



Education Answers briefing No 6

GRAMMAR SCHOOLS – THE PRIME MINISTER'S ANNOUNCEMENT AND THE NEXT STEPS

DATE ORIGINATED [09/09/2016] [99]

APPLICATION Theresa May's long expected announcement on new Grammar provision through new or existing secondary schools - most of which are likely to be Academies - will open up new and possibly uncharted legal territory. No doubt there will be the usual advantages offered to the early adopters and schools may well wish to take advantage of this. £50m has been announced today and presumably more will follow. Many however will wish to resist something they see as socially divisive. It is too early to give advice about how to handle the options but we are aware of major legal aspects which will have to be considered, and we intend to hold

**a national client consultation on Grammar Schools – delivery or avoidance?
how the law can help
1st December 2016, London**

The consultation will enable all who participate to better navigate the new agenda to the benefit of children and schools. It will be for local authorities, diocesan boards of education, secondary school leaders, and multi-academy trusts.

This briefing paper aims to assist colleagues by examining the statement and reviewing some of the chief legal considerations as they stand today so that all concerned can assess the viability and desirability of any proposals accurately.

1. The Statement and its context

- 1.1. The post-Brexit administration announced an early intention to reconsider the policy framework which currently precludes the opening of new Grammar Schools, and has made it very difficult to enlarge existing ones onto new sites. They did this in the context of the new Prime Minister's Downing Street speech in which she emphasised a programme to "build a country that works for everyone, not just the privileged few". Although, like "Brexit means Brexit", at the time this was not given much content, the grammar school proposal is now one of the first concrete signs of what this agenda may mean.
- 1.2. Although the statement uses the word "select" or "selection" eleven times, and the word "grammar" only three, it is clear that the concept is new and expanded grammar schools. Nothing is explicitly said about those schools that select only partially on aptitude.

- 1.3. These new/expanded grammars will have major obligations laid on them which will be consulted upon under the following descriptors:
 - 1.3.1. requiring new or expanding grammars to take a proportion of pupils from lower income households, so that selective education is not reserved for those with the means to move into a catchment area or pay for tuition to pass the test; or
 - 1.3.2. requiring them to establish a new, high quality, non-selective free school;
 - 1.3.3. requiring them to set up or sponsor a primary feeder school in an area with a high density of lower income households; or
 - 1.3.4. requiring them to sponsor a currently underperforming non-selective academy.
- 1.4. In our view these descriptors are designed to ensure the new provision sits **within the multi-academy trust system** which we therefore assume **will continue to be expanded**.
- 1.5. Universities – which now have the option to charge higher fees – will now be required, if they do charge higher fees, "to set up a new school or sponsor an existing underperforming school". The statement does NOT say those schools must be grammar schools. This will no doubt be clarified later.
- 1.6. The link to **universities** is highlighted as fitting with the move of Higher and Further education into the DfE.
- 1.7. The role of **independent schools** is the object of a radical critique from Mrs May. The government will consult on amending the Charity Commission guidance for independent schools to enact a "tougher test" on the amount of public benefit required to maintain charitable status. It seems this may mean sponsoring local state schools to a far greater extent than before.
- 1.8. Political commentators cast doubt over the Government's ability to take these new concepts through Parliament as they were not in the manifesto, and they are seen as highly contentious.

2. The Legal Background

- 2.1. New grammar schools were effectively forbidden by Section 99 of the School Standards and Framework Act of 1998. Selection by ability could be allowed within a school, and any pre-existing arrangements for a whole school to be selective by ability could continue; but no new provision for selective schools could be made thereafter.
- 2.2. As legislation now stands, new schools must now be academies or free schools. This is because the Education Act 2011 inserted a new Section 6A into the Education and Inspections Act 2006 providing that "If a local authority in England think a new school needs to be established in their area, they must seek proposals for the establishment of an Academy".
- 2.3. The 2010 Academies Act provides that any new Academy or Free School must "provide for pupils of different abilities" (Section 1(A)1(c)). Therefore a new school cannot be wholly selective on the basis of ability, though it might be partially selective without a change in statute.

3. New grammar schools are therefore impossible under existing legislation.

- 3.1. LBMW believe that new legislation would be required to introduce grammar schools if what is meant is schools that are to be wholly selective. This could be included in autumn legislation which is anticipated in the wake of the earlier White paper 'Educational Excellence Everywhere'. The word 'grammar' does not appear in any context in the White Paper.

4. **There is a great deal more to come out of the process than we know today. LBMW will continue to review the position and issue briefings.**

**PLEASE KEEP THE 1ST DECEMBER IN YOUR DIARY AS A KEY DATE TO MEET
AND UNDERSTAND THE WAY FORWARD**

[Simon Foulkes](#)

Education Consultant



educationanswers.co.uk

Lee Bolton Monier-Williams
Solicitors

direct dial 020 7960 7134

vcard: [download](#)

If you wish to [unsubscribe](#) from these mailings, [click here](#).