



Education Law

NEWS AND ADVICE FROM BIRKETT LONG

Is your school ready to take on the funding gap?



What funding gap?

If you have been running your financial projections for the next few years, you will have started to understand the true extent of the disparity between how much funding you will be receiving and how much you will actually need. There are difficult times ahead.

What can I do about it?

Schools are already looking at strategies to maximise their funds per student, reviewing their staffing, pupil numbers and capital funding; this is certainly the place to start. However, schools will need to be more creative.

Look at what assets your school already has. How can you maximise

their value for your school's future?

Think about your site, for example. Do you have space that could be hired out or a brilliant sports centre that others could use too? Could you sub-lease part of the site or run a private nursery from the premises? Do not forget your staff. They have valuable expertise and experience. The school could tutor pupils from elsewhere.

Consider the practicalities of course, but you may be surprised by your options.

We have a plan. What next?

Talk to your professional advisers about the best way forward; they will have done this before. Find someone

who will speak to you in practical terms, without using 'legal-speak'.

If you are an academy, your articles of association, funding agreement and charity law obligations may place restrictions on you, potentially affecting your plans, but we can discuss ways through this. You might want or need to set up a trading subsidiary company from which to run your projects. There may be tax implications to consider too. We can also help you with staffing issues, contracts, leases and other documentation, to minimise any risks.

If you would like to talk to us about your plans, we would be pleased to hear from you. Please call Emily Brown or David Cammack.



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Performance related pay

Few would argue that education today is all about quality of teaching and raising of standards. But how to achieve them is more contentious, particularly when the thorny issue of performance related pay (“PRP”), introduced by the Government in September 2013, is considered. This reform allows schools in England to determine pay arrangements for their teachers.

Policy Exchange, an educational charity and reputedly the UK’s leading think tank, has produced a report called “Reversing the Widget Effect”. It acknowledges teacher effectiveness as the single most important aspect of raising pupil attainment and asks why, therefore, teachers are all recruited, trained, paid and appraised in the same way.

The report’s contention is that PRP, whilst not a panacea, could be an important part of professionalising and developing teaching, and is certainly preferable to the old ‘automatic promotion’ system where teachers go up one main scale point each year. The report argues that we already have PRP in schools by means of the upper pay scale (UPS), with teachers having had to pass a threshold to get on to it in the first place and then produce a portfolio of evidence to move through it. Also, anyone on the leadership pay scale has to be formally performance assessed. The report argues in this way that PRP already exists for about half the teaching

workforce and that Government reforms are simply extending PRP to the other half.

NASUWT and the NUT strongly oppose these reforms. They argue that a “clear, equitable and consistent national pay framework, with suitable local flexibility”, is the most effective way to recruit, retain and motivate the skilled teaching workforce required to provide high quality learning. NASUWT suggests that school leaders, governors, teachers and staff ask themselves the following six key questions about their own PRP arrangements or proposals:

- do they promote a collaborative working ethos, both within school and between schools? The charge being that PRP pits teacher against teacher, or school against school, forcing them to compete for a fixed PRP pot;
- do they increase the potential for grievances, pay appeals, discrimination and tribunal claims?
- will they secure teacher recruitment and retention?
- do they permit your school to plan staffing budgets effectively beyond the short term?
- do they maintain a clear and demonstrable link between teachers’ pay and performance?
- do they ensure equality of treatment between teachers of all subjects and across all phases?



Bare essentials

Primary schools - time to convert?

As primary schools tend to be smaller than their secondary equivalents, it has not been easy for many to see what the benefit would be of leaving their local authority to ‘go it alone’ as an academy before now.

Sharing resources and knowledge, however, is a practical way of improving most schools, even those who are already performing well, and over the past few months we have seen more and more primaries discussing whether they can collaborate and form partnerships with others as part of a conversion process. The potential for economies of scale that such structures can bring will, I am sure,

be more than welcome in the difficult funding landscape that schools will be finding themselves in over the next few years.

See the back page article for more information on just one of the ways to convert as a group.

Please do not hesitate to contact me if you would like to have an initial ‘at no cost’ discussion about any of the issues raised in this article.

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The two Unions believe that the pay reforms will cut pay and hit careers and pay progression. They argue that ending incremental pay rises in an environment of funding shortages will make progression more difficult, and that individualising pay by extending PRP and ending “pay portability” amounts to an attack on the teaching profession. They argue that:

- incremental pay progression is justifiable by rewarding professional development early in teachers’ careers when pay rises fail to keep pace with other graduate professions;
- removing pay portability will affect teacher mobility, forcing teachers to negotiate starting salaries with no guaranteed recognition of their experience to date;
- PRP encourages competition when schools should be communities that work collaboratively. They say that to quantify the specific contribution of one teacher is impossible.

Policy Exchange attempts to address such concerns by comparing the teaching profession with professional service firms, which already measure complicated team based activity to differentiate, reward and motivate high performers. Policy Exchange rejects the notion of PRP being divisive for a

profession whose members are, by nature, collaborative, saying that most other sectors which have PRP (about half of all private sector workforces) work well together.

With regard to local labour market shortages, Policy Exchange’s counter argument is that shortages already exist. It says that PRP can help by paying more to recruit those with specialist skills. Whilst it has little truck with arguments against the principle of PRP, it is more sympathetic towards arguments against PRP in practice, recognising that there are real questions about how to effect PRP fairly. It advocates a basket of measures on more than one year of data and suggests increasing base pay – not bonuses – as the performance related element.

The Reform think tank seeks to find better ways to deliver public services and economic prosperity. It wants to free up the teaching profession, quoting international evidence that shows high performance systems are autonomous ones, and UK evidence that Heads and other teachers often have local and community knowledge that allows them to make good decisions at school level.



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Meet the team

Emily Brown

Emily heads Birkett Long’s education team, working with nurseries, schools, colleges and universities, as well as teachers and parents.

The education team provides specialist advice in a variety of areas: academy conversions, trading subsidiaries, Teaching Agency investigations, academic offences, contractual matters, employment issues, property, debt collection, planning, licensing, litigation and more. Our advice comes with our 25-year plus experience of the sector, allowing clients to have confidence in us and to know that they can pick up the phone regarding any query.

Emily is a member of the Education Law Association and the Employment Lawyers Association, a Governor of Colchester County High School for Girls and a Trustee of the Headgate Theatre in Colchester.

“Birkett Long was great at helping us understand the legal jargon and liaising with the Local Authority, pulling out all the stops to make sure that everything was in place for the deadline. A client recommendation”



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in brief

Joining an existing academy group

Now that many schools have already converted, an alternative to setting up a new academy partnership is to join an existing, established group. It is not surprising that schools are looking at this option seriously, especially when you know you will be supported by schools that have already been through the process successfully.

One form of collaboration model which has become popular is the Multi-Academy Trust, or a 'MAT'. In a MAT, schools join together as part of one academy trust company. The company has directors who will deal with the strategic running of the MAT. The day to day running is then delegated to each school's 'local governing body'.

This structure has become popular with schools who would like to work closely together, or have already been working together, perhaps with a shared leadership team.

Before you settle on a collaboration model, whether that is a MAT or otherwise, you will need to consider various matters very carefully. For example, be clear on the aims for your school. Will they work with those of the other schools in the group, or will they conflict? There are different models to choose from, depending on your objectives.

If you are looking at joining an existing MAT, they will probably already be taking legal advice from their own solicitors who will be preparing the documentation for your school to sign. Schools thinking of joining an existing MAT should carefully and objectively review any such paperwork and the other relevant documents which will suddenly apply to your school too if you go ahead and sign them, taking advice from an independent legal adviser.

You will want to make sure that the paperwork and the structure going forward are going to be in the best interests of your school as well as that of the whole group. Will your school be appropriately represented at all levels of the MAT? Do the documents reflect a different situation which will perhaps unintentionally leave your school open to risks?

In many situations it is likely that there will be a conflict of interest if you only rely on the MAT's professional advisers at this stage, given that they must act in the best interests of their client (which at that point will not include you).

Take expert advice at these early stages to help you develop the proposed model and to review exactly what your school is signing. They should be appropriate and tailored to everyone's requirements. Funding is provided to schools who are exploring conversion to cover the cost of such professional advice. Schools can then concentrate on what they do best – educating the pupils – instead of being left with the risk of management arguments in the future.

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