

Education Matters

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'Forthcoming headwinds' is a phrase that is commonly used at the moment. It encompasses a multitude of issues, such as 'VAT on independent school fees', 'TPS considerations' and the demise of the rates relief. The press talks about the demise of the independent school sector, the unfairness of the sector and what do parents really get for their investment? In short, there is a lot of noise. Having been involved in the sector for 25 years, the one thing I have noticed is, there is always a lot of noise.

Education is a topical subject regardless of where you are in your life journey. You may have children in education, colleges for 14- to 19-year-olds have popped up for those suited to apprenticeships, and for those children wishing to avoid post-university debt, there is a route to employment. Employers also have a view about the type of education children receive and are looking for a workforce that is diverse and capable. The variety of choice in our education system is a strength.

The key with all the 'noise' is education is front and centre again. Opinion is split on The Labour Party's proposed policy of adding VAT to independent school fees. Labour claims this will generate in the region of £1.5 billion that it can plough back into the state sector. Interestingly, the independent school sector accounts for about 7% of school-age children, meaning some 93% are in the state sector. Some commentators are questioning how the suggested £1.5 billion saving would stack up considering the substantial increase of the Employers TPS Contributions, effective 1 April 2024. What is not in question is that the state sector needs more funding.

As the debate on VAT on school fees continues, I expect the repercussions may not be felt immediately, as schools look to react. 20% may translate into 15% in the early days but the full impact may well be felt by parents eventually. A point that rarely gets a mention is what do the state sector parents do when independent school parents look to come back or access the state sector for the first time. Will it be at the expense of their own children?

Fair or unfair? Many parents not in the independent sector feel that, by there being an independent sector, there is an unfair advantage to those who can afford it. However, as multi-academy trusts drive efficiencies and changes, they are beginning to offer real competition to the independent sector and with competition comes choice.

Some pro-independent school voices talk about a Labour policy driven by ideology. However, what is important is, if education really is front and centre, then whoever is in power needs to fund education properly, not at the expense of the independent sector but in conjunction with it.

Build don't break!



Anjali Kothari
Head of Education

Plan for the worst, hope for the best but be ready to be surprised

Contributed by David Woodgate, Chief Executive, Independent Schools' Bursars Association (ISBA)

Anyone involved in the leadership, governance or management of an independent school will be aware of the various political, economic and business threats facing the sector. The headwinds, already significant, will strengthen and while the threats may be understood, some schools are not making sufficiently detailed, researched and realistic plans to address them. Now is the time to coldly and objectively assess business risks, carry out well-informed financial modelling, develop financial and non-financial scenarios and use sensitivity analysis to underpin the operational planning for schools over the next 18 months or so.

ISBA is seeing forecasts that are based on arguably unrealistic forecasts of pupil number growth. We know that after previous economic downturns, there is a lag effect on pupil numbers - parents make sacrifices to keep their children in independent education, but there is a risk that this will be until the end of the next key stage only rather than through to age 18. Equally, the current economic situation and uncertainty will affect parent confidence and impact the pipeline; a realistic assessment of the likely number of newly recruited pupils is critical. A possible change in the pattern of parental buying behaviour may impact this. Rather than automatically committing to educating children from 3 to 18 independently, more parents are likely to "invest" selectively, opting in and out at different stages. They may buy prep only with a view to getting their children into the academic stream of a good academy or a faith school or indeed into grammar schools where they still exist.

Alternatively, they may keep their children in the state sector for primary education, only buying secondary education. They may choose a state sixth form college rather than an independent school. The boarding pattern may change and we may see a trading down from more expensive to more cost-effective schools.



There is thus uncertainty around predicting pupil numbers over the next few years. This comes at a time when the recent inflationary pressures have impacted materially on the cost base of independent schools, and there is a further increase in TPS employer contributions to 28.68% from April. Subject to proper consultation, the TPS costs are controllable because schools can withdraw or at least close to new joiners (by the process known as phased withdrawal). Indeed, as of mid-January, around 500 schools have withdrawn or closed to new entrants, and we know that many more schools are now in consultation or have adopted some form of hybrid or pay-and-benefits model.

Political uncertainty is also impacting. ISBA suggests three assumptions:

1. Labour is likely to win the next general election.
2. The party is serious about and fully committed to abolishing mandatory business rate relief for charitable schools and imposing VAT at 20% on school fees.
3. This can be done relatively quickly through a Finance Bill without changing charity law. (Schools that are charitable will remain so with governors remaining trustees although the tax treatment will be different).

VAT could be introduced with effect from April or September 2025. At this stage, we cannot be specific about a date and, while the headline policy has been well trumpeted, the devil is in the detail and we just do not know how VAT will be applied in practice. Will some pupils, such as those with additional needs, be treated differently to other pupils? We do not know what the anti-forestalling measures will be and when these will take effect, other than to say they are likely to be robust.

This throws into sharp relief the pressing need to track risks as they develop, model different financial scenarios, and determine how schools will respond to a range of possible outcomes post the election. Such risk-assessed plans must be kept under constant review - certainly at each governors' meeting and at finance and general purposes committees, with additional meetings being scheduled in case of need to face up to an evolving picture.

For the slightly longer term, many schools are considering mergers, for instance, a single sex girls' school with a single sex boys' school. Consideration is also given to coming together with a senior school or a school group, be that a charitable or a for-profit organisation. Such considerations should not be taboo and should be looked at realistically together with a range of other options as a way of future-proofing the school - and with action being considered when the school remains in a position of relative strength. The nature of the sector is changing and every school needs to consider its place in the new post-election world. This is something both ISBA and AGBIS can help boards of governors come to terms with.

Indeed, we are giving many presentations to governing bodies looking at the general political environment and overlaying this, where required, with considerations around TPS and mergers and acquisitions. Please do get in touch if such a presentation would help governors understand current challenges and consider various options to address them. Similarly other professional advisers can assist of course.

Plan for the worst, hope for the best *but be ready to be surprised* must be the maxim for the next 18 months for governors and senior leaders in UK independent schools.



What if VAT was applied to independent school fees?

**By Debbie Jennings, VAT Director,
Moore Kingston Smith**

Much has been both discussed and written about the possibility of VAT being applied to independent school fees. This appears to depend on whether the Labour Party wins the next general election, and what its majority would look like.

Where are we now?

Currently, UK VAT regulations apply exemption to the provision of education (and goods and services closely related to education) by what is termed an 'eligible body'. Independent schools fall within the definition of an eligible body, as do universities, colleges and charities (if they structure the supply of education in the required way), etc. In theory, it would appear relatively easy to remove

independent schools from the list of institutions that qualify for exemption as eligible bodies.

The possible introduction of VAT on school fees raises several immediate questions:

1. Would the rate of VAT applied be 20% (the current standard rate)? The UK is no longer in the EU, so it is free to set its own rates of VAT.
2. Would increased fees be charged to parents to cover VAT, or could the school absorb it, or would it be a combination of both?
3. What would be the impact of the school then being able to reclaim VAT incurred on costs?
4. Would there be a requirement to identify other income that could also be liable to VAT?



What should schools be doing now?

- Firstly, do the existing contracts or agreements allow for VAT to be charged? If not, these would need to be updated and the wording changed. Also, the terms and conditions would need updating, as would websites, communication with parents and other funders of fees.
- Potential ways of mitigating the addition of VAT is a hot topic, especially discussions around paying fees in advance. Having discussions sooner rather than later is advisable.
- For VAT purposes, there are special rules governing the 'time of supply'. This means that if fees are paid in advance of any VAT liability changes being introduced, it might be possible to ensure VAT is liable on education provided later. However, it would very much depend on whether any legislation is introduced to prevent the more widely applicable time of supply and VAT liability rules from applying.
- Putting a 'payments of fees in advance' scheme in place could count towards

mitigating VAT on fees. If schools are considering this (e.g., for the purposes of VAT efficiencies), they would need to ensure paperwork and structuring arrangements are as robust as possible. While VAT mitigation may be possible for a period of time, it would not be possible to achieve on a permanent basis. Reviewing and assessing accounting systems and processes, with a view to accommodate VAT, would be a prudent action.

- Schools should also review existing accounting software and ensure it is ready to cope with VAT reporting requirements and Making Tax Digital. Similarly, it would be prudent to identify the VAT liability of all activities/income streams and the extent of the school's entitlement to VAT recovery. Schools that have both taxable and exempt income would need to undertake partial exemption calculations.

Early consideration of the above should allow for a relatively smooth transition and provide a basis for setting fees and budgeting for costs. As always with VAT, early planning is essential.



Data privacy and cyber risks for schools and multi-academy trusts

By Richard Jackson, Strategic Business Manager, Moore ClearComm

Education is without doubt one of the most targeted sectors for cybercrime, and the impact of lost data on schools, colleges and universities is immediate, costly, and well reported in the media. This leads to damage on a reputational level, as well as operational and financial.

However, a specific target for schools came to the fore in 2023; the single central record (SCR) where the attack resulted in the school having to remain shut.

In this article, we consider the risks posed by the SCR when in digital form, supported by a recent case study, as well the six key privacy risk areas for schools and multi-academy trusts for consideration in 2024.

What are the privacy risks?

Thought leaders in cyber security identified six key privacy risk areas for the education sector in 2023, and these issues remain as we move towards the mid-2020s:

1) Special category data

In a school or MAT setting, it is best practice to treat all of the following information as sensitive:

- safeguarding matters;
- pupils in receipt of pupil premium;
- pupils with special educational needs and disability (SEND);
- children in need (CIN);
- children looked after by a local authority (CLA).

2) Criminal offence data

Schools process criminal offence data in storing the outcome of a disclosure and barring service (DBS) check on their employees, non-employed staff and volunteers. As this data relates to criminal convictions, collecting and retaining it means the school is processing criminal offence data.

Criminal offence data includes:

- the alleged committing of an offence;
- the legal proceedings for an offence that was committed or alleged to have been committed, including sentencing.



3) Data subjects

Schools collect, store and use personal data about a variety of individuals. In this context, those individuals are known as 'data subjects' and include:

- pupils and former pupils;
- parents and carers;
- employees and non-employed staff;
- governors and trustees;
- local authority personnel;
- volunteers, visitors and applicants.

4) Governors and trustees

The responsibility and accountability for compliance sits with governors and trustees, who must ensure that their school or MAT:

- monitors its data protection performance;
- supports the data protection officer;
- has good network security infrastructure, to keep personal data protected;
- has a business continuity plan that includes cyber security.

5) Senior leaders

Senior leadership teams hold significant responsibility for data privacy and, as such, represent a risk to security of data. Their level of risk awareness should exceed that of the general staff population.

6) All staff in the school setting

Schools and MATs should ensure that all staff are aware of their data privacy responsibilities, benefit from regular training and awareness, understand the likelihood of social engineering attacks and recognise likely fraudulent activity.

Single central record: risk and reward

A single central record (SCR) is a compulsory record kept by schools, academies and MATs in the UK, for the purpose of safeguarding. It is a statutory requirement and must detail all recruitment and vetting checks carried out on staff.

The SCR links closely to the risks outlined above (in criminal offence data) and is an attractive target for cyber criminals, when stored in digital form. No school can legally remain open if its SCR becomes inaccessible. This is key to why it has become attractive to cyber criminals.

A school under attack

In June 2023, Leytonstone School was closed temporarily as the result of a cyber attack that rendered its single central record inaccessible.

The 800 pupils at the North East London school were forced to take classes remotely until the school could reopen. The attack caused a significant amount of personal data to be accessed by the criminals, with the school's Wi-Fi offline and its web-based phone systems not working.

In a letter to parents, the Head Teacher Jessica McQuaid said: "I am incredibly sorry for the short notice...but it is illegal for the school to be open without this document in place."

She added: "I am devastated that this IT incident has taken place and impacted the start of the half term for pupils."

Source: Evening Standard, June 2023

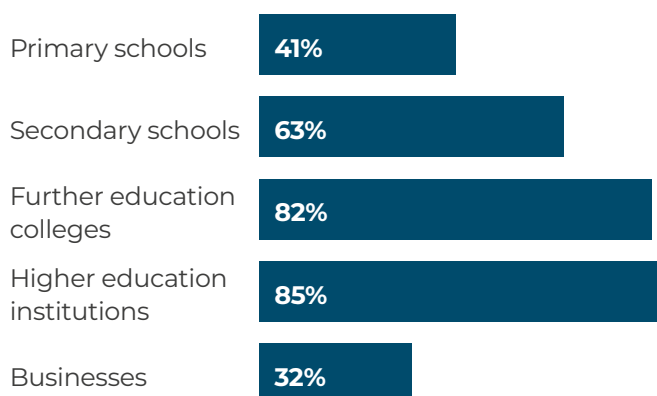
The school was eventually able to reopen once access to the SCR had been restored. This story shows that cyber criminals are evolving their strategy for the education sector.

The mandatory closure of a school when a SCR is inaccessible is a highly powerful lever for cyber criminals to apply. It increases the pressure on schools to pay ransom demands, does irreparable damage to their reputation, and puts staff and stakeholders at risk of financial and physical harm.

This means that all schools should review their business continuity plans regarding the SCR and ensure that complete reliance on digital access is avoided at all times.

Food for thought

Recent research from the National Cyber Security Centre (NCSC) has identified that all types of education institutions are more likely to identify breaches or attacks than the average UK business.



Source: NCSC report Cyber Security Breaches Survey 2023: Education Institutions Annex

Employment law changes in 2024

By Donal Moon, Employment Law Adviser,
Moore Kingston Smith People Advisory

With several changes already in force and several changes coming in, 2024 looks set to be a busy year for employers.

In late 2023, the government introduced reforms to a few key areas of employment law, which came into force on 1 January this year. They are:

- **TUPE:** for TUPE transfers that will take place on or after 1 July 2024, businesses with fewer than 50 employees or businesses of any size who are conducting a transfer of fewer than ten employees will no longer have to invite their employees to elect employee representatives to consult with. Instead, they will be able to consult directly with the employees if there is no trade union or existing representatives in place.
- **Working time record keeping:** employers will no longer be required to keep a full record of all working hours and rest breaks taken for most employees and workers but will be required to comply with the less onerous burden of keeping 'adequate' records.
- **Annual leave carry-over:** the government retained the rule that employees must be allowed to carry over holiday that they have been prevented from taking for any reason. The rules that allowed employees to carry over leave for

two years if prevented from taking it because of Coronavirus have been repealed. Employees will now have to take any Coronavirus-accrued leave that was accrued before 1 January 2024 on or before 31 March 2024. Thereafter, holiday which cannot be taken because of Coronavirus will be subject to the normal rules, which limit carry-over to 18 months.

- **Holiday pay:** the government retained the rule that holiday pay must be based on normal remuneration. Commission, overtime and other regular payments will still need to be included in holiday pay calculations.
- **Holiday entitlement and pay for irregular hours and part-year workers:** the option for employers to calculate holiday entitlement for irregular hours and part-year workers using a multiplier of 12.07% of hours worked in the previous pay period has been restored unless the worker is on sick leave or other family-related leave. In this case, accrual will be based on average working hours over a 52-week reference period for leave years starting on or after 1 April 2024.
- **Rolled-up holiday pay:** employers will be able to use rolled-up holiday pay for irregular-hour and part-year workers for leave years starting on or after 1 April 2024. This means including holiday pay in the worker's hourly rate rather than paying it at the time it was taken.



These are positive changes for employers, making TUPE much less onerous if the exceptions apply, rectifying the impact of the Harpur Trust vs Brazel case. This ensures that part-year and irregular-hour workers receive holiday entitlement and pay proportionate to hours worked, reducing key burdens in terms of being able to use rolled-up holiday pay, and implement a slightly less onerous method of keeping records of working hours.

However, this year will also see a sizeable expansion of employment rights for employees and workers. Various private members' bills, which were designed to implement enhanced workers' rights, received royal assent last year and will be coming into force in 2024 and 2025, as follows:

- **Carer's leave:** from 6 April 2024, employees who have dependents with long-term care needs will have the right, from day one of employment.
- **Flexible working:** from 6 April 2024, all employees will have the right to make two flexible working requests a year from day one of their employment/assignment. Employers will be obliged to consult with the employee before they can refuse a request and they must make their decision in two months instead of three. Employees no longer have to explain what effect their requested change may have on the employer and how any such effect might be dealt with.
- **Redundancy:** a new law is expected to come into force on 6 April 2024 extending the right to be offered suitable alternative employment in a redundancy situation for employees on family-friendly leave to six months from their return from leave.
- **Neonatal leave and pay:** a new law giving employees the right to paid neonatal care leave is expected to come into force in 2025. It is expected that the leave will be for a maximum of 12 weeks and the pay will be at the statutory rates for other family-friendly leave.

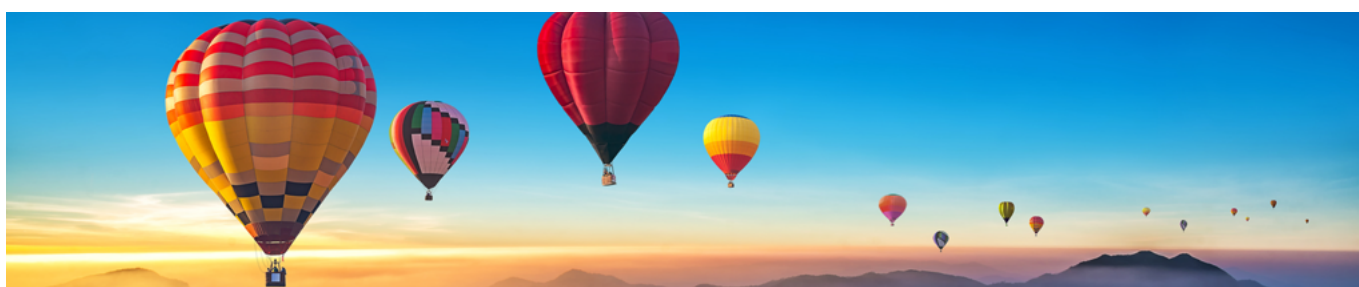
- **Third-party harassment/duty to prevent sex discrimination:** a new law obliging employers to take reasonable steps to prevent sexual harassment of their employees is due to come into force in October 2024 with a new discretion for tribunals to increase compensation for a successful tribunal claim by 25% if the provision is breached. It had originally been proposed to restore employer liability for harassment of employees by third parties but the House of Lords removed this provision.

In addition to all of these guaranteed changes, there will be a general election in 2024, so there may well be further changes in 2025 depending on the outcome.

Labour, for example, has pledged to introduce an Employment Rights Bill within the first 100 days of office, which is currently expected to include:

- banning fire and rehire;
- banning zero-hour contracts;
- reversing Conservative anti-union laws and expanding trade union rights;
- reversing the government's law that minimum service levels must be maintained in the event of strikes in sectors that provide key services such as health, fire services and education;
- increasing the living wage;
- reforming employment status so there will only be two statuses instead of three - workers with full employment rights and genuine self-employed contractors with no employment rights;
- making unfair dismissal a day one right;
- removing the cap on compensation for unfair dismissal;
- increasing the time limits for bringing tribunal claims.

It is not necessary to make changes right now until the new laws take effect. However, it is important to watch out for any developments, note the potential for increased liabilities and legal risk, and react quickly as laws come into force to amend employment documentation and HR practices.



What is the driving force behind mergers and acquisitions in independent schools?

By Dan Leaman, Partner, Moore Kingston Smith Corporate Finance

Mergers and acquisitions in the independent school sector seem to be buoyant and with no sign of slowing down despite political risks, higher interest rates, a rise in TPS contributions and inflationary pressures.

So, what is the catalyst behind this? The three main drivers are:

1. There is a scarcity of high-quality, profitable, independent schools coming to market combined with a good level of demand from several buyer pools. These include international buyers who remain attracted to the UK independent school market and private equity-backed consolidators, some of whom have secured additional funding to continue their buy-and-build strategies. At the top end of the market, pricing seems to have been maintained for profitable, well-run schools and we continue to see 12-15 x multiples of EBITDA being paid for the best schools.
2. At the other end of the market, we are also seeing demand for financially stressed schools – often standalone prep schools with the potential for turnaround. Some

buyers are willing to leverage the asset base of the target schools to help fund an acquisition and investment in the schools where they believe they can improve the results of those schools and there is a strategic fit with their existing holdings.

3. We continue to see a trend of smaller standalone charitable prep schools that are either financially stressed or concerned that they may become financially stressed seeking safety in numbers and economies of scale from mergers with larger charitable schools that are on stable and secure financial footings. These charity-to-charity mergers are becoming more common and we expect them to continue, as the threat of VAT on school fees and the loss of charitable rates relief and the increase in TPS costs continue to focus governing bodies' minds on sustainability in the current economic environment.

What we can be certain of is there will always be challenges and benefits which the school will have to take into consideration before taking such a bold step. At the end of the day, the interest of the school and its students should be the number one priority.



News in brief

EIGHT FINANCIAL RESOLUTIONS FOR 2024



BUSTING THE MYTHS ON VAT AND INDEPENDENT SCHOOL FEES



TEACHERS' PENSION SCHEME – EMPLOYER PENSION CONTRIBUTION INCREASE



INDEPENDENT ADVICE ON SCHOOLS AND TEACHERS' PENSIONS



THE CYBER THREAT TO EDUCATION AND ACADEMY TRUSTS IN THE UK



EDUCATION SECTOR INSIGHTS



TAX FACTS 2024/25



2024 EVENTS PROGRAMME



ENTERPRISE HUB



EDUCATION HOME PAGE



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