

Ward Hadaway – Lawyers for Education

## Insight: Education

# Your monthly education sector news roundup

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## Welcome

Welcome to the September edition of our monthly newsletter for those working 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](#).

### Academies Financial Handbook updates come into effect

The Education and Skills Funding Agency's updated [Academies Financial Handbook](#) came into effect on 1 September 2017 and sets out the financial management, control and reporting requirements that apply to all academy trusts. Compliance with the handbook is a condition of each trust's funding agreement so it is vital that you are aware of the changes.

#### Governance

The Handbook provides updated information clarifying the importance of academy trusts maintaining a degree of separation between their trustees and their members. With regard to this, the document states:

*"the most robust governance structures will have a significant degree of separation between the individuals who are members and those who are trustees. If members also sit on the board of trustees this may reduce the objectivity with which members can exercise their powers."*

Likewise, the Handbook also distinguishes between the different roles and powers of members and trustees, as well as reminding organisations that the current model articles do not permit employees of a trust to act as members.

The roles and responsibilities are set out as follows:

#### Members

Members may amend a trust's articles of association, subject to applicable restrictions.

Members have the power to appoint and remove trustees in certain circumstances.

Members are responsible for appointing a trust's auditors to prepare its annual accounts.

#### Trustees

Trustees should focus on "clarity of vision, ethos and strategic direction".

Trustees are responsible for holding individuals to account for the educational performance of the trust.

Trustees are responsible for overseeing the financial performance of the organisation and making sure the money is well spent.

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Finally, the document also emphasises the importance of trusts assessing and referencing effective governance when publishing their annual accounts. It is said that this should include a review of the board of trustees' actions taking into account the six "key features" of effective governance (strategic leadership, accountability, people, structures, compliance and evaluation).

## Financial Control

With regard to financial control, the updated handbook has made a number of changes of which academy trusts should be aware. These are set out below:

First, trusts should be aware that, in line with changes to reporting requirements, they must submit "budget forecast information" to the Education and Skills Funding Agency in a specified form to provide assurance that they are in "sound financial health".

Secondly, at section 2.3.5, the handbook states:

*"The board of trustees must ensure that their decisions about levels of executive pay follow a robust evidence-based process and are reflective of the individual's role and responsibilities."*

Consequently, going forward, trustees must ensure that such decisions are fully discussed as well as the reasoning for the decision being fully documented.

Finally, it is also worth noting that the handbook introduces a requirement that:

- » "Novel transactions": - i.e. those of which the academy trust has no prior experience;
- » "Contentious transactions": - i.e. those which might give rise to criticism of the trust; and
- » "Repercussive transactions": - i.e. those which are likely to cause pressure on other trusts to take a similar approach

must always be referred to the Education and Skills Funding Agency for explicit prior authorisation.

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## Ofsted issues school inspection update: Academic year 2017 to 2018

Ofsted has published a special edition of its school inspection update as a means of addressing the significant changes which have occurred to the education system over the past year and the resulting effects that these will have on the inspection process.

Usefully, the update details the likely considerations of inspectors when conducting assessments in addition to warning schools of practices which are likely to be heavily scrutinised.

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## GCSE changes

One fundamental focus of the report is the change to the GCSE examination regime, which has seen the previous grading system of U - A\* replaced by a 1 - 9 system. In this regard, schools should be aware that when conducting their inspections, Ofsted representatives will not necessarily look to compare a school's previous results with those under the new regime due to the potential for inconsistencies.

Instead, the guidance emphasises that:

*"Inspectors should continue to consider a wide range of measures to inform their judgements on outcomes. Therefore, as well as the headline attainment measures, inspectors will take into account the percentage of pupils at grade 4 or above in English and mathematics, [as well as looking at the bigger picture, particularly the quality of learning]."*

## "Gaming the system"

The update also stresses that the regulator has become wise to academic institutions seeking to "game the system" by taking deliberate efforts to enter pupils into specific subjects as a means of boosting its overall performance figures.

With regard to this, the update states that:

*"Inspectors must continue to sustain a sharp focus on challenging leaders and managers about unusual patterns of examination entry... [e.g.] Inspectors should scrutinise any evidence where it shows that leaders have entered pupils for qualifications with significant subject overlap."*

Consequently, it is clarified that Ofsted analysts will monitor the following:

- » High levels of entry for qualifications that are not core subjects or do not reflect the specialisms of a school;
- » The double entry of students in qualification which overlap in content, for example statistics and free standing mathematics qualifications; and
- » Entries into additional subjects which are not taught with sufficient time to support effective achievement, but pupils sit the examination to ensure other results are treated beneficially.

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

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## Local Government Association (LGA) warns of heightened secondary school demand

The LGA has issued a stark warning that unless deliberate action is taken, there is a significant risk that the country will be unable to meet the rising demand for secondary school places over the next five years.

The announcement followed the publication of statistics which indicate a predicted shortfall of 125,000 secondary school places by 2023 – a conclusion which has been reached following the requirement for an additional 600,000 primary school places since 2010.

### What action is required?

In order to redress the imbalance, the LGA has stated that:

*"[Councils] need to be given back powers to build new schools in areas where they are needed if it is logistically impossible for local academies or free schools to provide the places needed. Currently, although councils have a duty to make sure there are enough places in an area, all final decisions about new schools have to be made in Whitehall."*

### Commentary

*"Councils have worked hard to help create almost 600,000 additional primary places since 2010... However, as those children move on to secondary schools, the majority of which are now academies, securing new secondary places in the areas where they are needed is becoming increasingly difficult..."*

*"If we are to avoid this looming secondary school places crisis, councils need to be able to force existing academy schools to expand if voluntary agreement is impossible and [they] must be given back powers to open new maintained schools themselves."*

## Upcoming events

### Information Commissioner's Office update

[Wednesday 4th October 2017, 8.30 am – 11.00 am, Ward Hadaway's Newcastle Office](#)

[Thursday 5th October 2017, 8.30 am – 11.00 am, Ward Hadaway's Leeds Office](#)

You will hear the latest advice, guidance and commentary from Dave Clancy, Investigations Manager at the ICO. Dave will provide an update on a range of topics affecting organisations, including the Data Protection Bill, recent legal developments and a general ICO update.

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*Events & quick read*

## **Procurement Law update**

[Thursday 2nd November 2017, 8.30 am – 12:30 pm, Ward Hadaway's Newcastle Office](#)

[Thursday 9th November 2017, 1.00 pm – 4.30 pm, Ward Hadaway's Newcastle Office](#)

[Thursday 16th November 2017, 1.00 pm – 4.30 pm, Ward Hadaway's Leeds Office](#)

[Thursday 23<sup>rd</sup> November 2017, 1.00pm – 4.30pm, Ward Hadaway's Manchester Office. Please note this seminar is fully booked, click hereto be added to the waiting list.](#)

[Thursday 30th November 2017, 1.00 pm – 4.30 pm, London](#)

This session will provide you with a unique opportunity to hear first-hand from leading procurement experts who will share their thoughts on the most topical issues of the moment, as well as reviewing the new regulations one year on from introduction.

## **Your essential education law update**

[Tuesday 14<sup>th</sup> November 2017, 8.00am – 10.15am, Ward Hadaway's Newcastle Office](#)

[Tuesday 21<sup>st</sup> November 2017, 8.30am – 10.45am, Ward Hadaway's Leeds Office](#)

Join us at this must attend education law update ,where our panel of experts will guide you through the often complex legal issues that you face on a day-to-day basis in simple, commercial terms, giving you practical tips to apply to your school.

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## **Need to know – your policy and guidance quick read**

### **Statutory guidance: Exclusions statistics guide**

The DfE has published a comprehensive guide to the statistics for permanent and fixed period exclusions in schools in England.

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

### **Statutory guidance: Pupil absence statistics guide**

The DfE has published guidance detailing pupil absences in schools in England and explaining how it collects and processes data, how it calculates findings and when it publishes pupil absence statistics.

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

### **"New training opportunities for thousands of teachers"**

The DfE has announced that teachers across the county will benefit from additional training thanks to the new £75 million "Teaching and Leadership Innovation Fund", which is aimed at providing teachers with skills and knowledge-based training.

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

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*Quick read*

## **Consultation outcome: Schools national funding formula: stage 2**

The DfE has published an analysis of, and response to, the schools national funding formula consultation. The document outlines the 17 questions asked in the original consultation, as well as the explaining the typical responses to each of these and the Government's proposed action going forward.

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

## **Transparency data: Teacher's pension scheme payments: 2017 to 2018**

The DfE has issued data outlining the teachers' pension scheme payments made on its behalf in the 2017 to 2018 financial year.

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

## **"Deal to help schools save cash on computer equipment"**

The DfE has unveiled a second "bulk buying" deal which offers schools the chance to save thousands of pounds on tablets, laptops and desktop devices. In order to take part, schools must submit their requirements for new devices to the Crown Commercial Service by 6 October 2017.

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

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# Insight: Education

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.

### Your key contacts



**Tim Care**  
Partner | Public Sector & Academies  
E: [tim.care@wardhadaway.com](mailto:tim.care@wardhadaway.com)  
T: 0191 204 4224



**Frank Suttie**  
Partner | Commercial  
E: [frank.suttie@wardhadaway.com](mailto:frank.suttie@wardhadaway.com)  
T: 0113 205 6783



**Paul Scope**  
Partner | Employment  
E: [paul.scope@wardhadaway.com](mailto:paul.scope@wardhadaway.com)  
T: 0191 204 4352



**Fiona Wharton**  
Partner | Head of Charities  
E: [fiona.wharton@wardhadaway.com](mailto:fiona.wharton@wardhadaway.com)  
T: 0191 204 4219



**Alex Shiel**  
Partner | Head of IP/IT  
E: [alex.shiel@wardhadaway.com](mailto:alex.shiel@wardhadaway.com)  
T: 0191 204 4296



**Graham Vials**  
Partner | Employment  
E: [graham.vials@wardhadaway.com](mailto:graham.vials@wardhadaway.com)  
T: 0191 204 4383