

# be connected newsletter for schools - Autumn 2022

18 October 2022

Welcome to be connected, our termly update for schools, academies and trusts. With so many new developments in policy and legislation to consider for the academic year ahead, we've prepared a bumper edition for you. This issue of be connected is packed with the latest legal updates, news and insight from the sector.

Remember - be connected is your space – it's important to us that the mix of content offers you real value and relevant, useful information. Please help us to help you by providing feedback and comments. What would you like to see featured in the newsletter – and would you like to be part of a future edition?

[Get in touch and let us know!](#)

## New legislation

### [Update on school admissions](#)

As we start the Autumn term, the first part of the process for changing school admission arrangements can begin. Any school wanting to change their arrangements for entry from 2024, whether it be in Reception, Year 7 or Year 12, will need to consult for at least six weeks between 1 October 2022 and 31 January 2023, with at least the bodies set out in the Admissions Code consulted (broadly other schools, local authorities, parents, and relevant religious bodies). A full draft of the proposed arrangements must be published and details of where comments can be sent, provided.

In this article we set out the expectations for consultation on these arrangements and the circumstances where you don't need to consult.

### [A new School Admission Appeals Code](#)

On 1 October 2022, the School Admissions Appeals Code 2022 came into force, replacing the 2012 version and the amendments brought in during the pandemic. The Code will apply to all appeals lodged on or after 1 October 2022.

The changes are limited but do provide greater flexibility in how appeals are heard for admission authorities. The Code builds upon the approach taken by the DfE in the amendments brought in during the pandemic that allowed appeal hearings to be undertaken virtually by video, telephone or as a last resort, on the papers.

## Keeping children safe - searching and screening

One of three significant changes to Keeping Children Safe in Education 2022 is a new expectation that Designated Safeguarding Leads (DSLs) should be aware of the requirement for children to have an Appropriate Adult.

While the guidance says nothing more than that, the DfE has updated the Searching, Screening and Confiscation Advice to include a new section on strip searches. We all know why this requirement has been added to guidance — the strip searching of Child Q and other similar events that have been publicised since.

In this article we explain how to meet this new requirement and help you understand what steps you need to take when involving the police in pupil searches.

[Understanding the Appropriate Adult expectation](#) →

# Policy

## Insights from the DfE on pandemic recovery and major policies

On 21 September 2022, we had the pleasure of hosting a Whitehall & Industry Group (WIG) lunchtime briefing, delivered by the Director General for the DfE's Strategy Group, Julia Kinniburgh.

Having previously been responsible for COVID-19 Response and Schools Recovery, Ms. Kinniburgh explained how the DfE aimed throughout the pandemic to keep as many children and young people in school and learning as practically possible. The focus has now shifted to future departmental strategies which continue to aspire for high standards of education.

## Grammar schools revisited?

The words "grammar schools" are once again being whispered in government and the question of whether the creation of new grammar schools will finally be implemented as a central focus to DfE policy has re-surfaced.

Selective education has long been a divisive topic in the schools sector, with some people considering they drive educational excellence and improve social mobility, while others believe grammar schools are inequitable. Following years of debate and differing opinions, law was passed in 1998 by the Labour Government that whilst current grammar schools could remain, it would become unlawful for new grammar schools to be created.

Following the recent Conservative party leadership election campaign from new Prime Minister Liz Truss, there are now reports that Truss has directly asked her new Education Secretary Kit Malthouse to start looking into plans to introduce a law that would permit the creation of new grammar schools.

## Latest edition of the Academy Trust Handbook

In the latest edition of the Academy Trust Handbook, the Education and Skills Funding Agency (ESFA) has helpfully addressed the issue of trusts being able to enter into contractual indemnities which are in the normal course of business without seeking approval. The Handbook contains a new provision that makes clear that trusts are no longer required to seek consent for indemnities where they are within the 'normal course of business', which is a sensible change and will no doubt be welcomed by the sector.

Separate guidance has been produced that explains what is meant by 'normal course of business' in more detail, which gives a number of examples of the types of contracts considered by ESFA to fall under this provision. The guidance also makes clear that whenever trusts are seeking to enter into an indemnity, even if ESFA approval is not needed, legal advice needs to be sought to advise on the terms.

# Case law

## Holiday Pay for part-year workers

In July 2022, the Supreme Court handed down its long-awaited Judgement in the case of Harpur Trust v Brazel relating to the correct calculation of statutory holiday pay for part year workers. The Supreme Court's decision has implications for all part-year workers on contracts which subsist all year round, whether their hours are normal or irregular.

The decision has highlighted the manner in which the courts interpret the Working Time Regulations 1998 (WTR 1998), and employers will want to ensure their practices in respect of all part year staff are consistent with the applicable rules explored below.

For schools and trusts, the decision has particular importance due to the prevalence of term-time only workers, who only work the weeks when pupils are in.

## The case against buying a dragon with school budget...

As a result of a recent Charity Commission legal action, the former trustee of a Welsh charity was ordered to pay over £117,000 to Wrexham charities which support cancer patients. The ex-trustee had previously been in charge of a charity which operated a shop in a Wrexham hospital. The charity was meant to apply the profits from the shop towards equipment and resources for cancer patients in the

surrounding area, but instead spent more than £400,000 on a plan to erect a giant Welsh dragon on the Wales/England border. The idea was to encourage tourism to the area.

Now, an increase in tourism (and all the benefits it could bring to the local residents) is not necessarily problematic, and in certain circumstances could even be considered a charitable activity. The issue in this instance was that the charity's charitable object - its goal - didn't relate to increasing tourism, but related to providing equipment and resources to cancer patients in the Wrexham area.

Schools and academy trusts are charities, and therefore have particular charitable objects that they must expend their money and efforts on. The specific objects can vary between educational institutions, but usually focus on the advancement of education (or in the case of Catholic schools and academy trusts, the advancement of the Catholic faith).

## Advice and guidance

### Key steps to avoid falling foul of disability discrimination laws

The law around disability discrimination against pupils is not straightforward – but the reputational risk, let alone costs, of falling foul of the law are huge, so it's worth upskilling staff whenever possible.

For a school to become the subject of a disability discrimination claim is a challenging and resource-intensive matter. It can also be a source of potential reputational damage, even where such a claim is without merits.

As such, while this is a complex area of the law, there's a real value in front line staff in schools having some understanding of the legal requirements in this area, including strategies that can mitigate the risk of challenges in the First-tier Tribunal.

So, how can schools go about providing the right sort of guidance?

## New Guidance on Behaviour in Schools: What's changed?

The latest Department for Education guidance on behaviour in schools is now in force and brings substantial changes.

Whilst the focus of the old guidance was on disciplinary measures and appropriate sanctions, the new guidance moves more towards school culture, a whole school approach to tackling behaviour and, for those who need it, additional support to meet behavioural expectations.

Schools will need to review their behaviour policy to ensure it is in line with both statutory requirements and the new guidance.

[\*\*Access a suite of template policies for schools and academies\*\*](#) →

[\*\*Support to manage school exclusions\*\*](#) →

### Updated guidance on coasting school intervention process

The DfE has published updated guidance on Schools Causing Concern. The revised guidance is intended to “give greater clarity on the operational process the department will follow in relation to the schools not making necessary improvements measure”.

This new intervention measure, also referred to as the “coasting schools” measure, took effect in September and Regional Directors (RDs) have just started to issue notifications to schools and academies meeting the criteria.

In this article we set out the criteria, expectations and support schools should consider if notified they fall within this new category.

## You may also be interested in...

### Inspiring your pupils to reach their career potential

We know that creating opportunities and pathways for all students is really important and a key part of meeting the Gatsby Benchmarks. One of the charities working in this area that some of our team have had dealings with is a charity called Worktree.

Worktree organise career sessions with schools to supplement the activities that a school may already be taking to widen awareness of careers to its students. In 2021-22, Worktree organised for 7,855 students to meet and interview 656 work guests from 269 companies in 342 Virtual Career WorkOut sessions.

The experience gained by students at these sessions can be invaluable, and industry bodies that connect with students in this way get real benefits too from their participation.

## Our Education expertise recognised again in Legal 500 rankings

The set of Legal 500 directory rankings have been published, and we are proud to once again be recognised as one of the country's leading firms advising the Education sector. The annual Legal 500 directory reflects extensive research and analysis by the Legal 500 team, who conduct thousands of interviews to select the very best law firms in the UK.

This year the firm's Education team has again been ranked in the top tier nationally, and all of the regional Education teams based in each of Browne Jacobson's offices in England are also again ranked in the top tier for Education. Additionally, in a demonstration of the genuine strength in depth and capacity of our Education team, this year more members of the team than ever before have gained individual recognition in the Legal 500 directory.

We'd like to express our gratitude to our clients for the fantastic set of testimonials published in the Legal 500 this year which included:

"The Education Practice at Browne Jacobson LLP is deeply impressive and hugely knowledgeable."

"...an incredibly professional, approachable and knowledgeable workforce"

"...every colleague is exceptional. There is never any variation from the highest possible standards"

"Sound advice based on having a robust understanding of the current context with a consideration of where the sector is moving"

"...completely committed to the education sector and their moral purpose guides their legal advice and practice"

"Good humour, professionalism and efficiency are all hallmarks of the way Browne Jacobson work with us."

Partner and National Head of Education, Mark Blois, said: "It is a real honour to receive such market leading rankings and exceptional client feedback in the latest Legal 500 directory. We thank all our clients for their ongoing support. This fantastic set of results also reflects the hard work of every member of the Browne Jacobson Education team

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## Our expertise

Academy trusts and schools

Education

