

Horizon scanning

In the first of what we hope will become a regular feature in Be Connected, Nick MacKenzie reviews what's on the horizon for the education sector and briefly shares with you a number of themes.

29 November 2019

In the first of what we hope will become a regular feature in Be Connected, Nick MacKenzie reviews what's on the horizon for the education sector and briefly shares with you a number of themes. For each item, we will suggest whether it is an issue for you to monitor, to prepare for or to take action on.

Sex and Relationships Education (SRE) - Take Action

From 1 September 2020, regulations come into force which require **all** schools to follow statutory guidance on the provision of relationships education (primaries only), relationships and sex education (secondaries only) and health education (both). Trusts **must consult** on the content of this policy with parents prior to adoption, with ultimate sign-off from the CEO/Executive Principal and Board of Trustees. Trusts must ensure that their policies meet the needs of pupils and parents and reflect the community they serve. In MATs, we recommend all academies follow the same policy (differentiation for primary and secondary settings should be set out within). This will also make it easier for the trustees and central executive team to monitor and review.

Schools have been encouraged by the Department for Education to adopt the new curriculum early - from September 2019 – but many of the legal requirements that would necessitate changes to the policy won't be in force until next September.

You may be interested in our latest [Legal Opinion](#) written by Philip Wood on the outcome of the High Court ruling that saw a judge permanently ban anti-LGBT protests outside a Birmingham school.

Holiday pay in light of Brazel v The Harpur Trust – Prepare

You may recall some publicity from the end of the summer when the Court of Appeal handed down its judgment in the above case, which has significant implications for how all schools pay holiday to their staff. In summary, the Court of Appeal held that employers are not entitled to prorate the holiday entitlement of “part-year” workers (i.e. workers who do not work 52 weeks a year minus their statutory holiday entitlement) and that these workers are still entitled to the full 5.6 weeks statutory holiday entitlement.

We understand that the Harpur Trust is seeking leave to appeal the decision to the Supreme Court. The decision on whether leave to appeal is granted is expected in 2020. If leave to appeal is not granted, then trusts will immediately be liable for incorrect payments. At this stage, we advise trusts to be prepared by carrying out an audit of their holiday pay to understand the potential liability. We would not recommend that at this stage trusts make changes to implement the judgment until the position on appeal is clear.

For further commentary on this case, you may wish to view the related piece that employment specialists Heather Mitchell and Alex Berkshire wrote for our September edition of [HR essentials: The Harpur Trust v Lesley Brazel](#).

Income generation - Monitor

With budgets tightening ever more, academy trusts need to focus their attention on funding streams other than the General Annual Grant. We are seeing a variety of queries from clients which demonstrates the broad range of potential income-generating activities that are under consideration and/or being deployed. Where you are looking to generate additional income, it is important to make sure that you do not inadvertently miss an important step.

For example, care needs to be taken to ensure that any activity which generates income is:

- within the charitable objects of the MAT (and therefore is a charitable activity) or ancillary to; and
- turnover of all trading activities stays within the small trading limit (likely to be £80,000 for academy trusts); or
- run through a trading subsidiary with necessary documentation between the MAT and subsidiary to facilitate the flow of cash and assets.

The Trust may also need ESFA consent under the terms of the Academies Financial Handbook (AFH).

You also need to think through your strategy for protecting any intellectual property you have developed and are utilising as part of the planned activities.

To refresh your knowledge on the latest changes to the AFH, please refer to this [article](#) published by Jamie Otter earlier this year.

We have deliberately chosen the above themes from across school life. If there is an area you are interested in finding out more on but we have not covered, please do get in touch with one of the team. Equally, if you want to discuss one of the above issues in more detail, please also get in contact with your usual contact or another member of the team.

We are also able to provide a horizon scanning presentation to your governing board. If this is of interest please do speak to us.

Contact



Nick MacKenzie

Partner

nick.mackenzie@brownejacobson.com

+44 (0)121 237 4564

Related expertise

Academy conversions

Academy sponsorships and MATs

Child protection and safeguarding in schools

Governance of schools and colleges

HR services for schools and academies

Special educational needs and disability matters