

EDUCATION UPDATE

This is an update from the perspective of a law firm heavily involved with academies and with voluntary and foundation schools.

Admissions Policies of VA and Foundation schools with a designated religious character

There has been quite a bit of comment on these in recent weeks after the Chair of the Church of England Board of Education made his personal views known at Easter. As far as the law is concerned the issues are pretty simple:

1. What is allowed by the School Admissions Code 2010 is legal and what is forbidden by it is illegal.
2. It is for the governing bodies of the individual schools to determine within the law what their admissions policies should be and to carry them out in practice.
3. There are multiple layers of appeals under the Admissions Appeals Code 2010.
4. Schools with a designated religious character must have regard to the advice of their relevant religious authority. This is the local diocese for Church of England and RC schools, but a national body for most others. This does not mean that they must obey them but equally should not merely ignore.
5. The guidance offered by Church of England national bodies is guidance only, as the national body is not the relevant religious authority.
6. The office of the Schools Adjudicator keeps an eye on admissions policies and can adjudicate on them. It actually finds very few cases of deliberately illegal policies.

Education Bill 2011

This has now completed its committee stage and had its report stage and third reading on May 11th. It then goes to the Lords. Experience with recent education Bills suggests that it might get quite a bit of discussion there and probably rather more attempts at amendment.

The key areas advertised in the Bill are:

- provides for the introduction of targeted free early years care for children under compulsory school age

- makes changes to provisions on school discipline and places restrictions on the public reporting of allegations made against teachers
- abolishes five quangos: the General Teaching Council for England, the Training and Development Agency for Schools, the School Support Staff Negotiating Body, the Qualifications and Curriculum Development Agency and the Young Person's Learning Agency and gives new powers to the Secretary of State as a consequence of some of these changes
- removes certain duties on school governing bodies, local authorities and further education institutions, including the duty on local authorities to appoint school improvement partners
- makes changes to the arrangements for setting up new schools, and amends the Academies Act 2010 to make provision for 16 to 19 academies and alternative provision academies
- includes measures relating to school admissions, school meals, composition of school governing bodies, school inspection, school finance and permitted charges.

Amendments to date include:

- The deletion of matters dealing with Wales and Northern Ireland.
- The addition of a substantial extra Schedule on breaches of reporting restrictions.
- Limitation of the SoS's powers to make changes in respect of the abolition of the YPLA to subordinate legislation only.
- Even more powers for the SoS as a consequence of the abolition of the YPLA and an ever increasing list of consequential changes to existing legislation.

The sheer quantity of material consequent on the abolition of the YPLA is intriguing but in reality nothing of substance in the Bill has actually been changed.

We find the following areas of particular interest from our perspective:

- Directions re trustees' land in respect of Academies and otherwise. We are not at all convinced that the Secretary of State is correct in his view that the rights of school site trustees are not infringed by the proposed land transfer direction provisions of this Bill.
- Interaction of Education and Charity Law. It is this interaction that we feel has not been given sufficient attention. School sites are mostly in the first instance a matter of Charity Law.
- DfE to succeed YPLA as Principal Regulator of school Governing Bodies and Academy companies in their capacity as charities. Hence we are concerned about this increasing focus of power within the DfE. We wonder what is intended in respect of a Principal Regulator for school site trustees. In our view the role of the Charity Commission in all of these remains crucial in order to protect charities from the executive.
- Yet more (and welcome) changes in respect of arrangements for the proposal of new schools and academies. We stand in serious need of consolidation of these legal mechanisms and indeed of the arrangements for handling school sites.
- An extension of the scope of the Academies programme with 16-19 Academies (which are, please note, not schools) and provision for "alternative provision" academies.

Academies

We are aware of or party to a number of continuing discussions:

- A significant number of schools want to gain a religious character on becoming an academy. We are trying to agree a way with the DfE for this to happen under existing law by combining the Education and Inspections Act 2006 procedures with those of the Academies Act 2010.
- Similarly, schools want to make other changes (eg of age range).
- The DfE doctrine of "as is" in respect of governance, employment discrimination, RE and worship make the conversion of Church of England VC schools into academies extremely difficult and unattractive.

- It also impacts very negatively on the inclusion of mixtures of church and non-church schools in Multi-Academy Trusts or other local groupings. Again we are at work on possible solutions.
- However, in general "as is" is a misconceived policy that is impeding the academies programme.

LBMW company activities

LBMW:

- is acting on behalf of a wide range of schools or other parties for a constant stream of academy conversions.
- provides the legal advice service for the National Society that goes to all Church of England dioceses and their schools, covering every aspect of school life.
- drafted the DfE Model documentation for Church schools and worked with them on the land guidance.
- worked with the DfE on trust/land/religious character issues in the drafting of the current Education Bill and is advising the Church of England on its progress.
- is working with the DfE and the churches on the principles involved in academy conversions and "as is".
- has designed model "Umbrella Trusts" and associated "Trading Companies" to enable groups of academies and schools to collaborate in groups and share to a high level without needing to be in multi-academy trusts. While written initially for the C of E these can be adapted for other use.
- has been in constant contact with the Charity Commission in respect of the above and of other concerns over the interaction of charity and educational law.
- all as part of a wide-ranging practice based here in Westminster.

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