



May 2010

All change!

Michael Gove is to be the new Secretary of State for Education in the Conservative-Lib Dem coalition.

One of the first changes he has made is a re-naming of the Department for Children, Schools and Families (DCSF). From 12 May 2010, the Department became, once again, the Department for Education. However, the change is in name only: the areas covered by the department remain the same and it still has responsibility for children's services. A new departmental website, as announced on Twitter, is now live (www.education.gov.uk).

In similar style, it looks like the ContactPoint database is set for the chop under a 'Freedom or Great Repeal Bill' which is due to be announced in The Queen's Speech this month.

Another introduction announced by the new Government is an Education Bill that will give schools more freedom to set their own curriculum.

Vince Cable has been nominated as Secretary of State for Business, Innovation and Skills (BIS), which appears to have been welcomed in FE circles. It remains to be seen whether FE Colleges or HE institutions will move to the new Department for Education. The new Conservative-Lib Dem coalition has led to speculation about the future of funding in the FE sector as state funding is set to reduce.

Breaking the rules? SATS rebellion

There has been much debate about the legal status of the boycott of the SATs exams. A whistle-stop tour of the probable legal issues is as follows:

The Headteacher, the Governing Body and the Local Authority all have a statutory duty to 'secure' that the SATs tests are carried out where required under the National Curriculum. That duty is set out in legislation and supported by regulations. Consequently, if Headteachers decide not to implement the tests they will be in breach of that duty.

If the Headteachers boycott the tests, then there is an argument that they are breaching their contract of employment by doing so. In addition to that, there is also an argument that the Trade Unions are committing what is known as 'an industrial tort' by inducing the Heads to breach their contract of employment and interfering with the performance of that contract.

If the Trade Union has complied with its balloting obligations, the next question is whether such a

boycott is a 'trade dispute' and accordingly whether the Trade Unions or Headteachers are protected from being sued because of the industrial action. This is the tricky part.

If the dispute wholly or mainly relates to terms and conditions of employment or allocation of work, then there is a good argument that it is a trade dispute and therefore protected industrial action.

However, if the dispute is politically motivated, for example because the Unions believe that the SATs 'disrupt the learning process for children in Year 6 and are misused to compile meaningless league tables which only serve to humiliate and demean children, their teachers and their communities' (NAHT website), then there is an argument that this is a political dispute and therefore not subject to protection.

(An example of a case where this was debated was the refusal of BBC broadcasting technicians to make a broadcast to South Africa during the apartheid era. As this was politically motivated and not wholly or mainly connected to terms and conditions of employment, it was not considered to be a trade dispute.)

In addition to the above issues, we also need to consider the effect on other members of staff who may be involved in the boycott. The boycott affects only the Headteachers' terms and conditions of employment, so any 'secondary action' by teachers also boycotting the SATS will not be protected.

Due to the differing views of the status of the boycott, there has been varying guidance disseminated: the National Governors' Association state that the boycotting would not constitute legal industrial action by Headteachers as it does not relate to teachers' terms and conditions because the SATs are 'a performance measure'. Contrast this with the NAHT and NUT's views where their view is that the boycott is industrial action short of striking.

That said, the National Employers' Organisation for School Teachers (NEOST) has advised governing bodies of maintained schools to make deductions from pay where Headteachers have not undertaken their usual responsibilities in respect of SATs, and suggested that voluntary aided and foundation schools follow suit.

Potentially, taking the action recommended by NEOST could amount to a breach of the Human Rights Act 1998. It has often been argued that Article 11 of the European Convention of Human Rights, which protects an individual's right to freedom of association (and the right to form and to join trade unions for the protection of the individual's interests), could incorporate a right to take industrial action.

There is therefore an argument that by docking the Headteachers' pay, the Local Authority or governing body (depending on the status of the school) is seeking to fetter the Headteachers' right of association. Potentially therefore, Local Authorities or Governors could be in breach of the Human Rights Act by docking pay. However, this is an emerging area of law and it may be a while before we see any test cases on this particular point.

Then again, all of the above may turn out to be merely academic as threats of legal challenges to Head Teachers of schools that boycotted SATs exams seem to have vanished into the Conservative-Lib Dem coalition ether. It therefore remains to be seen as to what approach the new Government will take.

LSCB representation from education

Local Safeguarding Children Boards by now should have started taking steps to ensure that the following persons are represented on the Board:

- the governing body of a maintained school;

- the proprietor of a non-maintained special school;
- the proprietor of a city technology college, a city college for the technology of the arts or an academy;
- the governing body of a further education institution (where the main site is situated in the authority's area)

This requirement came into effect from 1 April 2010 under the Local Safeguarding Children Boards (Amendment) Regulations 2010.

Complaints Against Schools (England) Regulations 2010

Responsibility for investigating complaints against a school by a parent or pupil who complains that they have suffered an injustice because of an act of the Governing Body or the Headteacher will now be dealt with by the Local Government Ombudsman (LGO).

A test phase, which started in April, is being rolled out across local authorities and a full roll out is planned to take place from September 2011. Obviously, all this could change with a new Government. Watch this space!

Local Government Ombudsman report into education provision

Staying with the LGO, it recently published its report into a complaint against London Borough of Barnet (Complaint number 07A1 4912).

In this case, the pupil was excluded from school in November 2006 and did not resume alternative full-time education until May 2007 but remained on the school roll. The complaint was that the London Borough of Barnet failed to provide adequate education for her and delayed in responding to a request to assess her special educational needs.

The LGO said that it was not sufficient for the Council to say that because the pupil was on the school roll, they were not responsible for her educational provision. The LGO found that a failure by the Council to provide adequate full time schooling arrangements for an excluded pupil amounted to maladministration.

The pupil was awarded £1,750 in compensation for her lost education and her mother was awarded £750 for her distress and for the time and trouble spent pursuing her complaint.

Q & A

If you have a topic or question you would like answered and which can be covered in the bulletin, please forward it to us. The question will be edited so the identity of the questioner will not be given and anonymity assured.

For further information or advice on any education issue please contact Julia Green, associate on 01752 675504, julia.green@footanstey.com or Esther Maxwell, solicitor on 01392 685254, esther.maxwell@footanstey.com. Alternatively, visit our website www.footanstey.com

This bulletin is provided for information purposes only. Its contents do not constitute legal advice and should not be regarded as a substitute for specific professional advice.

© Foot Anstey 2010 All Rights Reserved.

Offices in Exeter, Plymouth, Taunton & Truro

Foot Anstey is regulated by the Solicitors Regulation Authority No. 321319

[Click here](#) to unsubscribe.

progressive ◀ determined ▶ supportive