

EMPLOYMENT

LITIGATION, DISPUTE RESOLUTION AND INVESTIGATIONS

COVID-19 Practical Considerations: State funding and Fee-Paying Schools

August 2020

Since our earlier briefing (available [here](#)), preparation for the return to school has continued.

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Europe Women in Business Law Awards

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Equity Deal of the Year 2018 – Allied Irish Banks IPO
IFLR Europe Awards

On 27 July 2020, a [Roadmap for the full return to School](#) was published by the Minister for Education. The Roadmap, developed in line with public health advice issued by the Health Protection Surveillance Centre, sets out how the Department of Education expects schools to re-open. In particular, Schools are required to complete and implement a COVID-19 Response Plan, templates of which have been developed in conjunction with the Health and Safety Authority (HSA) for [primary and special schools](#) and for [post primary schools](#).

In addition to the Roadmap and the Guidance, a funding package of €376.8 million to help schools prepare for reopening was announced on 27 July. This funding was made available in recognition of the fact that COVID-19 sees significant challenges to schools in regards to staffing, supervision, safety and wellbeing, and a breakdown of the package is available [here](#). The announcement noted that a Hand sanitiser and PPE grant would be made available, and that whilst costs could not be made known until the first week of August, the Department would provide a grant to schools based on a sliding scale to reflect enrolments.

Whilst additional guidance is welcome, the implementation of same is of concern.

Exclusion of Fee-Paying Schools from Automatic Government Supports

The initial announcement did not identify that eligibility for government

supports would be based on funding arrangements. However, Government Circulars issued shortly after the announced funding confirmed that certain supports would only be issued to “schools in the free scheme”, i.e. schools that participate in the Free Education Scheme.

A departmental spokesperson has confirmed in the Irish Times that fee-paying schools may submit applications to seek support from the Response Fund “where it can demonstrate difficulties in implementing necessary control measures outlined in the plan.” However, no official guidance as to how such an application may be made has been published by the Department. Principals of fee-paying schools who envisage the need for such support should act quickly, as the Minister for Education confirmed on 14 August 2020 that €160million had already issued in direct funding to cover minor works, employing support to assist with reopening, cleaning costs and PPE costs.

Vindication of rights of children and workers

The basis upon which fee-paying schools are being excluded from automatic support is unclear. The stated reason for the funding is in recognition of the fact that COVID-19 sees significant challenges to schools in regards to staffing, supervision, safety and wellbeing. These challenges are of course not

confined to schools in the Free Education Scheme. Indeed, not all schools in the Free Education Scheme will face the same challenges, yet such schools are automatically included in the scheme without the need to make further applications for government supports.

The basis upon which the additional requirements have been imposed on fee-paying schools is unclear and accordingly raises a number of concerns:

- Article 40 of the Constitution provides that “all citizens shall be held equal before the law”, and goes on to note that “This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.” Discrimination in State supports may be justified, provided that the state has not unjustly, arbitrarily or unreasonably discriminated between citizens. In the context of Article 40 and the right of all persons to be held equally before the law, the current failure to clarify why fee-paying schools

have been excluded from supports to maintain public health is of concern.

- Article 42 of the Constitution acknowledges the primary and natural educator of the child is the Family, and provides that parents shall be free to provide this education in their homes or in fee-paying schools or in schools recognised or established by the State. It further provides that the State shall endeavour to supplement and give reasonable aid to private and corporate educational initiative. The reason for excluding fee-paying schools from urgent public health supports is unclear, particularly in the context of the State's obligation not to penalise parents from making decisions to send their children to a fee-paying schools.
- Article 2 of the UN Convention on the Rights of the Child provides that States shall respect and ensure the rights of children without discrimination of any kind – it is clear that children attending fee-paying schools should not be adversely affected by reason of their attendance at a fee-paying school.

- Article 42A of the Constitution reaffirms the role of the State to intervene to protect the safety and welfare of all, not some, children in providing that “The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.”

Future developments

Clarity regarding the rationale for exclusion of fee-paying schools from State supports, together with clear guidance for how schools can access funds to implement appropriate protective measures, would be a welcome development, particularly in circumstances where the State has an obligation to vindicate the rights and welfare of all children.

In light of the fact that there is no immediate end in sight to the difficulties faced by schools, this issue should be at the forefront of decision-makers’ minds to minimise the spread of COVID-19 throughout all communities.

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