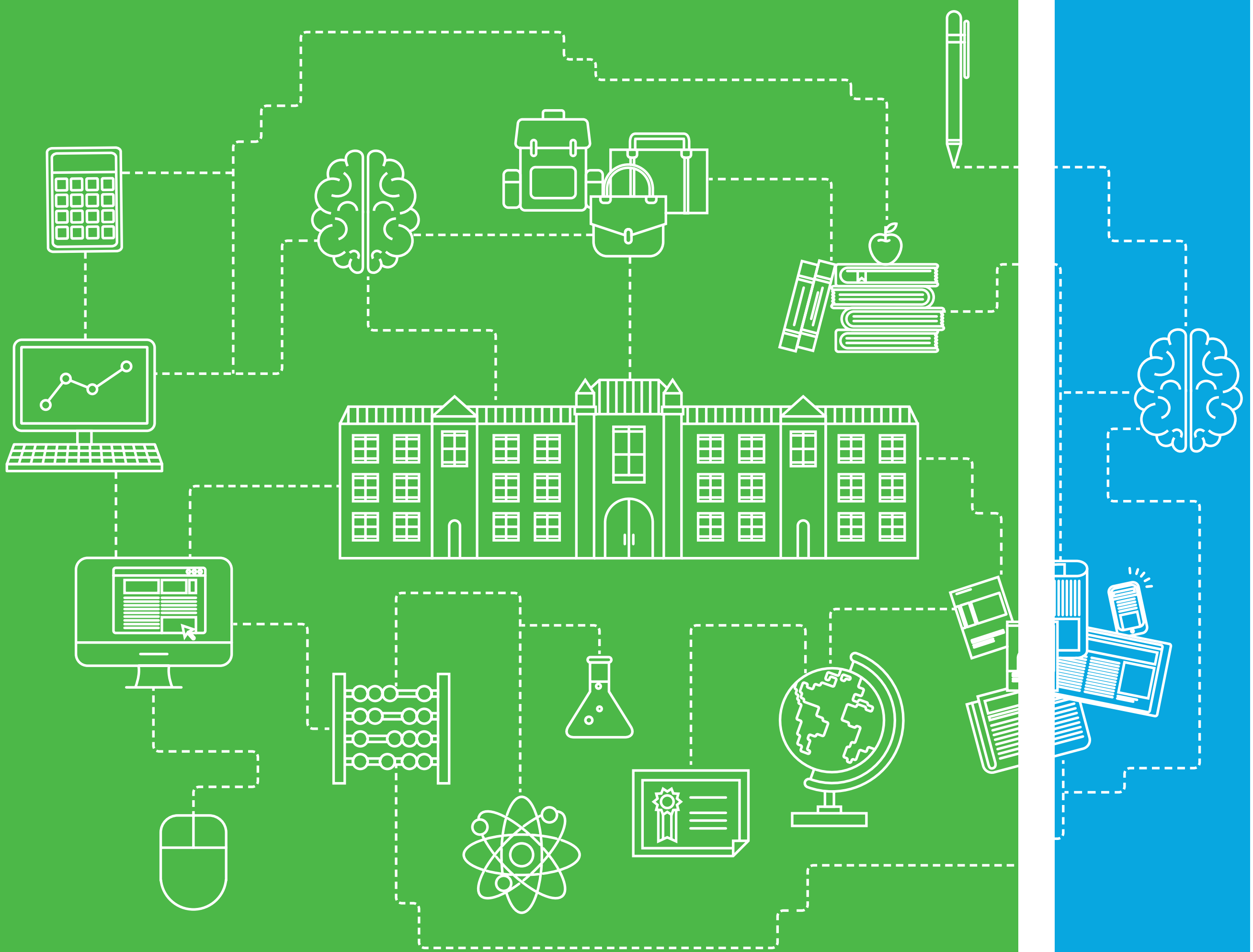
End of term report

Spring 2018

Independent schools



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Introduction

Welcome to the Spring edition of RSM's End of Term Report

As schools get ready for summer term, they must also prepare for the upcoming deadlines for two new areas of compliance.

- At the date of publishing this report, there are only 16 days until the Gender Pay Gap Reporting deadline. Frankie Davis covers what schools need to do to get ready.
- The much-publicised new data protection regulations (GDPR) come into force on 25 May 2018. This edition builds on the information we have previously provided, focussing on the specific considerations for independent schools.

Also in this edition:

- Simon Loughran from RSM Insurance tells you the things to look for when considering purchasing cyber insurance for your school.
- Deborah Parks-Green looks at the new Optional Remuneration Arrangements (OpRA) ahead of the P11d reporting period.
- Planning and funding capital projects – Anil Ahluwalia provides a bank's perspective.

Finally, the RSM team looks forward to seeing you at this year's ISBA Conference in Brighton on 9 & 10 May. Please come and see us on Stand 48 where we will be launching RSM's Reserves Resilience publication for independent schools – more on this on the next page...

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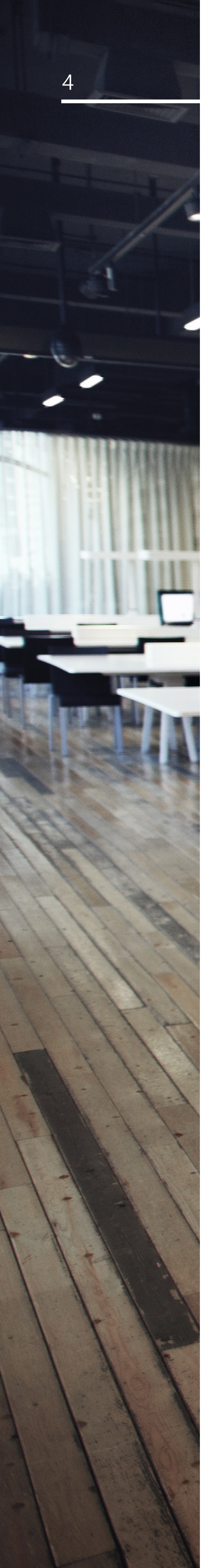

Coming soon – independent school reserves

Reserves are much more than a statement about the financial health of your school.

Amid growing media and public interest in charity finance and governance, a robust reserves position will send a clear message to stakeholders that you are well-led, well-managed and well-run.

Ultimately, it is up to governors to work out how much your school needs to keep in reserves. A balance must be struck. Too little, and you could be exposed to a shift in pupil numbers or trading income. Too much, and questions could be asked about whether you are managing resources in the best interest of beneficiaries.

But how much you hold in reserves is just one side of the equation. Schools must also publish and implement a robust reserves policy that sets out a target level of reserves and plan for how to get there.

In February 2018, we launched our "Charity Reserves – Resilience in 2018" publication. The publication assessed charities' reserve policies against a 24-point criterion. The criteria considered the disclosures and explanation relating to reserve funds, as well as the overall effectiveness in communicating the policy statement.

The charity publication and associated seminars attracted a significant level of interest from our independent school clients, demonstrating the significance of this topic to those working in the sector.

As such, we will be publishing a follow up document specifically for independent schools. The publication will include an analysis of the reserves policies of 60 schools across a range of income tiers and geographical areas and how well they are communicated in their annual reports, focusing on the specific issues relevant to the sector.

Our publication will be launched at the ISBA conference on 8 and 9 May 2018. Please come and visit our specialist independent school team on stand 48 to collect your copy!

We look forward to seeing you!

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LESSON 4 : PLANT LIFE CYCLE
A PLANT LIFE CYCLE

Gender pay gap reporting deadline

With less than 20 days until the gender pay gap reporting deadline, have you published your results?

Do independent schools have to publish their gender pay gap results?
All schools with 250 employees and over must publish a series of statistics covering six different measures of the gap between pay for male and female staff. As of the end of February, approximately 100 employers in the educational sector have published on the Government portal. In the wider sense, this constitutes a tenth of the total 1,000 employers who have already published. A remaining 8,000 are expected to post their results before the deadline.

What's the difference between equal pay and gender pay?
There is no doubt that the movement to close the gender pay gap revolves around equality. Despite widespread use of the terms 'equal pay' and 'gender pay' in the media, they refer to separate challenges. Equal pay refers to men and women receiving equal pay for carrying out work that is like work, work rated as equivalent or work of equal value, regardless of differences of sex or race, as set out in the Equality Act 2010. Gender pay centres around the imbalance of women's equality in the workplace and the ambition to close the gap.

How do we know whether the gender pay gap applies to our school?
Schools may initially assess themselves as being outside the scope of the Regulations as they deem themselves to employ fewer than 250 staff. However, the definition of "employee" for gender pay gap purposes is wide. When evaluating your workforce, it would be prudent to review all types of working arrangements such as Peripatetics, sports coaches, caretakers, invigilators and other groups of casual employees who work under contracts of employment governed by UK legislation.

How can we explain our gender pay gap results?
Organisations are being encouraged by the Advisory, Conciliation and Arbitration Service (ACAS) and the Government Equalities Office (GEO) to produce a narrative that will explain their calculations and provide context. Although this is voluntary, it is widely considered a useful tool to support the gender pay gap figures. For independent schools, it is likely the composition of staff will be largely split between two groups; teaching and non-teaching staff. With these separate groups of employees, it is possible the results of the gender pay gap may be diluted. If the gap appears to be concerning, we would suggest carrying out further analysis on your workforce: one option may be to calculate the gap separately for these distinct groups.

What are the potential consequences of the gender pay gap to independent schools?
The effects on the education sector and independent schools more precisely are not yet certain. What we do know is that the results will be accessible to the public via the government portal and the school's own website. Therefore, there is a possibility of parents seeking this information as part of their decision making between educational institutions for their child. It could be argued a school displaying a narrower gender pay gap may offer an environment with more successful female role models and may encourage a young person's aspirations towards gender equality.

At an operational level, measuring the gender pay gap can be a labour intensive and technical task. The issue of resourcing is more complicated due to the need to interpret the detail of the Regulations in the school context. The responsibility for the calculations may fall to administrators or support staff who may not be equipped or fully resourced to deliver the correct figures.

How does this link with our current equality and diversity policy?

The new reporting requirement provides schools with the opportunity to examine patterns and reasons behind their figures alongside any equality, diversity and inclusion initiatives already in place. Furthermore, the results may be able to help schools create a narrative around the statistics that educate current and future staff, pupils and parents as to their commitment to gender equality and their steer towards implementing new initiatives.

What if we don't report by the deadline?

The Equality and Human Rights commission (EHRC) is the body responsible for making sure that employers comply with the law on gender pay gap reporting. They have said the following; 'We want employers to follow the law without the need for formal enforcement action. However, we will take action were employers do not comply with the requirement to publish their data, despite our encouragement to do so.' At this stage, we do not have clarity on the actions that the EHRC may take. As schools have a number of stakeholders, they should be aware of the reputational damage externally if they failed to comply with the legislation. The school board and the Governors could be tasked in explaining non-compliance. In addition, schools may receive backlash from their own staff internally if they do not publish.

How do we get help on calculating our gender pay gap results?

Our HR Consultancy team can offer practical advice and guidance to clients prior to their reporting response. They can analyse data with a view to pinpointing issues and make recommendations on good courses of action for the future by assisting in gender pay gap action plans. With wide HR experience in the education sector, the team can support your school to prepare for the upcoming deadline in April 2018.

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Specific GDPR consideration for independent schools

In the autumn end of term report, we provided a high-level overview of the General Data Protection Regulation (GDPR) and provided five top tips for data auditing.

In this edition we are building on this overview, with some specific considerations for independent schools.

Data Protection Officer

Independent schools are not likely to be required under GDPR to appoint a Data Protection Officer (DPO). Whilst not required, it is important that someone in the school takes a lead on implementing GDPR, and in this regard, it is of benefit to assign responsibility to someone who has a reasonable level of independence from processing of personal data. The certified EU GDPR practitioner courses can be beneficial to upskill the selected member of staff.

Staff

The school will hold the personal data of current and former staff. In a number of areas, the school will have a 'lawful basis' for holding and processing the data, for example to meet the requirements of HMRC in regard to income tax and National Insurance. Another example would be that the school maintains records of identity and right to work in the UK to meet the requirements of the Education (Independent School Standards) Regulations 2014.

Under the 'right to be informed', where there is a lawful basis, the school must ensure that at the point of data collection, the individual is made aware of the 'purpose of the processing and the lawful basis for the processing'.

For staff who are permanent employees, it is often the case that well established and formal systems are in place for the collection and storage of data in all formats (paper, electronic, photographic, microfiche etc.). This should be confirmed through a data audit, as discussed in our previous article. For peripatetic staff, such as music teachers and sports coaches etc. some will be paid via the payroll and others will be paid via the purchase ledger (though the requirements of IR35 should be considered where this is the case). Where they are paid via the purchase ledger, personal data may well be being held in a manner that would need review under GDPR.

In respect of applicants, under current data protection legislation the information commissioner's office (ICO) states: 'An employer receives several applications for a job vacancy. Unless there is a clear business reason for doing so, the employer should not keep recruitment records for unsuccessful applicants beyond the statutory period in which a claim arising from the recruitment process may be brought'. The requirements to destroy data at the appropriate point is critical under GDPR, and the school will need to ensure that it can systematically identify data that has expired and ensure that it is destroyed in a safe and secure way.

For former staff, the school may wish to develop a checklist of the data and information that needs to be retained and can appropriately be retained for the purposes of providing references, and for pension queries. However, some other information that is relevant during employment, may no longer be relevant once the employee leaves.

Pupils

Personal data of pupils will be held by the school, and as the majority are children there are additional considerations. The ICO had a live consultation which closed on 28 February 2018 in respect of children. In addition, the age at which children can provide consent is still being considered as part of the Data Protection Bill; the proposal is age 13.

The school must ensure that, as for staff, children and their parents/ guardians are provided with information about the purpose of data collection and the lawful basis for processing. Where certain data is optional, an example would be photographs and/or videos of children being used for promotional purposes, the school must ensure it has consent. For those aged under 13, this consent must come from the parent, and once the child reaches the age of consent, their consent must also be obtained.

Third parties

The school may work with a number of third parties who will have access to personal and sensitive data. An example may be if the school procures counselling services for its pupils (and/or staff). It must be clear to the pupils that the counselling service is provided by a third party and the school needs to ensure that an appropriate contract is in place covering how the data will be used and held.

There are some third parties that the school will have no choice but to share some personal data with, an example would be HMRC as noted above. In these cases, it is unlikely that a data sharing agreement will be required, as HMRC has a lawful basis to require the data, and the school has no choice but to comply.

Alumni and fundraising

Whilst the school may have a lawful basis for retaining some data on alumni, when this is used for fundraising purposes, consent must be obtained. The consent must be specific and clear as to what data is held and how it will be used. For third parties that are contacted for the purposes of fundraising, again consent must be held. We recognise that fundraising, through both alumni and third parties, can be a key income stream and as a result, timely action to contact those on your database to ensure that consent is sought and received must be taken. Where consent is not received, the data must no longer be used for fundraising purposes.

Data outside systems

Our work with school's has shown that some data will be taken out of, and held outside of, formal systems. Examples we have seen are teachers holding birthday lists of their tutor groups, so that they can wish them a happy birthday, and line managers doing the same for their staff. Whilst the intentions are good, this personal data can be at risk outside of the systems which have inbuilt protections to facilitate security. As part of the data auditing process, the school must speak to staff about the information they personally hold and ensure that this is discontinued where appropriate.

Awareness

It is really important that the school makes sure that staff are aware of expectations under GDPR, this could take the form of online training, or briefings at training/ away day events. The school may also wish to provide pupils with information about data, as with social media and a data driven society, as citizens of a global and digital world, this would empower them to start to consider how their personal information is used.

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Are you prepared for what comes next?

- Are you confident that you will be able to maintain a clear and compliant audit trail of the continuous protection of your data?
- How will you ensure all your staff are following set procedures and processes in a compliant way?
- What measures are in place so that all devices remain compliant and can be tracked and measured accordingly so you can run your organisation?

Discover how to manage your on-going GDPR obligations at RSM and Microsoft's upcoming event.

Date
Wednesday 23 May 2018

Timings
9- 12pm (Seminar will start at 9.30am)

Venue
RSM, 25 Farringdon Street, London, EC4A 4AB

Register
https://www.rsmuk.com/events/managing-your-ongoing-gdpr-obligations

Cyber Liability insurance

RSM insurance are receiving a lot more interest in Cyber Liability insurance and recommend that you look for the following areas of cover in a policy to ensure adequate protection.

Cyber Incident Response

- Incident Response Costs
- Legal and Regulatory Costs
- IT Security and Forensic Costs
- Crisis Communication Costs
- Privacy Breach Management Costs
- Post Breach Recommendation Costs
- Third Party Privacy Breach Management Costs

Cyber Crime

- Funds Transfer Fraud
- Theft of Funds Held In Escrow
- Theft of Personal Funds
- Extortion
- Corporate Identity Theft
- Telephone Hacking
- Phishing

System Damage And Business Interruption

- System Damage and Rectification Costs
- System Business Interruption
- Consequential Reputational Harm
- Loss Adjustment Costs

Network Security & Privacy Liability

- Network Security Liability
- Privacy Liability
- Management Liability
- Regulatory Fines

Media Liability

- Defamation
- Intellectual Property Rights Infringement

For further information on this, or a review of your general insurance programme please get in touch.

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Optional Remuneration Arrangements

The new Optional Remuneration Arrangements (OpRA) legislation took effect from 6 April 2017, to tackle the increasing use of salary sacrifice arrangements which gave employees and employers sizeable savings in income tax and National Insurance Contributions (NICs).

A year on, it is time to reflect on these changes, and how they have impacted independent schools, and consider the challenges these new rules bring as the first P11D reporting season under them approaches.

Reminder of the rules

Whilst many employers have been focused on the impact these rules have on salary sacrifice arrangements, they extend wider than this.

The legislation defines two types of arrangements which are impacted as follows:

A

An arrangement where the employee gives up the right to an amount of earnings in return for a benefit (salary sacrifice).

B

An arrangement under which the employee chooses a benefit as an alternative to an amount of cash earnings (for example a car cash allowance)

Where a benefit is provided to an employee under either type of arrangement, careful thought must be given as to the extent that the new rules impact the value of the benefit to be reported on form P11D.

Exemptions

The legislation includes a number of exemptions that exclude certain benefits from the OpRA rules. These are typically benefits that the Government wishes to encourage employers to provide to employees. The most common exemptions are:

- contributions to a registered pension scheme, and the provision of pension advice;
- employer provided childcare;
- use of cycles and cycle safety equipment; and
- ultra-low emission cars ($CO2$ emissions less than 75g/km).

There is also a separate group of exemptions which broadly cover benefits where separate legislation has previously been introduced to remove the advantages of salary sacrifice. Examples include subsidised meals and trivial benefits.

Impact of OpRA on benefit charge

If a benefit is provided in conjunction with a type A or B arrangement as above that does not fall under an exemption, its value for P11D reporting purposes is equal to the higher of:

- the amount of earnings foregone; or
- the modified cash equivalent of the benefit.

The modified cash equivalent of the benefit is largely the benefit arising under normal benefit in kind rules, except there are quirks that employers should be mindful of, in terms of disregarding amounts made good, when undertaking this comparison.

Transitional rules

Transitional rules (otherwise known as 'grandfathering') have helped ease employers and employees into the new arrangements. The general approach here is that, if an arrangement was already in place before 6 April 2017, the benefit will not be impacted by the new rules until the earlier of:

- the date the contract ends, is modified, varied or renewed; or
- either:
  - 6 April 2021 for accommodation, school fees or cars with CO_2 emissions greater than 75g/km; or
  - 6 April 2018 for all other benefits.

School fees

Many schools will have taken prompt action to ensure they had suitable salary sacrifice arrangements in place with individual employees in relation to school fee arrangements entered into before 6 April 2017, to ensure they can benefit appropriately from the 'grandfathering' provisions. Provided the agreements were correctly drafted, this will have delayed the impact of the new rules on existing arrangements that have brought schools significant savings in employer's NICs over many years, until 6 April 2021. It is important to note that the transitional rules will apply to arrangements that were put in place before 6 April 2017, even where this is varied, modified or renewed, but only where the continuing school fee arrangements relate to:

- the same employment with the same employer;
- the same school; and,
- the same child.

It is not uncommon, for what is fundamentally the same school, to be run with a 'preparatory school' separate from the 'senior school'. HMRC's guidance has not offered schools any certainty over whether such organisational arrangements will be regarded as the same school for the purposes of this transitional rule.

HMRC has indicated that this rule is about the identity of the school which may encompass a combination of the following.

- Head teacher.
- Location.
- Governing body.
- Ownership.
- Building.
- Identity (for example, by uniform).
- Name.

However, if any school is looking for certainty on this issue, an approach to HMRC for bespoke clearance would be the sensible way forward.

Schools also need to be mindful of the fact that any employee entering into school fee arrangements on or after 6 April 2017, for example new starters, will immediately be caught by the new rules. It will therefore be necessary to identify which employees are covered by the transitional arrangements and which employees are immediately into the new rules, when completing forms P11D for the year ending 5 April 2018.

Given the financial benefits of these arrangements and the tax savings achieved in previous years, it is important that school's budget going forward for the increased employer's NICs, as children falling within the transitional rules leave the school and arrangements for new entrants are caught by the OpRA rules.

Other benefits

With such a strong focus on school fees, there is a danger that other OpRA arrangements offered to employees by schools are not identified and reported correctly. In particular, type B arrangements may prove hard to identify. Whilst formal 'cash or car' alternatives are not commonplace in independent schools, it is possible that HR managers have negotiated remuneration packages which could fall within the OpRA rules.

The silver lining

Whilst many schools will be disappointed to see the demise of the tax savings through their salary sacrifice for school fees arrangements, some may feel that this is the ideal time to consider whether other forms of salary sacrifice arrangements are appropriate for the school and its employees. Some employers have shied away from these historically, but with specific exemptions now included in the legislation for pensions, ultra-low emission cars, cycles and childcare, it may now be the right time to give these arrangements further consideration (salary sacrifice for pensions being subject to the pension scheme permitting this). However, whilst such arrangements are exempt from the OpRA legislation, it is still important to ensure that any new salary sacrifice arrangements put in place are implemented correctly to be effective.

It should also not be forgotten that, even after all of the transitional arrangements fall away in April 2021 for arrangements for school fees, employees will continue to benefit from savings in employee NICs under such arrangements, and it may therefore be worth continuing to offer such benefits for these savings alone.

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Recommended actions

It is important that, ahead of 6 July 2018 (the P11D reporting deadline for the 2017/18 tax year), schools undertake a review of their benefit packages, to ensure that all arrangements falling within the OpRA rules are identified. Discussions with HR will be important as part of this process.

It will then be necessary to implement a process for tracking all arrangements to identify which employees are covered by the transitional arrangements and which employees are straight into the new rules for the tax year ending 5 April 2018.

Appropriate communication is necessary with both existing and new employees to ensure that they understand the new rules and there are no surprises as previous tax and NICs savings are lost.

Finally, it is worth considering whether the benefit offering should be changed going forwards, and to what extent contracts should be updated to reflect these decisions.

Planning and funding capital projects – a bank's perspective

The quality of an independent school's facilities plays a critical and influential role in managing parent expectations, pupil numbers, staff retention and help provide a future perspective, writes Anil Ahluwalia, Director, Lloyds Bank PLC.

Capital projects for facility expansion, updates or improvements therefore form a key part of a school's business plan.

To support future capital projects the Governors ideally need to have carried out a thorough assessment and include:

- A detailed discussion with the school's senior management to ensure the required level of information is gathered; and
- Whether there will be external funding requirements and if so, the amount as well as term over which the external financing will be needed.

Planning capital projects
The starting point is normally to appoint a team of professionals who will help develop initial designs, provide an indication of the project length, costs and provide any required legal support at this early stage. With the additional information in place, the governing body (or nominated sub-committee) will review the various reports before agreeing to proceed with the project.

The professional team will then help commence the planning consultation through to a full planning application. In our experience, schools will benefit from the below advice at this early stage.

One

Carefully plan the timing of the project to minimise disruption to the school and in turn also mitigate any potential health and safety issues.

Two

Consider the benefit of enabling works and site set up within the Easter Break for the build to commence as soon as the summer term ends. This can help maximise the benefit of having access to the site and operate at full speed as the term draws to an end.

Three

Building projects are prone to risks relating to unexpected additional costs, risk of design failure and risk of delays. Procurement processes should allow for mitigation of this risk and through well-prepared building contracts with the aid of your professional advisors.

Four

Engage your bank as early as possible to shape any potential funding requirement and provide the governing body with the comfort of a funding commitment at an early stage in the process.

Funding requirement

When reviewing a funding proposal, the bank will seek to understand the project from the school's perspective to enable a thorough assessment of both historic and forecast financial information to evidence track record and sensitise any future assumptions. Non-financial information will also be assessed including a due diligence exercise around the senior management team and governance of the school.

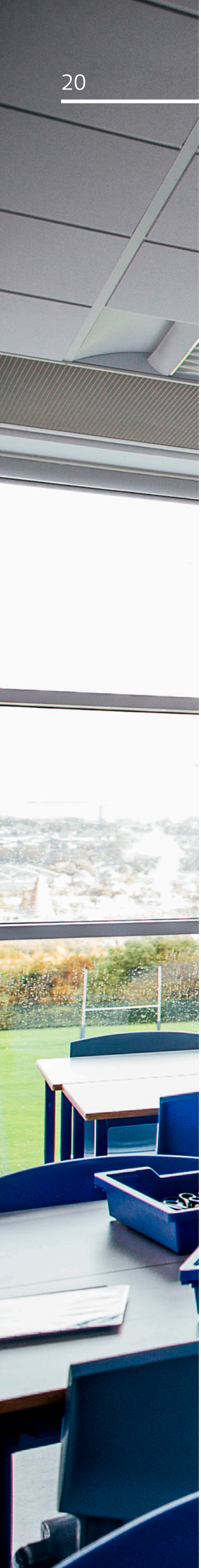
Suggested project information to include in bank funding proposal

- The rationale behind the proposed project and timing of any subsequent projects.
- The expected benefits and future opportunities or implications for the school.
- Approximate costs including contingencies.
- Your school's resources including any actual or pledged donations
- Project Build timing plan along with details of professional advisers and an outline of the procurement exercise to appoint the main contractor.
- Outline the impact of any disruption that will be caused to the day to day running of the school.

Financial and non-financial information

To enable us to understand the project further as well as to illustrate the school's ability to service any proposed debt moving forward, we ask the following information.

- Trading accounts for the last three years (from this information we will ascertain the level of surplus cash being generated by the school and in turn the school's ability to service the proposed debt).
- An overview of pupil numbers for the last five years and anticipated numbers moving forward.
- Projections including profit and loss, balance sheet as well as cash flow forecast – to include planned as well as regular capital expenditure carried out by the school.
- An understanding of the following three key school KPIs:
  - Pupil break-even point;
  - Bursary / scholarship levels (as a percentage of total income); and
  - Staffing costs (as a percentage of income).
- An assessment of the potential implications of the development upon the day to day cash flow/ working capital of the school taking account of the fee cycle (which provides a significant boost three times a year).



Management and governance

The bank will regard the quality of any management team as the single biggest contributor to the sustained success of any organisation. The bank will seek to:

- understand the expertise as well as experience of the Governors, Senior Leadership Team, as well as how the Head and Bursar work together;
- get a feel for the strength and depth of the team in relation to financial, technical and marketing skills;
- understand the management team's experience of similar or previous development projects and whether these were completed on time and budget;
- understand the level of engagement with professional advisers to date eg quantity surveyors, accountant etc; and
- identify whether the chosen contractor has sufficient experience of similar development projects and a suitably sized balance sheet to mitigate against the risk of developer failure.

Additional information to bear in mind

- During the term of any borrowing, schools will be expected to share termly management information with the bank to enable the monitoring of actual performance against forecasts, account operation and cash-flow as well as any pre-agreed covenants.
- Covenants will typically seek to provide a performance management benchmark and are geared to provide a trigger to both parties of any deterioration in surplus cash flow which forms the basis of the ability to service the proposed debt.
- Covenants would be set at a level that would enable the school management team to consider tactical operational changes in the event of a breach. This then becomes a useful performance management benchmark for both the borrower and lender.
- Any security provided to the bank is a fall-back position with the funding assessment centred on the school's ability to service the proposed ongoing debt from existing sustained pupil numbers. Pledging security enables the bank to reduce the interest margin for the proposed loan as secured lending carries lower costs of capital for the bank.

- Where property will be taken as security, a valuation will need to be undertaken by a firm on the bank's panel.
- A bank will review your inspection as well as regulatory reports along with ensuring appropriate child protection and health and safety procedures are in place.

We recognise that a substantial amount of time and effort is spent by the school management team when undertaking these projects and appreciate this time is often spent whilst also delivering on your day to day responsibilities of operating the school itself. We hope this article supports your school along this exciting journey and look forward to backing your ambition!

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