



**DOYLE CLAYTON**  
Workplace Lawyers

**Education Bulletin**  
**Spring 2021**

## Welcome to the Spring 2021 edition of our Education bulletin!

This edition focuses on four key developments:

- The cancellation of summer exams in England
- Post-Brexit overhaul of study routes to the UK
- Updates to Keeping Children Safe in Education
- Case law update

### OUR NEWS

The Education team is gearing up to host a number of webinars and events this term. [Simon Henthorn](#) and [Hannah Davies](#) recently hosted a webinar for the Independent Schools' Bursars Association on managing conflict in the workplace. [Amara Ahmad](#), Simon Henthorn and Hannah Davies will also be delivering training on social media and conflict management to a large multi-academy trust later this month.

If your school or college would like webinar delivered training, please get in touch with Simon Henthorn.

If your school or college would like webinar delivered training on the new Student and Child Student Visa routes and Student Sponsor compliance, please get in touch with [Anna Blackden](#). Anna is a specialist immigration lawyer in Doyle Clayton's Education team.

### IN THE NEWS

#### 1. Summer exams cancelled...again!

As we all know, students who were due to sit exams in England in summer 2021 have had their exams cancelled...again! They will now receive grades determined by teachers, as part of proposals published on Friday 15 January, in a move similar to last year. The widely condemned statistical standardisation model has been scrapped, so there is little danger of an algorithm throwing up anomalous results this August. The hope is for a fairer, more transparent system that awards students the grades they deserve.

The Department for Education and Ofqual launched its joint consultation seeking views on how to award grades in a manner that accurately reflects students' performance, recognising the disruption they have faced this year. School leaders, teachers, students and parents responded in record numbers. Guidance is expected this week, so watch this space!

#### What we know at this stage...

- Grades will be based on teacher assessment, with teachers supported in making decisions through guidance and training from exam boards. The consultation considered the range of evidence teachers use to award a grade, which could include coursework, other forms of assessment and papers provided by exam boards, to support consistency and fairness across schools and colleges



- The proposals are designed to ensure students are given the opportunity to demonstrate the standard at which they can perform and incentivise them to continue learning throughout the rest of the academic year
- The consultation sought views on results being issued to students earlier than usual to allow enough time for appeals to be processed ahead of the start of the new term
- Students will still receive a grade that reflects their ability. Students should be assessed on what they have learnt, rather than against content they have not had a chance to study. There are proposals to give teachers flexibility to choose the papers they use for assessment based on the areas of the curriculum their students have covered
- Teachers' assessments would be subject to quality assurance checks by exam boards
- A range of options for private candidates to be assessed and make sure they receive a grade are also part of considerations
- Similar alternative arrangements are proposed for students taking vocational and technical qualifications, such as BTECs and Cambridge Technical, to ensure students are treated fairly and are equally able to progress
- For qualifications where a practical demonstration of skills is needed, assessments would continue to be able to take place
- Vocational qualifications with written exams scheduled in February and March 2021 will not go ahead as planned and alternative arrangements will be put in place.

#### **Lessons from last year's experience ...**

- Maintain good record-keeping of attainment - including classwork, homework test scores, and assessments
- Maintain good record-keeping of department discussions and decisions pertaining to individual students
- Maintain a consistent approach to determining grades – develop a protocol and follow it!
- Make sure that access arrangements, special considerations, and reasonable adjustments are based on up to date information from parents and young people
- Make sure that all subject teachers are aware of any access arrangements, special considerations, and reasonable adjustments and that they are applied consistently to non-exam-based assessments as well as to formal tests and mock exams.

Look out for our update once the Department for Education announcement has been made.

## **2. Post Brexit Overhaul of Study Routes to the UK**

The UK formally left the EU on 31 December 2020. Since 1 January 2021, the UK has a new points-based immigration system that treats EU nationals and non-EU nationals equally.

Significantly, this means any non-UK national (apart from Irish citizens) coming to the UK from 1 January 2021, with the primary purpose to work or study, will need to apply for UK immigration permission. In our last Education bulletin, we looked at the revamped Student and Child Student visa routes, which came into force on 5 October 2020. Replacing the previous Tier 4 Child and Tier 4 General study visa route, the biggest change is that EU nationals will now be required to meet the same requirements to study within the UK as non-EU nationals. EU students already resident in the UK on or before 31 December 2020 should not use the new Student or Child Student Routes and are eligible to apply to the EU Settlement Scheme and have until 30 June 2021 to do so.

Independent Schools and Colleges who do not currently hold a sponsor licence should therefore seriously consider applying now to become a Home Office approved sponsor. Being an approved Home Office sponsor - which can include both a 'Student Sponsor' category and a new 'Skilled Worker' category - will give your education institution the ability to enrol pupils and hire staff from all over the world (including Europe) where their primary reason for coming to the UK is to study or work.

Major changes to study visa routes to the UK, however, did not end on 5 October 2020. The beginning of December 2020 saw significant changes to the Short Term Student Visa route. This route previously allowed individuals to study any type of course in the UK for up to six months or to study an English Language course for up to 11 months at an accredited institution (which did not necessarily have to be a licensed student sponsor).

From the 1 December 2020, the Short Term Student Visa route now only exists for an individual wishing to come to the UK to study an English Language course for longer than six months and up to a maximum of 11 months in duration. From 1 December 2020, anyone wishing to come to the UK to study for up to **six** months only (including to study an English Language course) must now apply under the Standard Visitor Visa route. This means that the Visitor Visa rules have been amended to permit study of any type of course for up to six months (whereas previously someone could only study in the UK as a visitor for 30 days and provided this was not the main purpose of their visit). Please note that all the main UK study visa routes in the Immigration Rules (i.e. Child Student and Student visa holders, Short Term Student Visa holders for English language courses and visitors studying in the UK for up to six months) exclude study at state funded schools. Such visa holders may only study at approved student sponsors and accredited institutions (including independent schools).

## **SAFEGUARDING UPDATE**

### **Updates to Keeping Children Safe in Education: what does it mean for recruitment processes?**

The Department for Education has issued a revised edition of Keeping Children Safe in Education (2020) to accommodate changes to recruitment following the end of the UK's transition period out of the EU.

From 1 January 2021 onwards, the TRA Teacher Services system will no longer keep a list of those teachers who have been sanctioned by EEA member states.

### **What does this mean for schools and colleges?**

Individuals who have lived or worked outside the UK must undergo the same checks as all other staff in schools or colleges. This includes obtaining (via the applicant) an enhanced DBS certificate (including barred list information, for those who will be engaging in regulated activity) even if the individual has never been to the UK.

Schools and colleges must also make any further checks they think appropriate so that any relevant events that occurred outside the UK can be considered. These checks could include, where available:

- Criminal records check for overseas applicants
- For teaching positions, obtaining a letter of professional standing from the professional regulating authority in the country in which the applicant has worked. Advice about which



regulatory or professional body applicants should contact is available from the National Recognition Information Centre for the United Kingdom, UK NARIC.

Where available, such evidence can be considered together with information obtained through other pre-appointment checks to help assess suitability. Where this information is not available, schools and colleges should seek alternative methods of checking suitability and/or undertake a risk assessment that supports informed decision making on whether to proceed with the appointment. Although sanctions and restrictions imposed by another regulating authority do not prevent a person from taking up teaching positions in England, schools and colleges should consider the circumstances that led to the restriction or sanction being imposed when considering a candidate's suitability for employment.

More information can be found [here](#)

## CASE LAW UPDATE

### Christian school worker loses tribunal claim after dismissal over anti-LGBT Facebook posts

In *Higgs v Farmor's School*, the Bristol Employment Tribunal ruled that a Christian school assistant was not unlawfully discriminated against on grounds of religion/belief when she was dismissed for gross misconduct for sharing two Facebook posts openly criticising the teaching of LGBTQ+ relationships and the LGBTQ+ community.

#### Background

Mrs Higgs is a Christian and was employed as a pastoral administrator and work experience manager by Farmor's School, a secondary school in Fairford, Gloucestershire.

In October 2018, the school's head teacher received a complaint from someone outside of the school about Facebook posts made by Mrs Higgs. The complainant described the views Mrs Higgs had posted as "homophobic and prejudiced against the LBGT community". Mrs Higgs had reposted a piece written by another person and added "Please read this! They are brainwashing our children!" with an exhortation to sign a petition. The post related to the teaching in schools of same-sex relationships, same-sex marriage and gender being a "matter of choice".

The school's head teacher asked the complainant to send him screenshots of any "similarly offensive posts" made by Mrs Higgs. As a result, he was sent a further example of Mrs Higgs' reposting an article written by someone else which referred to gender fluidity as a "perverted vision" and stated that "the LGBT crowd with the assistance of the progressive School systems are destroying the minds of normal children by promoting mental illness". The complainant also expressed the view that Mrs Higgs seems to find "obnoxious" a category of person that would include several children in the school. This appeared to reference LGBT+ pupils.

Following an investigation and disciplinary hearing, Mrs Higgs was dismissed for gross misconduct for breaching the school's conduct policy, including in relation to discrimination and serious inappropriate use of social media. Her internal appeal failed. Mrs Higgs claimed that she had been directly discriminated against and harassed on grounds of religion/belief.



## Decision

The Employment Tribunal ruled that Mrs Higgs' beliefs that gender cannot be fluid and that someone cannot change their biological sex or gender were capable of protection under the Equality Act 2010.

However, it ruled that she had not been discriminated against because of those beliefs. Instead, it found that Mrs Higgs' summary dismissal "was the result of a genuine belief on the part of the School that she had committed gross misconduct" and that the posts she had made might reasonably lead people who read her posts to conclude that she was homophobic and transphobic.

As regards to harassment, the Employment Tribunal found that this was an unexceptional disciplinary process. Whilst it clearly would have been unpleasant for Mrs Higgs to experience it, the Employment Tribunal considered that the School's conduct did not have the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. It also considered that the Schools' conduct was not related to her religion/belief.

The Employment Tribunal concluded that Mrs Higgs was not directly discriminated against on the ground of religion and nor was she harassed.

### **What does this case mean for schools and colleges?**

As with several recent cases (for example, beliefs in ethical veganism), this case emphasises the broad range of beliefs capable of protection under the Equality Act 2010. Nevertheless, this case will give comfort to schools that they can act against employees who express views on social media platforms which are discriminatory or cause offence to those with protected characteristics. A word of caution however, the case was heard in the Employment Tribunal (meaning it is not binding on future cases) and is likely to be appealed.

*Disclaimer: These materials are of a general nature and are not a substitute for legal advice. No responsibility can be accepted for the consequences of any action taken or not taken as a result of its contents.*

**If you have any queries regarding anything in this Education Bulletin, please contact Simon Henthorn on 0203 696 7172 or [shenthorn@doyleclayton.co.uk](mailto:shenthorn@doyleclayton.co.uk)**

