

Ward Hadaway – Lawyers for Education

Insight: Education

Your monthly education sector news roundup

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Welcome

Welcome to the December edition of our 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](#).

Hope you have a Merry Christmas and a wonderful New Year!

Former Headteacher fined for breaching GDPR unlawfully by obtaining school children's personal information

A Deputy Headteacher from Twickenham has been fined for unlawfully obtaining children's personal data from previous schools where he held leadership positions.

The Deputy Head at Isleworth Town Primary School was only six months into his new role when he was suspended. A subsequent IT audit revealed that he held large volumes of sensitive personal data on Isleworth Town Primary School's server from his previous schools in nearby Richmond, without a lawful reason to do so.

It materialised that the information appeared on the school's system as the result of an upload from a USB stick, he attempted to explain that he believed he had deleted the personal data from it.

In an interview that followed with the Information Commissioner's Office (ICO) the Deputy Head said the information had been taken for professional purposes. Subsequently, he admitted two offences of unlawfully obtaining personal data in breach of s.55 of the Data Protection Act 1998 before a Magistrates' Court and was fined £700 and ordered to pay £399.08 in costs.

The ICO's Criminal Investigation Group Manager Mike Shaw took the opportunity to express the importance of prosecutions like this, situations like this should remind teachers that they must be mindful in their use of pupil data. He explained:

"Children and their parents or guardians have the right to expect that their personal data is treated with respect and that their legal right to privacy is adhered to".

"A Headteacher holds a position of standing in the community and with that position comes the added responsibility to carry out their role beyond reproach".

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Department for Education backs seven new pledges to help address teacher workload

The Department for Education has announced seven new pledges to help tackle teacher workload. This has come as the result of a report conducted by the Workload Advisory Group which reported that teachers often suffer from anxiety and burnout because of an increasing expectation on schools to use detailed pupil data.

The report

The report entitled "[Making Data Work](#)" focused on how data collection could be simpler to improve the situation for teachers and made seven recommendations to the Government. It came off the back of research commissioned by the Department for Education, which revealed that 75 per cent of former teachers surveyed said workload was the primary reason they left the profession.

Hinds' response

The Education Secretary along with Ofsted and other organisations wrote to school leaders reiterating their commitment to tackling teacher workload. In his response he said himself and the Department for Education were prepared to accept all of the recommendations in the report in full.

The recommendations

» Fewer regular data drops for local authorities and Government

The Department for Education has announced that it will no longer ask schools for data on attainment, except national test data, unless a school is failing or at risk of failing.

The report went further and recommended that schools and academy trusts are told not to expect regular data drops but the Department only promised to "communicate this expectation to local authorities" however, a spokesperson has subsequently confirmed that trusts are also included in this.

» Research into whether schools need a 'data collection tool'

The Department will look at whether a tool or checklist would be a more effective data collection mechanism.

» New guidance on logging pupil behaviour

New guidance has been promised to help teachers log pupil behaviour. The Advisory Report warned against "burdensome" processes for logging pupil behaviour. The current report writing process can take up a lot of teachers time.

» Trustees and local authorities are not to use predictions data to hold schools to account

Research will be commissioned to look at the impact of target setting in schools, as the focus on targets and predictions places a burden on teachers.

» New research on the impact of reporting pupil premium

The Department for Education will speak to schools about the current reporting burden for pupil premium and primary PE and sports premium spend.

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- » Performance management guidance to be updated so teachers aren't judged solely on data
The Government agreed to update its performance management guidance for maintained schools and local authorities, which has also been applied to academies, to reflect the fact that teachers shouldn't be judged on data for a single group of pupils.
- » New governance training on workload.
The promise has been made to include "myth-busting" messages for governors in the workload toolkit and the governance handbook to undo misconceptions of what the Department or Ofsted require for data collection.

The Government's push for teacher recruitment failing to reach the "pass" mark for physics and maths

It has been widely publicised that the Government has been making a big push in an attempt to recruit more trainee teachers and help to remedy the current shortage of future teachers. A range of policies and initiatives have been introduced in an attempt to meet their ambitious target of 32,226 recruits. These policies include:

- » Recently announced programmes aimed at recruiting experienced business leaders and talented PhD graduates into classrooms with the help of three organisations – Now Teach, Cognition Education and The Brilliant Club;
- » UCAS teacher training system launch which allows candidates to apply for teacher training courses via UCAS with more ease;
- » The School Direct training programme – a programme aimed at graduates with 3 or more years' career experience, to attract career changers to the profession;
- » The launch of the Get Into Teaching PR campaign; and
- » Department for Education Train to Teach nationwide events.

Census data revealed that 29,255 trainees were recruited this year, less than was hoped for the Department. The situation is particularly bad for physics, maths and technology, with teacher recruitment figures falling to their "lowest points" in recent years. The Government recruited just 47 per cent of its target number of physics trainees this year and only 65 per cent of the target was met for maths. The same data revealed that the trainee recruitment target has only been met in biology, English and history.

James Nobel-Rogers from the Universities Council for the Education of Teachers, spoke out against the Government and Department for Education explaining that they are failing on such a crucial issue. He also added:

"The DfE must as a matter of urgency develop a coherent recruitment and retention strategy, rather than continue with a series of piecemeal and ad hoc initiatives"

He explained that the Department for Education should be removing tuition fees for postgraduate teacher education to attract more recruits and also replace the current outdated and badly administered pre-entry skills tests.

Despite concerns over the current recruit figures, schools minister Nick Gibb explained that the overall number of new trainee teachers starting courses this year is 34,500 which is around 2,600 higher than in 2017. He said that this shows that teaching continues to be an attractive opportunity for graduates. Furthermore, it should be kept in mind that the situation is an improvement on last year where targets were missed across all subjects except history.

Schools facing clawback after pumping up pupil numbers

Schools which incorrectly overestimated their pupil and admission numbers last year will be forced to repay the £33 million in funding shortfall as schools and trusts are repeatedly 'pumping up' pupil numbers in order to achieve more funding.

A freedom of information release revealed that 660 academies were funded through this method of pupil estimation last year and that 304 of these over-predicted their pupil numbers. All 304 of those schools will reportedly be left with the bill to make this deficit up.

A similar picture was painted for UTCs, of the 49 still open, 30 under-recruited pupils and now have to pay back more than £6.5 million between them.

However, how or when these trusts will pay this funding back is somewhat unclear. In the past, if a trust under recruits pupils, the extra funding has not had to have been repaid until the following year. Some trusts have even negotiated arrangements to pay the money back over a number of years and some have even agreed to have the debt written off.

Pam Tuckett, a Partner at an accountancy firm with specialist experience in dealing with academies said that academies funded on estimated pupil numbers usually get this funding because they are growing, the final number they settle their funding on tends to be down to negotiation with the Department for Education. She made it clear that the "benchmark" for gaining estimate funding isn't clear, many factors can influence this such as if the school received a better Ofsted rating or a nearby school has closed down.

The Department for Education has previously explained that often trusts may be offered the estimate funding as part of a recovery package to take over a struggling school to allow the trust to try and recover the school. However, joint secretary of the National Education Union Mary Bousted highlighted that this funding should not be used for these types of schools "effectively as a sweetener" to encourage trusts to take them on.

As well as leaving trusts in a worse financial position when they are forced to repay this funding, it has the potential of attracting poorly performing trusts. As Lord Agnew recently warned, trusts may over-estimate their pupil numbers in an attempt to bolster their financial protections, hoping that this will be the solution to their financial problems. He implied that trusts experiencing their own financial difficulties may take on schools with estimated pupils and use the extra funding to protect themselves and remedy their own financial problems.

Concerns increasing over current state of SEND Funding

Concerns have been raised over the current state of Government funding for SEND pupils. These concerns have been voiced by a host of different bodies from schools to councillors and also the Local Government Association. In response, the Government has reported that its high needs funding is protected in real terms but councils and schools have explained that the situation in reality is very different.

The number of pupils with a SEND classification has rapidly increased since the SEND reforms were introduced by the Children and Families Act 2014 which replaced statements with Education, Health and Care Plans (EHCPs). Government statistics show that from January 2017 to January 2018 32,000 more pupils were added to the SEND register. In the same space of time, SEND funding has been cut away and reduced.

The Local Government Association recently warned of a £536 million funding gap in SEND budgets as a result of growing demand, which is more than double last year's shortfall. They also reported that by 2020 councils will have lost 60 per cent of their funding in comparison to 2010.

Furthermore, earlier this year, The School Cuts Coalition, a Union which includes NEU, NAHT, ASCL, Unison, GMB and Unite explained that the current state of SEND funding is "dangerously inadequate" and requested an "immediate increase in funding for schools" to deliver additional support for SEND pupils. It does not seem like this has been adequately delivered by the Secretary for Education.

What do the councils say?

Dave Hill, the executive director of children, families and learning at Surrey County Council was vocal with the parliamentary education committee in explaining that the whole country is "close to a national crisis" on SEND funding. He warned that his council is close to being unable to run its core services because of a £30 million pressure on the high needs funding block.

Councils report that this is the result of pressure being placed on councils from parents to assess pupils for EHCPs, leaving high needs funding tied up in funding the planned provision with little left for high needs. Councils are being forced to plug the funding gap by top-slicing from their school's block funding and budget.

A corporate director of strategic resources at North Yorkshire County Council echoed this to the parliamentary committee explaining his authority's high needs demand has went up 10 per cent but its funding has only increased by 0.75 per cent, to remedy the deficit they had top-sliced £10 million.

Schools also face a similar struggle in their ability to support SEND pupils. The current government guidance for mainstream schools means that schools must meet the initial £6,000 of additional SEND support costs before funding is granted. One schools expert explained that this in combination with poor Council provisions can mean that often "schools are caught in a loop of no funding".

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Crown Commercial Services framework to open up to allow schools to access technology experts

Schools are to benefit next year from the opportunity to call off from Crown Commercial Services framework expert suppliers in technology for the school sector. Further and Higher Education are also to benefit from the procurement.

The framework will replace existing more limited frameworks in place and cover the following subject areas:-

- » ICT solutions – turnkey technology fit out and/or system management contracts;
- » Broadband fibre infrastructure;
- » Broadband connectivity services;
- » Hardware and peripherals including networking equipment; and
- » Audio visual – covering whiteboards, screens and audio equipment (but not video conferencing).

Each lot will have up to 20 participants. Schools will be able to select a supplier in various ways depending on the lot – ranging from direct call off without any further competition to selection through mini-competition where the school pre-selects a smaller number of bidders to compete for the opportunity to supply.

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Quick read

Need to know – your policy and guidance quick read

Health and Safety in schools

The Department for Education has produced a guidance note to help schools understand their health and safety duties and responsibilities. It includes information relating to health and safety policy for both pupils and employees as well as the importance of implementing adequate staff training and emergency preparation.

Listing a teaching job at your school on Teaching Vacancies

Guidance has been produced to provide schools, specifically school leaders and the staff involved in hiring teachers with the advice on listing teaching jobs and view previously listed jobs on the new online platform, Teaching Vacancies.

Mental health and behaviour in schools

The Department for Education has released guidance for schools on how schools can support pupils whose mental health problems manifest themselves in their behaviour. It gives advice on how schools can create a positive mental health culture, how schools can identify when behaviour is linked to mental health problems and also what support it can put in place for those pupils.

Controlling access to school premises

This Guidance is supposed to help schools understanding what they should do to remove someone who is on their premises without permission. The guidance applies to both academies and maintained schools.

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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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