

Education Reform and the Law in England and Wales

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Abstract

On May 1, 1997, the United Kingdom elected its first Labour Government for nearly 20 years. During the election campaign, the Labour leader, Tony Blair, now the Prime Minister, had announced his three priorities for government as being 'education; education; education'. The wide-ranging reforms which are promised will undoubtedly mean 'legislation; legislation; legislation', certainly if the last 20 years are anything to go by. We have seen continuous educational change brought about by new Acts of Parliament at the rate of one per year, on average, and by several hundred sets of orders and regulations. Within a couple of weeks of the new Government taking power a new Education (Schools) Bill was published. It aims to undo a major area of the previous Government's policy, the 'assisted places scheme', which involves state sponsorship of individual placements at private schools. It will also pave the way for the establishment of maximum class sizes for primary schools (about one third of children are currently taught in classes of over 30). This Bill is expected to become law before the start of the next school year in September. Moreover, another piece of legislation, to effect major changes to the schools structure and quality control, has been promised for publication in the autumn of 1997. These developments demonstrate that, irrespective of changes in the substance of legislative reform under the new Government, there will be two major continuities: the rapid pace of change and the intensely political character to public educational reform.

Introduction

Education law was transformed by nearly two decades of Conservative control, during which all sectors of the education system were subjected to far-reaching legislative changes. Many were underpinned by an ideological commitment to introducing free market principles of competition and consumer choice into the education system and at the same time increasing regulatory control as a means to greater economic efficiency and accountability. Now the new Labour Government has donned the mantle of reform. Had the Conservatives been re-elected for a fifth term the next phase of their reforms would have involved the highly-controversial further re-introduction of selection of pupils for school places by ability - reforms which were planned in a Government white paper in 1996 but which the Conservatives' small Parliamentary majority, and the need to

concentrate on the enactment of other reforms prior to the general election, prevented them from carrying into law. As things have turned out, the movement of self-styled 'new Labour' towards the centre-Right of British politics has meant that the politics of education will be less dramatically affected by the change of Government than might have been the case in the past.

Central to any analysis of the nature and impact of recent educational reforms in England and Wales' must be discussion of the basic educational rights of individual children and parents. Consumerism has become a dominant, pervasive, force and it has affected rights and obligations in the various areas traditionally associated with its influence in the public services: access, choice, information, representation and redress. This has been part of a broad trend towards shifting the balance of power away from a 'producer-led' system to one in which consumers of education enjoy greater freedom and can more easily call education providers to account. The Labour Party prefers the notion of 'stakeholderism' to 'consumerism', but it actually mirrors another of the Conservatives' ideological messages - that of 'active citizenship'. Both Labour and the Conservatives are keen to emphasise the need for parents to take responsibility - for example, for their children's attendance and behaviour at school, for ensuring the completion of homework and other tasks by their children, by serving on school governing bodies (parental representation was dramatically increased following the Education (No.2) Act 1986), and by exercising their rights to participate in various other decision-making fora. There was, for example, party political consensus over the provisions of the Education Act 1997 (enacted in the last days of the Conservative Government) which was concerned with home-school 'partnership documents'.¹ Furthermore, both parties accept that parents should be able to exercise a degree of collective choice over local schools provision: under the Education Reform Act 1988 the Conservatives gave parents the right to vote on the question of whether a school should opt out of local authority control and become grant-maintained (or 'self-governing', as the Conservatives preferred to call it), whilst Labour now plans to give parents a vote on whether a local community should continue to have a selective ('grammar') school.

The development of consumerism and a partly market-basis to the educational system (see generally: Willett, 1996; Harris, 1993; Bash and Coulby, 1989) has hinged around: the extension of individual choice; the increasing diversification of educational institutions (new types, such as city technology colleges partly-funded by private sponsorship, as well as GM schools lying outside local education authority (LEA) control, have been introduced); funding being linked primarily to pupil or student numbers, thereby increasing competition; access by parents and prospective students to information on the 'performance' of institutions; and new redress mechanisms for the assertion of 'consumer' rights. But the influence of consumerism has in fact extended beyond those areas. For example, in the field of discipline, the massive increase in cases of permanent exclusion from schools in England and Wales (from nearly 3,000 recorded cases in 1990-91 to approximately 13,000 in 1995-96²) has been attributed to the development of an exclusions 'culture' engendered by the competitive pressures on schools to succeed academically and to be seen by parents, as 'consumers', to be intolerant towards indiscipline (Searle, 1994).

Furthermore, the expansion of private tort-based litigation against universities, schools and local education authorities in respect of alleged educational under-achievement or malpractice (see below) is in part a product of raised consumer expectations and the promise of redress offered by the Government's *Citizen's Charter* initiatives (H.M. Government, 1991; see Willett, 1996). There has been considerable talk of consumer 'empowerment' in areas such as education. Certainly, there are many new rights for parents and students. Yet, when these rights have been put to the test over recent years, their limitations have been revealed, as shall be shown. I intend to illustrate this in the second half of the article by concentrating on reforms in two key areas - arguably corresponding to the notional consumer's ideal: freedom of choice and a good standard of education. Linked to each of these areas is the right of redress, which shall also be discussed.

First, however, it is necessary to set developments in these areas in context by explaining the changing structure of the education system in England and Wales.

The Changing Education Structure

Schools and local education authorities

The public sector schools system established by the Education Act 1944 was supported by a political consensus. It was largely unchanged until the 1960s. The post-1944 system was based around a 'partnership' between central government, LEAs and the teaching profession. Central government's role was to promote education and the national policy (s.1). Central intervention under default powers was expected to be reserved for only the most extreme of circumstances (see Harris, 1993: 31-37). But real power, including overall control of the secular curriculum in schools and responsibility for ensuring the provision of sufficient schools and equipment among other things, lay with LEAs (eg ss.6-8 and 23). Teachers, the third partner, had responsibility for developing teaching methods and the organisation of the school curriculum.

The schools system post-1944 was, as now, divided between denominational ('voluntary') and non-denominational ('county') schools. They were/are both funded by LEAs, but in the case of the former the religious 'foundation' which established the school was required to make a contribution (currently 15%) towards the running costs. In the secondary stage of education (basically spanning the 11-18 age group) pupils were allocated to schools on the basis of their academic ability, judged by their attainment in a local examination (usually at the age of 11 - hence the '11-plus' examination). Those judged of high ability went to a 'grammar' school, whilst the others attended a 'secondary modern' school. Academic standards and attainment were, not surprisingly, much higher at the grammar schools. During the 1960s selection became increasingly to symbolise social division and elitism. A strong movement within the educational establishment and the Labour Party supported the replacement of selection and the introduction of a new breed of school - the 'comprehensive' school - which would take and cater for pupils of all abilities, enhancing the opportunities for those from poorer backgrounds to succeed.

The Labour Government of 1964-70 put pressure on LEAs to introduce comprehensive schools. Many Conservative-controlled LEAs resisted. Where LEAs succumbed, they sometimes faced parental and school opposition to comprehensive schools. Indeed, courts in England and Wales first became the battleground for public law education disputes to any extent during this period. But only challenges to procedure succeeded: the courts asserted strongly the principle of non-interference with the merits of decisions taken with executive or legislative authority and discretion (see for example, *Lee v Department for Education and Science* (1968) 66 L.G.R. 211; *Lee v Enfield LBC* (1967) 66 L.G.R. 195; *Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014), a principle which is constantly reinforced in education cases today. By 1976, when the Labour Government finally enacted legislation to compel LEAs to publish plans for comprehensive schools, only half a dozen LEAs held out against comprehensivization. Before this requirement could be enforced, however, the Conservatives were elected to power, and their Education Act 1979 repealed the 1976 legislation.

The importance of this period to the shape of the present education structure cannot be over-stated. First, it heralded the beginning of a long running battle between central and local government for control of the education system. During the 1980s and early 1990s this to some extent symbolised an ideological struggle between the Left, with a majority of local councils under Labour control, and the Right, in the form of the Thatcher and Major governments which were determined to curtail local authorities' powers and weaken their influence over the education system. LEAs have shown resistance to increasing centralisation of power and authority, but the litigation has generally revealed the extent of central government's power over the education system. Take, for example, the introduction of GM schools, a policy established by the Education Reform Act 1988. These schools receive their funding direct from central Government (with funds being administered by a centrally-appointed funding agency), rather than via the distribution made to LEAs. There are no LEA representatives on the governing bodies of these schools. Not only are they free of LEA influence, they are for the most part schools which were in the LEA sector but have been granted permission to transfer out of it following a ballot of parents in favour.³ Not surprisingly, many LEAs campaign hard to prevent a school from opting out of the LEA sector. But the current legislation makes it clear that the final decision rests with the Secretary of State. Ministers are expected to make a decision based on the merits of the case, rather than being purely guided by political expediency. But the courts have confirmed that ministers are entitled to act in accordance with national policy and, provided they consider all the issues, to decide in accordance with their own policy preferences (*R v Secretary of State for Education and Science ex parte Avon County Council* (1990) 88 L.G.R 716 Q.B.D; same (*No2.*) (1990) 88 L.G.R. 737 C.A; and *R v Secretary of State for Education and Science ex parte Newham L.B.C.* (1991) *The Times* Law Report 11 January). Labour's planned Education Bill, due to be published in the autumn of 1997 would not place GM schools firmly in the LEA sector but would re-classify them and give the LEA some influence over them through representation on their governing bodies.

The declining power and influence of LEAs in recent years (see Harris, 1994; Meredith, 1995) is also illustrated by the establishment of the funding authorities, mentioned above, under the Education Act 1993 (now consolidated in the 1996 Act). Once at least 10% of the pupils attending state schools in an area are registered at GM schools, the funding agency (either the Funding Agency for Schools in England or the Schools Funding Council for Wales) will share with the LEA the responsibility (under s.14 of the 1996 Act) for ensuring local provision of 'sufficient' schools - a major planning function. When the higher threshold, 75%, is reached there is a total shift of control to the funding authority. Primary education and secondary education are treated separately for the purposes of these thresholds. By the time the Conservatives lost power in May 1997 the total number of GM schools had only reached approximately 1,100 out of 24,000 state schools (well below the Government's expectation, in 1992, that 'most of the 3,900 maintained secondary schools, as well as a significant proportion of the 19,000 maintained primary schools, could be grant-maintained' - Secretary of State for Education/Welsh Secretary, 1992, para.3.2.). Nevertheless, LEA and funding authority power-sharing in respect of secondary schools is in operation in nearly half (around 50) LEAs and there has been a complete transfer in two (Department for Education and Employment statistics). The implications of such transfers for LEAs are that they lose overall planning control of local schools and that the funding authority may be ordered by the Secretary of State to publish proposals to eradicate excessive provision (1996 Act, s.500). The major concern is that, unlike LEAs, the funding agencies lack democratic accountability for their decisions (Johnson and Riley, 1995).

Even if LEAs regain some of their lost power under the new Labour regime, they will be subjected to increased scrutiny and accountability in respect of their performance. The 1997 Act (ss.38-41) makes provision (not yet in force) for an inspection system for LEAs. Reports of inspections and LEAs' plans to deal with any faults would both have to be published.

Changes required *within* schools have also had a major influence on the power of LEAs in recent years. The Education (No.2) Act 1986 significantly increased the number of parents on school governing bodies and, with a new requirement to co-opt governors from the local business community, resulted in LEA governors (often considered to be following a not always particularly covert political agenda) being firmly in the minority. For example, a county school with 600 pupils would have six co-opted governors, two teacher governors, five parent governors, five LEA governors plus the head teacher (if he or she elected to serve as a governor, which most do). Later, under the Education Act 1993, provision was made for GM schools and some church schools to have 'sponsor governors', reflecting the Government's drive to import commercial business skills (in areas such as management and marketing), as well as private sponsorship, into the public-sector schools system. The way that, under that Act, most governing bodies automatically became bodies corporate represented a further entrenchment of the corporate model, in an increasingly competitive market for school-based education.

Under the Education Reform Act 1988 a system known as 'local management of schools', or 'LMS', was established. It involves delegation of a budget share, determined under a formula

under the approved (by the Department for Education and Employment) local delegation scheme, to the governing bodies of each of the LEA-maintained schools in the authority's area. Funding is based primarily on (age-weighted) pupil numbers at a school - hence its competitive effect. The school then has staff employment responsibilities and a partial responsibility for maintenance of school buildings, receiving an allocation within its delegated budget for this purpose. LMS is part of a 'shift from a system of local government to one of local governance' (Johnson and Riley, 1995: 296), under which educative decision-making powers have become diffuse.

But the most important reform, symbolically, was the abolition in 1990 (under the Education Reform Act 1988) of by far the largest and most influential LEA - the Inner London Education Authority (ILEA). It would be beyond the scope of this article to present a detailed analysis of this reform here (see Harris, 1993: 39-42 for the background and the legislation). But it is important to note that the ILEA represented, among Conservative politicians, all that was bad about LEAs and their influence over local schools. In the 1970s and 1980s ILEA had been in the vanguard of an anti-racist, anti-homophobic and progressive approach to the curriculum (for example, through the development of Peace Studies programmes); but to the Conservatives it had simply epitomised the excesses, including profligacy, of the 'loony-Left' in local government (see Jones, 1990) which they were committed to eradicating.

Another of the 'partners' in the post-war education system established by the Education Act 1944, the teaching profession, has lost power - most notably through the introduction of the National Curriculum under the Education Reform Act 1988. Teachers have been included on the statutory bodies, such as the School Curriculum and Assessment Authority, set up to advise central government on its content, including the arrangements for testing pupils; but ministers retain firm control. In its 1987 consultation paper the Government had promised that the National Curriculum, with its legislatively prescribed attainment targets, programmes of study and assessment arrangements across its ten core and other foundation subjects,⁴ would represent a 'framework and not a straitjacket', even though 'backed by law' (Department of Education and Science/Welsh Office 1987: 5). But the way that the Government had earlier seized control over the content of sex education and sought to eliminate political bias in the classroom under specific provisions of the Education (No.2) Act 1986 (ss.46 and 44 respectively) suggested that teachers' professional autonomy over many curricular matters would be fundamentally undermined. Such fears were borne out by the first four years of the National Curriculum, when ministerial dogmatism generally held sway (see Graham and Tytler, 1992). However, a more pragmatic approach emerged from 1994 onwards, when the Government appointed the industrialist Sir Ron Dearing to examine the system. He concluded that some streamlining was necessary, and in 1995 the Government adopted most of his team's recommendations. Teachers had been overburdened with administration by the new system and had regarded the National Curriculum as leaving insufficient time for coverage of other important matters (such as personal and social education). With the publication of the Dearing report, they at last felt that some at least of their concerns had been responded to. Note that the 1988 Act also reinforced the compulsory nature of collective

worship in schools and required it, in many schools, to reflect the 'broad traditions of Christian beliefs' (s.7; see also *R v Secretary of State for Education ex p. R and D* [1994] ELR 495), a development criticised by some as being out of tune with an increasingly multicultural society in Britain in the late 1980s.

Parents were not one of the recognised partners under the Education Act 1944, except in so far as their legal duty to ensure their children received an effective full-time education by regular attendance at school or otherwise was reasserted (s.36). But in recent years there has been an explosion of new parental rights. In particular, parents are guaranteed various opportunities to present their views and to express a preference. The operation of a quasi-market system based on competition between schools (and, more indirectly, between LEAs), requires parents to have a degree of choice. Moreover, making schools accountable to the market means that information about what they offer and about their effectiveness needs to be available to parents as consumers. Thus legislation (primarily the Education Act 1980, the Education (Schools) Act 1992 and regulations made thereunder) has introduced requirements that schools or LEAs make a whole range of types of information available, either in a school's prospectus or documents available at the school or in published performance tables. The last of these, first launched in 1992, have been particularly controversial. Research suggests that, when selecting a school, parents are more influenced by impressions gained on visits to a school or by a school's local reputation than by its examination results (see, for example, West, 1993). Nevertheless, many schools dislike the way that their pupils' National Curriculum or public examination results and truancy rates are displayed in 'league tables', because these raw results may offer an inaccurate guide to the quality of the school, including the effectiveness and commitment of its staff. By ignoring the social and environmental factors which affect, differentially, the performance of schools in areas of high unemployment and more prosperous middle class areas, the league tables fail to reflect the 'value added' to each child's attainment levels by the school.⁵ Other anomalies arise, as in the way that in 1997 pupils who were absent or in some other way disqualified from taking a National Curriculum test were treated, for the purposes of the published data, as having failed the test. One school and an association of head teachers mounted an unsuccessful legal challenge to this system in early 1997: *R v Secretary of State for Education and Employment ex parte the Governing Body of West Hordon County Primary School and the National Association of Head Teachers* (1997) 21 January, QBD (unreported). The court confirmed the extent of the minister's discretion in determining the basis on which the data was presented. This government power offers one further example of the extent of central control of the education system in recent years.

Parental rights over choice of school are discussed below. Parents have also been granted rights of, for example: access to their child's curricular record (see the Education (School Records) Regulations 1989); withdrawal of their child from sex education (other than the purely biological aspects covered within the National Curriculum: see the Education Act, 1996, s.405); the receipt of regular written reports on their child's progress at school; the results of inspections of the school (see below) and on the exercise of the governing body's functions; complaint over the way

the curriculum is delivered; and a whole raft of remedial rights, including appeals over permanent exclusion from school and over decisions concerning placement and other matters concerning children with special educational needs.

Many of these rights are linked one way or another to the question of parental choice. Parents of children who have learning difficulties, whether through physical or mental disability or as a result of behavioural problems or problems such as dyslexia, often have very strong views over how their children should be educated or, more particularly, where their education should take place (a question which can have enormous cost implications for the LEA). The Education Act 1981 placed an emphasis on 'partnership' between parents and schools/LEAs in supporting the learning of such children. This ideal continued through the reforms introduced in 1994 under the Education Act 1993 and a *Code of Practice* (DfE 1994). However, the increasing emphasis on parental rights as consumers has seemingly helped to engender a far greater assertiveness on the part of parents and thus an increasing number of challenges to LEA decisions. According to one report (*Times Educational Supplement*, 15 January 1993), 120 applications for judicial review were made in special educational needs disputes in 1992/93. Because special education generally makes larger demands on LEA resources than other areas of education, LEAs have tended to opt for the least expensive mode of meeting their statutory obligations to meet a child's needs. In increasing numbers (1,170 cases in 1994/95 and 1,622 in 1995/96), parents, their expectations raised by the Government's *Parent's Charter* (1991, revised 1994) and *Special Educational Needs: A Guide for Parents* (1994), have utilised the right of appeal to the Special Educational Needs Tribunal established by the Education Act 1993 (see Harris, 1997b: 22).

Children's rights

The way that education law in England and Wales has placed an increasing emphasis on the rights of parents rather than the independent rights of children in recent years stands in marked contrast to the development of a culture of children's rights in the UK (particularly through the Children Act 1989) and beyond (most significantly through the UN Convention on the Rights of the Child 1989). The Children Act 1989 (s.1(1)) requires decisions by family courts concerning questions of children's upbringing and welfare to be decided on the basis that the welfare of the child is the paramount consideration. The UN Convention uses a concept, applicable to all areas of state activity concerning children, of the child's 'best interests', which must be the 'primary consideration' in all actions concerning children, whether taken by judicial or administrative bodies, public or private (Art.3). This means, in effect, that under this Article, 'the interests of others including parents and social work, education or health agencies are less important than those of the child' (Asquith and Hill, 1994: 13). Furthermore, both the Convention (Art.12) and the 1989 Act (s.1(3)) require children's views to be taken into account in such decisions, in the light of their age and understanding. There is thus an acknowledgement that children have autonomous rights. However, education law has failed to move away from the notion of parental rights: indeed, the development of educational consumerism has reinforced it. As Carlen (1992:

59) comment, in the field of education ‘the consumer within the market is generally assumed to be the parent, not the child. There is no mention of children’s rights to set alongside the repeated emphasis on parental choice’. Even older children find that the education rights which have developed in recent years - such as rights over choice of school, special educational needs, withdrawal from sex education at school, membership of school governing bodies, access to school records, appeal against decisions on exclusions or special educational needs, and so on - are enjoyed only by their parents. For example, in the *S v Special Educational Needs Tribunal and the City of Westminster* [1996] ELR 228 the Court of Appeal confirmed that the Education Act 1993 had conferred the right of appeal to the special educational needs tribunal and from there to the High Court on the parents but not the child. While parents’ knowledge of the child and his or her needs makes parental participation vital in the majority of cases, in the interests of maximising the child’s welfare, there is a need to acknowledge the rights of the child to a degree of self-determination. As Freeman has argued, ‘To take children’s rights more seriously ... demands of us that we adopt policies, practices, structures and laws which both protect children and their rights ...’ (Freeman 1992: 53). A practical difficulty resulting from the decision in *S* concerns the availability of legal aid for appeals to the High Court. Children will almost always satisfy the means test for legal aid; but with the income thresholds being so low, parents often will not.

Two recent developments make further inroads into the notion of children’s rights in the education context. First, there is the introduction of home-school agreements (‘partnership documents’) under s.13 of the Education Act 1997 (when in force). These documents set out the school’s and the parent’s respective general duties as regards the child’s education at the school. Admission to a school could be denied to a particular child on the ground that his or her parent has refused to sign a declaration agreeing to be bound by the partnership document. Under the relevant provisions the child is not a party to such an agreement, even though some models which were developed prior to the Act contemplate the child having specific obligations under them (Bastiani, 1996). Moreover, a failure by a parent to comply with his or her obligations under the agreement is understood to constitute grounds for exclusion of the child from school. In both cases, the child is being potentially disadvantaged by the parent’s failure and thus by the law’s failure to recognise that he or she has an independent educational right. Similarly, in the case of school exclusions, the court in one recent case upheld the right of a governors’ panel to take account of a *parent’s* conduct when visiting the school: *R v Neale and Another ex parte S* [1995] ELR 198. Turner J said (at p.211): ‘[I]t would be idle to suppose that a mother’s attitude towards a head teacher and/or the governors of the school as expressed by her defiant conduct must of necessity be an erroneous matter to consider when determining that an exclusion, formerly indefinite in duration, should become permanent’. It could be argued that such an approach in fact protects the interests of *other* pupils at the school, and is thereby consistent with the new duty (in Schedule 16 to the 1996 Act, as amended by the 1997 Act) on exclusion appeal committees to consider such children’s interests, along with those of staff, when making their decision. Nevertheless, it does reinforce the parent-centredness of education law in England and Wales.

Further and higher education

Within a few weeks of the completion of this article a huge debate about the future development of further and higher education in the United Kingdom will start, following the publication of Sir Ron Dearing's long-awaited report on higher education. The report could be of even greater significance than the Robbins (1963) report on universities, which led to the expansion and reform of higher education in the 1960s and early 1970s, including the development of the polytechnics sector alongside that of the universities. The recent report on further education by the Kennedy Committee (Kennedy, 1997) recommends increased resources for further (as opposed to higher) education and widened access to it. This suggests that, if the recommendations are accepted, reform of higher education may have to proceed on, at best, an almost neutral cost basis.

Dearing is unlikely to contemplate any reversal of the fundamental structural reforms undertaken by the Conservatives via the Education Reform Act 1988 and Further and Higher Education Act 1992. The effect of this legislation was the removal from the LEA sector of virtually all of further education, and all of higher education, and the establishment of considerably increased central government control of the latter. Also of interest to education lawyers in recent years has been the effects of consumerism in this area of provision, generated (as in the schools sector) by increased competition between providers and the encouragement of a consumer culture through the development of student charters, led initially by the Department for Education's own *Further Education Charter* and *Higher Education Charter* (both 1995) (see below, as to contract litigation).

Colleges of further education

Initially, under the 1988 Act, further education colleges were given control of their own budgets and a limit was placed on LEA representation on their governing bodies. However, much more fundamental reforms were made by the 1992 Act, when further education funding councils (FEFCs, one for England and one for Wales) were established to administer funds for most further education provision and overall management of colleges was (from April 1993) placed in the hands of further education corporations. The funding councils were appointed by the Secretary of State (s.1), who can attach terms and conditions to grants made to them and issue directions (ss.7, 56 and 47); this and the fact that the councils 'will only fund the kinds of education they consider appropriate to be made by [a] college' (Department of Education and Science, 1991, Vol.2., para.4.14) illustrates the increasing central control of the system. Colleges of further education and sixth-form colleges gained corporate status and were taken out of the LEA sector. But this left them even more vulnerable to external financial control.

This is well illustrated by the recent case of *R v Further Education Funding Council ex parte Parkinson* [1997] ELR 204. Here the applicant applied for judicial review of the FEFC's refusal to fund a course of education for him at the Pengwern College. He was seriously disabled

mentally and physically and the course would have helped him develop his communication skills. It would have involved a residential placement, costing £30,000 per annum (one-third of which would be met by the applicant's own LEA, Bradford Metropolitan District Council). In order to have attracted FEFC funding the course would have had to fall within one of the categories listed in Schedule 2 to the 1992 Act (para.(j)) and the applicant would have to be deemed able, as a result of the course, to progress to further study under other courses listed in the Schedule. The court held that the FEFC had been entitled to conclude that the applicant would not have succeeded on the para.(j) course to the extent that he would be able to progress, and it therefore had no duty to fund the applicant's place. Moreover, once this conclusion had been drawn by the FEFC it also had no discretion under the Act to fund education under such a course. In a separate legal action (reported with the case against the FEFC) the court also held that the Bradford LEA did not have a duty to fund provision for the applicant in Pengwern. Overall, the case highlights the degree of central control and regulation over further education post the 1992 Act. Moreover, both this case and an earlier decision (*R v London Borough of Islington ex parte Rixon* [1997] ELR 66, QBD) have confirmed that the duty on both the funding councils and LEAs to ensure adequate provision for further education - and in doing so to have regard to the needs of persons above compulsory school age who have learning difficulties (1992 Act, ss2-4 and Education Act 1996, s.15) - is a 'target' duty rather than an absolute one.⁶ The case thus also illustrates the weakness of individual education rights in this area of provision, despite the rhetoric of choice contained in official publications such as the *Further Education Charter*.

Higher education

So far as higher education is concerned, there has been similar centralisation of power. In the 1980s, the Government wanted to introduce greater financial control and increased accountability in this sector. The internal affairs of universities were largely immune from government control as a result of their establishment by Royal Charter. Academic freedom was enhanced by this and by the conferment of tenure on academics, which meant that they could only be dismissed for grossly immoral acts or similar. The Education Reform Bill threatened academic freedom by removing tenure for new or promoted staff, although an amendment to the Bill (carried on into the Education Reform Act 1988) ensured that an academic could not be dismissed on the basis of his opinions.

The body responsible for administering funds to universities prior to the 1988 Act was the University Grants Committee. It had been dominated by academics and had managed to keep central government at arm's length from the university sector. It was replaced under the 1988 Act by the Universities Funding Council (UFC), which was required to have representation from the worlds of industry, commerce, finance or the professions. Other parts of the higher education sector had their own funding body, the Polytechnic and Colleges Funding Council (PCFC). The establishment of the UFC was of particular significance, since it operated in a sector which had enjoyed so much institutional autonomy in the past. The UFC had powers to attach conditions to

the making of grants to universities and it was required to operate under the policy framework established by the Secretary of State. UFC policy was that the funding of institutions would be determined on a competitive basis, with reference not only to price but also to performance and quality. This represented a sea change in the status of universities. As Maclure (1989: 96) said, 'The idea of universities as independent centres of research, capable of standing out against government and society ... is discarded. Instead universities are made servants of the state and its priorities'. Despite being subjected to similar controls, the polytechnics and colleges sector of higher education at least gained independence from local education authorities. Each was to be run by a higher education corporation, mirroring developments in the further education sector (above).

The second stage in the transformation of the higher education sector has come with the 1992 Act. The so-called 'binary line' between the polytechnic and university sectors has been removed. Former polytechnics have acquired the right to use the title 'university' (subject to approval by the Privy Council) and to award degrees (previously this had been the preserve of a Council for National Academic Awards) (ss.76 and 77). A single funding body for higher education has replaced the UFC and PCFC - the Higher Education Funding Council (HEFC - one for England and one for Wales). It administers funds to institutions for both teaching and research. However, the Secretary of State controls the purse strings. The Act gave him a power to impose conditions regarding the funding of institutions or classes of institution, although it barred him from imposing conditions or requirements in relation to grants for individual subjects or programmes or in so far as they related to student admissions or staff appointments (s.68). Government policy, which the HEFC has to carry out, has involved 'greater efficiency', 'cost effective expansion' and 'greater competition for funds and students' (Secretary of State for Education and Science, 1991: 15-17). The participation rate in higher education has increased to approximately one-third, despite the introduction of student loans and the gradual reductions in grants (Education (Student Loans) Act 1990, as amended). But in recent years the Government has limited funding and applied the brakes on expansion of student numbers. Financial pressures are now also forcing universities to consider whether to charge students tuition fees; such a practice is, at the time of writing, considered likely to be endorsed by the Dearing report on further and higher education when it is published in mid-July 1997.

In the HEFC's allocation of funding, student demand is one factor, but another is quality of provision. Under s.70(1) of the 1992 Act the HEFC has a specific duty to 'secure that provision is made for assessing the quality of education provided in institutions for whose activities they provide, or are considering providing, financial support'. Under the present basis of assessment the HEFC examines the results of institutions' self-assessment and ratings are based on this and on the findings of teaching quality assessment (TQA) by teams of assessors, many of whom are subject specialist assessors seconded from universities. In the last round of assessments academic departments were rated for their teaching and learning provision under one of three categories:

excellent, satisfactory or unsatisfactory. A small number of courses have had funding suspended or withdrawn, or been threatened with this.

The HEFC also administers general research funds to institutions. As in the past, funds are distributed selectively; an assessment of quality forms the prime determinant of the allocation. The first research assessment exercise (RAE) subsequent to the 1992 Act occurred in 1996. Research teams were assessed on a scale of 1-5* on the basis of scrutiny of the work they put forward as their best, in terms of published output, during the assessment period (spanning 1992 to early 1996). Other factors, such as research support at departmental and institutional level, research student numbers and external grants, were also taken into consideration.

Although academics have become resigned to the broad principle of quality-based allocation and the competition it engenders, the fairness of the methodology employed for both TQA and RAE have long been criticised within the academic community in the United Kingdom. A legal challenge was mounted by one department following its rating in the 1992 RAE: *R v The Universities Funding Council ex parte The Institute of Dental Surgery* [1994] ELR 506. The Institute is a college of the University of London. Its research rating for clinical dentistry fell from 3 in the previous exercise to 2 in 1992. This meant a loss of £270,000. When the final decision was being taken by the panel, two of its members changed their assessment from their provisional rating by one point, so that the overall average was 2.4, rounded down to 2, rather than 2.6, rounded up to 3. The Institute argued that the UFC had acted unfairly by failing to give reasons for the panel's decision and that if no reasons were given the decision should be treated as irrational and thus unlawful. The Divisional Court (Mann LJ and Sedley J) dismissed the application, holding, inter alia, that purely academic judgments, as had been made in this case, did not fall within the class of case where the courts have regarded the nature and impact of the decision as calling for reasons as a routine aspect of procedural fairness. Despite this ruling, feedback was provided by the HEFC to departments following the 1996 RAE, but it has been criticised for being insufficiently detailed.

After nearly a decade of change, the higher education system in the United Kingdom is presently bracing itself for another tide of reform. Whether this will require further legislation remains to be seen. Following the 1988 and 1992 Acts, central government probably possesses already all the powers and mechanisms it needs to effect changes to higher education in line with its chosen policies.

Choice, Standards and Accountability through Redress: How does the Education System in England and Wales Shape Up?

In the course of reforms to the education system in England and Wales over the past two decades users of the education system have been promised improvements in the areas of choice, educational standards and accountability. Many of the most important legal developments have occurred in these areas.

Choice of school

The title of the Government's 1992 white paper was *Choice and Diversity: A new framework for schools*. The Government announced its continuing commitment to a process, which had commenced with the Education Act 1980, of enhancing parental choice. But the way in which this was to be achieved was not to be through greater guarantees that a parent who sought a place for his or her child at school X would obtain it. Rather, there would be more diversity in the schools system,⁷ so that parents could select the *type* of school which best met their child's needs and their own aspirations. If the school had sufficient places, the child would be able to attend it, provided the relevant admissions criteria were met. The Education Act 1993 imposed a duty on the Secretary of State, now laid down in s.11 of the 1996 Act, to exercise his powers over schools or further education colleges 'with a view to (among other things) improving standards, encouraging diversity and increasing opportunities for choice'.

Parents were becoming increasingly aware of the greater competition which was developing between schools and were able to compare their 'performance' as a result of the 'league tables'. Securing a school place of their choice has become more and more important to parents - a fact that is reflected in the growing number of statutory appeals by parents against refusals of choice - from 18,100 appeals in 1991 to 41,400 in 1995 (Council on Tribunals, 1991: 62 and 1996: 104).

Overall, individual choice of school will be a problem for many parents. Indeed, a recent report by the Audit Commission in England and Wales concluded that as many as one in five parents fail to secure the school of their choice for their child. It said that many parents can realistically only be certain of a place at one, local school, concluding that the introduction of a market system had actually made things worse for parents and that in the case of popular schools choice was exercised by the schools themselves, through the admissions policy, rather than by the parents (Audit Commission 1996, para.30). This problem arises primarily from the way that the legislation has been constructed in relation to schools which are over-subscribed. The Education Act 1980, s.6, gave parents a right, now contained in s.411 of the 1996 Act, to express a preference for a particular school for their child and stated that such preference should be upheld, save where specific grounds applied. The courts have confirmed that the rights conferred by s.6 operate on the basis of equality between parents living within and outside the particular LEA's area (see, in particular, the Court of Appeal's decision in *R v Greenwich London Borough Council ex parte the Governors of the John Ball Primary School* [1989] 88 LGR 589). In other words, the general rule is that a parent has an equal claim to a place at a school whether he or she lives in the particular LEA's area or not. Nevertheless, the most important ground on which preference can be denied under s.6/s.411 is that the admission of the child would 'prejudice efficient education or the efficient use of resources'.⁸ An amendment made by the Education Reform Act 1988 has ensured that no such 'prejudice' can occur unless the school has reached its defined 'admissions limit'. But if a school is oversubscribed, and the LEA or school has admitted as many children as

can be coped with without, among other things, prejudicing efficient education then it can refuse admission. Moreover, when it comes to deciding which of the competing claims for a place at the school should have priority when the initial allocations are made, the school or LEA would be entitled to apply its own admissions criteria within its admissions policy. Recent cases illustrate the problem. In the first, *R v Governors of the Bishop Challoner School ex parte Choudhury* [1992] 3 All ER 227, a girls' Roman Catholic secondary school was oversubscribed. Two girls, one a Hindu, the other a Muslim, were denied a place. The school's admission policy enabled the admissions authority - the governing body - to accord a higher priority to Roman Catholics than to others. The House of Lords held that an admissions policy of this kind could legitimately be used to determine priority in cases of over-subscription.

A common element in admissions policies is the use of catchment areas or zones. A child who lives in the catchment area for a school has a higher priority for a place there than children living outside it. In *R v Wiltshire County Council ex parte Razazan* [1997] ELR No.3, a child living in Somerset was offered a place at a school in that county by the LEA. But his parents preferred him to attend a school over the border in Wiltshire. Under Wiltshire LEA's admission policy, preference for places at the school was determined partly with reference to residence in the school's catchment area. This did not extend over the border to Somerset. Moreover, children who had a guaranteed place at another school were treated as a lower priority than others. The child lost out on both counts. The court upheld the decision and rejected a challenge based on the argument that the Wiltshire LEA's decision was inconsistent with the case law (particularly *Greenwich*, op cit) which held that children should not be discriminated against for living outside the LEA's area: here the court said that that had not been the basis for the decision.

A third case also demonstrates how place of residence can limit choice. In *R v City of Bradford MBC ex parte Sikander Ali* [1994] ELR 299 a resident of the Mannigham district of Bradford sought a place for his child at several reasonably local schools. He did not live in the catchment area of any of those schools. Indeed, Manningham was not in a catchment area at all. This was because the catchment areas were determined each year partly on the basis of the likely demand for school places but particularly in the light of traditional local school-community links. Manningham did not have such traditional links with any school. Mr Ali complained that the catchment areas were unlawful, but the court held that their rationality could not be impugned. A complaint of unlawful race discrimination, based on the argument that because a high proportion of the Mannigham residents were of Asian origin, this ethnic minority was disproportionately affected by the admissions system compared to whites, was also rejected. The court held that as non-Asians living in Mannigham were equally as affected by the policy as those of Asian origin living there, there was no racial discrimination. In another recent case, the court refused to strike down the Lancashire LEA's policy of giving priority for places at county secondary schools to non-Roman Catholics: *R v Lancashire County Council ex parte F* [1995] ELR 33. The LEA argued successfully that (i) Roman Catholic children had a guaranteed place at a Roman Catholic school; (ii) non-Roman Catholics would almost certainly be unable to secure a place at a Roman

Catholic School; (iii) if a certain number of Roman Catholics exercised the choice of sending their children to a county school they might thereby deprive some non-Roman Catholics of a school place; thus (iv) the effect of a failure to discriminate would be to put school places for non-Roman Catholics in jeopardy.

When a case goes on appeal to an education appeal committee, the committee will, when considering the ‘prejudice’ ground (above), have to operate a two-stage test to determine how many, if any, additional children who have initially been turned down should be admitted to the school and which, of a number of appeals in respect of a particular school, should succeed. The test, laid down by Forbes J in *R v South Glamorgan Education Authority ex parte Evans* (Lexis CO/197/94, 1984, 10 May, unreported) requires the appeal committee to determine first whether the admission of a child to the school would prejudice efficient education or the efficient use of resources. If the answer is negative, the child should be admitted. If the answer is in the affirmative, the committee has to go on to decide whether the reasons given by the parents, indicating the special reasons why the child should be admitted to the school, are sufficient to outweigh the prejudice. Committees have experienced some difficulty in applying the test and there have been many judicial review challenges over the past few years (see, for example, *W (A Minor) v Education Appeal Committee of Lancashire County Council* [1994] ELR 530; *R v Appeal Committee of Brighouse School ex parte G* [1997] ELR 39; and *R v Essex County Council ex parte Jacobs* [1997] ELR 190; *R v Education Appeal Committee of Leicestershire County Council ex parte Tarmohamed* [1997] ELR 48). The fact that multiple appeals may all be heard before a decision is taken in any individual case (*Croydon London Borough Council v Commissioner for Local Administration* [1989] 1 All ER 1033) inevitably creates the impression of a conveyor-belt system of justice on some occasions. The increasing number of appeals over the past few years has exacerbated the problem.

The overall position vis a vis individual choice of school is that the law offers few guarantees - unless one selects an unpopular school for one’s child! In the case of the most popular schools the traditional barriers remain, such as geographical location, religion, and in some cases selection by ability. In respect of the first of these factors, there has been increasing evidence of parents giving a relative’s address close to the school when applying for a place or even renting a flat in the catchment area (but not necessarily living there) for a few months at the time when applications are made and decided upon. This illustrates how choice and social equality have become inconsistent concepts in this context (see Glatter *et al.* (eds) 1997).

The new Labour Government is committed to the notion of choice in education, but rather than seeking to strengthen individual rights will aim to consolidate the admissions system. Allocation of school places has been beset with problems in some parts of the country as a result of LEAs and grant-maintained schools, which operate separate admissions systems, not co-ordinating their arrangements in the way that the 1992 white paper had envisaged.

Standards of educational provision

In its 1991 *Citizen's Charter* the Conservative Government argued that, in relation to public services, 'choice, wherever possible between competing providers, is the best spur to improvement' (H.M Government, 1991: 4). Yet at the same time it was acknowledged that greater regulation of the schools system by subjecting schools to regular inspection (a new system was introduced under the Education (Schools) Act, 1992: below) and making public the results of pupils was an effective way of pressurising schools to improve their performance.

The school inspection system which was introduced under the 1992 Act is headed by a Chief Inspector, whose functions include advising the Government and monitoring and reporting on the standards achieved within schools. The Chief Inspector's teams of Her Majesty's Inspectors (HMIs) and his and their administrative arm comprises the Office for Standards in Education (Ofsted). A key element is the regular inspection of schools, with reports of school inspections and the action plans drawn up by schools in response to be published and distributed to parents. Most inspections are carried out by registered inspectors under the School Inspections Act 1996, which has consolidated the previous statutes. Registered inspectors are hired on a contract basis to carry out inspections. There is a power, generally only used where schools are in difficulty, for HMIs to carry out an inspection of a school instead. Ofsted issues regular reports on standards in schools and other matters such as discipline and exclusions.

Any school which under-performs may be classed by Ofsted as 'failing or likely to fail to give its pupils an acceptable standard of education' (s.13(9)). The Conservative Government was determined to make an example of some of these schools, not least because being seen to be tough on school standards in this way generally ensures maximum political capital at minimum economic cost. It enables someone else - the school, its teachers or the LEA - to be blamed for a school's underperformance, rather than central government's education policy or its under-funding of education. Powers were introduced under the Education Act 1993 (see now Part II of the School Inspections Act, 1996) to deal with 'failing' LEA schools. These include the appointment of additional governors to help to run the school or suspension of the school's entitlement to manage its own budget. But the most drastic measure is the replacement of the entire governing body with a specially-appointed 'education association', comprising experienced educationalists and representatives of industry. The association is to have stewardship of the school for a limited period, after which the school will continue, but only as a GM school, or be closed altogether. The latter was the fate of the Hackney Downs School in London (whose past pupils included the playwright Harold Pinter). But the haste with which the closure of the school proceeded once the education association had been appointed led to allegations that the association had been brought in with the specific remit of closing the school rather than, as the law seemed to demand, weighing up all the factors carefully before providing objective advice to the minister. A legal challenge was brought following the minister's decision to close the school: *R v Secretary of State for Education and Employment and the North East London Education Association ex parte M and others* [1996] ELR 162. In addition to the assertion that the education association had not acted fairly, it was claimed that closing the school in mid-year would be damaging to some pupils' prospects. Of

particular concern were the pupils taking public examinations at the end of the academic year. The legality of the short period for consultation (barely three months) was also questioned. The court did not find any unfairness, on the facts, and said that because the possibility of closure had been known for some months, a long period of consultation had been unnecessary.

The push for better standards has continued with the Education Act 1997. If the relevant provisions are brought into force, they will enable primary schools to be required to carry out baseline assessments of pupils (facilitating the monitoring of pupils' progress by external agencies, such as Ofsted) and will empower the Secretary of State to make regulations requiring governing bodies of public sector schools to secure that annual targets are set in respect of pupils' performance in public examinations or National Curriculum assessments. These are far reaching powers and represent further central control and direction of the education system.

The Labour Party's recent white paper (Secretary of State for Education, 1997; Secretary of State for Wales, 1997) makes it clear that a drive for higher standards will feature large in its forthcoming education reforms. The new government has already established a standards and effectiveness unit. The white paper contemplates implementation of the above provisions of the 1997 Act, with LEAs being given a central role in helping schools to achieve their targets. It also proposes additional new powers to deal with under-performing schools, one of which would involve such a school being taken over by a successful local school and re-opened under new management and with a new name. It reiterates the Government's expressed intention to expedite the dismissal of incompetent teachers. Overall, implementation of the white paper's proposals will mean even greater central regulation of and control over schools. Even though LEAs will have elements of their traditional role restored, they will be made more accountable to central government for school standards. Indeed, there will be a new power for badly-performing LEAs to be replaced, temporarily at least, by a centrally-appointed 'hit squad' - the equivalent of an education association which can take over the overall management of a school.

Consumers of education have become increasingly intolerant of poor educational standards in England and Wales, largely as a result of raised expectations caused by government's emphasis on tightening up on standards but also because of the legal profession's growing interest in education litigation. Increasingly over the past few years civil, private law claims have been launched in respect of defective education, or rather its consequences for particular individuals. For example, damage to career prospects in social work as a result of inadequate teaching and provision form the basis of a suit brought by three former students of the North London University (Hamilton, 1997). This case, as yet unresolved, has sounded alarm bells for universities. An action has also been brought by two former school pupils who failed their public examinations at aged 16; they seek lost earnings and the cost of re-taking their courses at college (ibid). Ofsted reports had found the schools to be failing to provide an acceptable standard of education. Over 200 schools have failed inspections since 1993; and according to the latest Ofsted annual report, some 15% of primary schools and 10% of secondary schools have been found to have 'serious weaknesses'. Thus there could be a flood of further litigation if these cases succeed.

One of the most acute areas is redress for victims of bullying and indiscipline. In 1996 a claim brought by a former pupil in south London for damages resulting from a school's failure to prevent him from being bullied was settled out of court at the instigation of the insurers (O'Leary, 1996). It was also reported that a couple were to sue over the disruption to their child's education caused by the breakdown of order at a school in West Yorkshire. Measures taken under the Education Act 1997 (requiring commencement orders to bring them into force) - including greater dissemination of disciplinary rules and policy, home-school partnership documents, and new statutory powers of detention and physical restraint of pupils - aim to promote better discipline in schools and will make a failure to maintain good discipline all the more culpable.

The only way, realistically, that cases like those discussed above can succeed is if negligence can be proved. These are not like the more traditional forms of legal challenge in respect of schooling, based on judicial review, where decisions such as those involving the exclusion of a pupil from school continue to be challenged on a regular basis (indeed such cases are also increasing) but where the merits of individual actions will not be questioned by the court. In general, educative duties under statute do not give rise to rights in private law (see *R v Inner London Education Authority ex parte Ali* (1990) 2 ALR 822). Now, however, the door has been opened to common law negligence claims in respect of defective education practice and provision as a result of the House of Lords' decision in a group of cases, particularly three concerned with education: *X v Bedfordshire County Council* [1995] ELR 404 HL. In essence the court accepted here that a common law duty of care may arise in certain situations where a professional performs his or her role in connection with a statutory service, as in the headteacher's alleged failure, in one of the cases, to refer the child, who had special educational needs, for formal assessment by the authority. It is alleged that this failure meant that the child's behavioural problems were not ameliorated, to the detriment of his educational development and general prospects. In a crucially important passage, Lord Browne Wilkinson said: 'If it comes to the attention of the headmaster that a pupil is under-performing, he does owe a duty of care to take such steps as a reasonable teacher would consider appropriate to deal with such under-performance' (at 451A-D). This duty was also owed in respect of advice given by the head teacher or an advisory teacher.

The growing threat of litigation is causing considerable anxiety within education authorities and schools around the country. It seems likely that, over the coming years, tort litigation will become as established a redress mechanism as judicial review, the statutory rights of appeal (over special needs, permanent exclusion and school admissions: above) and complaint (to the Secretary of State, LEA/school, and Local Commission for Administration (the local 'ombudsman')). Another growth area of litigation concerns contract actions brought by university students in respect of a university's failure to deliver promised provision in full, the principle having been established (but not yet universally accepted) that students may stand in a contractual relationship to a university. The legal issues surrounding such an argument are complex and are explored in detail elsewhere, together with discussion of the role of judicial review to challenge university decisions (see Farrington, 1996 and Harris, 1997a (forthcoming)).

Conclusion

Education law has grown considerably in volume and importance in England and Wales over the past decade. Radical and far-reaching legislative reforms affecting almost all areas of education provision and management, and a huge growth in education litigation - particularly in areas affecting individual rights, such as special education, school exclusion, school admissions and access to discretionary grants or free school transport - have brought education law to considerable prominence. A recent Administrative Law Bar Association seminar in London, to discuss judicial review and education, was packed full of eminent lawyers. Over the past 8 years two new education law journals have been published here and, in 1994, the *Education Law Reports* (ELR) series was launched, a quarterly volume of judicially-approved reports of the key education cases.⁹

As the focus of policy continues to shift from questions of choice to issues of quality and standards of provision, new areas of dispute and legal concern will develop. Already, civil litigation concerning inadequacy of provision and management, and its consequences, is opening up new possibilities of redress in this field. It will contribute to the increasing accountability of education providers being fostered by new Labour's regulatory mechanisms for raising educational standards, announced in the recent white paper and expected to be passed into law some time in 1998. At the same time, there are encouraging signs of re-emergence of the notion of 'partnership' as a key to improvement in standards. The chief difference from 1944 is that considerable central control via complex legislation is necessary to maintain an institutional framework in which it needs to operate. The effect is, in some ways, to undermine the very notion of partnership which is (within controlled limits) being encouraged.

Keywords

Education; Reform; Law; England; Wales

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Endnotes

- ¹ Section 13, amending the Education Act 1996. The document sets out details of the school's ethos and values together with a statement of the school's commitments regarding educational provision and the obligations of the parent regarding the child's education at school.
- ² *The Guardian*, 14 May 1996 and *The Times Educational Supplement*, 8 November 1996.
- ³ Since the Education Act 1993, it has also been possible for new schools to be established as GM schools.
- ⁴ The ten foundation subjects (or 11 in Wales) comprise English, mathematics and science (and Welsh in Welsh language schools in Wales) (the core subjects) plus history, geography, technology, music, art, physical education, a prescribed modern language (approved languages are prescribed by order) (plus Welsh in non-Welsh language schools in Wales): Education Act 1996, s.354(1) and (2). Exception from the National Curriculum is permissible in very limited circumstances: *ibid.*, ss363-367.
- ⁵ The new Labour Government has asked the School Curriculum and Assessment Authority to press ahead with work on how best to show the 'value added' factor in school performance tables from 1998 onwards: Department for Education and Employment, Press Release 156/97, 25 June 1997.
- ⁶ In *Rixon Sedley J* described the notion of a 'target' duty as a 'metaphor [which] recognises that the statute requires the relevant public authority to aim to make the prescribed provision but does not regard failure to achieve it without more as a breach' (at 69D).
- ⁷ The Government pointed to the development of grant-maintained schools and city technology colleges from the late 1980s and encouraged the development of specialisation among schools in fields such as music, technology (there was already a technology schools initiative) and sport.
- ⁸ 1996 Act, s.411(3)(a). The other grounds apply only in specific circumstances: *ibid.* subs. (3)(b) and (c). First, if the governors of a voluntary aided school (a type of denominational school - mostly Roman Catholic or Jewish schools) have made admission arrangements with the LEA to select pupils on the basis of their religion, then they may refuse to adhere to parental preference if the child is not of the stated religion. Secondly, if the approved admissions arrangements enable selection to be made on the basis of academic ability, a child

could be rejected because he or she has not reached the required academic standard.

- ⁹ The author is Senior Editor of ELR. The two law journals are *Education and the Law* and *Education, Public Law and the Individual*. Other, well established journals, such as *Public Law*, *Child and Family Law Quarterly* and *Journal of Social Welfare and Family Law*, also carry articles on education law.