

What does the election result spell for Education Law practitioners?

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In a landslide victory in the general election, the Labour Party returns to government. What does this mean, though, for education lawyers?

In its manifesto, the Labour Party pledged to “*modernise the school curriculum*”, whilst building on the success of “*knowledge-rich syllabuses*”. In terms of assessments, the party aims to strike the “*right balance of assessment methods whilst protecting the important role of examinations*”. There is a pledge to “*drive up standards, modernise the school curriculum, reform assessment, and create higher-quality training and employment paths by empowering communities to develop the skills people need*”.

But how? And what about existing programmes for reform that were currently set in motion by the Conservative Party, such as the SEND and Alternative Provision Improvement Plan?

Here is a roundup of some of the major policies set to be implemented under the new government, and what it could mean for education law practitioners.

VAT on private school fees

The party expects to raise some £1.5 billion from its plans to apply VAT and business rates to private schools. The aim of this controversial policy has been to ensure investment can be made into the state school system, with the money raised being ring-fenced to fund the recruitment of 6,500 teachers (£450 million), to provide increased teacher and headteacher training (£270 million), to secure work experience and careers advice for all young people (£85 million) and to provide early language interventions (£5 million).

The party has said that the money raised would cover its Ofsted reforms (£45 million), fund the opening of more than 3,000 new school nurseries (£35 million) and provide mental health support for every school (£175 million).

The potential ramifications of this policy are likely to be wide-ranging.

The policy appears to assume that parents will be able to absorb this increased cost, and whilst some may, many parents will not be able to do so. This is likely to lead to parents having to make very difficult decisions, including (in the most extreme cases) withdrawal. This is likely to create an additional burden on the state school sector.

In terms of the impact to independent schools, whilst some independent schools are highly profitable, many independent schools are not. The increased risk of parents withdrawing from the independent school sector is likely to cause significant concern to many Headteachers and Governing Bodies.

In addition, in a bid to “balance the books” as some parents withdraw their children, many independent schools may well look to reduce the availability of scholarships and bursaries.

In terms of SEND pupils, Keir Starmer has confirmed VAT would not be charged on fees where an independent school was named in section I of a child’s EHC Plan. This does not help those many thousands of parents, though, whose children have SEN but no EHC Plan, and who elect to send their children to private schools.

What is the consequence of all of this to us as practitioners? Of course, there is an element of “crystal ball gazing” here, but in my view, I expect we will see at least some of the following:

1. An increase in admissions appeals next year as more parents rely on the state school sector and the availability of places declines.
2. An increase in parents seeking EHC Needs Assessments where children have SEND but no EHC Plan, particularly for those children that require, as special educational provision, smaller class sizes than those typically available in the state sector.
3. An increase in claims for negligence and/or breach of contract against independent schools. As parents pay more for their children’s education (even if that money isn’t reaching the school!) they will expect more for their money.
4. An increase in complaints to independent schools where bursaries or scholarships are withdrawn.

5. An increase in private schools taking legal action against parents who withdraw their children without providing adequate notice (i.e. claims for fees in lieu of notice).

Changes to the curriculum and assessment

The Labour party has committed to launching an expert-led review of the curriculum and assessment, “*working with school staff, parents and employers*” to deliver a curriculum which is “*rich and broad, inclusive and innovative*”. The review will also “*consider the right balance of assessment methods whilst protecting the important role of examinations*”.

One of the main changes we are likely to see under the new Government is reforms to Ofsted gradings, no doubt in light of the tragic death of Ruth Perry. It is envisaged that single headline Ofsted grades will be replaced with a new “report card system” telling parents how schools are performing in clear language. Multi-academy trusts will also be brought “into the inspection system”, but it is not clear what this will entail.

It is difficult to say with any degree of certainty what these changes may lead to for us as practitioners. Perhaps the removal of single headlines will lead to fewer challenges to Ofsted reports by way of Judicial Review? Equally, its replacement could create further headaches for the High Court in due course. Time will tell!

Recruitment and retention

By 8 July 2024, the wheels were already in motion to begin to recruit an additional 6,500 teachers. But what about the challenge of the teacher’s pay dispute? It is not yet clear what the pay offer will be for teachers this year but unions have generally welcomed the appointment of Bridget Phillipson (Education Secretary).

SEND, inclusion and mental health

The big question for SEND specialists is whether or not the SEN and Alternative Provision Plan will remain in place?

The Labour manifesto says the party will improve inclusivity in mainstream schools and ensure schools co-operate with councils on SEND inclusion. Equally, it is clear from the manifesto

that the party is committed to ensuring special schools cater to those with the most complex needs.

The party inherits a SEND crisis: Local Authorities are financially at breaking point up and down the country. The number of appeals issued in the SEND Tribunal increases year on year. What, precisely, will be done about this remains to be seen.

Along with a crisis in SEND, those working in alternative provisions (AP) report increased pressure for places and struggles to reintegrate pupils back into mainstream. The Labour manifesto does not mention AP or pupil-referral units directly, but clearly the new government will need to address these challenges.

Miscellaneous

In addition to the main issues raised above, the Labour Party manifesto commits to funding free breakfast clubs in “*every primary school, accessible to all children*”, which will be welcome news for working parents.

The party also intends to open an additional 3,000 nurseries through upgrading space in primary schools (so we could see an increase in the work of Ofsted as these settings apply for registration).

The commitment in the manifesto to guaranteeing two weeks’ worth of work experience for every young person is an interesting development in view of some of case law in the last 12 months relating to the liability of providers of work experience placements (see my article in the September 2023 newsletter on the case of *MXX* [here](#)). Placement providers will need to carefully consider their liability and safeguarding obligations in view of that decision.

Other noteworthy policies include:

- Protecting time for physical education, and supporting the “*role grassroots clubs play in expanding access to sport*”
- Launching a new national music education network
- Ensuring schools “*address misogyny and teach young people about healthy relationships and consent*”
- Introducing a supervised tooth-brushing scheme for 3 to 5-year-olds, targeting the areas of highest need.

Conclusion

In many respects, there are more questions than answers at this stage. When will we see the introduction of VAT on school fees? Will it be an immediate or phased introduction? How will residential schools account for accommodation costs versus education costs when it comes to accounting for VAT?

Will the party abandon the proposals for SEN Reform instigated by the Conservative Party?
What is the solution to the SEND funding crisis?

It is very early days but we will be sure to keep you posted in our next newsletter!

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