

January 2019 edition

education insight

Education Insight: for businesses supplying the education sector

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welcome

Ward Hadaway is delighted to send you this edition of Education Insight. Published to coincide with BETT 2019 our focus is on the edtech sector. Our EdTech team has assembled brief articles and news items covering significant developments. We cover important issues to consider when preparing to export and the possible impact of Brexit for technology companies. GDPR is, as ever, newsworthy and we also look at the challenges and opportunities for education in the emerging 4th Industrial Revolution. The edition concludes with a summary of recent developments at DfE.

If you are exhibiting or in some other way participating in BETT 2019 we hope that it goes very well for you!

the role of education in the 4th industrial revolution

The education select committee is currently considering the role education should play in delivering successful outcomes for the United Kingdom in the “big data” age that we now live in. The committee is analysing how we should adapt our expectations of the education system and our behaviours as employers or as other stakeholders in the education system.

The terms of reference require the Committee to examine how best to prepare young people to take advantage of future opportunities by looking at the suitability of the school curriculum. It will also look at the role of lifelong learning and how best to help people climb the ladder of opportunity in the future.

The evidence that the committee is receiving highlights all too clearly that transformational change in society and our economy is now being driven by the technology available to us. As the CEO of a leading education artificial intelligence software developer said in evidence “technology will not wait for education to catch up”.

Apparent in much of the evidence delivered is a need for adaptation to new

employment patterns, as well as an approach to education that promotes the concept of lifelong learning far more



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seriously than has previously been the case. Both the working environment and the skills required to make the most effective contributions to business outputs and outcomes are changing rapidly and in ways that technology providers and not employers control. Winning enterprises in the future will be those that make the most accurate predictions as to how to leverage new technological solutions into the business model whilst managing effectively the impact upon human resources and the

transformations required as a result of that impact.

Serious concerns are being placed before the committee over the still relatively new levy based apprenticeship model. Employers drawing down funds must do so largely against apprenticeship models (described as standards) which deliver outcomes positively in today's workplace but which perhaps offer only questionable value for that apprentice and the employer business into the future.

A common theme stems from the “big data” world we live in and the opportunities that arise. There is a need for our education system to place far greater emphasis upon digital skills and literacy.

It seems clear that the objectives of the education curriculum are once again being brought into question and for good reason. Providers of learning tools used in the classroom will need to be alive to the challenges created and look to present opportunities to support the education system playing a key role in delivering the 4th Industrial Revolution. To repeat – technology will not wait for education to catch up.



data protection: what to expect in 2019

2019 promises to be a busy year in the continuing development of data protection rules and requirements for businesses in their use of personal data. We take a look here at upcoming events and issues that are likely to require attention in businesses working within the education sector.

Implications of a hard Brexit

As this newsletter goes to press there continues to be the risk of the no deal scenario becoming a reality. If your business operates solely in the UK or your personal data processing involves only territories external to the EU there should be no significant issues for you if you are already operating compliantly. However, if your personal data flows take your data into, or come from any of the 27 remaining EU member states, you will want to pay attention to the efforts that will be initiated on an urgent basis to secure an adequacy recognition from the EU failing which action will be required in the form of updating your contract terms with your EU customers.

Initiatives at ICO

- The ICO are set to expand, with a headcount of almost 700 marking a 60% growth since 2016.
- As of December 2018, the ICO has received over 8,000 breach reports since GDPR was implemented.
- A number of Codes of Practice are expected to be published in 2019. These are required under the Data Protection Act 2018 (DPA) including:

- **a Data Sharing Code** – covering transparency, lawful bases for processing, accountability and recording of processing requirements. The call for views which closed in September 2018, was the first stage in the consultation process.
- **a Direct Marketing Code** – the ICO consultation closed on 24 December 2018 and guidance is expected to build on the existing direct marketing guidance addressing aspects of the GDPR.
- **an Age Appropriate Design Code** – giving the design standards that ICO expect of providers of online services and apps used by children when processing their data. ICO published responses from a number of organisations following a call for views which closed in December 2018. The responses can be found [here](#).
- ICO plans to issue new and expand on current guidance in several areas such as:
 - The deletion of personal data;
 - Public task as a lawful basis for processing;
 - Exemptions from the rights of access, rectification, erasure, restriction, portability and objection under the DPA;
 - Privacy enhancing technologies;
 - Security; and
 - Big data.

The Morrisons Case

In October 2018, the Court of Appeal dismissed Morrisons' appeal and upheld the High Court's decision that the supermarket were vicariously liable for a serious data breach caused by an employee.

The employee copied a vast amount of employees personal data, which included payroll data, onto a USB stick and later posted the data concerning nearly 100,000 employees on the internet.

Morrisons' employees alleged that their employer had breached the DPA in a number of respects and took action in the High Court claiming damages. Despite ruling that Morrisons had put in place adequate and appropriate data protection controls, the High Court held that Morrisons were vicariously liable for the employee's criminal actions, a decision that was then upheld by the Court of Appeal.

The decision came as a concern to employers and is a stark reminder of the potential risks posed by aggrieved employees who, in performing their role, have access to large amounts of employee personal data.

Businesses should ensure that they review the extent to which staff can access and download data to devices. The use of information barriers is an important consideration.

We think that software developers under their privacy by design duty must also play a part by enabling appropriate controls on access to data.

Businesses will also want to consider the extent they hold insurance coverage for risks of this kind.



It goes without saying that the UK EdTech sector will be impacted by Brexit. Exactly how will depend on the nature of the future relationship between the UK and the EU.

The European Union (Withdrawal) Act (the "Act"), enacted in June 2018, puts a framework in place for dealing with the legislative consequences of the UK no longer being a member of the EU. It achieves this by incorporating all EU law, as it applies to the UK immediately before "exit day", directly into UK law as "retained EU law". Significantly, the Act enables the Government to adapt the retained EU law so that the legislation can operate independently of the EU going forward.

Many issues that this might raise for EdTech businesses operating in the UK will not be unique to EdTech, but as a sector that is so intrinsically linked with technology and innovation, there are a number of points that could be relevant. EdTech companies are regulated by EU derived legislation in a number of areas, such as:

- **The sale of goods and services (including digital services)** – how will EdTech businesses be affected if there are changes to import and export rules?
- **Business and personal immigration** – how will EdTech companies ensure that they can recruit the necessary expertise if individuals from the EU can no longer move freely to work in the UK? The Government has already published its *White Paper on the future skills-based immigration system which is proposed to apply in place of the free movement rights that currently apply to EU citizens.*



Of course, the potential downsides of legislative divergence which are likely to arise over time could be accompanied by several opportunities for UK based EdTech companies, for example continuing to forge relationships with companies and individuals based in non-EU markets, such as those in Asia.



- **IP** – *could there be changes affecting the protection and enforcement of intellectual property rights in the EU?*
- **Data Protection** – *there should be no immediate change in UK data protection requirements because the GDPR will form part of "retained EU law" and the UK's Data Protection Act 2018, reflecting and supplementing the GDPR, will continue in force regardless of Brexit. However, due to the UK no longer being an EU member state, EdTech companies (or their subsidiaries) based in the EU would need to put appropriate arrangements in place to comply with GDPR requirements on data transfers to the UK.*

Significantly, the UK will not be a part of the EU's Digital Single Market ("DSM") initiative after Brexit. This package of initiatives aims to enable individuals and businesses to access online goods and services more seamlessly by removing current barriers. The DSM initiative aims to address issues from modernising EU copyright rules to funding EU research helping companies and individuals have the necessary digital skills to make use of

new technologies. If the UK is no longer a member of the EU, it would not ordinarily be a part of this new environment, which could make providing digital services to EU customers more difficult for UK-based EdTech companies when compared to their EU-established competitors.

Of course, the potential downsides of legislative divergence which are likely to arise over time could be accompanied by several opportunities for UK based EdTech companies, for example continuing to forge relationships with companies and individuals based in non-EU markets, such as those in Asia.

Even if the direct legislative and policy impacts are not felt by EdTech companies immediately, the EdTech sector will undoubtedly be impacted by any issues faced more widely in the digital sector. Whether Brexit affects the EdTech sector positively or negatively will depend on the extent of any legislative divergence that occurs in the areas listed above (and several others) and whether it makes the UK a more or less attractive environment in which to operate within the EdTech space.

taking your business international – some tips when preparing your business plan

In this article we share with you a few hints and tips useful when planning to internationalise your business.

It's well-known that UK education is highly exportable – whatever issues and challenges face our education system domestically the qualities demonstrated by educationalists and those who support the system as suppliers is highly valued in overseas markets.

If you look to foreign markets for business there are some important aspects to think about and plan for before becoming too committed.

The territories you are looking at – why choose them?

Your choice may be driven by a particular opportunity – an existing customer school is opening a branch overseas or a member of the customer team is migrating and wants to continue working with you and your products. All fine but in wider terms are you certain you can build from that opportunity a successful base of customers?

As a starting point, check whether the specialist education team at the Department for International Trade have some helpful thoughts. Is the territory one that they are actively encouraging education businesses to be active in?

If you are a member of BESA or considering membership, chat to the organisation about its support for member suppliers. This includes a specialist sub-group dedicated to businesses involved in exporting.

How well will your branding be received?

Give some thought to your brand identity – is it appropriate for the countries you plan to sell into? If so, make sure that you take the opportunity to trade mark your brand identity. The global system of trade marks is easy to work within – UK legal advisors who have trade mark experts can secure registrations in other territories on your behalf. The costs should be found to be affordable. An important by-product of this exercise is that it may tease out any clash in branding with other existing businesses that you would wish to avoid.

Working with personal data – what are the risks?

The implementation of GDPR has given all businesses the opportunity to appreciate the significance of data protection laws. Whilst GDPR is an initiative of the European Union, less well known is the fact that the treaty driving protection for personal data has wider effect with many nations worldwide committed to data protection – but frequently in different ways. Being particularly clear about aspects that have criminal enforcement is vitally important.

Will your intellectual property be safe?

Finally, if a major part of the value of your business is its intellectual property you will want to understand protections available in the territories that you look to do business in. Many will feel reassured when briefed on the local laws that exist. You need to look further into the issue, however, and make sure that you understand how the laws that exist are then enforced. If enforcement

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”

could in any way be limited – for example though the absence of effective routes for legal proceedings, or the lack of resources being applied to enforcement the risks arising need to be taken into account.

Is that everything we need to think about?

Most certainly not! We will cover a range of other issues and considerations in a future edition. In the meantime if you would like us to help you look at a potential opportunity and support your decision making please get in touch.

dotgov: your need to know guide to DfE policy decisions

Health and Safety in schools

The Department for Education ("DfE") has published statutory guidance aimed at helping 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.

Additionally, DfE is consulting on security arrangements which schools are expected to have in place to ensure the safeguarding of children and staff addressing, for example, terrorism risk.

Please click [here](#) for a link to the statutory guidance.

Please click [here](#) for a link to the School security consultation.

Funding boost helps raise standards

Thirty six colleges across England will receive funding totalling £5.5m as part of a move aimed at increasing standards in educational establishments.

The colleges, who were each successful in the first round of the Strategic College Improvement Fund, will receive their share of the total £15m funding pot which will help pay for training and services to improve the quality of education on offer to students.

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

DfE announces student app winners

Following the conclusion of the Government's £300,000 Open Data Competition, two tech companies have been awarded £150,000 to assist with the creation of mobile apps which will provide students with easier access to graduate outcomes data.

The first contract is for an app which offers students a personalised careers assistant while the second helps users to understand the consequences of their decisions through simulations of graduate career paths.

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

Disadvantaged students to receive extra support during school holidays

DfE has encouraged organisations to submit bids for a share of a £9m Government programme to deliver holiday clubs for pupils eligible for free school meals during the 2019 summer holidays.

Further to this, the Government has also confirmed that in 2019 it will more than quadruple funding to programmes encouraging co-ordination in local communities.

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

Activity passport to inspire school children

The recently announced 'My Activity Passport' has demonstrated DfE's commitment to ensuring that all children are able to enjoy new and varied experiences.

Consequently, organisations which provide services such as the Scouts and the Girl Guides Association will be looking for materials to support their work in the education sector as part of a new DfE supported initiative.

Described as a passport of initiatives, schools will be encouraged to work with partner organisations in education orientated activities.

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

Education Secretary announces additional support

The Education Secretary Damian Hinds has announced that, on top of existing high needs allocations, there will be:

- An additional £250m of high needs funding - £125m for 2018-2019 and £125m for 2019-2020;
- A £100m top-up to the Special Provision Capital fund for local authorities in 2019-2020 for the new places and improved facilities. The funding can be used for more places in SEN units and resourced provision in mainstream schools or colleges; in special schools; or in any of the other types of provisions used for pupils and students with Education, Health and Care plans ("EHC plans"); and
- An increased number of special and alternative provision free school bids that will be approved as part of the current wave. The DfE anticipate being able to approve all those Local Authority bids that fully meet the criteria for the wave which will, therefore, contribute to relieving high needs funding revenue pressures.

Similarly, a series of further initiatives has been announced including:

- Outlining the next steps to establish a new SEND System Leadership Board;
- Reviewing current SEND content in Initial Teacher Training provision;
- Ensuring a sufficient supply of Educational Psychologists trained to carry out the statutory functions linked to the EHC plan process; and
- Holding an evidence gathering exercise on the financial incentives in the current arrangements.

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

meet the team

We focus on areas of legal practice that are vital to the needs of businesses working in the education sector. A large procurement and competition law team is available to respond to problems and issues that the private sector face in bidding for business, we support clients across the full range of legal service requirements including corporate finance, commercial, property and employment and pensions.

With in-house Trade Mark expertise, a network of overseas partnering practices and one of the most active technology teams focussing increasingly on the edu-tech agenda, Ward Hadaway is rapidly becoming a law firm of choice for the sector.

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