

Presented by

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ISFL ONLINE WORLD CONFERENCE  
“FAMILY LAW AND CRISIS – GOING THROUGH PANDEMICS”  
BUENOS AIRES, ARGENTINA

Human rights and pandemics

Conference subject 5(e): The right to education and family life

‘Covid-19: “Honey, we forgot the kids”;  
Why many children in England have lost out in the current crisis  
and how educational provision needs to change.’

# Content of presentation

- Context
  - The importance of education law
  - Legal and administrative framework in England
  - Lockdown timeline
- Impact of lack of formal oversight
  - Schools
  - Parents
  - Children
- Recommendations
- Conclusions

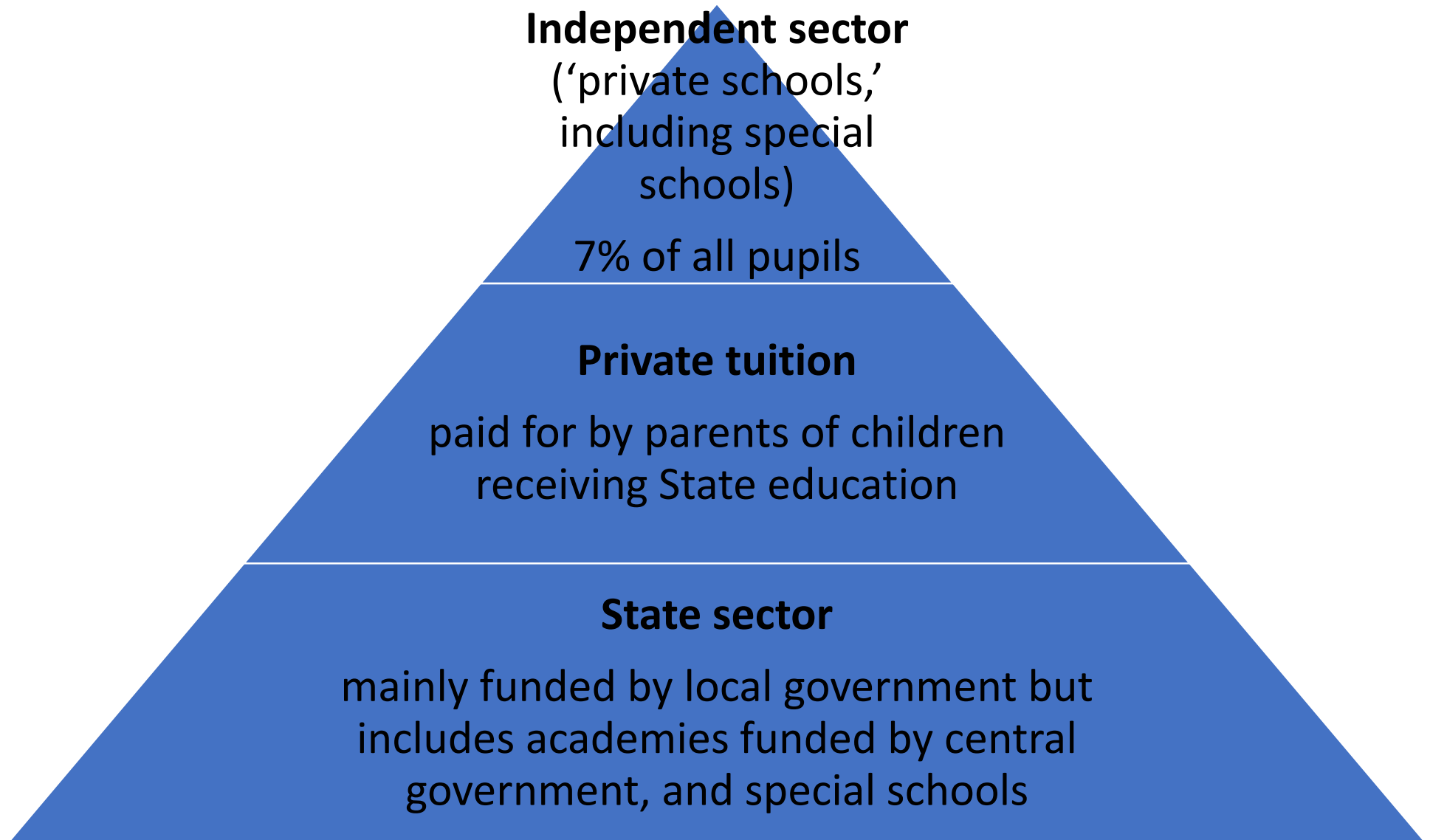
# Introduction

- Prior to the outbreak of Covid-19, historians and public health specialists alike warned of our vulnerability to a new and devastating virus
- The political response in England has been woeful
- We will consider:
  - the role that schools play in our society and the quality of State and independent education in England before and during the pandemic
  - the impact of these issues on the hundreds of thousands of children
  - how parents have been affected
- In order to do so, we will first need to examine the legislation governing school standards and regulation and the role of Ofsted
- The current attainment gap cannot be permitted to widen further

# Key issues: education system chaos; individual catastrophe

- Where was the oversight by the UK Government and agencies at such a critical time?
- Will the pandemic provide the impetus for change in educational provision in England, not least in terms of school standards, regulation and enforcement, in order to achieve better outcomes for every pupil's wellbeing and life chances and to ensure a fairer and better system of education for all?
- Do pupils and students have any recourse to redress or is the damage to their young lives irreversible?

# Education in England



## **Independent sector**

(‘private schools,’  
including special  
schools)

7% of all pupils

## **Private tuition**

paid for by parents of children  
receiving State education

## **State sector**

mainly funded by local government but  
includes academies funded by central  
government, and special schools

# Private education leads to a lifetime of privilege and influence

- Attending an independent school in England is associated with the equivalent of two additional years of schooling by the age of 16
  - Durham University 'Academic Value Added' Research, 2016

# Education legal and administrative framework in England

- European Convention on Human Rights 1950
- Education Act 1996 (as amended by the Education and Inspections Act 2006)
- Education Act 2005
- Equality Act 2010
- Children and Families Act 2014

# Oversight of educational provision

- Gavin Williamson, CBE and MP, Secretary of State for Education since April 2019
- The Department for Education ('DfE')
- The DfE works with 18 agencies and public bodies including:
  - Ofqual (the 'Office of Qualifications and Examinations Regulation')
  - Ofsted (the 'Office for Standards in Education, Children's Services and Skills')
  - Office of the Children's Commissioner
  - Office for Students
  - Social Mobility Commission



# Ofsted's school inspections role

- Education Act 2005, section 5
  - Schools must be inspected at prescribed intervals and inspectors must report on:
    - The quality of education provided by the school
    - How far the education meets the needs of the school's pupils
    - The educational standards achieved
    - The leadership and management of the school
- Education and Inspections Act 2006, section 112
  - Ofsted must carry out its inspections in a way that encourages the services it inspects to improve their efficiency and effectiveness

Tuesday 17<sup>th</sup> March 2020

Ofsted suspends all  
routine inspections

Friday 20<sup>th</sup> March 2020

All UK schools in England  
close 'until further  
notice'

Lockdown

Monday 23<sup>rd</sup> March 2020

Prime Minister Boris  
Johnson tells everyone  
to 'stay at home'

Summer 2020

Confusion and chaos  
ensues

# Impact on schools

- Independent sector
  - The independent sector has had the resources to switch to online provision fairly seamlessly as have parents and children.
- State/ maintained sector
  - The State/ maintained sector has tried to switch to online provision whilst also continuing to teach especially vulnerable children and the children of key workers.
  - Pupils and parents have not always been equipped for online provision
  - In the space of 48 hours, headteachers went from running an ordinary school to organising a virtual school, a childcare centre and a food delivery service.
  - How can State/ maintained schools compete with the independent sector?
  - How will State/ maintained schools current maintain standards if parents opt for the independent sector?

# Impact on parents

- Schools closed several days before the official lockdown creating havoc for working parents
- Contradictory messages from the Government about:
  - Social distancing
  - Transmission of Covid-19
  - Staying at home
  - Re-opening of schools
- Worried about the safety of their children and families
- Many contemplating sending their children to an independent school

# Impact on children

- Many children:
  - Have not have access to a pc/ broadband and have received minimal tuition since the lockdown
  - Have gone hungry this summer
  - Have witnessed increased levels of domestic abuse in the home
  - Will suffer short, medium and long-term impact on health and well-being, education, qualifications, life chances and social mobility
  - Will suffer further educational set-backs if more pupils are shifted from the State sector to the independent sector

# Recommendations

- An enquiry is needed to understand how critical decisions were reached in the spring/ summer of 2020 regarding the provision of education in England
- Consideration should be given to:
  - A complaint against Ofsted to the Independent Complaints Adjudication Service (ICASO)
  - A complaint to the Parliamentary and Health Service Ombudsman
  - Whether either step would be productive
    - *See R (Durand Academy Trust) v the Office for Standards In Education, Children's Services and Skills and the Secretary of State for Education [2017] EWHC 2097 (Admin) and In Practice: Legal Update: Education: Ofsted marked its own homework (2017) LS Gaz, 9 Oct, 20*
      - Fairness is key

# Conclusions

- It is easy to be wise after the event but we are looking at a cohort of nearly 10 million pupils in England in the context of a pandemic that was predicted
- What lessons can be learned in the event of another lockdown?
- There are signs of more joined-up, child-focused, disability aware thinking and actions needed but the crisis has underlined existing differences and disadvantages for State educated pupils
- Arguably:
  - More could have been done by the DfE, the Education Secretary and others to ensure that pupils at maintained schools, in particular, were educated and were educated well and consistently
  - There could have been greater oversight of the provision of online tuition
  - Perhaps, Ofsted could have found a way to monitor the provision of education during the spring/ summer of 2020
  - An entire generation of young people will be blighted by the decisions that were/ were not made in England in the early stages of this pandemic

# ‘The nation’s most valuable asset’

- ‘Education law is perhaps the most important cornerstone of our society. It deals with the most valuable national asset – our children and our future. Following the Education Act of 1944, aspirations were high. A depressing and deplorable lack of foresight, energy, resources and interest has meant that we have done less than justice to the young. We are now reaping the whirlwind.’
  - Taken from the Foreword by Lord Justice Otton to the first edition of Education, Law and Practice by Ford J., Hughes, M., and Ruebain D. (1999)(Legal Action Group)