



# Education Matters

Summer 2019

Brachers is a leading provider of legal and HR advice to schools, academies and higher educational establishments. The Education team brings a fresh approach to the sector, comprising of a team of lawyers and HR consultants (via KentHR) that advise on the issues faced by the sector in a straight forward, jargon free, approachable manner.

We strive to provide a service that recognises the specific needs, aims, challenges and culture of your organisation, whilst bringing a wealth of knowledge and solutions from our past experience. We hope we can share our passion and enthusiasm with you, working in partnership in pursuit of delivering educational excellence.

In our termly education newsletter we will bring you the latest in legal updates, guidance, news and insight from the education sector. In this issue we look at data protection, restructures, retention and mental health in schools.

It is important to us that we offer you real value and relevant, useful information. Please help us by providing feedback and comments as well as any suggestions of what you would like to be covered in future newsletters. Also, if you would like to contribute an article and/or share some valuable know-how please do contact us.





## The Education sector and data protection

The School and Academies Show took place last term. It included a presentation from the Information Commissioners Office (ICO) which provided some helpful tips and advice in relation to data protection and schools. We thought that it would be helpful to share this information in order that those that may not have been at the event can benefit from and pass on to others in the education sector.

### Background

As you will be aware, the Data Protection Act 2018 (“DPA 2018”) came into force on 23 May 2018 with the aim of making data protection laws fit for the digital age and modernising the law to ensure it is effective for the future. As well as the DPA 2018, organisations must comply, where applicable, with the General Data Protection Regulation (“GDPR”). It is important therefore that GDPR and DPA 2018 are reviewed together.

### Where are we now?

We are now a year on from the data protection changes. The ICO

confirmed that following approach by them, consensual audits have been taking place with various large Multi-Academy Trusts. This concentrated on policies and procedures and they will issue a report on this within the next 6 months.

Since the introduction of the new legislation, the ICO has confirmed that there have been 32,000 complaints across all sectors, with 600-700 relating to schools. They indicated that most complaints were about subject access requests (“SARs”) and/or inappropriate disclosure of data. Examples include disclosure of staff data to pupils, emails to parents using a wrong email addresses, emails being sent out to groups of people revealing each individual’s email address (i.e. not using the bcc). It was suggested that security and transparency was also a ‘hot topic’, for example, ‘I did not know my child’s data would be processed in that way’.

The ICO also warned that cyber incidents are increasing in schools, particularly ‘phishing emails’. If you have not already done so, it will be important to train all staff with email addresses and/or access to your school’s computer system to be aware of what ‘phishing’ entails and what action to take if they suspect that this is happening.



### Subject access requests

In relation to SARs, you will be aware that you must respond without undue delay but in any event within one month from receiving the request. This is a shorter period than was previously allowed. There are very limited circumstances where, if the request is complex or more than one request is made, you may be able to extend the response period to up to three months. Due to the tight timescale, it is important that your staff are trained to recognise when a SAR is received and what to do in handling such a request.

When considering your processes for responding to SARs, the ICO have confirmed that there is no exemption and/or extension owing to school holidays. You will therefore need to ensure that procedures are in place to deal with requests within the relevant time period and as best you can. It was recommended that you document any issues that may arise, for example, 'staff member not available' and manage individual expectations in relation to responding to the complaint.

### Areas to be kept under review by schools

- It was noted that DPO roles can be overstretched, particularly in MATs where the DPO is expected to cover all schools that are part of that Trust.

- When appointing a DPO be mindful of conflicts of interest, for example, an IT Manager should not be appointed a DPO as they procure the systems.
- Record keeping and documentation of key decisions needs to be improved.
- Training of key staff – ensure that this is delivered at the right level and that regular refresher training is given and documented.
- Ensure that you have appropriate Data processing agreements in place.
- Review security, particularly when systems and/or processes and policies are updated.

### ICO Top Tips

- Ensure that you have appropriate policies and procedures in place.
- Review policies regularly.
- Undertake data protection impact assessments (check who is in control of outsourced data).



## Restructures and managing change effectively in your school

With Brexit looming, many organisations may face uncertainty including those within the Education sector. This may not only impact recruitment and retention but also the wider economy as businesses may relocate to EU or divert business which is currently done in the UK to EU affiliates.

### The need for restructure

Restructures within organisations can be driven by a need for change in the existing structure, or it can be driven by the necessity to make financial adjustments. Frequently, it may involve both. Restructures within schools can occur for a number of reasons such as:

- To reduce costs
- Shifts in strategic objectives
- Curriculum changes
- Changes to pay and conditions
- Expansion
- Joining a MAT
- Government legislation/initiatives
- Technological developments

Restructures can lead to redeployment of staff to other roles, changes to the grading of posts or positions becoming redundant.

## How can we help with managing change within your school?

We can provide advice and guidance on managing change including Restructures and Redundancies, HR strategy and planning, Wellbeing and Outplacements.

Please contact one of our education team for assistance.



## Key points to think about when managing a restructure within your school

**Managing change effectively is essential to ensure its success through employee engagement, employment relations, organisational effectiveness and employee wellbeing. Failure to do so may have a negative impact in these areas.**

So how do you ensure that such a change in your school is effective? Some key points to consider are:

1. Have a clear vision for change. Think about why you need to restructure and the impact on student needs. Keep your focus to the school's core activities which are teaching and learning.
2. Allow enough for planning and implementing the restructure. Identify all activities, tasks, and decisions to be accomplished for effective operation, who should be involved, and what each person's responsibility in the activity should be.
3. Think about whether you need to amend current roles and create new roles. Is there opportunity for staff development and progression in the future to assist with retention and succession planning? Will you have right people in the right place after the structure?
4. If you are creating or amending roles, ensure that workload is manageable to achieve work-life balance as staff well-being is a challenge in schools. Try to focus on what your staff are doing now and examine staff tasks in detail to help you ensure that those that add value are not lost in the restructure.
5. Any restructure should be aligned with the school's vision, strategy, culture and direction. Think about the short, medium and long term impact on the school. Does it accommodate future changes as you may not want to go through several restructures in a short period of time.
6. Get your SLT on board. The level of trust developed between line managers and employees enables a smoother transition if you have SLT buy in. Their support is important through the process as they can provide local context and relate to particular circumstances of individual employees. Therefore, they play a significant role in communication to employees.



7. Communication and employee engagement are key. How will the restructure impact on staff – their wellbeing and morale? Get them involved from the start to minimise any resistance. Therefore, ensure that you communicate constantly, openly and in a transparent manner through a variety of formats such as face to face meetings, workshops and written communication. Gain their trust and confidence. Inform and consult with them and their union representatives and genuinely take on board their comments and feedback before making your final decision.
8. Think about any additional support that can be offered for your staff. This could be providing your staff with details of an Employee Assistance programme or equivalent. They may also wish to seek further support from their union. Following the restructure, there may be CPD needs that to be considered such as further training.
9. If there is possibility of redundancies ensure that consultations begin in sufficient time prior to notice of redundancy being given. Are there any suitable alternative roles that can be considered prior to redundancy?



## Recruitment and retention strategy: Support for early-career teachers

A survey carried out by National Education Union (NEU) of its members found that 40% of teachers believed that they would not stay in their profession beyond five years and 18% think they won't stay longer than two. The survey has prompted specific concerns about retention of early-career teachers, after 26% of those with between two and five years' experience told the union they intend to leave the education sector within five years.

The DfE published its long awaited teacher recruitment and retention strategy on 28 January 2019 to help address the recruitment and retention crisis which has been welcomed by many. One of the areas of priority within the strategy document is the support for early career teachers.

### Key challenges

The document highlights key challenges faced by early careers teachers:

1. Not enough teachers receive the high quality support and development they need at the outset of their career;
2. Financial incentives are focused on recruitment and do not encourage early career retention; and
3. Early career teachers are too often expected to plan and resource lessons from scratch.



## Addressing the key challenges

### Launch of a new Early Career Framework (ECF)

- New teachers will be entitled to a funded 2 year structured training and support package
- It focuses on 5 key areas of development – behaviour management, pedagogy, curriculum, assessment and professional behaviours
- A trained mentor to provide support to new teachers

In addition the induction period has been extended to two years to facilitate the extra support.

DfE will fully fund the national roll-out in September 2021, however, an early roll-out will happen from September 2020 in the North East, Greater Manchester, Bradford and Doncaster.

The national roll-out will include:

- Funding and guaranteeing 5% off timetable in the second year of teaching for all early career teachers

- Creating high quality, freely available curricula and training materials
- Establishing full high quality ECF training programmes
- Funding time for mentors to support early career teachers
- Fully funded mentor training

### Introducing financial incentives to stay in teaching, not just to train

- Introduction of phased bursaries for other subjects with staggered retention payments to better balance the need to retain new teachers as well as recruit them
- Payments will be higher for teachers working in more challenging schools which should help to attract and retain good teachers in the schools that need them the most

### Access to high quality curriculum plans and materials

- New teachers will have access to high quality curriculum resources therefore avoiding the need to start from scratch every time they plan a lesson



### **What should schools think about**

With the early roll-out due to commence in September 2020, Schools may wish to think about their own recruitment and retention strategies. Some of the things to consider:

- Does your school have a recruitment and retention strategy?
- Impact of the national skills shortage on your school's performance
- Have innovative practices in recruiting and training teachers in all settings
- Planning and managing an effective advertising campaign
- Effective use of CPD in retaining staff
- Addressing excessive teacher workload and wellbeing
- How to set a constructive and valuable organisational culture

### **Need assistance with recruitment and retention within your school?**

**Contact one of our HR consultants on 01622 690691 to discuss your needs.**



## Is your school mentally healthy?

In light of Mental Health Awareness Week which took place between 13 May to 19 May Kent HR looks at what your school can do to manage mental health and support wellbeing.

Mental health issues are more common than we might think and they can affect anyone, at any time which means that they not only impact staff, but also pupils.

10% of children and young people (aged 5-16) have a clinically diagnosed mental health problem, yet 70% of children and adolescents who experience mental health problems have not had appropriate interventions at a sufficiently early age<sup>1</sup>.

In 2017, 98% of teachers and school leaders came into contact with pupils they believed were experiencing mental health problems, according to a National Association of Schoolmasters Union of Women Teachers Teacher's survey. With children spending 190 days at school each year, teachers are in a prime position to provide much-needed support to pupils with mild to moderate mental health problems<sup>2</sup>.

Teachers' mental health is no better. In a 2017 Health survey carried out by charity, Education Support Partnership, it was found that 75% of all education staff have faced physical or mental health

issues in the last two years because of their work and 53% have considered leaving as a result. Mental health of teachers has been in focus for some time with workload being considered as the top work-related reason<sup>3</sup>.

Schools addressing mental health concerns should take a more whole-school approach which creates a more inclusive environment by adopting a culture of wellbeing. This should not only include governors, SLT, teachers and support staff working together but also parents, carers and the wider community. It needs to be an ongoing process which can be impacted by the following:

- Having clear process and policies to deal with any concerns
- Thinking about best practice to contribute to good mental health
- Providing training to enhance knowledge
- Getting everyone involved by consulting with children, staff, parents and carers to create inclusivity
- Encouraging an open dialogue and dealing with negativity around mental health
- Using external support when needed

<sup>1</sup> [https://www.who.int/mental\\_health/media/en/785.pdf](https://www.who.int/mental_health/media/en/785.pdf)

<sup>2</sup> <https://view.joomag.com/state-of-education-report-2017/0676372001494577623>

<sup>3</sup> <https://www.educationsupportpartnership.org.uk/resources/research-reports/2017-health-survey>



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## Meet our team

### 60 Seconds with Antonio Fletcher, Partner

Antonio joined Brachers in April 2017 and is a Partner in the Education Team. Prior to Brachers, Antonio had practiced as a solicitor for 10 years acting for a number of schools and other educational establishments throughout that time on matters ranging from Employment Tribunal claims, TUPE transfers and data subject access requests.

Due to his knowledge of Employment Law, Data Protection Issues and the Education Sector, Antonio provides clients with comprehensive, holistic advice on the issues that they face. Outside of work Antonio is a School Governor and is married to a Deputy Head Teacher, so is well aware of the practical challenges that schools face.

If you would like to discuss how Brachers or Antonio might be able to support you then please contact him on 01622 690691.

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