



EDUCATION law

NEWS AND ADVICE FROM BIRKETT LONG

A fair amount has happened since the last publication of our Education Law newsletter. A level results were released, with students having been awarded the highest proportion of As and A*s since 2012.

Last year, students in England took more challenging exams in 13 subjects, with 11 more following this year. Further, rapper Stormzy has made the news by offering a scholarship to black British students to attend the University of Cambridge. The scholarship will pay for tuition fees and provide a maintenance grant for up to 4 years for an undergraduate course.

Alongside the stories that are making the headlines, there have also been developments in education law. Should you wish to discuss further with a solicitor, please contact Thomas Emmett, our education law specialist, on 01245 453847 or email thomas.emmett@birkettlong.co.uk.

Keeping children safe in education

The Keeping Children Safe in Education statutory guidance has been updated.

Enhanced duty of care and practicability

High Court considers a school's duty of care.

Managing your school's finance

The management of public funding is a key focus in the media.

Scrutiny of those working with children

Supreme Court asked to consider a decision of the Upper Employment Tribunal relating to a head teacher's dismissal.

Keeping Children Safe in Education

The Keeping Children Safe in Education statutory guidance has been updated and came into force on 3 September 2018. The guidance is applicable to both schools and colleges.

One particular point to note is that these changes will require schools and colleges to make modifications to their policies. Multi-Academy Trusts are permitted to have an overarching policy relating to child welfare, but each individual school in the Trust should have their own child protection policy which is unique and tailored specifically to the individual school. Three crucial changes are as follows:

- **Volunteers and regulated activities**

Relevant education institutions are permitted to obtain enhanced DPS checks (but not a barred list check) on supervised volunteers in particular circumstances. The guidance tries to shed some light on what a “supervised volunteer” is.

- **Use of reasonable force**

The updated guidance provides

educational institutions with information relating to the use of reasonable force in schools and colleges. The Department for Education is keen to press home the importance of the rights that schools and colleges have to use reasonable force in certain circumstances. Understandably, such educational institutions are slow to use the rights they have due to concerns relating to a child’s welfare. Particularly, the use of physical contact is of concern.

- **Peer on peer abuse**

This is a complex area, especially when authorities such as the police are involved. The modified guidance provides further detail on what constitutes peer on peer abuse. Child protection policies will need to be updated in light of the expanded guidance.

There are many more significant changes that should be noted and I recommend all relevant educational institutions should read the updated statutory guidance. After reading the guidance, should you have any questions, please do not hesitate to contact me.



Thomas Emmett

01245 453847

thomas.emmett@birkettlong.co.uk

The recent case of Pook -v- Rossal is interesting, as it required the High Court to consider a school’s duty of care to its pupils.

Enhanced duty of care and practicability

A pupil ran from the school’s changing rooms to the school field for a physical education lesson. Despite there being

a footpath, the pupil took a route across a muddy area, fell and sustained a significant injury to her elbow. The

Education Bulletin :

Managing Your School's Finance – The Changes Ahead For 2018/19

The ESFA is placing an ever increasing burden on Trustees to ensure they have sufficient financial controls and systems in place to ensure appropriate safeguarding and management of their School budget and resources.

The management of public funding generally is a key focus in the media and so it is no surprise that the ESFA has continued to increase their requirements within the Academy Sector to further increase accountability for appropriate use of their funding.

The continued pressure on funding also requires many Academy schools and their Trustees to think differently and ultimately having to make difficult decisions to produce a balanced budget. The Academies Handbook 2018 which took effect from 1 September 2018 introduces further financial requirements for all Academy Schools.

- It is now a formal requirement for all Academies to provide monthly management accounts which must be reviewed by the Chair of Trustees each month.

- The Management accounts must also be reviewed by all Trustees, at least six times a year and this must be evidenced within the minutes of the Trustee meetings.
- Academies are also now required to prepare a 3 year forecast, to ensure they have sufficient reserves not just for the current financial year but projecting forward further. This should naturally take into account an element of sensitivity analysis regarding estimated pupil numbers and other variable factors within the schools budget.

In the latest guidance from the ESFA, they have also now confirmed their stance on other areas for Trustees (and auditors) to review including an ongoing review into high levels of executive pay with additional reporting requirements for executive pay exceeding £100,000. The ESFA have also referred to other possible risk areas of irregularity including lack of appropriate authorisation of expenditure; inappropriate procurement processes and irregular expenditure not for the purpose intended and given the

example of “excessive gifts and alcohol”. Whilst many Academies may already be adopting this management reporting approach as best practice, this may require some schools to adapt their current financial reporting process and Trustee meeting format for the new 2018/19 academic year.

If this sounds like yet another task to be juggled at the start of the Academic year, don't panic as our specialist education team at Rickard Luckin Limited can provide additional support to help you through this. Please do contact kate.bell@rickardluckin.co.uk for further details of how we may be able to help your finance team and Trustees to meet their obligations.

Kate Bell FCA, CTA

Head of Education Team
Rickard Luckin Limited
Chartered Accountants & Tax Advisers

High Court had to consider whether the educational institution had failed to protect the pupil because, at the time of the incident, there were no staff members around and the pupil had been encouraged to run to the field.

The High Court's view was that whilst schools have a significant duty to pupils in their care, this has to be balanced against the fact that a school does not have to bring a risk down to the lowest level reasonably practicable. The High Court held that courts should be slow to

judge teachers as negligent, especially when it is not inherently dangerous for children to run to sports lessons, as long as they are careful. The teacher in this case demonstrated herself to be a caring and thoughtful teacher who had been responsible for an “impressive” risk assessment which showed that she was well aware of her duty of care. This case highlights the difference between where it is never reasonable to allow a pupil to run, for example, in the classroom, and where it is reasonable.

Thomas Emmett

01245 453847
thomas.emmett@birkettlong.co.uk



Scrutiny of those working with children

The Childcare Act 2006 and the subsequent Childcare (Disqualification) Regulations 2009, bar people with certain convictions, mainly relating to sexual offences, from working with pupils in education institution.

The legislation also disqualifies those who live in the same premises as people with such convictions. The laws catch both before and after school provisions provided by educational institutions. It does not, however, include education or supervised activities for children above reception age during school hours.

In a recent case, the Supreme Court was asked to consider a decision of the Upper Employment Tribunal relating to a head teacher's dismissal. The head teacher had worked in education for over 20 years and had, until this case, a clean record. Both the Tribunal and the Court heard that the head teacher was in a close relationship with an individual who was convicted of making indecent images of children. Both the head teacher and the individual in question did not share the same home, but they did have a joint bank account and the head teacher was a named driver on the individual's car insurance policy. The Court and the Tribunal heard that the head teacher took up her role as head teacher around 7 months after the arrest of the individual for the aforementioned offence. The head teacher did not inform the school governors of the arrangement. The head teacher claimed that she had sought the advice of

various people, including a police officer, with such advice being that she did not need to disclose the information.

The Supreme Court agreed with both the Employment Tribunal and the Court of Appeal that the head teacher had a duty to "advise, assist and inform" the governing body of the school in the fulfilment of her safeguarding responsibilities. The relationship between the two individuals meant that there was at least potential for an enhanced risk to the pupils of the school. Disclosure was necessary to allow the governing body to consider what protective steps were required.

Should you wish to discuss the implications of this case with an education law solicitor, please contact Thomas Emmett.

Thomas Emmett
01245 453847
thomas.emmett@birkettlong.co.uk

BIRKETT LONG LLP

PHOENIX HOUSE
CHRISTOPHER MARTIN ROAD
BASILDON SS14 3EZ
T 01268 244144

1 AMPHORA PLACE, SHEEPEN ROAD
COLCHESTER CO3 3WG
T 01206 217300

FAVIELL HOUSE, 1 COVAL WELLS
CHELMSFORD CM1 1WZ
T 01245 453800

E NEWS@BIRKETTLONG.CO.UK
WWW.BIRKETTLONG.CO.UK
TWITTER: @BIRKETTLONG
INSTAGRAM: @BIRKETT_LONG

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