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Education law update

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Themes

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- Confidentiality
- Ofsted
- Exclusions
- Education otherwise
- School attendance
- SEN
- Negligence
- Striking teachers

Cases

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- Confidentiality: *Warwickshire CC v Matalia, LB Croydon v Dodsworth*
- Ofsted: *R (Interim Board of X) v Ofsted* (x 2) *R (Durand Academy Trust) v Ofsted, PB v Information Commissioner*
- Exclusions: *R (LB) v IAP of Newport CC*, *R (LH) v X School*
- Education otherwise: *R (DS) v Wolverhampton CC*
- School attendance: *Isle of Wight Council v Platt*
- SEN: *LB Richmond v AC, Devon CC v OH*, *UA v LB Haringey*, *MG v Cambridgeshire CC*, *JG v Kent CC, Staffordshire CC v JM, AA v LBH*
- Negligence: *Cundall v Leeds CC, Dyer v East Sussex CC*
- Striking teachers: *Hartley v King Edward VI College*

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Confidentiality

Confidentiality - *Matalia*

Warwickshire County Council v Amit Matalia [2017] EWCA Civ 991:

- Website run by parent published details about 11+ test before all candidates had taken it
- Court granted injunction to restrain breach of confidence
- "Not on the face of it surprising" – but went to the Court of Appeal

Confidentiality – *Matalia*

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- Council commissioned tests from Durham University and administered them on behalf of local grammar schools - university retained copyright

- Council had substantial and legitimate interested in the maintenance of their confidentiality

Confidentiality - *Matalia*

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- Fact pupils not told test confidential or that they should not discuss contents with others not fatal

- Essential element is that defendant is in possession of information that he knows, or viewed objectively ought to know, is confidential

Confidentiality - *Matalia*

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- Existence and extent of duty on pupils, on other hand, not straightforward
- No problem discussing with parents but could be restrained from publishing questions on social media

Confidentiality - *Dodsworth*

London Borough of Croydon v Dodsworth and others [2017] EWHC 2257:

- Headteacher (D1) resigned and whilst on garden leave accessed work email and forwarded confidential information to a third party (D2 and D3)

- Ds had “safeguarding concerns” and intended to go to press – court issued injunction preventing this

"As with any school, there is a public interest in seeing that the School is properly run and that the Claimant is properly carrying out its responsibilities in this regard. In the present case, this may lead those who are entitled to do so (e.g. parents of children at the school) to disclose some information either to the appropriate authorities or more widely. That is a matter for them."

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Ofsted

Ofsted – *X (interim relief)*

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R (Interim Board of X) v Ofsted [2016] ELR 519:

- Co-ed voluntary aided Islamic school with long-standing practice of gender segregation
- 2014 went into special measures then released in early 2016 after positive Ofsted reports
- Then Chief Inspector visited in June 2016 and adverse seriously adverse report followed
- Injunction sought to restrain publication to allow concerns to be discussed ‘in an orderly manner’ and manage ‘community cohesion tensions’

Ofsted – *X (interim relief)*

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"I accept as entirely plausible that, at the present time and in the febrile atmosphere that has prevailed since the Trojan Horse school problem arose, publication of the report has the capacity to affect social and community cohesion. It also has the capacity to be seen as an unwarranted attack on aspects of the school's Islamic religious ethos which have in the very recent past been acceptable to Ofsted, because the nature and effect of the school's segregation policy have not changed since the previous reports…Publication of the report before the determination of the substantive claim would be likely to generate a media storm and tensions and fears for parents and the local community that will not happen in the report in its present form is quashed."

Ofsted –*X (substantive)*

The Interim Executive Board of X v Ofsted [2016] EWHC 2813 (Admin), [2017] ELR 54:

- Segregation is capable of constituting discrimination but less favourable treatment could not be assumed and evidence required
- This is a matter of law so fact that no concerns raised earlier did not prevent Ofsted raising them
- But did mean school should have been given longer to sort itself out
- Decision of CA on segregation awaited

R (Durand Academy Trust) v Ofsted [2017] EWHC 2097 (Admin):

- Challenge to Ofsted 'inadequate' report

- Two grounds: (1) fairness of complaints procedure, (2) *Wednesbury* unreasonableness of conclusion

Ground 1 succeeded:

"A complaints process which effectively says there is no need to permit an aggrieved party to pursue a substantive challenge to the conclusions of a report it considers to be defective because the decision maker's processes are so effective that the decision will always in effect be unimpeachable is not a rational or fair process"

Ground 2 not determined but observations made:

- School's argument that it went from 'outstanding' to 'inadequate' in 3 years without changes of management/leadership too simplistic – may have expanded too quickly and taken eyes off the ball

- But significant concern as to whether evidence base justified 'inadequate' rather than 'requires improvement'

Ofsted - *PB*

PB v The Information Commissioner [2017] UKFTT 2015_0294, [2017] ELR 176:

- College placed in special measures following adverse Ofsted report just four months after satisfactory one
- Father of pupil applied under FOIA for information relating to inspection, including notes, minutes of internal meetings and emails
- Ofsted refused, IC upheld refusal, FTT allowed the appeal

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Exclusions

Exclusions – St Olave's School

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- Judicial review by parents of children at Grammar school allegedly excluded after lower sixth for not getting good enough marks

- Government guidance states exclusion can only be for behaviour/disciplinary reasons

- Pupils subsequently allowed to return and claim withdrawn

- Practice alleged to go on at significant number of other schools

Exclusions – Sexual assaults

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"The education secretary, Justine Greening, could face legal action if she does not take steps to prevent schoolchildren being forced to share classes with pupils who have raped or sexually assaulted them. Lawyers who have been contacted by victims have written to Greening complaining that there is still no clear guidance telling schools what they should do when rapes and sexual assaults are reported, despite concerns being raised a year ago. As a result, schools are failing to support victims of peer-on-peer abuse – usually girls – and can end up "re-traumatising" them by putting them back in classes with pupils they have accused of rape or sexual assault…Lawyers have accused Greening of being in breach of her statutory duty under section 149 of the Equality Act 2010."

(Guradian report, 15 September 2017)

Exclusions - *LB*

R (LB) v IAP of Newport CC [2017] EWHC 2216:

- Permanent exclusion of 9 year old for a one-off incident of forcing open a door and pushing a teacher overturned

- IAP failed to consider whether she was guilty of "serious actual or threatened violence" under terms of government guidance on exclusions

- IAP also failed to follow guidance on managed moves to another school

Exclusions - *LH*

R (LH) v X School [2017] EWHC 1985:

- Year 11 student offered place in sixth form
- Shortly after accepting place caught smoking cannabis in the school
- Exclusion was stated sanction for that behaviour not withdrawal of offer
- But school withdrew offer rather than exclude so as not to disrupt GCSE year – not unlawful

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Education otherwise

Education otherwise - *DS*

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R (DS) v Wolverhampton City Council [2017] EWHC 1660 (Admin):

- S.19 applies where not reasonably possible for a child to take advantage of existing suitable schooling
- Misconceived objections by a parent do not oblige LA to make alternative arrangements
- Whether reasonable to expect child to attend to be judged objectively

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School attendance

School attendance - *Platt*

Isle of Wight Council v Platt [2017] UKSC 28, [2017] 1 WLR 1441:

- EA 1996, s.444(1); "If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence"
- "Regularly" means "in accordance with the rules prescribed by the school"
- Offence is committed by a single day's absence unless a statutory defence applies

Simplifies matters but potential points for the future:

- "In accordance with the rules prescribed by the school" – which rules?

- Challenges where code of conduct not complied with?

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SEN

LB Richmond upon Thames v AC [2017] UKUT 173 (AAC), [2017] ELR 316:

- Costs calculations unaffected by parental refusal to send child to school named by LA

- Children Act 1989 s.1 (welfare a paramount consideration) does not apply in SEN proceedings

Devon CC v OH [2016] ELR 377:

- CFA 2014 section 19(d) does not oblige LA to identify “best possible” placement

- Duty remains limited to naming what is suitable

SEN – *UA* and *MG*

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- Application for costs can be made within 14 days of tribunal notice that withdrawal has taken effect (unless settlement terms exclude this) – *UA v LB Haringey* [2016] UKUT 87

- Costs are exceptional and only in the most obvious cases (*MG v Cambridgeshire CC* [2017] UKUT 172 (AAC), [2017] ELR 351

- Costs under legal help to be determined as if no public funding (ibid.)

JG v Kent CC [2016] ELR 396:

- When has person “moved” so statement/plan transfers to new LA?
- ‘Belonging regs’ do not apply
- ‘Ordinary residence’ test and cases may provide indirect pointers but not applicable
- Only one LA can be responsible
- Decision of LA only challengeable on public law grounds

- Transport is not a SEN or SEP and Code of Practice para 9.215 is misleading in suggesting transport can be included in plan 'in exceptional circumstances' - *Staffordshire CC v JM* [2016] UKUT 0246 (AAC)

- But this is a question of fact not jurisdiction and cannot say 'never' so has to be decided in each case (*AA v LBH* [2017] UKUT 0241)

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Negligence

Negligence - *Cundall*

Cundall v Leeds City Council (Leeds CC, 24 January 2017):

- TA at special needs school assaulted by a pupil who had been violent on several occasions in the previous two months

- LA in breach of duty of care – failed to assess risk, focussed exclusively on pupil's best interests

Dyer v East Sussex County Council (Brighton CC, 19 December 2016):

- Serious head injury caused when gate normally locked kicked open during horseplay not foreseeable

- No breach of duty of care by LA in not locking gate and supervision was adequate

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Striking teachers

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Striking teachers

Hartley v King Edward VI College [2017] UKSC 39, [2017] 1 WLR 2110:

- Contracts provided for monthly payment and variety of directed and undirected work
- Deduction for day on strike was 1/365 of annual salary, not 1/260
- Contract could specify otherwise

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