

# EDUCATION BULLETIN

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AUTUMN 2018

## Welcome to our Autumn education bulletin.

We hope this termly update will help steer you through some of the turbulent issues that schools and academies must continue to deal with, whilst Brexit still dominates the minds of our political leaders. We flag what little references there were to education in the recent political conferences, alongside some recent case law and commentary on academy governance.

### Finally, may I remind you of our forthcoming events:

- **Northern Education Conference**  
All day conference, Cloth Hall Court, Leeds, 27 November 2018  
[For more information or to book](#) ▶
- **What's New in Employment Law?**  
Breakfast Seminar, Leeds, 4th December 2018  
[For more information or to book](#) ▶

We are always interested in feedback or suggestions for topics that may be of interest to you, so please get in touch.

Chris Billington,  
Head of Education  
e: [chris.billington@wrigleys.co.uk](mailto:chris.billington@wrigleys.co.uk)  
t: 0113 244 6100

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## More scrutiny of academies' financial management

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The sector is under fire again. What is being done and what can you do?

Another ESFA review has raised issues about academies procurement and relationships with suppliers. Of course, the issues raised are not solely limited to academy schools, but that is the political and public focus at the moment.

From 1st April 2019 'related party transactions' will require prior authorisation from ESFA if they exceed £20,000 whether for a single or multiple transactions. Given ESFA capacity to deal with other consent matters we assume obtaining a consent could take months.

None of the publicity covers the value that related party transactions can bring to a Trust. The assumption is that any such transaction is wrong. Accordingly, think carefully about entering into any transactions. Trustees must bear in mind their legal duty to act in the best interests of the Trust, and that includes considering the reputational aspect of related party transactions.

If you do think about entering into such a transaction then manage the procurement process meticulously (see below). Ensure you can justify and evidence and perhaps even proactively publicise the benefits. After all if you can get something "at cost", or even less than cost, that might otherwise have cost you considerably more that can be a good thing.

Auditors have highlighted poor compliance with AFH procurement and tendering requirements. This includes both initial procurement and reviewing supplier performance. Rules governing auditors means that they are under a duty to whistleblow where they suspect financial wrongdoing. Every time you buy any goods or services the AFH and government guidance requires you to do a procurement exercise. Even for low value transactions (ESFA suggest low is under £10,000) you should:

- set out a bidding process;
- decide how you will assess the bids;
- get quotes from at least 3 suppliers;
- have at least 2 people assess all the quotes you get fairly;
- choose the supplier that offers best value for money;
- keep all the records of the process;
- (remember GDPR too!).

For all significant contracts (particularly higher value, longer duration) you should be doing supplier reviews, i.e. checking supplier performance and against targets, assessing quality and value for money. These contracts will require at least benchmarking against the market from time to time and retendering on expiry.

This can be an awful lot of work, but there is no de-minimis level. If you don't do it then you can be criticised by the Auditors and ESFA. Not to mention the journalists and politicians. You must do as they say – not as they do (but that is a different story!).

Controlling executive pay is a continuing thorny issue. It appears the ESFA would like to cap executive pay, but haven't done so. Presumably they recognise that they cannot really do so without opening other cans of worms (but don't assume it will never happen).

Instead the ESFA will continue to challenge, demand justifications, and publicise senior executive pay levels. The clear message from Government is that earning a lot of money out of the public purse is "wrong". On this topic, notably less importance is given to value than the actual figure. You must be prepared to justify the numbers. Clearly the role of a headteacher of one school is not the same as the role of a CEO of a 10 or a 50 school MAT and the markets and comparators are not the same, but you need to do the benchmarking and evidence the market, the comparators and produce the justifications when challenged.

Please remember academy trust trustees' duties in relation to all these topics (and indeed every action of the academy trust!) if trustees are not acting in the best interests of the trust and particularly if they are not complying with the AFH and trust's policies and procedures they could in theory face claims for personal liability for breach of duty and causing loss to the trust.

There used to be an expectation that if a charity trustee genuinely acted in the best interest of their charity they could expect leniency from the Charity Commission and the Courts in the event that things did go wrong. However recent scandals involving international charities, safeguarding and a change of emphasis at the Charity Commission focusing more on its enforcement role does mean that there is a higher level of expectation on the performance of trustees and particularly so where there are public funds involved whether they are volunteers or not.

The academy sector continues to be hit by public scrutiny and condemnation. The government doesn't appear to put much effort into defending the sector. It is up to you to demonstrate not only compliance, but also the value to the sector and ultimately to pupils and society at large. Shout your accomplishments from the rooftops, prove your worth.

## **School and nursery staff no longer have to disclose association with sex offenders**

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The disqualification by association rules no longer apply to those working in schools and nurseries.

However, it is likely that new statutory guidance will encourage school employers to set out more clearly expectations about staff relationships outside school.

Under the disqualification by association rules, someone working with children in the early years age range (i.e. birth to 5) or in childcare provided by a school outside of school hours for children under 8, and who lived in a household where a disqualified person lived or was employed, had a statutory duty to disclose this to their employer.

Concerns were raised with the Department for Education that this was a disproportionate measure when weighed against the potential risks to children and that it led to significant unfairness for school and nursery staff working with young children.

The Government began its consultation on changes to the disqualification regime in May 2016. Out of 440 respondents, 78% viewed the disqualification by association rules as unfair and 58% stated a preference for the abolition of the duty to disclose. Those working in schools, academies and nurseries made up the majority of respondents.

On 31 August this year, the Government brought in the amending legislation which removes disqualification by association in schools and registered non-domestic childcare settings. The change also applies to headteachers of schools and the registered person in non-domestic childcare settings. The rules continue to apply to registered childcare provided on domestic premises.

Chris Billington, head of the education team at Wrigleys comments: “The removal of this statutory duty to disclose an association with a disqualified person may bring relief to many school staff and employers. However, the duty to safeguard children includes taking a broad view of risks to children within and without the school. Schools should be aware that, in order to ensure that children continue to be safeguarded, the Government intends to amend statutory safeguarding guidance to encourage schools to have in place policies which make clear the expectations they place on staff, including where their relationships and associations outside the workplace may have implications for the safeguarding of children.”

The response to the consultation is available [here](#).

## Could you maximise income through hiring out school property?

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We look at an example of utilising school land and property, and how the school and academy trust should act.

### The scenario

The local junior football club call to ask if they can use the brand new 4G football pitch at the school for a couple of hours every Thursday evening during term time. Of course this is an attractive arrangement which would benefit the local community and generate a little extra income.

### What should the school and academy trust do?

Make sure arrangements are properly documented from the start to avoid issues further down the line. There should be a lettings policy and standard hiring terms set by the School Governing Body or Academy Trust if an academy. First check who can authorise a new hire agreement (is this a trustees' decision, Local Governors or the head teacher?). Put in place a hire agreement which makes clear the terms on which the property can be used which both parties should sign:

### What, when and how? Which part of the school property can the hirer use, during what times and for how long, and for what purpose?

Charges - Remember to cover all costs the school may incur such as heating, lighting, additional caretaking services and any admin costs. What charges are due and when should they be paid?

The standard terms should cover

- Liability – make it clear the hirer will be responsible for any damage caused to the school property and any school equipment they may use during the period of hire. The hirer should also be responsible for maintaining insurance cover as relevant to the particular use including third party liability.
- Health and Safety – give details of any procedures affecting the property to be followed in an emergency and make sure you have emergency contact details for the hirer.
- Compliance – the hirer should be responsible for compliance with applicable regulations
- Safeguarding – consider safeguarding implications arising and requirements that supervisors are appropriately DBS checked.

This list is not exhaustive, just some of the basics that should be contained in the standard lettings documents.

### Keep arrangements under review

Remember to issue fresh hire agreements at the beginning of each school year, or periodically as required depending on the period of hire.

Remember hire agreements should not be used for arrangements involving long term use and/or exclusive use of any part of the school property by a third party. It is vital that leases and statutory rights of occupation are not granted inadvertently. If you're an academy to do so might breach the lease from the Local Authority, breach the Funding Agreement, and breach of Academies Financial Handbook. If you're local authority maintained and/or a church school it might breach the terms of the delegations and the LA or Diocese's schools lettings policies.

# Can a Pupil with Autism be Excluded for Aggression?

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Disabled children with a tendency to abuse others physically should not fall outside the protection of discrimination legislation.

The Upper Tribunal of the Health, Education and Social Care Chamber (Special Educational Needs and Disability) has ruled that a pupil with autism who has a tendency to physically abuse others arising from that condition should be protected by the Equality Act 2010.

## Case details

The case of [C & C v Governing Body of a School and others](#) concerns L, an 11 year old child who suffers from autism, anxiety and Pathological Demand Avoidance. Over a ten month period a number of incidents of physical aggression by L had been recorded by the school, including pulling, pushing and grabbing others and pulling the hair of and punching a teaching assistant. L received a fixed term exclusion of 1.5 days for aggressive behaviour.

L's parents brought a disability discrimination claim against the school in the First Tier tribunal, citing unfavourable treatment including the fixed term exclusion. The tribunal decided that L was not protected from discrimination in relation to this exclusion because it sprang from L's tendency to physically abuse others.

## The law

Under Regulation 4(1)(c) of the Equality Act 2010 (Disability) Regulations 2010 (the Regulations), a tendency to physically or sexually abuse others is to be treated as not amounting to an impairment coming under the definition of disability with the Equality Act.

The effect of this Regulation is that children with certain conditions which give rise to a tendency to physically abuse others and who are, for example, excluded from school because of physical aggression, are not protected against disability discrimination which is related to that aggressive tendency.

## The appeal

On appeal to the Upper Tribunal, Judge Rowley overturned this decision. She determined that the Regulations (only in their application to children under the age of 18 in the education context) contravene the European Convention on Human Rights. This was on the basis that the Regulations discriminate against children with particular conditions, such as autism and ADHD, in terms of their right to education.

Judge Rowley concluded that the Secretary of State had not carried out a proper balancing exercise of the impact of the Regulations on certain children with special educational needs against the impact on others such as other pupils and staff in a school. On carrying out that exercise herself, Judge Rowley concluded that the impact of the Regulations on children with special educational needs whose condition led to a tendency to physically abuse significantly outweighed the impact on others in the community. She was particularly influenced in this decision by the fact that excluding such a pupil does not remove the tendency to physically abuse, but simply moves it to another setting.

Judge Rowley determined that words should be read into the Regulations which meant they would not apply to children in education who have a recognised condition that is more likely to result in a tendency to physical abuse or should be disapplied in L's case.

Judge Rowley considered in her judgment the March 2016 report of the House of Lords Select Committee on the Equality Act 2010 and Disability which concluded that the Regulations undermine the need to support and encourage schools to make adjustments for those children whose conditions lead to challenging behaviour. Judge Rowley commented that schools will still be able to justify exclusion on the basis of aggressive behaviour in circumstances where the exclusion was a proportionate means of achieving a legitimate aim.

## Comment

It has always been important for schools to give careful consideration to whether an exclusion of a disabled child is a proportionate means of achieving a legitimate aim. This involves weighing up the impact on the child, the impact of the behaviour on others and considering whether there is a less discriminatory way to achieve the school's aims, such as maintaining discipline and keeping children safe during their education. In the light of this ruling, schools should carry out this balancing exercise in the same way when dealing with a disabled child whose condition leads to a tendency to physically abuse and who is being excluded (or sanctioned in some other way) for aggressive behaviour. Equally, schools should be mindful of their duty to make reasonable adjustments for such children where they are disadvantaged by their disability, for example by school policies and practices.

This judgment does not mean that schools can never exclude or sanction for aggressive behaviour a child whose disability gives rise to a tendency to aggressive behaviour. However, the exclusion of such a child for such behaviour where insufficient reasonable adjustments have been put in place to support the child is unlikely to be found to be proportionate by a tribunal. Indeed, a tribunal may find that a child's condition means that they are not in control of their aggressive behaviour and/or that a lack of reasonable adjustments in school has increased the risk of the child reacting aggressively. If this is the case, simply adjusting the behaviour policy to allow the child more chances to comply before being sanctioned may not be sufficient to avoid discrimination.

Chris Billington, Head of the Education Team at Wrigleys adds that "It is important for schools to evidence strategies that have sought to ameliorate the underlying unacceptable behaviour rather than be seen to simply punish such behaviour."

## Extended Disqualification Rules for Academy Trustees and Senior Executives

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From the 1 August 2018, important changes are being made to the automatic disqualification rules for charity trustees.

Under the current rules, automatic disqualification focuses mainly on bankruptcy and unspent convictions for crimes with an element of dishonesty or deception.

The new rules increase the number of reasons a person may be automatically disqualified and cover:

- terrorism related offences;
- money laundering offences;
- bribery offences;
- offences under the Charities Act for disobeying a Charity Commission order or direction; and
- offences for misconduct in public office, perjury, and perverting the course of justice

The new rules also prevent anyone who is automatically disqualified from being a charity trustee also from holding particular senior management positions in a charity, including as Chief Executive and Chief Finance Officer, or similar roles; the job titles are not key.

Academy Trusts are charities so these new rules will apply to them, and their senior executives. Also, it is important to note that offences under the Charities Act will not show up on a Disclosure and Barring Service (DBS) check, so something more is required from an Academy Trust if it is to evidence that it is aware and complying with its legal obligations.

It is a criminal offence to seek to act when disqualified. The Charity Commission can also order repayment of any expenses, benefits, remuneration or the value of benefits in kind received from the charity during the time a person was acting while disqualified.

Anyone subject to a disqualification can apply to the Charity Commission for a waiver to permit appointment (or for senior executives post 1 August, any continued appointment) at a specific charity, for a class of charities or for all charities based on the particular circumstances.

Whilst these changes may appear to be another administrative burden, it is an ideal opportunity for academies to review and update their procedures for checking the eligibility of new and existing trustees and their senior executives.

Chris Billington, Head of Education at Wrigleys notes that “It is already good practice to ask trustees to confirm their eligibility under the HM Revenue and Custom’s ‘fit and proper person’ test and the academy trust template articles of association (it’s constitution) includes some specific eligibility requirements which go beyond those applied to other charities. The new rules reinforce the need for academy trusts to question both trustees and senior executive’s eligibility to hold office.”

Declarations of Eligibility should be signed by prospective trustees and senior executives before their appointment to confirm that they are not disqualified from acting. Academy trusts should consider ensuring that trustees and executives are under a continuing obligation to notify if they should become, or are at risk of being, disqualified. Trusts should add the issue of eligibility to their annual update on business interests.

## When do Academy Trusts Need a Trading Subsidiary?

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What circumstances mean an academy trust may need to set up a subsidiary company to carry out trading activity, in order to comply with charity law?

A recent [blog post](#) published by Companies House highlighted the work of a social enterprise set up by school pupils, which helps schools generate income by hiring out their facilities to individuals and local groups. This is just one strategy which academy trusts may pursue to generate extra income, as highlighted in this earlier [Wrigleys article](#).

Such activities may be classed as trading, particularly where services are provided alongside the facilities, such as a cleaning, catering or security. Where this is the case, an academy trust may need to set up a trading subsidiary in order to undertake them.

### What trading can an academy trust do itself?

The general rule is that an academy trust can only carry out trading activity which furthers its charitable objects, or which is ancillary to furthering those objects.

The objects are found in the academy trust’s articles of association. The DfE model objects require an academy trust to advance education for the public benefit in the United Kingdom. For academy trusts with DfE model objects, they may therefore carry out trading which has an educational purpose, or is ancillary to an educational purpose.

In practical terms, this means that an academy trust can charge for educational activities such as music lessons (provided this falls within the [DfE guidance](#) on charging for school activities), and for ancillary activities such as school meals or uniforms.

Some academy trusts also have leisure and recreational charitable objects, which permit activities such as hiring out playing fields or serviced facilities to local sports clubs and other groups. However, DfE is now more reluctant to permit new academy trusts to be incorporated with this object.

An academy trust should therefore check what its own objects are, as a first step when reviewing the trading activities it carries out. Trading which is permitted by an academy trust’s objects may be referred to as charity trading, or ‘primary purpose trading’.

### What if an academy trust carries out non-charity trading?

A charity is only permitted to carry out non-primary purpose trading (or non-charity trading) where this does not involve significant risk to the resources of the charity. Examples of activities which would fall within this category include selling services outside the academy trust, such as HR, IT and catering to other schools and academies. Although renting out land and buildings does not generally qualify as ‘trading’ for this purpose, in some circumstances it may, particularly where the facilities include services (e.g. catering or cleaning).

In trading terms, income generated by non-charity trading will usually be chargeable to corporation tax. However, there is a useful tax concession which helps to manage non-charity trading. This permits an academy trust to do a small amount of non-charitable trading, without becoming liable for corporation tax, provided that the income generated falls under a certain amount. This is currently up to £50,000 per annum and is known as the ‘small scale exemption’. Any profits generated must be applied for the charitable purposes of the academy trust.

It is important to note that the amount of trading undertaken takes into account all of the schools within an academy trust. It is not done on a school by school basis. An academy trust therefore needs to regularly review the trading activities carried out by all the schools in its network.

You should bear in mind that everything a charity does should be within its charitable objects. The purpose of any non-charity trading activity it does should be purely to raise money for the academy trust to spend on its charitable purposes. If an academy trust undertakes activities outside its objects, it could lead to an academy trust losing its charitable status, which is a breach of the academy funding agreement (and would potentially result in personal liability for the trustees).

On a separate point, spending GAG funding on non-academy activities is also a breach of the academy funding agreement, so it is important that an academy trust can identify the source of any funds used in seed funding or supporting any trading activity.

### **Using a trading subsidiary**

If an academy trust is likely to generate more than £50,000 per year from non-charity trading, it is customary to set up a trading subsidiary (a separate company wholly controlled by the academy trust). Non-charity trading is then undertaken by this trading subsidiary. Any profits generated can be transferred to the academy trust under the 'Gift Aid' scheme, reducing the liability of the trading subsidiary to corporation tax.

Even where non-charity trading is less than £50,000 per year, academies may choose to use a trading subsidiary anyway, to 'ringfence' trading activities from their core charitable activities, especially if the activities involve financial or reputational risks (such as running private events such as weddings or balls on school property).

Further information about the use of trading subsidiaries and the relationship between trading subsidiaries and the academy trust which controls it can be found on the Charity Commission website (as part of its generic advice for charities), available [here](#).

Chris Billington, head of Wrigleys Education Team, comments "many academy trusts are still adjusting to life as exempt charities, and getting to grips with what compliance with charity regulation entails. It is important to understand what trading activities fall outside an academy trust's objects and manage them properly, in order to avoid adverse tax consequences".

The social enterprise featured on the Companies House blog is an inspiring example of schools diversifying their income sources. However, where academy trusts are considering undertaking such activities, they need to bear in mind their obligations under charity law.

## **Damian Hinds and the Conservative Party conference: What was new?**

We take a look here at what was new in the key policy announcements made by Damian Hinds in his speech to the Conservative Party Conference.

### **The Education Secretary's Party Conference speech**

In his speech to the Conservative Party Conference, Damian Hinds made much of the need for investment in our education system. Indeed, he said 'a world class education depends on our investment in the future', presumably including university tuition and private school fees following widespread criticism of the DfE's use of statistics? Putting that to one side, what was new in the key policy announcements made by Damian Hinds?

### **Centres of excellence**

Damian Hinds' first key policy announcement was of 32 primary schools and 21 colleges which will act as 'centres of excellence' for best practice in early literacy teaching and the teaching of maths for ages 16 and above. However, this was more a re-announcement of a policy launched by Justine Greening, as Secretary of State for Education, on 6th January 2018 when she launched a £26m fund to establish 35 English hubs across the country. As such, all Damian Hinds announced was a re-badging of the hubs as 'centres of excellence', an expansion of their remit to include both literacy and maths and a reduction in the number of 'centres' from 35 to 32.



## **Behaviour management**

Damian Hinds' second key policy announcement was of a further £10m to support the sharing of best practice and knowledge on behaviour and classroom management. While this was a new policy, what wasn't new is that the £10m will be drawn from the existing DfE budget given the tight hold which HM Treasury keeps on its purse strings.

## **T-level funding**

Damian Hinds' third key policy announcement was of a £38m capital pot so that colleges can teach T-levels, a technical alternative to A-levels, with 'world class equipment and facilities'. While T-levels themselves are not a new policy announcement, the £38m capital fund is. However, as above, this is not extra money but will need to be found or re-allocated from elsewhere in the DfE budget.

## **Careers leaders**

In his fourth key policy announcement, Damian Hinds said the DfE will be doubling the number of trained careers leaders in schools. However, the Careers Strategy launched by the DfE on 4th December 2017 envisages that every school and college will aim to have a dedicated careers leader in place by the start of the new school year, backed by a £4m fund. The strategy also plans to boost careers support in areas of most need, with a £5m fund to create 20 careers hubs although, on closer reading, the £4m for careers leaders would appear to be included in the £5m for careers hubs. Damian Hinds' policy announcement was therefore nothing new and failed to clarify the funding position.

## **School sports action plan**

Damian Hinds' final key policy announcement to the Conservative Party Conference was of a school sports action plan to make sure that sporting opportunities are spread as widely as possible so that every child is able to benefit. According to the speech, the plan will be a new cross Government initiative working with bodies like the RFU, the Premier League and England Netball. While the school sports action plan was precluded in advance, this was ostensibly a new policy announcement though no detail was given on timescale for implementation and, importantly, what funding (if any) will be earmarked to support the initiative.

## **Summary**

Despite the fanfare and virtue ascribed by Damian Hinds to investment in the education system, his conference speech was in many ways a recycling of old policy announcements and existing money re-allocated from elsewhere in an already over-stretched DfE budget. Despite the upcoming Budget and Comprehensive Spending Review, it will inevitably be the case that very little will change.

For Graham Shaw's article on the Labour Party conference please click [here](#).

## So what did the Labour Party conference teach us?

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We take a look here at what we can learn from the speech by the Shadow Education Secretary, Angela Rayner, to the Labour Party Conference.

Debrief of the key points for the education sector

### **Academies and free schools**

The speech first promised to ‘immediately’ end the academies and free schools programmes. There would therefore be no new free schools or academy conversions under Labour. While this is unambiguous, the position is less clear for existing free schools and academies, as we see below.

#### **Local authority control**

Having given an unequivocal commitment to immediately end the academies and free schools programmes, the Shadow Education Secretary went on to say that Labour will ‘allow academies to return to local authority control’. This would include existing free schools, having the same legal status as academies, and require a legislative change which, given the parliamentary pre-occupation with Brexit and depending on the timing and outcome of the next General Election, may not be forthcoming. It also indicates a discretion, not a compulsion, for academies and free schools to return to local authority control which is surprising given the Labour commitment to a National Education Service and the system fragmentation that would persist under a Labour government.

#### **Failing academy trusts**

The speech maintained the focus on academies by saying Labour would tackle the problem of trusts that fail but didn’t give any detail on what it would do to address the issue.

#### **Publicly funded schools**

Angela Rayner compounded the ambiguity for existing academies and free schools when she said that Labour will ‘bring all publicly funded schools back into the mainstream public sector, with a common rulebook and under local democratic control.’ Would Labour therefore legislate to permit or compel existing academies and free schools to become schools maintained by the local authority? The position is unclear.

#### **Co-operative schools**

What is clear from the speech is that Labour sees co-operative schools as a means for parents and staff to launch and lead their own schools. As there would be no new free schools, these co-operative schools would be schools maintained by the local authority. Specifically, they would be foundation or ‘trust’ schools where the foundation or trust draws its members and trustees from different groups or constituencies and holds the freehold title to the school site on trust for the school. However, the creation of co-operative schools in this way would require legislative change to remove the ‘free school presumption’ which applies to any new school. As above, the parliamentary pre-occupation with Brexit and the timing and outcome of the next General Election, may mean the legislative change is not forthcoming.

#### **Labour’s school building programme**

In concert with wider Labour policy, Angela Rayner went on to trumpet ‘the most ambitious school building programme ever backed by eight billion pounds of investment’ which some may view with concern given the cost of Building Schools for the Future under the last Labour government.

#### **School places**

According to the speech, Labour would also allow local authorities to build schools, which suggests local authorities would implement the school building programme referred to above, not the Education and Skills Funding Agency as is the case with the Priority Schools Building Programme.

## **Admissions**

Angela Rayner also confirmed that local authorities would take back control of admissions from academy trusts, meaning the local authority would be the admission authority for academies alongside their role in co-ordinating admissions. The speech did not say whether the local authority would also be the admission authority for foundation and voluntary-aided schools, each currently their own admission authority, to make the local authority the admission authority for all schools in their area.

## **SEN and disabilities**

The speech did confirm that Labour would lead plans to stop those with special educational needs and disabilities from falling out of the school system but didn't give any detail on the specific focus of these plans. The speech also confirmed a record investment in school buildings to make sure they are accessible but didn't attach a specific value to the investment. One might presume this would form part of the eight billion pound school building programme but this wasn't confirmed.

## **Early years**

The speech reached its climax with a flurry of freebies, firstly free early education for all two to four year olds. This was accompanied by plans to reinvent 'our state nurseries' but without any further detail on what is envisaged. For example, while legislation would be required to return academies to 'state' control, there was no mention of whether this would extend to independent nurseries who receive central government funding for free nursery places

## **Further and higher**

The Shadow Education Secretary then confirmed Labour would provide free further and higher education before concluding with a rallying cry to end austerity which, according to Theresa May's conference speech, is now over!

## **In summary**

While giving a rousing speech for the party faithful, the Shadow Education Secretary raised more questions than she answered and leaves the sector with insufficient certainty as to what to expect from a Labour government not least in relation to how the significant initiatives are to be funded.

For Graham Shaw's article on the Conservative Party conference please click ['here'](#).

## Education In The North: Behind The Headlines

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We take a look at the evidence provided to the House of Commons Education Select Committee on 'Educating The North'

This paper reflects on the evidence given by George Osborne, Lord O'Neill and Henri Murson from the Northern Powerhouse Partnership ("NPP") to the House of Commons Education Select Committee on 2nd May 2018.

### Collective effort

Once the initial and important exchanges regarding the benefits of raising educational performance, first for children's lives and then for economic performance and industrial strategy, were covered, Robert Halfon (Committee Chair) enquired 'why there is so much social disadvantage in terms of education and aspiration in the north?'

Responding, George Osborne referenced the 'dramatic improvement in the state of London schools' and considered that 'the north has not had that focus Ö [nor] Ö a collective effort from national and local Government, the private sector and the teaching profession', which is what the NPP is putting forward.

So what should that 'collective effort' look like?

### Centre of excellence

Henri Murison, NPP Director, considered that 'we need a centre to look at what works in transforming schools in disadvantaged areas, because some schools in the north are getting it right, and some of the best schools in the country for getting kids out of poverty and opening their aspirations up are in the north'. Inevitably, this would require the Department for Education ("DfE") to allocate the necessary funding but would create a centre of specialist expertise of the kind favoured by the DfE previously.

### Standards and structures

Recognising that both standards and structures are important, Henri Murison went on to remark that 'a focus on education policy that has been predominantly from Whitehall has meant that no one has ever come to grips properly with the problems that face the north [which] is the reality of the Department being focussed in London'.

### Devolution

The solution to a system where education policy is driven from Whitehall was addressed throughout the rest of the Committee hearing and focussed on the need for devolution to enable decisions to be taken locally based on a close understanding of local need. Much was made of the Greater Manchester Combined Authority as a model for bringing together different agencies with 'local convening power' to combine and co-ordinate budgets and decision making to provide an integrated approach to addressing the pressing needs of a particular area.

### Northern Powerhouse Education Board

However, the greater prize was the creation of a Northern Powerhouse Education Board ñ or the Northern Powerhouse Schools Improvement Board, as referred to in the NPP report ñ to sit above multi academy trusts, teaching schools and opportunity areas and, with devolved funding, co-ordinate what is happening in the education system including how schools are allocated among multi academy trusts (MATs") to best serve the area and intervening where problems with MATs arise.

### No ring-fencing

Interestingly, the consensus was not that funding should be ring-fenced to improve outcomes in the north. George Osborne said that he was 'not a massive fan of ring-fencing'. The rest of the Committee appeared to agree. Instead, the view was that devolution would create the climate for funding to be co-ordinated and targeted.

## Pupil Premium

On the topic of funding, there was also much said about the Pupil Premium, which it was recognised needs of reform. George Osborne said that 'it is people who are persistently on free school meals who perhaps need additional support [and that] one way of reforming the Pupil Premium would be that the longer a child had spent on free school meals, the higher the premium should be'. Michelle Donelan (Committee Member) also asked whether there is a need to look at how someone gets on the Pupil Premium in the first place and 'at some kind of auto-enrolment scheme?' given the 'stigma attached to parents self-nominating their children for free school meals'. George Osborne confirmed that this was not something NPP had explored but said this is 'a very good idea' and that NPP is 'happy to give more thought to it'.

## Comprehensive Spending Review

As for the reforms required to implement the NPP report, George Osborne saw the next Comprehensive Spending Review as 'the place for some of these changes' and was 'hopeful that, particularly around Pupil Premium, we will see progress'.

## Summary

The evidence given by George Osborne, Lord O'Neill and Henri Murson to the House of Commons Education Select Committee which goes beyond the immediate headlines raises the important need for devolution in decision making and policy so the education needs of the north are addressed. This chimes with the wider debate on devolution, not just in relation to education policy. However, while there is clear merit in a Northern Powerhouse Education Board to direct education policy and provision, the Department for Education must provide it with the functions and funding to have strategic oversight and direction over the schools and academies system in the north. This may even provide a blueprint for education devolution in other regions.

Whether this marks a return to a form of Local Education Authority, whether or not based on RSC boundaries, remains open.

Wrigleys have been working with a number of academies to review governance and company compliance. If you would like any further information, please contact Chris Billington or Elizabeth Wilson on 0113 244 6100

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