**Briefing on the VAT judicial review claim ahead of 1 – 3 April hearing**

The legal challenge against the government’s VAT policy will be heard by the High Court from 1-3 April 2025.

The claim is being brought by seven families and is supported by the Independent Schools Council. The claimants are represented by the law firm Kingsley Napley with a legal team led by Sophie Kemp (partner and head of Public Law) and Sahil Kher (Senior Associate), and a team of barristers from Blackstone Chambers: Lord Pannick KC, Paul Luckhurst and Grant Kynaston.

The claim was filed just before Christmas last year. In the weeks after the claim was filed, separate claims were filed on behalf of a) claimants supported by a parent-led group called Education Not Discrimination; and b) claimants attending various Christian faith schools, as well as the schools themselves. These cases (referred to as “Claim 2” and “Claim 3” respectively) will be heard alongside the claim supported by the ISC (referred to as “Claim 1”).

This update deals with some of the common questions about the legal challenge.

**What is the legal case?**

The case is a judicial review claim challenging the government’s decision to impose VAT on the provision of education by independent schools. This policy marks the UK out as an outlier among the 46 Council of Europe States.

The claimants supported by the ISC are arguing first and foremost that taxing the provision of education is in and of itself in breach of the right to education guaranteed by the European Convention on Human Rights (ECHR), and that the way the government has implemented the policy is disproportionate. Furthermore, the claimants argue that the policy specifically threatens access to the education that their children need and that the state cannot provide – because they have complex SEND, want to access education in line with philosophical/religious convictions, have chosen single-sex education for any particular reason, or need access to a specific curriculum to ensure continuity of education as foreign nationals.

The formal defendant in the claim is the Chancellor of the Exchequer, and HMRC is also involved in the case as an interested party. The Department for Education is listed as an intervener. In practice, all three government departments and ministers are being represented by a single legal team and will be advancing a common case. The Speaker of the House of Commons is formally a party to the proceedings, but the points initially raised by his legal team are now academic.

**Who will hear the claim?**

The claim is proceeding in the Administrative Court, a specialist division of the High Court which deals with judicial review claims.

While unconfirmed, we understand that three judges may be on the bench to hear this case (likely including a senior judge from the Court of Appeal). It is relatively rare to have three judges for a High Court hearing, which serves to highlight the huge public importance of the case and the complexity of the legal issues.

**What is the remedy being sought from the Court?**

The claimants are seeking from the Court a declaration of incompatibility – essentially, a finding that the legislation is incompatible with human rights law. This is on the basis that the policy is incompatible with Article 2 of the First Protocol (right to education) of the ECHR read on its own, and when read with Article 14 (protection from discrimination).

If the case is successful and such a declaration is granted, the legal effect would be to put the ball back in the government’s court to decide whether to change the law – either by amending parts of it or withdrawing the policy completely. The government may also choose to appeal the decision.

In theory, the government may choose to do nothing. However, given the government’s stated commitment to the rule of law, we expect that the Chancellor will take any declaration of incompatibility very seriously.

If the case is unsuccessful, the claimants’ respective legal teams will have to consider the Court’s reasons and assess whether there is scope for an appeal.

**Why is the government spending so much money defending the claim?**

We have seen reports touching on the likely legal fees being incurred by the government.

The ISC’s view is that it was entirely to be expected that the government would defend the judicial review robustly, and they will have taken their own legal advice when designing the policy and before defending it in Court. They are entitled to do so. The government’s team consists of experienced barristers, likely acting on a ‘panel rate’, which is a government-agreed rate well below their ordinary commercial rates. Their solicitors are in-house solicitors at HMRC.

The ISC’s concern is not about the government’s decision to defend this judicial review, but about the lack of detailed engagement with the independent sector when designing the policy, the rushed timeline and the catastrophic impact it has had (and will continue to have) on school children up and down the country. More fundamentally, the ISC’s view remains that the decision to tax the provision of education fundamentally impairs the very essence of the right to education.

**What happens at the hearing?**

It is expected that Lord Pannick will lead the case from the claimants’ side on Day 1. He will set out the broad legal framework and why the imposition of VAT on the provision of education effectively breaches the human rights guaranteed by the ECHR. Paul Luckhurst will deal with the discriminatory impact of the policy on pupils with SEND, those with specific religious needs that simply cannot be catered for in the state system, those with foreign nationality who need access to a particular curriculum to guarantee continuity of education, and those who attend single-sex schools.

Jeremy Hyam KC and Tom Cross KC will lead the case in Claim 2. Bruno Quintavalle will lead the arguments in Claim 3.

The government will then respond to all the claims. They are represented by a team of barristers led by Sir James Eadie KC, Eleni Mitrophanous KC, Sarah Hannett KC, and Jason Pobjoy KC.

Lord Pannick and others will have the opportunity to make reply submissions on Day 3.

**Can members of the public attend the hearing?**

There is likely to be extremely limited space in the courtroom for those wishing to attend in person, and preference will be given to the legal teams, the claimant families, and other key parties involved in the claim.

An application has been made for a hybrid hearing, ie, for the case to proceed in person in a courtroom in the Royal Courts of Justice, but with a video link for others to follow proceedings. It is unclear whether this application will be granted by the Court, and if it is, it may be that the Court restricts the number of people who can attend over video (eg, only the claimant families and legal teams who are unable to attend in person).

**Press and legal queries**

For any press queries in relation to this case, please contact Sarah Cunnane at the ISC (Sarah.Cunnane@isc.co.uk)

For any legal queries in relation to this case, please contact Louise Beeson at Bell Yard (louise@bell-yard.com) who can refer it to a member of the legal team as appropriate.

**Note**: The case is the subject of [an anonymity order](https://www.judiciary.uk/judgments/alr-and-others-v-chancellor-of-the-exchequer-anonymity-order/). Pursuant to s. 11 of the Contempt of Court Act 1981, there must be no publication of the identity of any of the claimants or their litigation friends, or of any matter likely to lead to their identification, in any report of, or otherwise in connection with, these proceedings.