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EDUCATION BULLETIN

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Welcome to our winter edition of Wrigleys' education bulletin

In this issue, we start by looking into the employment issues and legal risks of having a high turnover in school staff. This article also covers the legal obligations of schools hiring agency supply staff.

We also look at the key elements of the DfE updated and consolidated guidance on external reviews of governance and consider why academy trusts need to manage conflicts of interest and what this means for them in practice.

Our employment law solicitor, Alacoque Marvin talks us through the updated guidance on special severance payments for academy trusts and what the additional requirements are for academy trusts. We also highlight the case of ***Flatman v Essex County Council*** and how the lack of manual handling training in lifting a disabled pupil was a fundamental breach of contract.

More regular Covid-19 updates and what that means for staff are posted to the news page on our website and linked through Twitter and LinkedIn.

As always, we really welcome feedback and suggestions for further topics that may be of interest to you, so please get in touch.

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School staffing and the risks of the revolving door

What are the legal risks of high staff turnover and reliance on agency staff in schools?

School employers have reported a higher level of staff turnover in recent years. Coupled with this, high levels of staff absence, particularly since the start of the Covid pandemic are an ongoing concern. This has led many schools to rely on an increased number of transitory staff, including agency supply staff. In this article, we consider the employment law considerations for school employers facing these staffing challenges.

This article focuses on employment law issues, but in doing so it is important not to lose sight of the disruption caused to the quality of education by high staff turnover.

Crisis – what crisis?

Many schools and trusts were facing a staffing crisis in certain subjects and at certain management levels in the years before the Covid pandemic. The drivers for high turnover of teaching staff are many and varied. A House of Commons Library Briefing Paper from November 2021 Teacher recruitment and retention in England provides a useful overview of some of the longer-term issues impacting on teacher recruitment and retention. Unsustainable workload, government policy and a lack of support from leadership top the list of reasons given by those leaving the profession. Unsurprisingly, teaching staff mobility between schools is more likely where staff are younger, on fixed term contracts, and are not in leadership positions. Schools in deprived areas are more likely to lose staff to other schools.

The Covid pandemic may initially have put a damper on staff mobility, but it seems now that some Covid-related factors, such as the so-called "Great Resignation" and higher levels of long-term absence are now putting further pressure on school staffing.

Supporting your stalwarts

Good induction, management, on-going support and appraisal are key to establishing and developing a happy and high-performing staff team. This can be a real challenge for established staff and leaders where colleagues are new and/or transitory. And this in turn increases the risks of employment law claims.

It can be easy to overlook the impact, particularly on your long-serving senior and middle managers of an ever-changing and piecemeal staff team. These demands can lead to complex grievances, conflict between staff, work-related stress and long-term absences. Pro-active support for these lynch-pins in your team is vital to reduce the risk of them burning out, moving on, and/or raising formal grievances and claims. Staff with two years' service could resign and bring a constructive unfair dismissal claim if they consider that the demands upon them were so unreasonable that they were in breach of contract.

Legal risks from staff with less than two years' service

It is a popular myth that staff who do not have two years' service cannot bring employment tribunal claims. Schools with high staff turnover should be aware that there are a number of claims which can be brought before that point.

Unfair dismissal claims based on "blowing the whistle", raising health and safety issues, trade union membership, or statutory rights such as exercising the right to be accompanied to meetings can all be brought without two years' service.

The usual cap on compensation for unfair dismissal claims of one year's gross salary does not

apply when an employee is found to have been dismissed for raising health and safety issues or for whistleblowing.

Claims can also be brought before two years' service in relation to:

- statutory rest breaks, working hours and holidays;

- unfavourable treatment because of fixed-term employee status;

- unfavourable treatment because of part-time worker status; and

- other statutory rights such as family-related and flexible working request rights.

Discrimination claims based on a protected characteristic such as sex, age, race, religion, sexual orientation or disability can be brought by employees, workers, agency workers, job applicants and former staff, regardless of length of service. Schools should be alert to the fact that compensation awards for such a claim are not capped and can include injury to feelings awards.

Can you be sure an employee has less than two years' service?

It is not always obvious when an employee has accrued two years' service. The general rule is that a break in employment of at least "a week ending with a Saturday" will break continuity of service. However, if there is a "temporary cessation of work" (for example where a teacher is not employed over the Summer holiday) continuity of service is very unlikely to be broken.

It is also important to consider the impact of the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999 which means that staff who have moved from a local authority school or another academy trust will bring with them their length of service for the purpose of calculating redundancy pay.

The risks of using fixed-term contracts

Many schools routinely employ new recruits, especially NQTs, on fixed-term contracts in the first instance. Where turnover is high, this can mean managing a significant number of fixed-term contracts.

Support and appraisal of staff on fixed-term / probationary contracts is a crucial tool in managing performance and making an informed and reasonable decision about whether to terminate or renew the contract. It is not uncommon for the demands of this process to be overtaken with the day-to-day hecticness of school life and for the end of the fixed-term to come around with no paper-trail of performance management to support a decision to terminate. A lack of supporting evidence for termination on capability, performance or conduct grounds will increase the risk of claims relating to ending the contract.

Schools should be alert to the termination provisions in their fixed-term contracts and ensure that notice is properly given in line with the contract. Some fixed-term contracts can be poorly drafted and do not include a mechanism for early termination. Schools who terminate before the end date could then find they are facing claims for unpaid wages to the end of the contractual term.

If the written fixed-term contract is not renewed but employment continues, it is likely that the contract will be found to have become permanent. Schools should ensure they have a good administrative system which ensures that fixed-term contracts are reviewed in good time before notice must be given and that new contracts are issued where relevant.

Employers must have a fair reason to terminate employment, and this includes fixed-term contracts. The reason might be redundancy where there is a decreased need for employees to

carry out a particular kind of work, or "some other substantial reason" such as the return of the substantive post-holder or the end of a specific project. Staff who bring automatic unfair dismissal claims will argue that the reason for their dismissal was an unlawful reason. It can be difficult for an employer to defend such a claim where the reason for the dismissal is unclear or undocumented.

Fixed-term employees have protections under the Fixed Term Employee Regulations. A claim could arise, for example, where an employee has been selected for redundancy on the basis of their fixed-term status (for example where permanent staff were not included in the redundancy pool).

Legal obligations of schools hiring agency supply staff

High staff absence rates over the last few months, along with longer-term recruitment and retention issues, have also led many schools to rely more heavily on agency staff. Although these staff are not direct employees of the school, local authority or academy trust, there are key obligations on the "hirer" in these arrangements. Understanding your obligations under the Agency Workers Regulations from the outset can help to limit claims arising.

The two key rights of agency workers which schools and trusts should be aware of are:

- The right to the same pay and basic working conditions as equivalent directly employed staff after a twelve-week qualifying period; and

- Access to collective facilities and to information about employment vacancies from day one.

Liability for a failure to provide the same pay and conditions as a permanent member of staff after twelve weeks falls on both the agency and the hirer to the extent that they are responsible.

Schools and trusts should ensure that they provide information to the agency about the pay and conditions of comparator staff so that the relevant terms and conditions apply from week thirteen.

In addition, there are statutory rules about responding to a formal request from the agency worker for information relating to an alleged breach of agency worker rights. Agency workers can also claim that the hirer has subjected them to a detriment for some reason connected to their agency worker rights. For example, where a decision to end the assignment is alleged to be because the agency worker asserted their rights under the Agency Worker Regulations.

When does an agency worker reach 12 weeks?

To complete the qualifying period, the agency worker must work in the same role with the same hirer for twelve continuous calendar weeks. The twelve-week period includes any weeks where the worker has carried out work for the hirer. It will not include weeks where they carry out no work for the hirer. Breaks in service of less than six weeks will not break continuity. The clock will also be paused where the agency worker is on sickness absence for a period of up to 28 weeks. If a tribunal determines that an assignment has been deliberately structured to avoid the twelve-week right, an additional award of up to £5,000 can be made.

Importantly, where the hirer is an academy trust, the twelve-week period could include weeks where the agency worker was deployed in different schools across the trust. Central monitoring of agency worker deployment will therefore be required to ensure compliance with the Agency Workers Regulations.

School employers can reduce the risk of grievances and claims by ensuring that managers are well trained, supported by the central team, and broadly understand the rights of staff working under different kinds of contracts. Strong proactive management and administration will enable school employers to plan ahead, enable the sharing of necessary information, and act in a timely fashion in line with the contract in question.

External Reviews of Governance – What's in the new DfE Guide?

We look here at the key elements of the DfE updated and consolidated guidance on external reviews of governance.

On 21 December 2021, the DfE updated and consolidated its guidance on external reviews of governance into a single guide for

- maintained schools
- pupil referral units
- academy trusts
- foundations, sponsors, dioceses and others interested in school governance
- sixth form colleges and
- general further education colleges.
- The key elements of the guidance are summarised as follows.

Focus, purpose and importance

First, a review should be conducted by an experienced independent governance professional. With proven experience and expertise in governance, Wrigleys is ideally-placed to provide you with an independent and objective review of your governance.

A review should examine the effectiveness of your governing body or board (the "board") against the 6 features of effective governance included in the Governance Handbook:

- strategic leadership
- accountability
- people
- structures
- compliance
- evaluation.

Some reviews have tended to give less attention to compliance. However, any review must look at all aspects to provide a thorough assessment.

Specifically, the guidance says a review should provide your board with

- an independent, objective view of its strengths and areas for improvement
- clear recommendations for next steps and
- an opportunity to review strategic direction and processes and systems.

and reassure others that the board is taking its responsibilities seriously and endeavouring to carry them out effectively.

Ultimately, a review will help your board

- be more skilled, focussed and effective
- be clear in its vision and how to achieve it
- have a clear delineation of roles and responsibilities
- have the appropriate skills
- hold leaders to account for improving pupil outcomes
- oversee finances and ensure value for money
- assure compliance and

- continuously improve.

There are also other benefits as detailed in the article on The Benefits of Good Governance, which is available on our website.

As for frequency, a review should be undertaken at regular intervals and otherwise before any significant change, such as an academy conversion or trust growth.

How to prepare for and commission your review

Preparation is always key and a review is no exception. The guidance therefore suggests first reflecting on what is working well and any areas for concern or improvement.. While this can help prepare for a review, it does not carry the same weight as (and should not replace) a review conducted by an experienced, independent governance expert.

When commissioning your review, you should

- secure the agreement of your board and senior leaders
- identify an appropriate reviewer
- agree the scope, costs and timescales for the review
- discuss the findings and recommendations with the board and reviewer
- agree and implement an action plan
- review the impact and, if appropriate, schedule a follow up.

Your reviewer should have the background, skills and experience to fully understand your organisation and governance structure and can be sourced from service providers, sector organisations, consultants, professional bodies, lawyers and auditors.

What to expect from your review

The guidance advises that a review should be personalised to your organisation, detail well-evidenced findings and provide recommendations for improvement. To this end, the board and reviewer should first establish the

- areas of concern or improvement
- anticipated outputs
- objectives and scope
- process to be followed
- timeframes and costs.

Once these terms of reference have been established, the reviewer should

- assess board effectiveness by observing board and committee meetings, by facilitated discussion or interviews and by assessing challenge, scrutiny and internal control and
- test compliance with legal and regulatory requirements.

Boards should also consider including a review of the governance support, advice and guidance they receive and how this helps them to be effective.

However the review is scoped, you will need to

- provide the reviewer with any documents and information they request
- be open and receptive to challenge and constructive criticism
- actively seek and consider new ways of operating and
- be reflective and honest during the process.

In this way, you will help ensure your board learns all it can from the review and that your school, trust or college improves as a result.

The review should conclude with a report and action plan (developed together) which is timebound, specific and identifies clear measures of success.

The reviewer should then return after several months to assess the board's progress and provide further advice as appropriate.

Summary

The DfE guidance on external reviews of governance helpfully explains the key features of an effective review and the benefits for your board and school, trust or college. As experienced, independent governance experts, Wrigleys routinely advises on governance issues, whether by email or telephone as part of Wrigleys' Education Response package or as part of a review, such as Wrigleys' Governance Review Service for Academy Trusts. If you would like further information on how Wrigleys can support you, please get in touch.

Why and how should academy trusts manage conflicts of interests?

We look here at the legal and practical reasons why academy trusts need to manage conflicts of interest and what this means for them in practice.

Context

Conflicts of interest have been topical of late, with consultancies and other paid roles for MPs in the spotlight. However, conflicts of interest continue to be an issue for academy trusts with the ESFA's 2020/21 assurance work highlighting the 'failure to identify and document conflicts of interest appropriately' as a 'main issue'.

So, what are conflicts of interest, how are they regulated and what must and can academy trusts do to manage them to ensure their continued success and avoid undermining public trust and confidence in their work with children and communities?

How conflicts of interest regulated?

In order to understand what is meant by a conflict of interest, we first need to identify the legal and regulatory framework which governs conflicts of interest for academy trusts as DfE-funded exempt charities and companies limited by guarantee. This is set by:

- **charity law:** trustees must act only in the best interests of the trust and avoid any conflict between this duty and any personal interest they may have;
- **company law:** trustees, as company directors, must avoid a situation in which they have, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the trust;
- **articles of association:** the DfE model articles define a conflict of interest for a trustee and prescribe how conflicts of interest must be handled;
- **fiduciary duty:** members owe a fiduciary duty to act with single-minded loyalty in the best interests of the purposes of the trust, in accordance with the articles and charity and company law;
- **Academy Trust Handbook:** the Handbook requires trusts to record and publish details of business and pecuniary interests.

The Charity Commission publication Conflicts of interest: a guide for charity trustees (CC29) includes further detail on the charity and company law position and other practical advice which I draw on here and which is referred to in the Handbook. A trust's funding agreement also requires it to have regard to Charity Commission guidance.

What is a conflict of interest?

A conflict of interest is any situation in which a trustee's personal interests or loyalties could, or could be seen to, prevent them making a decision only in the best interests of the trust.

The DfE model articles further define a conflict of interest as 'any direct or indirect duty or personal interest (including but not limited to a personal financial interest) which conflicts or may conflict with their duties as a trustee'. A personal financial interest includes any such interest in:

- a benefit as a beneficiary of the trust;
- an indemnity arrangement (e.g. under commercial insurance or the RPA);
- goods or services purchased from or provided to the trust;
- property sold to the trust;
- rent received from the trust;
- interest on money lent to the trust;
- employment by or remuneration from the trust; or
- any other financial benefit from the trust.

A conflict of interest will therefore usually arise where:

- there is a potential financial benefit directly to a trustee or indirectly through a connected person (a "trustee benefit"); or
- a trustee's duty to the trust may compete with a duty or loyalty they owe to another organisation or person (a "conflict of loyalty").

Under the DfE model articles, the trustees may allow a trustee benefit where:

- the sum is reasonable;
- the trustee is absent when the benefit is discussed and is not counted in the quorum;
- the trustee does not vote on the trustee benefit;
- the trustees are satisfied it is in the best interests of the trust;
- there is a written record of the reason for the trustees' decision; and
- a majority of the trustees haven't received the same benefit.

They may also allow a member to benefit as a beneficiary and to receive payment for goods or services, rent for premises and interest on a loan where the sum is reasonable and the trustees are satisfied it in the interests of the trust. Again, the trustees must keep a written record of the reason for their decision.

Meanwhile, the DfE model articles define connected persons as including:

- any company in which the trust holds more than 50% of the shares, controls more than 50% of the voting rights attached to the shares or has the right to appoint one or more directors to the board (e.g. a trading subsidiary);
- any child, stepchild, parent, grandchild, grandparent, brother, sister or spouse of the trustee or any person living with the trustee as their partner;
- any firm or company in which the trustee is a partner, employee, consultant, director, member or shareholder (unless the shares are in a public company listed on a recognised stock exchange and less than 1% of the issued capital).

A conflict of loyalty includes:

- a competing legal obligation or duty to another organisation or person;
- a loyalty a trustee owes or may feel towards family, friends or others;
- religious, political or personal views.

Where a trustee is elected or appointed by a connected person (such as a sponsor, foundation or diocese), they must therefore act only in the best interests of the trust.

What must trusts do?

The fact that conflicts of interest can arise doesn't mean trustees mustn't have other interests or that people should be discouraged from becoming a trustee. Quite the opposite. Trustees' personal and professional connections can benefit a trust from their wider insights in the sector and society. The question is 'how must interests be managed to avoid any conflict of interest?'. The above Charity Commission guidance helpfully identifies the following 3 stage process which trustees must follow. The process should also be followed by members and local governors.

<u>Identify</u>

The Charity Commission expects trustees to identify conflicts of interest at an early stage and have the declaration of conflicts of interest as an agenda item at the start of each meeting. The DfE model articles also require a trustee who has or can have a conflict of interest to disclose that fact to the trustees as soon as they become aware of it.

If a trustee is aware of an undeclared conflict of interest affecting another trustee, they should notify the other trustees or the chair.

Prospective trustees should also be asked about potential conflicts of interest to identify any serious or frequent conflicts that would seriously question their appointment

<u>Prevent</u>

Trustees must consider any conflict of interest to prevent any potential effect on their decision making in the best interests of the trust.

In more serious cases, trustees should consider removing the conflict by:

- not pursuing the course of action;
- proceeding in a different way (e.g. not using the trustee or their company);
- securing the resignation or removal a trustee; or
- not appointing a trustee.

Serious cases include where:

- conflicts of interests are present in significant or high risk decisions;
- there is inappropriate trustee benefit;
- trustees cannot act because a majority are conflicted on a particular issue;
- a large number of trustees have conflicts of interests (e.g. where several trustees, or their connected persons, have links with each other);
- the interests of one or more trustees are regularly in competition with the trust.

Where trustees wish to proceed without removing the conflict of interest, they should consider obtaining independent advice, appointing additional trustees (who are not conflicted) to help decide the issue, and avoiding the appointment of other conflicted trustees.

Whatever the nature of the conflict of interest, the DfE model articles require trustees to always absence themselves from any discussion of the trustees where it is possible a conflict of interest will arise with their duty to act solely in the interests of the trust. They must not be counted when calculating the quorum for that part of the meeting.

Record

Trustees should also maintain a written record of any conflicts of interest showing:

- the nature of the conflict;
- which trustee or trustees was/were affected;
- whether any conflicts of interest were declared in advance;
- an outline of the discussion;
- whether anyone withdrew from the discussion; and
- how the trustees took the decision in the best interests of the trust.

This will help trustees show they have acted properly and in the best interests of the trust.

Meanwhile, the Handbook requires trusts to have an up-to-date register which identifies:

- the relevant business and pecuniary interests of members, trustees, local governors and senior employees; and
- the relevant material interests from close family relationships between members, trustees or local governors and between those individuals and employees.

The trust's website must include the relevant business and pecuniary interests of their members, trustees, local governors and accounting officer. Trusts can decide whether to publish other interests but need to be transparent and able to explain their decision.

What could go wrong?

If trustees don't manage conflicts of interest in the best interests of the trust, the consequences can be wide-ranging and potentially terminal for the trust.

Alongside the inevitable damage to the relevant trustee, the trust's reputation and public trust and confidence in the trust, the sector and charities generally, trustees will need to take remedial action to ensure the situation doesn't recur.

In more serious cases, trustees risk making decisions that are invalid or open to challenge by interested parties such as staff, unions, pupils, trusts, schools and suppliers. Trustees may have to repay sums paid by the trust, even where the trust has benefitted, and make good any loss suffered by the trust. The Charity Commission may also take enforcement action at the request, or with the consent of the DfE, such as suspending or removing a trustee or employee or directing specified action, including disqualifying an individual from acting as a trustee and as a company director for a period of years. However, the ESFA will more likely investigate and, depending on circumstances, issue a Notice to Improve and re-broker the trust.

What more should trusts do?

Conflicts of interest policy

To help identify, prevent and record conflicts of interest, trusts should have a conflicts of interest policy. The policy should:

- define conflicts of interest;
- explain that trustees have a personal responsibility to declare conflicts of interest;

- confirm what the trust's articles say about conflicts of interest;
- define all interests that trustees should declare;
- define trustee benefits and highlight the requirement for prior approval;
- include guidance on the procedures to follow;
- set out how and by whom the policy will be monitored and enforced;
- be widely communicated and understood within the trust; and
- be part of a wider policy framework, such as a trustee handbook, and reference all relevant codes of conduct and policies the trustees must follow.

The policy should also apply to members and local governors and be regularly reviewed and updated.

Meeting agenda

It is common practice for trustee meetings (including sub-committees) to have a standing agenda item asking trustees to declare any conflict of interest, both in relation to matters to be discussed at that meeting but also as a reminder for a more general declaration.

Similarly, consideration should be given to whether a meeting is properly quorate, which considers not just whether there is a sufficient number of trustees present for a valid meeting to start, but also that there are sufficient non-conflicted trustees to reach a decision on the matters to be discussed.

Governance reviews

Trustees should also regularly review their trust governance to ensure conflicts of interest are managed effectively and in the best interests of the trust and key regulatory requirements are complied with. The Handbook emphasises the value of an objective external review of governance and the strong DfE preference that external reviews are conducted routinely. Our governance review service assesses both effectiveness and compliance and reports on our findings. If you would like more information, do get in touch.

Summary

Conflicts of interest continue to be an issue for trusts and are something the ESFA will always take a keen interest in given the risk to public funds, trust and confidence in the sector and the DfE ambition of strong multi academy trusts for all schools. However, there are clear steps that trusts can and should take to manage conflicts of interest and safeguard their success and the interests of their pupils and communities.

Updated guidance on special severance payments for academy trusts

Additional requirements for academy trusts considering agreed exits for staff.

The Education & Skills Funding Agency (ESFA) has updated the rules for academy trusts considering making a special severance payment to a member of staff. These rules now reflect the Public Sector Exit Payments Guidance on Special Severance Payments published in June this year and the new Academy Trust Handbook which replaced the Academies Financial Handbook from 1 September 2021.

Further information on the updated Academy Trust Handbook can be found in our previous article (available on our website): Academy Trust Handbook 2021 - what's new?.

The new rules on ESFA / HM Treasury approval

In addition to the normal considerations for academy trusts making severance payments (set out below), trusts are now required to obtain prior approval from the ESFA where the exit package as a whole is £100,000 gross or more and includes a special severance payment; and/or any case where the employee earns over £150,000 gross.

What are special staff severance payments?

Special staff severance payments are payments which fall outside a member of staff's contractual or statutory entitlements when their contract comes to an end. For example, a payment in excess of an employee's entitlement to notice pay, statutory redundancy pay and/or contractual redundancy pay.

Such payments may be made when employment is terminated through mutual agreement, rather than through resignation or dismissal. They might also be contemplated following resignation or dismissal where there is a risk of claims being brought against the trust.

What must academy trusts consider before making a special staff severance payment?

Under part 5 of the Academy Trust Handbook, academy trusts must consider the following issues before agreeing to make a special severance payment of any size:

- whether the proposed payment is in the trust's interests;
- whether the payment is justified, based on a legal assessment of the trust's chances of successfully defending the claim and the likely costs of that defence; and
- a legal assessment of what a court or tribunal is likely to award if the claim were to be successful.

The guidance suggests that special severance payments should not be made in cases of gross misconduct or poor performance unless justified by the risk of claims, or the costs to the trust of taking an employee through performance management / capability procedures.

There are special requirements for ESFA approval for severance payments where one or more of the following are the case. The latter two of these are new requirements from June 2021:

- they include a payment of at least £50,000 gross above contractual and/or statutory entitlements;
- any amount over contractual or statutory entitlements is proposed and the academy trust is under a Financial Notice to Improve or a Notice to Improve;
- the exit package as a whole is £100,000 gross or more and includes a special severance payment; and/or
- the employee earns over £150,000 gross (not taking into account employer pensions contributions) – whether a special severance payment is being made or not.

As the ESFA will refer applications for approval in all these cases to HM Treasury, it is very important to allow time for the approval process before making the offer.

Where ESFA prior approval is required, academy trusts must complete the Academy Trust Severance Payments Form.

Business case and legal assessment required to justify all special severance payments

The guidance makes clear that, for all other special severance payments, academy trusts must still "be able to show you applied the same level of scrutiny to a payment. ESFA expects academy trusts to have a business case for any non-contractual severance payment and to provide this to ESFA in a

timely manner if requested."

This means that academy trusts should seek a legal assessment of the risk of claims in order to assess whether a severance payment over contractual and/or statutory entitlements is justified on a value for money basis.

Action taken by ESFA where severance payments are not justified

The ESFA reserves the right to claw back special severance payments which are not justified. The ESFA may, additionally or alternatively, visit the trust and impose sanctions in relation to further severance payments.

It is also possible for the ESFA to issue a Notice to Improve "in extreme circumstances" where severance payments have been made without proper scrutiny.

Further information

Our previous articles on this topic can be found on our website:

Severance payments and the academy trust: what you need to know - Part 1

Severance payments and the academy trust: what you need to know - Part 2

Given these compliance requirements and the rules concerning the taxation of termination payments (outlined in Part 2 of our previous article above), we strongly recommend that academy trusts take legal advice in good time before making a settlement offer.

From acorns large oak trees grow – diversity among academy trust leaders

Equality, Diversity and Inclusion - what is behind the words?

Equality, Diversity and Inclusion (EDI) is on the agenda of many boards nationwide. Organisations are working out what EDI means in the context of their own sector and how they can work towards encouraging a more equitable culture. Following on from the impact of George Floyd's death and movements like "Everyone's invited" it is to be expected that academy trust boards will be challenged about diversity and equality.

The Covid-19 pandemic has had a disproportionally negative impact on some communities and widened the learning gap further. A study by Camden Learning highlights recurring themes which impact on learning including overcrowding and language barriers. BAME students and students from disadvantaged communities found it difficult to adapt to home learning, with limited resources at home and the lack of support where parents speak English as a second language.

For all these reasons schools and academy trusts are under pressure to pursue diversity. They need to be tackling potentially discriminatory practices, non-inclusive behaviours, and the unfairness of learning gaps to ensure they are fully engaged with, and credible in, the eyes of the communities they represent.

There are many and varied ideas of what EDI means but it is a label we need to look behind if we really want to see a fairer society. The concept of equality may be familiar to us through examples like the Equality Act, designed to protect people with protected characteristics by making discriminatory practices unlawful. However, the concept of equality alone does not necessarily advance the prospects of disadvantaged people.

Equality of opportunity will not necessarily result in equality of outcomes because some people start from a more disadvantageous place and others from a more unconscious advantageous position. To level the playing field we need to introduce 'equity' to provide tailored support to address the systematic barriers that create the advantaged and disadvantaged in society. Progress has been made in the education sector and elsewhere but that there is still a long road ahead.

Diversity is the presence, in a setting such as an academy trust, of people who together have various elements of human difference, such as gender and gender identity, race and ethnicity, faith, sexual orientation, disability classification, and class. However diversity alone is not enough which is why inclusion is so important.

Inclusion refers to actions that invite and support 'difference' in a setting. An inclusive organisation enables all of its people to fully participate in and shape the collective, for example by supporting people to be themselves, to speak out about concerns and to be heard. Diversity that does not sit in an inclusive environment will look like tokenism; to avoid this an organisation needs to live its values and call on the principles of equity to ensure a person from an under-represented or disadvantaged background who succeeds is supported to continue to achieve.

To inform and lead the sector in addressing EDI among academy trust leaders, Forum Strategy published the first national research report into EDI among Chief Executives of academy trusts at its National #TrustLeaders CEO Conference on 29 September 2021. The report identifies successes but more so the challenges and details how EDI can be improved.

Why is EDI important?

There are moral and societal reasons why tackling inequity in the workplace and our education system is important. From a moral perspective, increasing diversity among trust leaders will help to put schools and academy trusts in a better position to tackle society's diversity issues. This practical argument for increased diversity is highlighted in research from the YMCA on the young black experience of institutional racism in the UK in which it found:

- 95% of young black people report that they have heard and witnessed the use of racist language at school;
- 49% of young black people feel that racism is the biggest barrier to attaining success in school

There are also organisational advantages to diverse trust leadership. As recommended by the **Charity Governance Code** (Principle 6 EDI) www.charitygovernancecode.org having a diverse board will make it more effective by drawing on a wide spectrum of perspectives, experiences and skills. A diverse board will have lived experiences so it will understand the barriers that prevent both staff and pupils reaching their full potential. With this knowledge the barriers may be dismantled to the benefit of all.

The responsibilities of trust leaders at all levels

The Charity Governance Code Principle 6 clearly sets out the responsibilities of individual trustees and the board collectively. The rationale behind Principle 6 is to guide an organisation towards balanced decisions to benefit the entire community under its governance.

A trust board should be supporting EDI through its own practices to set standards and embed EDI values in the whole trust. Then it should set a strategy to deliver its purpose and inclusive values and culture, reduce obstacles to participation and to become more effective by reflecting different perspectives, experiences, and skills.

Boards are advised to extend their duties to the collection of data to assess the state of EDI in their organisations. However, as Forum Strategy has identified, trust boards alone will not drive a change

in culture and increased inclusion in their schools. The entire trust has a role to play and CEOs are key players in the implementation of policy across schools. CEOs remain pivotal in assessing the policy roll-out as well as monitoring how effective these policies are upon implementation. Trustees rely on CEOs to implement their strategic vision. In pursuing diversity, the duties of trustees and CEOs must work hand-in hand.

Research has shown a lack of diversity amongst trust CEOs which boards are encouraged to address. This will be an organic process with roots in the recruitment and support of NQT and junior staff from diverse communities. They will only thrive in an inclusive culture; so the strategy must be to encourage fairness at all levels of the trust and not only from the top down. In this way from small acorns oak trees will grow.

Boards should assess their own understanding of EDI before considering what must be seen across the trust as a whole. Any gaps in understanding at board level should be met by discussion, learning, research or seeking information.

Boards should then assess their own diversity and recruitment processes before setting context-specific and real targets in its plans for the trust. Once the strategy is in place the board should put in place arrangements and resources to monitor and achieve the EDI plans and targets including those relating to the board and tackle any organisational or board inequalities and gaps that have been identified.

To conclude we can see that diversity alone in the school setting is not enough. Without the right mentoring and support and without creating an inclusive culture it is almost bound to fail. The way forward lies in nurturing diversity at the top focusing on trust CEOs and throughout the academy trust structure whilst cultivating inclusion and equity from the bottom up and sideways too. Trust boards must work with academy trust CEOs; rather than diversity measures being lost in the pipeline, CEOs can take trustee strategies and deliver them within the academy trust framework. In this way, trust leaders can be held accountable for the delivery of their diversity policy.

Guidance for schools on rollout of Covid vaccination programme for 12-15 year olds

School Aged Immunisation Service will be legally responsible for the rollout.

The Government announced on 13 September its decision to offer the Covid vaccine to all children aged 12 to 15. Since then, schools and academy trusts have found themselves in the middle of a debate as to whether the programme, which will largely take place in schools, is in the best interests of children. Many schools and trusts have received letters and emails from campaigning groups warning that head teachers may be held personally liable if harm arises to a child from vaccination at school, or if vaccination goes ahead without parental consent.

The Government has now published guidance for schools on the covid-19 vaccination programme for children and young people. This guidance makes clear that the programme will be run in the same way as other immunisation programmes for this age group, through the School Aged Immunisation Service (SAIS).

How involved will schools be in the vaccination rollout?

There are likely to be variations in the way SAIS teams in each area administer and run the rollout. However, in all cases the SAIS should work closely with schools and trusts in order to make plans for the vaccination programme, including the logistics of vaccinating children at a school venue and in school time. The guidance suggests that schools may be asked to disseminate the relevant information leaflets and to provide to the SAIS a list of eligible children. They may also be asked to

assist with sending out consent forms to parents and guardians. In some cases, however, the usual SAIS online consent process will be followed, in which case schools will have even less involvement in these administrative steps.

Parents will be asked to provide consent to vaccination in the first instance. If there is a disagreement between parent and child, the child can consent to the vaccine if they are "Gillick competent", in other words is able to understand fully what is involved in the medical procedure. The guidance makes very clear that schools will not be required to secure parental / child consent, to make decisions about whether a child is Gillick competent, or to mediate between parents and children if they disagree about whether the child should have the vaccine. It will be the SAIS which is responsible for these processes.

Could schools and school staff be personally liable for harm arising from the vaccine?

The guidance offers reassurance that the SAIS will have legal and contractual responsibility for delivery of the vaccination programme in schools.

Given that the Government has followed the recommendation of the Chief Medical Officers in offering the Covid vaccine to this age group, and that the SAIS will be responsible for making decisions concerning vaccination of individual children, it is highly unlikely that a particular school, academy trust, individual employee or trustee would be found to be liable for any harm arising from vaccination carried out at school.

However, that is not to say that parents may not try to bring such a claim. In such a case, schools and trusts should contact their insurers. Individual staff receiving allegations that they are personally liable for harm to a particular child may wish to take their own advice, for example from their union.

Avoiding stigma and less favourable treatment based on vaccination status

The vaccine is not mandatory and schools will of course need to be prepared to deal equitably with vaccinated and unvaccinated children and to be sensitive about the reasons behind consent decisions. Schools should consider their data protection obligations. Vaccine status will be special category data for the purposes of the UK GDPR and information about a child's vaccine status should not be shared without having the proper lawful bases to do so.

It will be important to ensure that unvaccinated children are not stigmatised or treated less favourably because of their vaccine status. Parents may seek to bring claims on behalf of their children for discrimination (for example on the grounds of belief or disability), alleging that their child was subjected to detrimental treatment because they decided not to have the vaccine.

How should schools deal with communications from campaign groups, complaints and protests?

The guidance offers some advice on dealing with pressure from campaign groups and protests outside schools. It suggests that engaging with anonymous correspondents and campaigning groups may simply encourage further communications. It recommends that schools communicate with the SAIS team who will be able to advise on security procedures. Schools are advised to alert the SAIS provider, the Local Authority and their police contacts to discuss the best way safely to manage planned protests or disruptive activity.

If formal complaints are received from parents about school involvement in the programme or about the conduct of school staff, these should be dealt with under the relevant complaints policy. Where the complaints involve decisions or actions of the SAIS, parents should be referred to the relevant SAIS contact.

Schools are to some extent being caught in the crossfire in an emotional and divisive issue. It will be important to maintain a balanced view, to maintain good lines of communication with parents and children, and to ensure that appropriate procedures are followed. Taking legal advice at an early stage on communications and complaints can provide schools and trusts with the confidence to respond (where necessary) in measured and informed way.

The benefits of good governance

We look here at the benefits of good governance for schools and academy trusts.

Schools and academy trusts have been through the mill in so many ways over the last 18 months. Their understanding and implementation of good governance has been put to the test, like never before. So what are the key benefits of good governance that will stand schools and academy trusts in good stead as they emerge from the pandemic?

Common purpose

The vision sets the direction of travel for any school or academy trust. It captures what they want to be and achieve. For some, covid will have caused them to review and re-set their vision, with governors and trustees enthused by a new sense of purpose. For others, their vision will have held them firm through the pandemic, with governors and trustees more convinced of their shared endeavour. Either way, we have seen how a clear, shared vision enables schools and academy trusts to unite around a common purpose.

Strategic focus

We have also seen how the pandemic has required boards to retain a strategic focus while supporting staff and students. This has not been easy. However, a strategic plan that identifies the key priorities and deliverables, the required resources and how key challenges will be resolved, helps governors and trustees in this endeavour. It provides a strategic framework for policies, procedures and other metrics, so that staff and local governors can also play their part in delivering the collective vision.

Shared values

Meanwhile, life teaches us that our values derive from who we want to be and what we see as important. The same is true of schools and academy trusts, where values derive from the vision. As with the vision, values are most powerful when they are written down, shared and owned by everyone, not just governors or trustees. In this way, the whole community understands what's expected of them in pursuing the common good.

Good behaviour

Expectations are particularly important among governors and trustees, if they are to function effectively. A code of conduct plays a key role in recording expected behaviours by codifying what works well and/or setting new expectations. Governors and trustees know what's expected of them, meaning they all pull in the same direction. Others see what's expected, which facilitates the recruitment of like-minded individuals.

Effective teamwork

This supports effective teamwork at board level, where having the right skills and experience also means everyone has a valid contribution to make. An effective chair ensures each voice is heard while keeping everyone focussed on the task in hand. They also build team between the board and senior leadership, ensuring the two work together to deliver their shared vision. Both play an equal

part. The same goes for the members and local governors of an academy trust. Everyone plays their part when roles and responsibilities are understood and embraced.

Clear delivery

Effective teamworking is reinforced by policies and procedures that are informed by independent advice, best practice and what works well. Front and centre is a scheme of delegation that clearly records the division of responsibility between the members, trustees, senior leadership and local governors. A full set of other policies and procedures builds on the scheme of delegation by recording how functions are to be discharged. Together, they ensure clear delivery and limit the risk of legal challenge.

Risk management

They also manage the risks that present themselves and so form a key accompaniment to the risk register which records the key risks and where these can be managed. Where this is not possible, decisions can be taken to avoid or cease a course of action and so ensure the future success of the school or academy trust.

Robust decisions

The timely receipt of suitable reports, information and advice plays a key role in informing risk management and also decision-making. We've seen this during the pandemic. Decisions informed by the right advice and information are more likely to be robust and stand up to external scrutiny. Internal challenge by the board, committees and auditors also place decisions under the spotlight so these are made for the right reasons.

Trust and confidence

Where minutes of board and committee meetings are published on the website, this enables the public to see the integrity and care with which decisions have been made. Publishing information such as the scheme of delegation, policies and procedures and register of interest also enables others to see how things work in practice. This builds trust and confidence and wider support for the school or academy trust.

Compliance

All the above create a culture and way of working geared towards compliance. This minimises the risk of a legal or regulatory breach and, in the case of an academy trust, helps avoid additional scrutiny from the ESFA or RSC.

Continuous improvement

An independent external review of governance, whether before growth, where concerns arise or otherwise on a routine basis, can also help boards navigate significant change, overcome difficulties, and review established practices, all with a view to continuous improvement.

Information on the governance review service Wrigleys provide can be found on our website here. If you would like to discuss how our work can help support and equip your academy trust, do get in touch.

In summary

The benefits of good governance are wide-ranging and clear to see. These will serve schools and academy trusts well, whatever their circumstances. Perhaps the summer break will be an opportunity to reflect on what has worked well and where change may be needed?

Will school children be offered Covid vaccines…and if so what duties will schools have?

Schools are already dealing with concerns about the possibility of vaccinating pupils.

Wrigleys' education team is aware that many schools and multi-academy trusts have recently received correspondence from campaigning groups expressing concerns about the possible participation of schools in any rollout of the vaccination programme to school age children and young people.
It is our understanding that no decision has been taken as yet about whether vaccinations will be offered to under 18s in the UK. We also understand that there has been no communication from the Department for Education (DfE) or Public Health England to prepare schools for any such rollout or to clarify what part schools might be asked to play.

Since the Pfizer vaccine was approved for 12-15 year olds in the UK by the Medicines and Healthcare products Regulatory Agency (MHRA) at the beginning of June, press reports have suggested that children may be offered the vaccine as early as the Autumn term. However, recent reports (such as this from the BBC Covid: Children aged 12-17 unlikely to be offered vaccine in UK) suggest that the upcoming statement from the Joint Committee on Vaccination and Immunisation (JCVI) is unlikely to recommend the vaccine is automatically offered to children in the near future.

Consenting to the vaccine

The rules around consent to vaccination for children are the same as those for consent to medical treatment. Briefly, those aged 16 and above are usually entitled to consent to their own medical treatment. Younger children who are "Gillick competent" (in other words they have the intelligence and competence to understand what is involved in their treatment) can consent to their treatment. Otherwise, someone with parental responsibility can consent on their behalf. Further details can be found at the following links:

https://www.nhs.uk/conditions/consent-to-treatment/children/

https://www.gov.uk/government/publications/consent-the-green-book-chapter-2

DfE guidance on Covid testing and the use of face coverings for children in schools has not been mandatory and no school can refuse to educate a child on the basis that they do not wear a face covering or fail to undergo non-symptomatic testing. If the vaccination programme is rolled out to school aged children, it will be highly unlikely to be a mandatory requirement for school attendance.

Whether schools may have any involvement in the delivery of any such vaccination programme is a separate whilst related point.

In relation to both, we would also expect detailed guidance, including on child and/or parental consent issues, to be shared by the DfE as part of any rollout programme.

The duties of the school or academy trust in relation to any vaccine rollout to school children

Schools and academy trusts must take DfE guidance (including any Covid-related guidance) into account when taking decisions about policy and practice. The trust, school or local authority (in the case of maintained schools) also have common law and statutory duties to protect as far as reasonably practicable the health and safety of staff and pupils. This includes an obligation to carry out risk assessment, to consult with staff representatives on health and safety matters, and to review and revise risk assessment and mitigation measures when circumstances change. Academy

trusts must by statute have a health and safety policy which is reviewed at least annually. The Government also expects large employers (with 50 or more staff) to publish their risk assessments on their website (although this is not a statutory requirement).

Schools and trusts will need to assess the risks of any steps they are asked by the DfE to take in relation to the vaccine rollout, if and when proposals are formulated by the Government. This may include hosting vaccination clinics and helping to disseminate authoritative and accessible information to families so that they can make an informed choice. Ultimately, it is for the Government to determine whether vaccination will be mandated for school attendance (as is currently proposed for staff working in older age care homes) and it will be for parents and children (where they can provide consent) to decide whether to comply with any mandatory rules or to accept any offer of a vaccine. It is not for schools and trusts to compel compliance or acceptance.

During this period of uncertainty, we recommend that schools and trusts inform the DfE of any campaigning correspondence they receive on this issue and push for sector-wide advice from the DfE. Where concerns are expressed by parents, these will need to be sensitively handled and the relevant usual processes followed. Should vaccination be offered to school children, it will be important to ensure as far as possible that children are not disadvantaged by not taking up the offer and that it does not impact on their access to education.

For further information on a recent European Court of Human Rights case on childhood vaccination, please see Compulsory vaccination scheme was not a breach of european convention on human rights. For further information on whether schools can insist that staff are vaccinated and some of the potential legal risks, please see Could schools insist that staff take up the offer of a covid vaccine?. Both articles are available on our website.

Learning support assistant was constructively dismissed in relation to health and safety failings

Lack of manual handling training in lifting disabled pupil was a fundamental breach of contract.

Duty to take reasonable care of employees' health and safety

Employers have a duty to take reasonable care of the health and safety of their employees, to take reasonable steps to provide a safe workplace and to provide a safe system of work. This duty arises from statutory obligations under the Health and Safety at Work Act 1974 and a number of health and safety regulations, the common law duty of care, and a contractual duty implied into every employment contract.

Constructive dismissal and health and safety failings

Employees can claim constructive dismissal where they resign in response to their employer's fundamental breach of contract. One of the key questions in such cases will be whether the employer's act or failure to act is serious enough to be a fundamental breach of contract. Where the employer fails to comply with its health and safety obligations, the tribunal will consider the nature of the breach. Some health and safety failings will be serious enough to be a fundamental breach entitling the employee to resign as a consequence and to bring a constructive dismissal claim.

After a fundamental breach has occurred, employees can sometimes "affirm" the contract by doing something which shows they are putting up with the situation and acting as if the contract still exists. The case law shows that this question will be very fact-specific, but affirmation can happen where an employee fails to complain about the situation and/or delays too long after the breach before resigning.

A recent case in the EAT considered whether employers can do something to "cure" a fundamental breach of contract after it has occurred but before resignation takes place.

Case details: *Flatman v Essex County Council*

Ms Flatman worked in a maintained school as a Learning Support Assistant. Her role was to give support to a disabled pupil and included daily weight-bearing and lifting of the pupil. Over a period of around 8 months from September 2017, Ms Flatman made repeated requests for manual handling training. Although the school managers assured her that steps would be taken to arrange this, no training was put in place. In December 2017, she developed back pain and reported this to the school.
At the beginning of May 2018, the Claimant was signed off for three weeks with back pain. The head teacher informed Ms Flatman that she would not be required to lift the pupil on her return to work and that she was considering moving Ms Flatman to another class in the next school year. The head also assured her that manual handling training was being organised for her and other staff in the following few weeks. Ms Flatman resigned at the beginning of June 2018 and she brought a claim for constructive unfair dismissal.

An employment tribunal found that the local authority employer was in breach of the Manual Handling Operations Regulations 1992, but that it had not fundamentally breached its duty to provide a safe system of work. This conclusion was based on the fact that, before the resignation, the head teacher had shown a genuine concern for Ms Flatman's health and safety and taken steps to ensure that she would not be exposed to danger in future. The employment tribunal therefore decided that Ms Flatman was not constructively dismissed.

On appeal, the EAT overturned this decision and held that Ms Flatman had been constructively unfairly dismissed. It made clear that it is not possible for an employer to "cure" a fundamental breach of contract after it has taken place. The tribunal should have considered whether at any point before the resignation the employer had fundamentally breached the contract and should not have taken into account the actions or assurances of the head teacher in May 2018.

According to the EAT, it was clear in this case that the failure over a number of months to put manual handling training in place was a fundamental breach of the duty to provide a safe system of work. In making this decision, the EAT took into account the facts that occupational therapists and physiotherapists visiting the school considered that this training was required, that Ms Flatman had made repeated requests over a number of months, and that she had actually developed back pain, but the training was still not actioned at the school.

The EAT decided that a tribunal could not have properly decided that Ms Flatman had affirmed the contract in this case. It pointed to the fact that she had persistently and repeatedly complained about the lack of training throughout the entire period. It was also relevant that the school had given her assurances which were not fulfilled, and that she had then escalated her complaints. The EAT stated that "this was not a case of an employee who had decided to live with the situation, but of an employee who had, hitherto, soldiered on for a time, because she had hoped that the promised action would occur; but instead the breach was prolonged and exacerbated".

Comment

Although in this case the head teacher was found to have genuine concern for the employee's health and safety just prior to her resignation, the employer's delay in putting in place required manual handling training was a serious breach of the employment contract which entitled the employee to resign. The plans put in place some 8 months after manual handling duties began came too late: the breach of contract had already taken place and could not be cured.

Employers should of course be mindful of their health and safety obligations and the multiple risks of a failure to take reasonable steps to protect employees. A failure to provide a safe system of work

can lead to a number of legal claims, including personal injury and employment tribunal claims. Aside from constructive dismissal claims, employees might seek to bring claims in the employment tribunal for health and safety related detriments (on this issue, please see our recent article Refusing to work because of fears about covid-19 - section 44 of the Employment Rights Act which is available from our website).

Whistleblowing claims can also arise where employees have raised concerns in the public interest about safety in the workplace and then been dismissed or subjected to some disadvantage. These claims do not require two years' service and are not subject to a statutory cap on compensation. Health and safety breaches can also trigger reports to regulators, the possibility of criminal prosecution, and serious reputational risk.

Battle continues over free speech at universities

New proposed measures continue debate on free speech on university campuses.

The education secretary, Gavin Williamson, recently announced plans to introduce legislation enabling academics, students or visiting speakers who are no-platformed to sue universities for compensation, where they feel they have suffered because of infringements to their right of freedom of speech.

What new measures are proposed?

Williamson's proposals are part of a raft of new measures the government is seeking to introduce to fulfil its manifesto commitment to protect perceived threats to free speech and academic freedom in universities in England.

Further proposals include:

- appointing a 'free speech champion' to investigate potential infringements of free speech in higher education;

- making access to public funding contingent on universities adhering to a new free speech condition and giving the Office for Students, the higher education regulator in England, the power to impose fines in case of breaches;

- a new free speech duty applying directly to students' unions, requiring them to take steps to guarantee the right of free speech to their members and visiting speakers; and

- introducing a new statutory tort for breaches of the free speech duty, enabling academic staff or students who have been expelled, dismissed or demoted to seek redress through the courts.

The measures outlined above will impact all students' unions in England, if they successfully pass through parliament.

Are these measures really necessary?

Universities already have a legal obligation to take 'reasonably practicable' steps to ensure freedom of speech within the law for their members, students, employees and visiting speakers, under the Education Act 1986. As public bodies, they also have a duty to comply with Article 10 of the European Convention on Human Rights, which states that everyone has the right to freedom of expression. Useful guidance published by the Equalities and Human Rights Commission (EHRC) in February 2019 aimed to clarify the rules.

The legal framework to protect free speech on university campuses therefore already exists.

Banning certain groups or individuals from campus could potentially infringe a university's duties to uphold freedom of expression on campus. If a student group blocks a particular speaker, their institution may therefore step in.

Although students' unions are not themselves subject to these duties, as independent charities, they are subject to other legal duties and responsibilities which concern free speech. Students' unions generally have charitable purposes framed around the advancement of education, and as charities must remain politically neutral. Encouraging debate and giving voice to a broad range of perspectives on topical issues is a core part of this. Banning certain speakers would potentially conflict with these duties.

However, student groups occasionally do use no-platforming and safe space policies as grounds to refuse invitations to speakers to their events. This is clearly permissible under the existing legal framework. These policies can play a key role in encouraging people to express views free from harassment and discrimination, fostering understanding and respect between the diverse communities co-existing on university campuses. Preventing certain speakers from having a platform may in some cases be necessary to uphold an SU's duty of care towards their student beneficiaries, especially where it may result in violence on campus. Any such decision would need to be weighed up against their duty to maintain their resources, particularly where it risks damage to their reputation.

In any event, in reality there have been relatively few instances of no-platforming. The Office for Students published a paper in September 2018 arguing that there is limited evidence of universities failing to confront these issues and that the majority of students engage respectfully in exercising their rights and determining what they deem acceptable. A report on free speech in universities by the parliamentary Joint Committee on Human Rights, published in March 2018, reached a similar conclusion.

Despite this, Williamson's new proposals build on the perception that there is a free speech 'crisis' at universities. However, the 'crisis' is more media hype than anything, and the need for new legislation is questionable. We await more details on the proposals to know how extensive they will actually be, and to assess the likely impact on the students' union sector.

Nonetheless, Williamson's intervention suggests this topic will remain controversial. Students' unions implementing a no-platform policy should therefore expect accusations of restricting free speech to continue, however unjustified these accusations may sometimes feel.

If you would like any further information, please contact graham.shaw@wrigleys.co.uk

www.wrigleys.co.uk/education

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