

Keeping our children safe in school

Whilst most schools have a very good handle on keeping school children safe, it doesn't hurt to be reminded of the obligations education establishments must have with regard to safeguarding.

Safeguarding and ensuring the welfare of students is everyone's responsibility. Students should feel safe and secure whilst in school and schools should promote a robust safeguarding ethos.

Here is a reminder of what each school should be doing.

Safeguarding and promoting the welfare of children [those under 18] is generally defined as:

- protecting children from maltreatment
- preventing impairment of children's health or development
- ensuring that children grow up in safe and effective care
- taking action to enable all children to have the best outcomes

If schools have any concerns about a child's welfare, they should act on them immediately by following their own organisation's child protection policy and speak to the designated safeguarding lead.



Contact:

If there are any issues or if you would like further safeguarding advice please contact Partner **Chris Burns** on **0113 280 2115** or chris.burns@luptonfawcett.law

All staff should be aware of systems within their school or college which support safeguarding and they must be aware of the following:-

- child protection policy;
- behaviour policy;
- staff behaviour policy or code of conduct;
- the safeguarding response to children who go missing from education; and
- the role and identity of the designated safeguarding lead and any deputies.

Schools should be particularly alert to the potential need for early help for a child who:

- is disabled
- has special educational needs
- is showing signs of being drawn in to anti-social or criminal behaviour
- is at risk of modern slavery, trafficking or exploitation
- is at risk of being radicalised or exploited

Safeguarding options will often include:

- managing any support for the child internally via the school's or college's own pastoral support processes;

- an early help assessment;
- a referral for statutory services

The designated safeguarding lead or a deputy should always be available to discuss safeguarding concerns.

Staff should not assume a colleague or another professional will take action and share information that might be critical in keeping children safe.

If early help is appropriate, the designated safeguarding lead (or deputy) will generally lead on liaising with other agencies and setting up an inter-agency assessment as appropriate.

Local authorities are required to provide services for children in need for the purposes of safeguarding and promoting their welfare. Children in need may be assessed under section 17 of the Children Act 1989.

Where a child is suffering, or is likely to suffer from harm, it is important that a referral to children's social care (and if appropriate the police) is made immediately.

Research and serious case reviews have repeatedly shown the dangers of failing to take effective action.

Examples of poor practice include:

- failing to act on and refer the early signs of abuse and neglect;
- poor record keeping;
- failing to listen to the views of the child;
- failing to re-assess concerns when situations do not improve;
- not sharing information;
- sharing information too slowly; and
- a lack of challenge to those who appear not to be taking action

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Issue 2

Academy Trusts and Related Party Transactions

The Academies Financial Handbook ("AFH") provides that from 1 April 2019 Academy Trusts are required to report all transactions with related parties to the Education and Skills Funding Agency ("ESFA") in advance of the transaction taking place, using an online form.

What are related party transactions?

Paragraph 3.10.12 of the AFH provides detailed information on what might constitute a related party transaction. Typically it will involve a transaction made between an Academy Trust and an individual or company connected to a Member or Trustee of the Academy Trust. Services do not include contracts of employment with the Trust as permitted by the Trust's articles of association or the Charity Commission.

What do Academy Trusts need to do?

Academy Trusts will now need to think even more carefully before entering into a related party transaction. For transactions on or after 1 April 2019, Trusts are required to obtain the ESFA's prior approval for transactions which:

- are deemed novel, contentious and/or repercussive;
- involve a contract exceeding £20,000; or
- involve a contract of any value that would mean the total value of contracts with the related party exceed £20,000 in the same financial year; or
- involve a contract of any value if there have been contracts exceeding £20,000 individually or cumulatively with the related party in the same financial year.

Such transactions are reported to the ESFA through an online form.

"At cost" requirements

In addition to the reporting of related party transactions, subject to limited exceptions, a Trust must pay no more

than cost for goods and supply of services provided by related parties which exceeds £2,500 cumulatively in any one financial year. Note that contributions made by an academy to its diocese for services provided in association with securing the Trust's religious character and ethos is regarded as meeting the "at cost" requirement.

What else do Academy Trusts need to consider?

Trustees are under a duty to avoid conflicts of interest and must have regard to the requirements of the Trust's articles of association and the AFH to effectively deal with potential conflicts of interest. Trusts are required to keep registers of interest capturing the relevant business and pecuniary interests of Members, Trustees, members of Local Governing Bodies and certain senior employees. The AFH requires Trusts to publish on their websites the relevant business and pecuniary interests of Members, Trustees, Local Governors and the Accounting Officer. Trustees are also encouraged to read the Charity Commission's guidance on managing conflicts of interest and CC29 "Conflicts of interest: a guide for charity trustees".

If you require any advice on what constitutes a related party transaction, on how to manage potential conflicts, or if you wish to arrange an in-house training session for Trustees in relation to the legal duties of Trustees, then please do get in touch.



Contact: For further information or advice please contact Lupton Fawcett's **Mark Honeywell** Partner, on **01904 561 476** or mark.honeywell@luptonfawcett.law

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What is a school exclusion?

Exclusion should be regarded as a Draconian remedy of last resort. The decision to exclude must be lawful, reasonable, fair and proportionate.

The framework governing school exclusions is contained in section 52 of the Education Act 2002, the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 and statutory guidance. The power to exclude rests with the head teacher or with the teacher in charge of a pupil referral unit.

There are two types of exclusion:

- Fixed exclusions: These involve the pupil being excluded from school for a fixed period of time, on one or more occasions in any school up to a maximum of 45 school days. Individual exclusions should be for the shortest time possible, in order to facilitate reinsertion of pupils when they return to school.
- Permanent exclusions: These prohibit pupils from returning to school. Permanent exclusions should only be imposed when a child presents a risk to other pupils.

Permanent exclusions should only be used as a last resort and in response to a serious breach or persistent breaches of the school's behaviour policy. They usually follow an incident of an exceptionally serious nature, such as the use of drugs or sexual abuse or assault. Mitigating factors such as bullying or embarrassment should be taken into account by the head teacher when making the decision.

In any event, a child should not be excluded because the school cannot deal with his or her special needs, as this could give rise to a disability discrimination case.

Contact:

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School Exclusions: Processes & Appeals

What is the process if a decision to exclude is challenged?

In the event of an exclusion, parents must be notified in writing by the school promptly. They must be informed of the reason for the exclusion, the period of exclusion and of their right to make representations to the governing body to review the head teacher's decision.

The governing body will then have to assess whether the decision to exclude was lawful, reasonable and procedurally fair. It can uphold the exclusion or direct the pupil's reinstatement.

If the governing body decide not to reinstate the child and the parents wish to challenge this decision, they can turn to an Independent Review Panel.

If the Independent Review Panel considers that the decision to exclude was illegal, irrational or procedurally improper, it may order the governing body to reconsider the decision.

The school's governing body is not under an obligation to reinstate because of the direction of the Panel. However if it decides not to reinstate the child, then the school will have to pay £4,000 to the local authority.

It is worth noting that the penalty does not apply to parents in the opposite situation. Indeed, if the governing body offers reinstatement but the parents decide that this is not the right way forward for their child, then the £4,000 financial adjustment is not relevant. The parents, head teacher and relevant local authority must be notified of the decision.

Importantly, if parents believe that their child has been discriminated against, they can also make a claim to the First-Tier Tribunal or the County Court. The First-Tier Tribunal will hear cases of disability discrimination and the County Court other forms of discrimination.

Can the Independent Appeal Panel compel a governing body to reinstate a child?

The Independent Appeal Panel cannot compel the school to come back on its decision and to reinstate a pupil who has been permanently excluded. Instead, it can only make recommendations that the exclusion decision is reconsidered. If a child's parents are unhappy with the governing body's decision after that, they can apply for Judicial Review.

Judicial Review is the process during which a judge considers the lawfulness of a decision, action or inaction by a public body. This includes the decisions of a school's governing body. Decisions of independent schools or non maintained schools cannot, however, be challenged by Judicial Review. In those cases, parents can bring an action in private law for breach of contract.

There are two stages to the process of Judicial Review. The first stage is an application for permission during which the Court will decide whether there is an issue it should consider. If permission is granted, the second stage consists of a full consideration of the issue(s). This stage usually involves a hearing during which the Court considers the arguments of all parties and decides whether or not to uphold the application.

For an application for Judicial Review to be successful, the parents will have to show that the school's governing body:

- has acted against its legal obligation;
- is refusing to do something which it is required to do by law;
- has made a decision it was not entitled to make; or
- has acted in ways beyond its powers.

An application for Judicial Review must be made as soon as possible and in any event within three months of the governing body's decision.

The process of Judicial Review is very complex and requires parties to act promptly. Successfully arguing or defending such cases requires the specialist knowledge of the law and professional advice is crucial. In such a situation, our team is here to help.

Deficits distract academies from education



BHP has recently issued a new academy survey which warns that financial uncertainty risks hampering academies in Yorkshire and North Derbyshire.

This is the Kreston Academies Benchmarking Report for 2019 which is based on academy financial statements for the year ended 31 August 2018. It is the largest independent survey of the financial health of the academy sector being based on 370 academy trusts nationwide, made up of 1,000 individual schools, including 106 schools in Yorkshire and North East Derbyshire.

The report reveals that half of academy trusts had an operating deficit again last year with only stringent cuts and the sharing of resources within multi-academy trusts stopping the figure from being higher. It is particularly concerning to note that 7.7% of the trusts in the survey were showing a cumulative deficit position which must presumably have necessitated loan funding from ESFA

The report provides clear evidence that MATs are more efficient than standalone academy trusts in terms of non-staff costs and so are able to spend a higher proportion of their income on staff costs. It also demonstrates for the second year running that MATs with a relatively centralised or hub structure are on average, more efficient than those with a looser, more diversified structure, to quite a significant extent

Although the report identifies that progress has been made in reducing the size of deficits overall, it warns that further spending reductions will be hard to achieve, and future funding uncertainty could start to hit the way in which education is provided.

Contact:

For further information or advice please contact **Philip Allsop**, partner and head of the academies team at BHP on **0114 266 7171** or Philip.allsop@bhp.co.uk

The report states:

"Our clients across England are telling us that the 'easy savings' have already been made. We are already seeing reductions in learning support assistants, and staff contact ratios will be increased to save costs. This means teachers spend longer in the classroom so, in theory, schools wouldn't need as many teachers. There has been several years of cost cutting and the trusts that we work with are telling us that there are no more areas where they can save significant costs without impacting on the way in which education is provided."

Furthermore, the ability of trusts to effectively plan is severely restricted by uncertainties caused by increased teachers' pay and higher pension contributions. The report highlights that in 2018, the government agreed pay scale increases of 3.5% and a 7% increase to Teachers' Pension Scheme (TPS) contributions to 23.4% of gross salaries. The TPS increase alone will cost in the region of £200k to the average-sized secondary school. Currently, the government has agreed to fund these costs until 2019/20 but not beyond.

Integrated Curriculum Financial Planning is increasingly being taken on board by academy trusts as a tool to review the financial efficiency of the curriculum and to facilitate the comparison of key metrics against those of other schools and trusts. The report provides some case studies to illustrate this in practical terms.

Copies of the report can be obtained by emailing info@bhp.co.uk or download from the academies page of our website www.bhp.co.uk

Can an employer suspend an employee without breaching the implied term of trust and confidence?

In the case of *Lambeth v Agoreyo*, the Court of Appeal considered on what basis an employer can properly suspend an employee, pending an investigation.

Simone Agoreyo (SA) was an experienced primary school teacher, teaching a Year 2 class of up to 29 children. Two of the children in SA's class exhibited particularly challenging behavioural issues.

In her early weeks of teaching, three separate incidents took place involving these two children, in which SA used force in order to remove one of the two children from the classroom. SA had requested additional support in teaching these two children. Allegations of use of excessive force were made against SA, by two teaching assistants. Although two of the incidents were considered by the Head Teacher, who found SA had used reasonable force, following the third incident, SA was suspended pending an investigation and she resigned on the same day.

SA subsequently brought a claim in the County Court against the local borough for breach of contract, contending that her suspension was a repudiatory breach of the implied duty of trust and confidence. The County Court decided that the school 'clearly had reasonable and proper cause to suspend the Claimant' due to its 'overriding duty to protect the children pending full investigation' and dismissed SA's claim. SA appealed.

The High Court allowed the appeal and substituted a

judgement that SA's suspension was a 'knee-jerk reaction' and was a breach of the implied term of trust and confidence. In reaching its decision, the Court stated that the 'central issue' is whether it was reasonable and/or necessary to suspend SA pending the investigation.

The Borough appealed to the Court of Appeal which held that there were clearly serious allegations of misconduct which needed to be investigated, and so long as the employer's response was 'reasonable and proper it could not be said that the employer had breached the implied term of mutual trust and confidence.'

The implication is that there is no requirement to prove it is a 'necessity' to suspend, the test is one of 'reasonable and proper cause'.

The Court of Appeal allowed the Borough's appeal and restored the judgement of the County Court.

Employers should still be careful not to suspend an employee solely as a 'knee-jerk' reaction as the risk of breaching a contract still remains. However, this case is good news for employers.



Contact: To discuss any of the issues raised in this article or for specific employment law advice, including details of our training, please contact Joan Pettingill on **0114 228 3252** or joan.pettingill@luptonfawcett.law