

### In this issue:

1. Applying Good Governance
2. Payrolling Benefits (call to action!)
3. Salary Sacrifice
4. Apprenticeship Levy - New rules from April 2017
5. A Score Draw on VAT (for HMRC and the Education Sector)
6. Changes to Fundraising Regulations
7. Gender Pay Gap Reporting
8. Off-Payroll Workers and the use of intermediaries



# Education Matters

## Editorial

The year has started off very well for us at Kingston Smith; in particular, I am proud to tell you that we have been ranked top for Overall Service and Charity Expertise in the Charity Finance Audit Survey. This is the result of hard work from a great team and is a work ethic applied across our whole organisation including our education department. We are very proud of the positive feedback from our clients who recognise the support and value we add through our expertise.

There is no doubt that the events of 2016 will live long in the memory of the sector and are sure to shape its short-term future. Looking ahead, what financial challenges can we expect to come over the hill in 2017 and beyond?

Continued discussions on the affordability of fees for independent schools, ongoing funding changes in the state sector, cost pressures across the board and increased regulation will all continue to play a large part in the 2017 life cycle of schools, colleges and universities.

The Government consultation on 'schools that work for everyone' closed in December 2016, and we now wait expectantly for the Government's response and any impact, financial or otherwise, on the sector.

In addition, grammar schools seem to have fallen back in favour with the current Government, potentially increasing competition in the sector, this will also result in funds being diverted from academies, which are already under pressure.

A significant number of changes will arrive early, each with their own potential cost implication. The Apprenticeship Levy, which comes into effect from April 2017, has continued to cause some head scratching around the finer points of how it will operate in the sector, and whether there are further concessions to be had which are yet to be concluded.

No sooner did the sector implement the new FRS 102 SORP, than we began to discuss the shape of the next iteration. Following a consultation that closed in December 2016, the results of the exercise published this year. Although this will not change financial statements reported in 2017, it could provide an insight into the direction of travel for the next SORP, and whether further time and costs will need to be spent in complying.

As the sector continues to rely on fundraising to finance new projects, we need to be mindful that fundraising and data protection guidance has changed beyond recognition.

Whether it is the voluntary levy paid, the Fundraising Regulator, the additional costs of CC20, "Charity fundraising – a guide to trustee duties", or the time spent consulting with your fundraising partners to update contract terms and conditions, these will all represent financial challenges.

The sector also expects a consultation from the Charity Commission on the proposed mechanism to charge the sector for its regulation. Again, not a 2017 cost, but one situation that will need to be monitored closely for its future budget or five-year plan implications.

The financial pressures, coupled with ongoing Brexit discussions, a continued public and Government focus on the sector and an ever-changing political world stage, indicate that 2017 could be another rollercoaster year.

**Anjali Kothari**  
Partner, Education



# Applying Good Governance

## Applying Good Governance

**Luke Holt, Partner, Not-for-Profit**

A number of high-profile governance failures during 2016 have brought the issue into sharp focus in the Charity and Education sector. Good governance can aid the effectiveness of a school, ensure actions are taken in its best interests and, ultimately, deliver its public benefit.

The consultation for the draft new Charity Governance Code closed in February and there has been a major overhaul in comparison to its previous second edition (published 2010). Key areas of update include an increased emphasis on the role of the Chair, best practice recommendations on Board size and diversity, and an overarching presumption that charities and schools should be open in their work.

There are particular areas within schools where the governance may not be as robust as the school believes. The most common include:

### Board induction and training

- Ensuring that any new governors are eligible to act, particularly in light of the new automatic qualification powers to be brought in by the Charities (Protection and Social Investments) Act 2016. Many schools do not have the evidence to support that the appropriate checks have been undertaken
- Ensuring that training needs (and understanding where knowledge gaps exist) are actively reviewed on a timely basis. A number of governors do not attend/and or keep a record of any training courses attended during their tenure.

### Board size, skills mix and diversity

- Undertaking an annual skills audit of the governors can also aid efficiency by highlighting the experience of the current Board and where further experience may be required. This is particularly important with the recent changes to accounting requirements and review of fundraising practices
- Ensuring that Board performance is reviewed annually, at least. Many Boards do not undertake a performance review, nor do they act when a governor is persistently absent from meetings.

### Conflict of interest and related parties

- Ensuring that any conflicts of interest are fully understood and are declared, documented and reviewed at least annually
- Does your charity now record “declaration of interests” from all key management personnel, alongside the Trustees? The new FRS 102 SORP requires declarations from both the Trustees and key management personnel
- Is there a recognised process for dealing with potential or actual conflicts of interest if they are identified?

### Policies, procedures and management information

- Are there formal written policies for each of the school’s key operations, including any new operations or changes in legislation or best practice in the sector? One of the most common issues is an out-of-date financial handbook, including the omission of new sources of income
- Is the information that is received by the governors and each of the committees relevant, timely and not too onerous? Many non financial governors struggle to understand the financial information including the annual statutory accounts.

If a governance review at your school is long overdue, or you are concerned that there have been significant changes since the last review, then a full governance review should be undertaken.

## Payrolling Benefits (call to action!)

**Andrew Learmond, Employment Tax Assistant Manager**

Employers intending to payroll any benefits must register them with HMRC using the payrolling employee’s taxable benefits and expenses service <https://www.gov.uk/guidance/paying-your-employees-expenses-and-benefits-through-your-payroll>. This must be done before the start of the tax year i.e. before 6 April 2017. Employers must be registered with HMRC’s PAYE online service before they can enrol.

Since 6 April 2016, employers have had the option to process benefits in kind through the payroll. So long as the relevant tax is collected through the payroll, there will be no need to complete P11Ds for these benefits, although a P11D(b) will still be required to account for the Class 1A National Insurance contributions.

Most taxable benefits can be payrolled, for example, medical benefit, school fees and other costs associated with living accommodation (gas, lighting, Council Tax etc.) and company cars. Loans in excess of £10,000 and employer provided living accommodation remain the benefits that cannot be payrolled.



# Salary Sacrifice

Registration is continuous, so if organisations have registered for 2016/17, this will continue into 2017/18 unless they deregister. Therefore, this facility can significantly reduce administration of the P11D process.

The tax codes for all employees receiving payroll benefits will be amended by HMRC so that they are not taxed twice on the same benefit.

Once an employer has registered to payroll benefits, they must provide their employees with a letter explaining the position and what it means for them. Template letters are available on HMRC PAYE online once the employer has registered for payroll benefits.

Employers must also provide employees with the following information by 1 June following the end of the tax year:

- Details of the benefits that have been payrolled
- The cash equivalent of each benefit that has been payrolled
- Separate details of any benefits that haven't been payrolled.

The information can be provided on employees' payslips or a separate note or statement. HMRC have also relaunched their employment status tool which businesses should be using if they are using self-employed workers to determine whether they should be putting them on the payroll or not <https://www.gov.uk/guidance/check-employment-status-for-tax>.

# Salary Sacrifice

**Andrew Learmond, Employment Tax Assistant Manager**

The Government is concerned that the use of salary sacrifice schemes disadvantages some employees and results in an increasing loss to the Exchequer.

The Autumn Statement, published on 23 November 2016, has confirmed that salary sacrifice arrangements will no longer apply to some tax exempt and non-tax exempt benefits.

Legislation will come into force for all schemes on or after 6 April 2017. However, existing schemes in place before 6 April 2017 will be protected until 6 April 2018, unless modified during that period.

The Government has legislated that salary sacrifice schemes for cars, accommodation and school fees in place before 6 April 2017 will be further protected until 6 April 2021.

By way of example: an employee gives up cash salary of £1,200 per year in exchange for the provision of living accommodation.

Under current legislation this employee falls within one of the tax exemptions and therefore no taxable benefit arises. However, under the new rules, this will no longer be the case and income tax and Class 1A NICs will arise on £1,200 (being the higher of the taxable value of £nil, and the cash salary given up of £1,200).

Therefore the previous tax advantages no longer exist and the proposals from HMRC in this example will result in the employee paying tax on the amount sacrificed and the employer paying Class 1A NICs on the same amount.

Where a non-exempt benefit, such as medical cover, is salary sacrificed it will be subject to tax and Class 1A NICs in the normal way.

These changes may have a significant impact on the current salary sacrifice arrangements for schools where exempt living accommodation will be particularly vulnerable.

## Legislation will come into force for all schemes on or after 6 April 2017.

The sector will need to consider the implications on contracts of employment, as well as potentially completing P11D forms for those members of staff who are still operating this arrangement either post April 2017 or April 2021.

HMRC has confirmed it will retain a number of tax exempt benefits in kind that will continue to enjoy the tax and NIC savings associated with salary sacrifice arrangements. These are:

- Childcare vouchers
- Pension contributions
- Employer supported childcare
- Cycle to work schemes
- Ultra Low Emission Vehicles (ULEV) less than 75g/km

## Apprenticeship Levy – new rules from April 2017

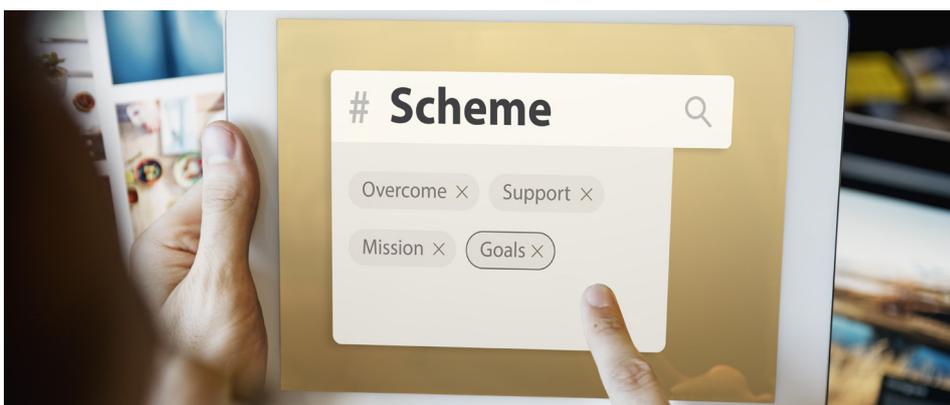
**Kate Davies, Employee Relations Specialist, HR Consultancy**

The Government initiative to increase apprenticeships goes live from April 2017 and will apply to all organisations with a wage bill of £3 million or more.

Based on PAYE, the Levy is set at 0.5% of the annual payroll. It is estimated that this will impact on organisations with 120 employees or more but, of course, this will depend on salary levels.

The Levy will fund the Digital Apprenticeship Service and all employers will be able to access up to £15,000 worth of training through the portal. It is hoped that the scheme will promote the use of apprenticeships and assist the Government in reaching its target of 3 million or more apprentices by 2020.

There are some concerns, however, that the apprenticeship training frameworks and standards do not provide training of a sufficient quality, nor the level of skills employers are looking for.



In addition, there is a worry that imposing a levy will lead to a reduction in internal training budgets, reducing other training offered by organisations.

In relation to Academy trusts, they must also be mindful of the Government target to be introduced in April 2017 which requires public bodies with 250 or more FTE staff to employ 2.3% of their total FTE annually.

Larger trusts will be obliged to take on several apprentices each year and this may mean they are unable to retain some apprentices once trained in order to fulfil their quota.

---

## Apprentices have specific employment protections.

There are no current apprenticeship routes to teaching, although a proposal has been made to create one. Schools can utilise apprentices in support functions such as administration, finance and catering.

Apprentices have specific employment protections - and you should ensure you have specific apprenticeship contracts in place which include the training that is offered and clearly state the standards expected.

## A Score Draw on VAT (for HMRC and the Education Sector)

### **Debbie Jennings, VAT Principal**

Two recent VAT decisions have important implications for charities and schools who are looking to incur costs on procuring a new building, and who are reviewing their VAT recovery method.

A charity, "Longridge", operates an outdoor centre on the Thames, west of London. It wanted to procure a new building and get the construction works free of VAT. It made a nominal charge to participants for them to take part in the charitable activities that would involve the use of the new building.



However, these charges were not at a commercial rate because Longridge only made a nominal charge in order for a participant to take part, the activities were deemed to fall outside the strict definition of what was a "Relevant Charitable Purpose" for VAT purposes. Therefore, the building works could not qualify for VAT relief, and Longridge incurred additional VAT.

Although the Longridge decision is disappointing from the perspective of the availability of VAT relief, it does provide clarification on the criteria that need to be met in order to meet the conditions to develop new buildings at the zero rate.

However, the second decision ruled in favour of the charity, and continues to illustrate that HMRC is taking too narrow a view on how to calculate recoverable VAT and the basis for attributing costs to activities.

In the case of Durham Cathedral, which reinforced the 2015 European Courts of Justice decision in "Sveda", it was shown that the correct approach with regard to determining the relationship between VAT bearing costs and the activities carried out by the charity needs to be a practical one.

The Courts took the view that the spend on works carried out in the grounds for both charities supported all the activities so was partly recoverable, rather than not recoverable at all. This decision means that charities that carry out a range of activities need to approach their VAT recovery on a pragmatic basis.

## Changes to Fundraising Regulations

### **Dan Fletcher, Deputy Director, Kingston Smith Fundraising and Management**

The last 18 months have seen the spotlight fall on charitable fundraising as it undergoes significant changes. Some of this has been regulatory and there have been changes in perception of how charities and schools operate.

A number of recent issues have concerned the use of data and, for the first time, the Information Commissioner's Office has focused on how charities and schools use donor data. This has been driven in part by the introduction of the EU General Data Protection Regulation (GDPR) in May 2016.

The aim of this new regulation is to consolidate data protection rules across all channels, such as direct mail, telephone, SMS and email, and across all members of the EU. The GDPR has been set up with a two-year lead-in period, so the regulations aren't enforceable until May 2018. However, now is the time to be gearing systems up to cope with the changes and, despite Brexit, GDPR and the measures it enshrines are here to stay.

The main issue revolves around gaining the right consent to use personal data. Charities and schools are being challenged to make sure they have sought permission to use personal data in certain ways and have consent to do so from the primary contact. This means that assuming consent because someone hasn't asked to opt out of communications will no longer be enough.

# Academies

Just because someone is on a database as a parent or an alumnus, does not necessarily mean they have agreed to be contacted for donations.

Charities and schools are being asked to improve their privacy statements and the robustness of their data collection. The three tests for soliciting donations also need to be remembered:

1. Does it intrude privacy?
2. Is it unreasonably persistent?
3. Does it create undue pressure to give?

Fundraising communications don't only need to be compelling and interesting - they also need to comply with the rules. Charities and schools need to ensure their governance systems are strong enough to deliver this.

## Gender Pay Gap Reporting

**Adam Flight, Principal Consultant, HR Consultancy**

Gender Pay Gap Reporting ticks all the right boxes ethically and for added transparency. However, it does add another layer of regulation in a sector already creaking from the various layers of compliance.

Charities and schools with 250 employees or more now need to report on the pay gap (if any) between the sexes they employ. There is an expectation that this should be reported in the annual accounts and on the Government's reporting website before 30 April 2018. Interestingly, there is no financial penalty for non-compliance with the regulation; however, organisations will be 'named and shamed'.

So, how useful will the data be? Both the mean and median pay for men and women will need to be published, but do not need to be broken down by variables such as job type or grade, location, or by full/part-time employees. It will have to include maternity and sick pay, bonuses, shift premium pay and area allowances, but not variable elements such as overtime and expenses.

Many of these variables will have a significant impact on the figures and are likely to skew the final outcome. The devil is always in the detail and so it will be interesting to see the first reports to be issued.

While this only applies to larger schools and charities, it will not take long to filter down to the smaller schools and charities.

## Off-Payroll workers and the use of intermediaries

**Richard Cummings, Managing Director, HR Consultancy**

In the 2016 Budget, the Government announced that it intends to reform the intermediaries rules for off-payroll engagement of workers who operate through an intermediary, such as their own limited company, in the public sector. The rules will be effective from 6 April 2017.

The Government is looking to ensure that those who are engaged in work through an intermediary, but are essentially doing the same or similar work as an employee, pay the same amount of tax and NI as if they were an employee. The public body engaging the intermediary will need to account for PAYE and NICs. Effectively, the burden to pay the correct tax and NICs will shift from the intermediary to the engager.

Although the legislation is currently limited to public bodies, there may be scope to widen this to the private sector in due course. Public bodies are defined as those included in the Freedom of Information Act; schools (including academies), health services, central and local government are all within scope.

When engaging a consultant or freelancer through an intermediary, consider carefully if the work or project they are undertaking is similar in nature to work that an employee would do. If it is, then the PAYE burden will sit with you.

The changes would not impact on any arrangement you may have, for example, with agencies to supply substitute teaching staff. If the individual teacher works through a personal services company, then the burden to ensure correct PAYE falls to the agency that engages them. Also remember that, if the work is not the same as that undertaken by an employee, then they would not be subject to these rules.

---

**If the individual teacher works through a personal services company, then the burden to ensure correct PAYE falls to the agency that engages them.**

This only applies to those who work through personal service companies or other intermediaries; those who do not use such mechanisms are not affected.

## Creative Vision Award 2017

We are delighted to announce the winning charities of the 2017 Kingston Smith Creative Award for Charities who will receive an animated brand film:

- **DEBRA** - A national charity that supports individuals and families affected by Epidermolysis Bullosa (EB), a painful genetic skin blistering condition which, in the worst cases, can be fatal. They fund pioneering research to find effective treatments and, ultimately, a cure for EB as well as providing care and support to improve the quality of life for individuals and families living with EB
- **Re-Cycle** - Collects unwanted bicycles and ships them to partner organisations (charities & NGOs) in Africa to provide people in rural areas with an affordable and sustainable means of transport. As well as bicycles they also ship spare parts, bike accessories and tools to enable the bikes to be repaired as and when necessary.

The winning films will be shown at a special event in October and we will also be launching the competition which opens the following day.

Find out more about the Creative Vision Award [www.ks.co.uk/cva](http://www.ks.co.uk/cva)

## Contact us

More information about  
Kingston Smith LLP and our services can  
be found at [www.kingstonsmith.co.uk](http://www.kingstonsmith.co.uk)

## Your Education team



**Neil Finlayson**  
020 7566 3761  
nfinlayson@ks.co.uk



**Anjali Kothari**  
020 7566 3656  
akothari@ks.co.uk



**Luke Holt**  
020 7566 3636  
lholt@ks.co.uk



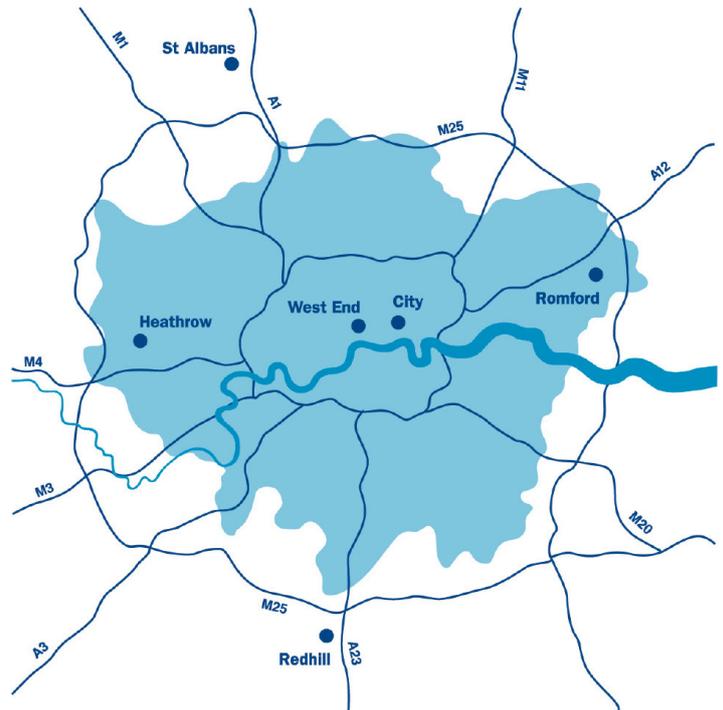
**Mahmood Ramji**  
020 8848 5500  
mramji@ks.co.uk



**Karen Wardell**  
01708 759759  
kwardell@ks.co.uk



**James Cross**  
020 7566 3816  
jcross@ks.co.uk



## HR Consultancy

**Richard Cummings**  
Managing Director  
rcummings@ks.co.uk

## Fundraising and Management

**James Newell**  
Director  
jnewell@ks.co.uk

## VAT

**Adrian Houstoun**  
Partner  
ahoustoun@ks.co.uk

## Tax

**Tim Stovold**  
Partner  
tstovold@ks.co.uk



Follow us @kingstonsmith



Join us on LinkedIn



Visit us at [ks.co.uk/education](http://ks.co.uk/education)