



## Education Answers LBMW Circular 003

### Introduction

We hope everyone had a good summer with opportunity to relax and perhaps reflect on life as well. These circulars bring LBMW's contacts and Education Answers users some added value in the form of a 10 issues a year circular with brief digests of relevant information – short, useful, interesting, and up to date. If you haven't visited [www.educationanswers.co.uk](http://www.educationanswers.co.uk) for a while, take a look: we have refreshed the home page and the whole site continues to offer dynamic access to the best legal information in the sector, on desktop, tablet, and in your pocket on your mobile phone.

### **Late Summer Holiday Interest... LBMW win High Court hearing - Ofsted Report Quashed**

You may have seen in the press that Ofsted lost a challenge from Durand Academy Trust, as a result of which the judge quashed the Ofsted report. Here are some key excerpts:

#### **Judgment**

...46. To my mind, 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...

47. The absence of any ability effectively to challenge the Report renders the Complaints Procedures unfair and in my judgment vitiates the Report. Nor can it, in my judgment properly be said that this aspect of the challenge is in any way academic, not least because of the very limited nature of the basis of any public law Wednesbury challenge before this court.

**48 It follows in my judgment that permission should be granted on this ground and, on substantive review, the Report should be quashed.**

49. In the circumstances there is no need for me to go on to consider the reasonableness of the conclusions reached in the Report and I do not propose to do so in any detail,

...

52. That said, I do have significant concerns as to whether, on a fair analysis of the evidence base in general and the Final Summary Evaluation in particular, the material does really lead to a conclusion that the School was inadequate and in need of being placed into special measures rather than the lesser category of requires improvement.

**LBMW's view is that paragraph 46 could set a precedent and until Ofsted produces a fair complaints/appeals process, any school put into special measures may be able to prevent the publication of an adverse report and subsequently for the report to be quashed. Each case will of course depend on its own facts.**

**We now offer a full briefing on the matter**

**Present: the barristers, Gerard Clarke and Gurprit Mattu**

**LBMW solicitors Clifford Woodroffe, Howard Dellar and Philip Sergeant**

**On 19<sup>th</sup> September at 4pm at our Main Boardroom at 1 The Sanctuary – with drinks and light refreshments**

**Please [Book using this link \(click here\)](#)**

You may be interested to see the full judgment: [from this link](#).

[Education Answers](#) users can see the judgment in full, and raise any questions about it, [from this link](#) (requires log-in).

**Do let us know at LBMW if we can help you in similar circumstances.**

## **The Next Six Months**

This time last year who would have guessed a General Election would be announced... Brexit will clearly fill the agenda in many ways (data protection being one – see below), but some key issues will remain for schools, funding in particular but also compliance issues around data protection will continue to be important. Though the pressure to convert to academy seems to have dissipated, the structures of RSCs and Headteacher Boards remain central and their toolkit is academy, academy, academy! For the independent sector, there are still rumblings about charitable status and tax exemptions – for more, see below.

Both those thinking of converting, and those now in Multi-academy trusts, may like to note a snippet from the [2016-17 DfE consolidated accounts](#) about the diminished influence of "governors" in the MAT system (p178) which states "**The Department considers governors of local governing bodies for individual academies are insufficiently influential at the AT, not being trustees, to be classified as related parties.**" As MATs now face issues themselves, who makes the decisions for individual schools, and how those decisions are made, will become urgent questions. LBMW contributed a piece to [Schoolsweek](#) on the subject and published a new [Education Answers paper](#). These have been widely read over the summer, and if any readers would like us to contribute to a local seminar or board discussion on this issue, please get in touch.

## Trending issues

**1. Trusts (Capital and Income) Act 2013** – we mentioned our concerns in the last Circular and continue to work on the detail. We hope to have some comments available for the seminar on the 19<sup>th</sup> September.

**2. The Charity Commission-DfE Memorandum of Understanding (MoU).** An important document which we have rolled out for questions through [Education Answers](#) – click [the link](#) to find out more. It sets out the powers of the DfE and the Charity Commission with respect to schools – of special interest to academy trusts, voluntary school governors, and independent schools.

**3, Data protection – the GDPR** – with the new legislation coming into effect in March, all the legal advice circulars are picking up Information Commissioner Elizabeth Denham's [blog](#), which is indeed very helpful and shows schools, trusts, and charities have some legitimate interests they may or may not be able to use in making use of data. However, **not everyone has highlighted the research on cyber-security for charities** available from DCMS at [this link](#). This covers every charity's need to protect its own data, and highlights the risks of not doing so. LBMW also need to comply with the new legislation, and from next year you will need to [subscribe](#) to continue to receive briefings, circulars, and notifications from us. [Click here](#) to get ahead of the trend. We always offer the option of [unsubscribe](#) from our list.

**4. Nurseries,** their sites and rights of access continue to give problems when schools convert to academy – please check carefully, even if you think there is no prospect of conversion, before making any arrangements for provision of land, access rights, and so forth!

### And finally:

I have always like Michael Fullan's approach to managing change in the education system. Here's a quote from a paper published last year: "Improving whole education systems—provinces, states, countries—has proven to be a frustrating quest. In 2011, I published a paper called 'Choosing the wrong drivers for whole system reform'. Drivers are policies and wrong drivers are policies that don't work. There were four: accountability (punitive), individualism, technology, and fragmented policies. The right drivers—at least directionally were: capacity building, collaboration, pedagogy, and systemic policies. ([source](#))" (Michael Fullan, O.C., is a worldwide authority on educational reform with a mandate of helping to achieve the moral purpose of all children learning. A former Dean of the Ontario Institute for Studies in Education (OISE) of the University of Toronto, Michael advises policymakers and local leaders around the world to provide leadership in education.) ([www.michaelfullan.ca](http://www.michaelfullan.ca)).

## Forthcoming seminars and events from LBMW

On the 19<sup>th</sup> September our annual EDUCATION AND PROPERTY LAW UPDATE FOR CHURCH SCHOOLS (programme below) will be held at LBMW Offices, 1 The Sanctuary, Westminster, SW1P 3JT. Book now through [www.educationanswers.co.uk/events](http://www.educationanswers.co.uk/events).

## Programme

- |       |   |  |
|-------|---|--|
| 11:00 | Refreshments  |  |
| 11:20 | Welcome and Introduction<br><i>Howard Dellar, Partner and Head of Education, Ecclesiastical, and Charity</i>  |  |
| 11:30 | Session 1 (with plenary)<br><b>School Property - latest thinking and legal progress</b><br><b>Robert Cottingham, Partner and Head of EEC Property and update on PSCs* and Company Law - Susan Newell, Associate</b> |  |
| 12:15 | Session 2 (with plenary) - Futureproofing Fundraising for Schools and MATs and Charities<br><b>Paul Courtney, Director, Kairos Fundraising Solutions</b>  |  |
| 13:00 | Lunch<br><b>A sandwich lunch is provided</b>  |  |
| 13:45 | Session 3<br><b>New developments and updates in Education Answers</b><br><b>Simon Foulkes</b>   |  |
| 14:15 | Session 4<br><b>Here comes trouble - the new Data Protection legislation</b><br><b>Ed Henderson, Partner</b>  |  |
| 14:45 | final Plenary   |  |
| 15:00 | Close   |  |

\*PSCs - persons of significant control

[www.educationanswers.co.uk](http://www.educationanswers.co.uk) is now a vital resource for all involved in school organisation, academy conversion, and education administration. LBMW runs [regular seminars and conferences](#) for all involved in the issues affecting schools, universities, colleges, and academies. Please contact [simon.foulkes@lbmw.com](mailto:simon.foulkes@lbmw.com) or call 202 7960 7134 for details.

[Unsubscribe here.](#)



**[Simon Foulkes](#)**  
**Education Consultant**

direct dial 020 7960 7134

vcard: [download](#)