections. Primary schools may find this helpful with their programming and planning for the following September. However, this might not be as suitable for secondary schools as the examination period approaches.

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» Busy GCSE and A-level period

The affected secondary schools face the extra complication of the general election taking place during one of the busiest weeks in the exam calendar, with GCSEs, AS and A-levels taking place on 8 June.

» Purdah to delay decision-making?

The term "purdah" is used to describe the period immediately before elections when specific restrictions on the activity of civil servants are in place. Its effect is that in delivering public services, ministers, civil servants and non-civil servants within non-departmental public bodies will refrain from taking any decisions which are significant and may be politically contentious.

The purdah period may have an impact on new schools in the pre-opening phase and schools and academies which are already open, particularly if in the process of change, for example:

- » if deemed political in nature, the approval of new free schools, the pre-opening phase, or entering into new funding agreements may be deferred until after the election; and
- » given the potential delays in decision-making, schools or proposed schools which are in formal consultation should consider extending the consultation period until after the general election. A previously announced consultation cannot be shortened. A fresh consultation following the election might also be appropriate if responses might be out of date.

Supreme Court rules on term-time holidays

On 6 April 2017, the Supreme Court delivered its [judgment](#) in the much anticipated term time holidays litigation. In April 2015, despite being refused permission by the head teacher, Jon Platt took his six year old daughter out of primary school for a seven day family holiday to Florida. The Isle of Wight Council issued Mr Platt with a penalty notice for failing to secure his daughter's "regular attendance" at school as required by s.444(1) of the Education Act (EA) 1996. After failing to pay, he was prosecuted by the Council's Education Welfare Officer.

What is the meaning of "regular" attendance?

The question to be determined in Mr Platt's case was whether the attendance of his daughter at school was "regular". Both the Magistrates' Court and the High Court took the approach of considering the attendance of the child as a whole, including attendance outside the period of absence. They concluded that the child had attended regularly because, including the holiday, she had attended school 90.3% of the time up to that point in the academic year.

Supreme Court decision

The matter decided on by the Supreme Court was the meaning of "regularly" in the context of s.444. The three possible meanings identified by the Court were:

- » at regular intervals;
- » sufficiently often; or
- » in accordance with the rules.

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The Court found that the meaning could not be "at regular intervals" as this would enable attendance every Monday to count as regular even though attendance every day of the week is required. For a number of reasons the Court rejected the interpretation of "sufficiently often", including that:

- » this approach is too uncertain to found a criminal offence; a parent would not know on any given day whether removing the child from school is a criminal offence; and
- » there is a sound policy justification that unauthorised absences are disruptive to both the individual child concerned and to other pupils due to the resultant impact on group learning.

The Court therefore concluded that in s.444(1) of the EA 1996, "regularly" means "in accordance with the rules prescribed by the school".

What does this mean for schools?

This judgment is welcomed for the clarity it brings for schools and local authorities, as well as parents. The strict approach taken by the Court will help to eliminate any doubt which might have been cast on the approach to penalising parents for absences. Attention should be paid however, to the Court's suggestion for a "sensible prosecution policy", allowing minor or trivial breaches to be dealt with by the use of fixed penalty notices. This would recognise the misdemeanour but spare that person a criminal conviction.

Upcoming events

Don't be distracted by Brexit – five key HR changes you need to know in 2017

[10 May 2017, 9.30am – 12.00pm, Ward Hadaway's Manchester office](#)

[24 May 2017, 9.30am – 12.00pm, Manchester Airport Marriott Hotel](#)

2017 is set to bring several important and potentially costly changes affecting the workplace. Our employment law update advises on the practical steps which businesses should be taking to ensure compliance in the following areas: the rise of the contractor and the "gig" economy; immigration; health and safety dismissal and managing staff; and what's new in 2017.

Need to know – your policy and guidance quick read

Guidance: Health matters: obesity and the food environment

Public Health England has published a resource outlining how councils and partners can help schools create a healthier food environment and help children choose healthier food.

For more information please [click here](#).

Guidance: Sponsor a Tier 4 student: guidance for educators

UK Visas and Immigration have updated the policy guidance on sponsoring a student. This guide can be used to find out how to apply for (or renew) a university or college sponsor licence and enrol students from outside the EEA who will be studying under Tier 4 of the points-based system.

For more information please [click here](#).

Guidance: Short-term students

UK Visas and Immigration have updated the guidance for staff on how to consider short-term student applications for entry clearance or leave to enter under paragraphs A57A to A57H of the Immigration Rules.

For more information please [click here](#).

Guidance: Financial benchmarking tool for colleges

The college financial benchmarking tool helps colleges compare their financial performance with others in the sector. This version of the tool included data submitted in colleges' 2014 to 2015 and 2015 to 2016 finance records.

For more information please [click here](#).

Guidance: Analysing family circumstances and education

The Department for Education (DfE) is seeking views on its preliminary investigation of the relationship between household income and education for pupils in schools in England. The DfE has published a statistical paper which sets out the provisional methodology used to calculate equivalised household income bands and seeks views on this approach.

For more information please [click here](#).

Consultation outcome: Institute for Apprenticeships – draft operational plan

A summary of responses to the consultation on how the Institute of Apprenticeships proposes to carry out its functions has been published, along with the Institute's response outlining the next steps.

For more information please [click here](#).

Guidance: Free school pre-opening guide

On 21 April 2017, the DfE updated its guidance for groups which are in the process of opening a free school (mainstream, special, alternative provision and 16 to 19). The updated guidance reflects the DfE's current policies on funding, governance, admissions and other important areas that projects must comply with during pre-opening.

For more information please [click here](#).

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Quick read

Guidance: Governance handbook and competency framework

The DfE has published a "Clerking competency framework", which sets out the knowledge, skills and behaviours required to provide professional clerking to school and academy governing boards.

For more information please [click here](#).

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Meet the team

Meet the Education Team

As the evolving educational landscape continues to open up new opportunities and present challenges, you need to be confident that you are getting the right legal advice, at the right time and, of course, at the right price. Ward Hadaway's Education Team is recognised as a leading national player. Our friendly, commercial and pragmatic approach allows you to be reassured that you are in safe hands.

Whether you are a maintained school, academy, multi academy trust, free school, studio school or UTC, our team have an in-depth, up-to-date knowledge of the sector, making us ideally placed to offer the best possible advice to all those involved in the delivery of educational excellence for pupils, students and their communities. [Click here](#) to read about how we can work with you.

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