

# Education Matters

Winter 2018/19

**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, collaborating a team of lawyers and HR consultants 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 back and remind you of important cases and changes that have occurred in 2018 as well as how to prepare for changes anticipated in 2019.

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 ideas on what you may 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.

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## Lehtimaki –v- The Children’s Investment Fund Foundation (UK) and others (2018) EWCA Civ 1605

The Court of Appeal has upheld the High Court’s ruling that members of a charitable company (such as an academy trust) have fiduciary duties to act in the best interests of the charity.

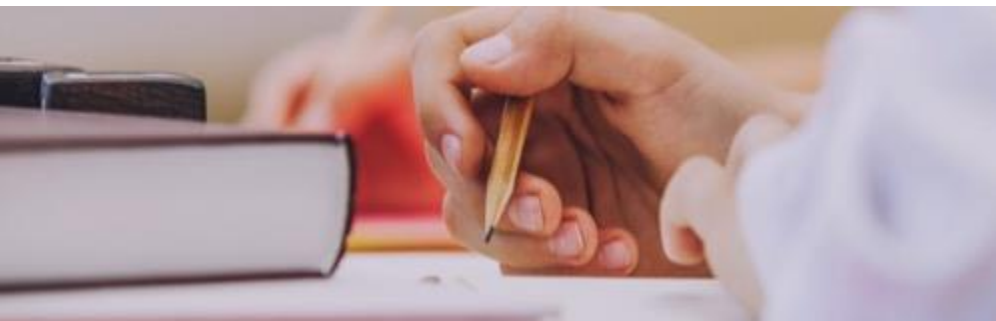
The decision reinforced the Charity Commission’s guidance on membership of charities (RS7), that when exercising powers, members of a charitable company should only act to further the charitable objects of the charity and not in their own personal interests.

On the basis that members have fiduciary duties, this raises the question should academy trusts have policies covering potential breaches of duty by members? The Academies Financial Handbook 2018 already requires academy trusts to maintain registers of interest for members and publish them on its’ website but little further information is given specifically for members, instead, focusing on trustees and directors.

### What does this mean for you?

Until the DfE address this further, it would be advisable for academy trusts to review existing policies covering managing and avoiding conflicts of interest to ensure that they cover not only trustees and directors but members as well.

It is also unclear whether risk protection arrangement (RPA) covers breaches of fiduciary duties by members so may leave academy trusts open to unrecoverable potential losses.



## **C&C –v- The Governing Body of a School (2018) UKUT 269 (AAC)**

The Judgment in this case has made clear that the Regulation 4(1)(c) Equality Act 2010 defence to any alleged discrimination towards pupils arising out of a decision to exclude, if it could be shown that the reason was a result of the pupil's 'tendency to physical abuse', is incompatible with human rights law.

### **What does this mean for you?**

In practice this may not have a huge impact for schools as the pastoral ethos of many schools is that such exclusions should only ever be considered as a last resort, and greater tolerance is given towards children whom are less able to control their behaviour.

However, it will now be necessary to be able to demonstrate (with written evidence) in relation to a child whose disability is recognised to manifest itself in a physically abusive way, that reasonable adjustments and alternatives have been actively considered, explored, and, if appropriate, ruled out, before deciding to exclude.



## Dealing with issues relating to parental responsibility

<https://www.gov.uk/government/publications/dealing-with-issues-relating-to-parental-responsibility>

Towards the end of 2018 the DfE published an updated version of their guidance for schools about parental responsibility.

It makes clear that all parents have a legal right to participate in their child's education and schools must treat all parents equally unless there is a court order limiting the exercise of their parental rights and responsibilities.

You may be interested to know that that the definition of 'parent' for these purposes is wide and includes:

- All biological parents whether they are married or not;
- Any person who, although not a biological parent, has parental responsibility for a child (e.g. a step-parent); and
- Any person who, although not a biological parent and does not have parental responsibility, has care of a child.



## Data Retention Policy

The guidance reflects requirements under the General Data Protection Regulations and the Data Protection Act 2018. It also makes clear that maintained schools are required to give parents access to their child's educational record.

However, this requirement does not apply to academies, who must only comply with the principles of GDPR and DPA 2018. This states that children have control over their own personal information from the age of 13, effectively meaning that academy pupils aged 13 and over could refuse to allow one or more

person with parental responsibility to have access to personal information about them.

**If you have not done so already, it would be advisable to review any applicable policies and procedures to ensure that the updated guidance is covered adequately.**



## Mental Health and behaviour in schools

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/755135/Mental\\_health\\_and\\_behaviour\\_in\\_schools\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/755135/Mental_health_and_behaviour_in_schools_.pdf)

This DfE guidance was updated in November 2018. It gives advice on:

- How to create a whole school culture, including promoting positive mental health.
- Understanding the link between mental health and behaviour.
- How to identify children with possible mental health problems.
- Where and how to put in place support, including working with external agencies where required.
- It also provides links to sources of further support and guidance.

The Government has also published a green paper: *“Transforming children*

*and young people’s mental health provision’*. The aim is to incentivise every school to identify a Designated Senior Leader for Mental Health to oversee mental health and well-being in their school. New mental health teams supervised by the NHS will be funded specifically for early intervention with the work managed jointly between schools and the NHS with the team being linked to a group of schools. It is anticipated that different delivery models will be piloted in different areas.

The Education Select Committee found that schools have a frontline role particularly in early identification of eating disorders, self-harm and ADHD.

It is likely that this will mean that going forward schools will need to look more carefully at pupil behaviour to consider possible underlying causes and to work with the NHS. It is envisaged that one member of staff in every school will receive mental health awareness training as well as requiring good quality teaching for pupils through PHSE including statutory guidance on the connection between mental health and healthy relationships.

We understand that many schools are already taking steps to implement strategies and appoint an appropriate Mental Health Leader.



## Keeping children safe in education

A reminder that in May 2018 the DfE published an updated version of the statutory guidance, Keeping Children Safe in Education which took effect from 3 September 2018.

All staff and governors should be familiar with the guidance, key changes included guidance on matters such as the use of reasonable force, the single central record and host families.

## Sponsored Schools and transfer of surpluses

Sponsors should be aware of guidance issued in 2018 released by the Department for Education (DfE) in connection to the transfer of surplus in sponsored academy conversions:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/692787/School\\_balances\\_on\\_conversion\\_submission.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/692787/School_balances_on_conversion_submission.pdf)



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## Meet our team

### 60 Seconds with Lily Toppo, Kent HR

Lily Toppo is an experienced HR consultant working within KentHR and brings particular specialist knowledge of working with Schools. Before joining KentHR, Lily worked previously for nationwide law firm, Stone King and prior to this she worked as a Senior HR Officer in the Schools' HR Team for Wandsworth Borough Council.

Lily has extensive knowledge and experience of the Education sector and of working in non-unionised and unionised environments. She has worked with primary and secondary schools, single academy and multi-academy trusts. She has also delivered onsite and offsite training to clients on various HR topics.

If you would like to discuss how KentHR or Lily might be able to support you then please contact her on 01622 776521.

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