

COURT OF APPEAL HEARS CASE AGAINST VAT ON SCHOOL FEES

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Independent schools have weathered many challenges in the past, from the 2008-09 Global Financial Crisis and demographic changes to a long-standing threat to charitable status. The latter resulted in independent schools working closer with state schools and broadening access to bursaries. None of these threats, however, matched the burden placed on the sector when, from 1 January 2025, the government – ideologically and to generate revenue from taxes – inflicted two body blows on independent education: through charging 20% VAT on school fees and removing an 80% concession on business rates. These targeted measures were followed by a third blow – an increase in the cost of employers' National Insurance that affected all businesses – meaning that in 2025 independent education was subject to a 'triple whammy'. Parents and schools found themselves boxed into a financial corner through sudden and substantial fee increases and the prospect of continuity in and the quality of education being torn apart by cost-savings and school closures.

Before looking at just how momentous the past year has been, two important milestones in the form of legal challenges emerged to counter the imposition of VAT on school fees. The first attempt failed and the second is on-going. In June 2025 the High Court dismissed all claims, ruling that the government had a "*broad margin of discretion in deciding how to balance the interests of those adversely affected by the policy*" and that the European Court of Human Rights (ECHR) did not protect a "*right to pay school fees at a particular level*". The High Court did, however, grant permission to appeal, and a fresh hearing is currently taking place, with arguments focusing more narrowly on how VAT on school fees disproportionately impacts low-cost Christian schools and interferes with a right to education that accords with parents' religious convictions. This appeal is being considered by the High Court on 20-21 January 2026 and the outcome is awaited.

Whilst raw data exists about school closures and pupils moving from the independent to the state sector, underlying assumptions are harder to pin down. It is surprising, in a sector dedicated to education, that statistics do not paint a full and accurate picture of the effect of VAT being charged on school fees. They certainly do not reveal the stories of individual families and children who have been affected adversely by government legislation. As a result, it is all too easy for myths and misinformation to persist. On the one hand, those who support taxing private education applaud the government's assault on what is perceived as wealthy families able to buy privilege; and on the other hand, families who scrimp and save to send their children to independent schools – which applies to many if not all fee payers – see their right to choose between schools being blocked through financial measures driven by ideology and envy, not sound planning. The truth, as is so often the case in terms of cause and effect, lies somewhere between these two extremes.

The Independent Schools Council (ISC) - a non-profit lobby group that represents over 1,400 independent schools in the UK – understandably paints a gloomy picture. On 6 October 2025 the ISC announced that the government's VAT on fees policy was having a significant impact on independent schools and their communities more widely; and that ISC member schools have seen a 25,000 decrease in the number of pupils since Labour vowed to raise fees. "*We've seen around just over 80 schools close in the past academic year. It's proving existential for some schools. In many areas, independent schools will be the biggest local employer.*" Speaking the following day to The Telegraph newspaper, ISC CEO Julie Robinson, stated "*The decline in pupil numbers since the general election is now at least 25,000 – over eight times the fall the government predicted by this point. It is clear their sums do not add up on this policy, particularly when you take into account that this poll represents only open schools and so will not reflect the pupils displaced from over 80 mainstream independent schools that have closed in the past academic year.*"

To try and get a more objective handle on what is happening within the independent school sector, earlier this month AFIS contacted BBC Radio 4's *More or Less* team, led by Tim Hartford. This resulted a few days later in the following conclusions in relation to independent schools in England and Wales, broadcast on 14 January 2026:

- During 18 months since the Labour government was elected in July 2024, with its manifesto pledge to impose VAT on school fees, 105 schools have closed. This contrasts with 108 independent schools that closed during the last 18 months of the preceding Conservative government.
- During the first 18 months of the present Labour government, 165 new independent schools opened: a net increase of 60 schools.
- 18 of the schools that closed were schools catering for children with special needs, with more than 90% of fee income unaffected by VAT, from which local authority funding is exempt. During this same period 146 special schools opened.
- Of the mainstream schools that closed, 12 were also specialist schools where VAT is not as significant and some were very small, with five having five or fewer pupils and three had only one pupil each, who were moved to other schools.
- Of the mainstream schools that closed, 12 had a capacity of more than 500 students, eight were selective, and about half had a capacity of 150 or fewer pupils, with the majority being primary or preparatory schools in which numbers are challenged by falling birth rates.
- One of the mainstream schools that closed, an all-girls' school in Croydon, had announced its closure in September 2023, well before Labour's election victory.
- Many of the schools that closed cited the imposition of fees on VAT as a contributing factor, along with wage increases, the loss of the exemption on business rates, inflation, demography, and the fallout from Covid. The inference being that many of these schools were already in a precarious situation before VAT was imposed on fees.
- Taken as a whole, the independent school sector is faring worse since Labour took office, with an overall loss of student capacity through a fall in student numbers.

This brief insight, provided by *More or Less*, underlines the reality that the situation is far more complex than many might wish to admit and that without unambiguous statistics it is difficult to disentangle myth and reality. One of AFIS's key goals, through commissioning independent university-level research, is to generate an objective understanding of what is driving school and student numbers in the independent sector and through this research to contribute to a more balanced national debate about independent education.

Against this statistically confusing backdrop, this summary returns to the present hearing at the Court of Appeal in London. Had the High Court challenge in June 2025 been successful, whilst this would not have overturned VAT on school fees it could have forced ministers to reconsider the policy or to issue exemptions.

Arguments put forward in the appeal are complex. They are predicated on the imposition of VAT on independent Christian education being contrary to the European Convention on Human Rights, with the increase in school fees affecting parents' ability to secure the only form of schooling that aligns with their religious convictions. For many families, Christian education is not merely preferable, it is essential and cannot be provided in the state sector. The appeal also contends that the VAT policy undermines the peaceful enjoyment of possessions, and evidence placed before the Court is intended to demonstrate that for many low fee Christian schools the addition of VAT risks making their continued operation unviable.

It is uncertain at the moment which way the appeal will go and, if successful, how this might impact more broadly across independent schools.

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