

# Independent schools sector update

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## **Holiday pay for part year workers**

Holiday pay for part year workers has been subject to a long running court case – Harper Trust V Brazel. This case was finally concluded at the Supreme Court in July 2022.

This judgement impacts workers who have permanent contracts but work irregular hours and are paid on an hourly or daily basis. Therefore this is very relevant for Schools, who often have term time only workers.

Historically the '12.07% method' has been used to calculate holiday pay following guidance issued by ACAS. However, this was never enshrined in law. The Supreme Court judgement has now confirmed that this method should no longer be used and instead holiday pay for permanent workers with irregular hours should be calculated with reference to work undertaken across a 52-week period. This is then multiplied by the 5.6 weeks annual leave entitlement. Part year workers must receive at least 5.6 weeks of holiday each year even if they only work for a few weeks each year.

Schools should review their employment contracts for part year workers and ensure they reflect this decision and perhaps even consider the basis on which they employ irregular workers in the future. They should also review their holiday pay calculations to ensure they comply with this new approach. Finally, Schools should consider whether there is a potential back pay liability as a result of this judgement.

## **Impact of UK inflation on Independent schools**

Having survived the lock downs of the Covid pandemic in 2020 and 2021, Independent Schools are now facing a new challenge – high inflation levels which the UK has not seen for many years. Inflation has not been over 3% in the last 20 years but in 2023 has hit 9%.

### **The key impacts of this for Schools include:**

#### **Rising costs**

There is likely to be pressure on wages as well as all other costs. Teachers will want to see their salaries increase in line with inflation in order to maintain their standard of living. Another major cost for schools, light and heat, is experiencing above inflation rises. We have heard from some schools that once they exit their current fixed term contract, their electricity and gas expenditure could increase by up to 50%. Catering costs are another area of concern with food price increases putting pressure on budgets.

During this time of rising costs, the Schools' budget will be more crucial than ever. It is important to research your suppliers accurately when setting a budget, as costs are unlikely to be "the same as last year". Bursars will need to ensure there is tight control of discretionary costs whilst essential expenditure is included within forecasts at an appropriate level. Sensitivity analysis should be completed to consider the expected outturn if expenditure was even higher than predicted – would the School be able to survive? Does the School have reserves available to sustain such a variance to budget?

#### **Potential reduced demand for student places**

Difficulties within the economy caused by inflation and increasing interest rates may result in pressure on affordability for parents. This could mean that demand for pupil places falls which again puts a strain on the Schools results.

The ISC census showed that demand for independent school places had returned to an all time high following the recovery from the pandemic but we may see this tail off in 2023. Fee setting next academic year could be particularly challenging in this highly uncertain economic environment.

#### **Interest rates**

Interest rates are now at their highest for almost 15 years. Where Schools have borrowed to invest in their facilities this is likely to be significantly impacting their monthly cash outflow. It will be really important to communicate with your bank manager regularly regarding affordability and discuss options available. It may be possible to extend the term of the loan or consider a capital repayment holiday for a short period.



## Crypto Currencies

You may be forgiven for thinking that crypto currencies are of no concern for independent schools. However, it is important to keep abreast of new developments whether these are technological or other transformations. Crypto currencies are sufficiently on the radar, for the Charity Commission to write an article in July 2022 about "what they are and should charities use them".

In the future, Schools may start to innovate into crypto currencies in the following areas:

- Accepting fee payments
- Receiving donations
- Investing in assets
- Using blockchain as an unchangeable record for either supplier contracts or educational certificates
- Teaching pupils about crypto and blockchain

However, as the Charity Commission state in their article, Trustees should be very careful at this early stage when deciding to "dip their toes in the crypto water".

There are some significant associated risks in terms of potential volatility and knowing the source of your donor. Therefore, this is likely to be something to keep on your horizon scanning agenda for now and keep a watchful eye on developments in this sector.



[charitycommission.blog.gov.uk/2022/07/12/cryptocurrencies-what-are-they-and-should-charities-use-them](https://charitycommission.blog.gov.uk/2022/07/12/cryptocurrencies-what-are-they-and-should-charities-use-them)

## Teacher's Pension Scheme

The cost of membership for independent schools of the defined benefit teacher's pension scheme (TPS) has increased substantially over recent years, and many schools fear rising contributions in the future.

Contribution rates were due to be confirmed as part of the 2023 scheme valuation. However, this review has been delayed until 2024, although any announced increase will need to cover backdated scheme costs including 2023. Interestingly there is a FAQ on the Teachers Pension website.

They want to "shed some light on some common misconception" that the employer rate will rise significantly in 2024. They state that it is impossible to know what the results of the valuation will be and what affect that will have on the contribution rate whether it be a rise or drop. This won't be known until late 2023 at the earliest. The article also confirms there are no plans to introduce an exit charge.



[www.teacherspensions.co.uk/news/employers/2022/05/contribution-rate-and-exit-charges.aspx](https://www.teacherspensions.co.uk/news/employers/2022/05/contribution-rate-and-exit-charges.aspx)

This isn't particularly reassuring and there is still much uncertainty surrounding the future of the TPS. Furthermore, Unions appear to have adopted an increasingly aggressive posture with strikes suggested where some schools have consulted employees about exiting the scheme.

Given tight future budgets for most Independent Schools, we suggest that TPS should still be high on the agenda of strategy discussions for all Trustees and when budgeting for 2023/24 and beyond. Bursars must consider a potential increase in cost associated with membership of the scheme.

## Suspicious funds

There can be occasions where funds are received by a charity and their origin/legitimacy are not known. This can be from donations received which have unusual requests or specific conditions attached (such as asking you to forward it to another charity or act as a pass-through-entity to circumnavigate funding rules for other grant-making bodies). This can also include amounts received in cash from overseas bank accounts in relation to services provided by the charity.

Charities have a duty to carry out some due diligence on the source of the funds, especially if material, from any unusual or anonymous sources. It is sensible to ask questions about the individual or entity making the payment, such as:

- Who are they and what is known about them?
- Is the money coming from outside of the UK?
- Is there an existing relationship?
- Are any checks required?
- Is the amount a one-off or a regular amount?
- Are there conditions attached to the money received?
- Is there anything else strange or unusual about the transaction?
- Such as unnecessary urgency in completing the transaction?

Governors, being charity trustees, have fiduciary duties that feed into their approach to managing the risk of money laundering:

- You must act in your charity's best interests;
- You must manage your charity's resources prudently; and you must act with reasonable care and skill.

As a minimum Schools must ensure they do not commit any offences under the Proceeds of Crime Act 2002. We recommend that Schools revisit their Anti Money Laundering Policies to ensure these are fit for purpose.

### Labour Party announcements regarding VAT on Independent School fees

The Labour Party have recently re-asserted their proposal to charge VAT on independent school fees. We last wrote about this in our 2019 sector update, following the 2019 Labour conference where delegates voted in favour of "integrating all private schools into the state sector".

The Independent School Council commissioned a report in 2018 in relation to the potential impact of charging VAT on school fees. It stated that putting VAT on school fees would make independent schooling an unaffordable choice for many families. Smaller independent schools would certainly close, resulting in a sudden increase in the numbers of young people needing places at state schools – driving up costs to the taxpayer. For every child forced out of the independent sector, the impact on the Department for Education's budget would be approximately £6,310 per pupil per year, with a further one-off capital cost associated too.

The calculations summarised by Baines Cutler concluded that ultimately, putting VAT on school fees would cost the Government money, not raise money.

We will be discussing this further at our breakfast roundtable on Tuesday 15 September in our Horsham office. If you would like to attend our event and hear our VAT Director's thoughts on this proposal, please email [events@krestonreeves.com](mailto:events@krestonreeves.com).

### Charity reserves policy - a reminder

The Charity's reserves policy is not just a requirement of the Charity SORP, setting out in the Trustees' Report unrestricted, restricted, designated or endowed funds. It is also an opportunity to share with users of the financial statements any longer-term plans for funds of the charity.



The reserves policy must consider the actual position of the School compared with the desired position and where there is a difference then an explanation as to what Trustees are doing to reduce the difference needs to be detailed.

We recommend the Board regularly reviews their reserves policy. Is it appropriate still? Is the level required too high? Are any elements of the reserves earmarked/designated for charitable or construction projects?

The Charity Commission has a useful guidance document [CC19: Charity Reserves – Building Resilience](#) which we recommend is read before your reserves policy is updated.

## Risk Management

Identifying and managing the possible and probable risks that your School may face is a key part of effective governance. In the current economic uncertainty this is particularly important. The Charity Commission guidance CC26 – Charities and Risk Management, is a useful guide which School Trustees should read to remind themselves of their responsibilities.

In our experience most Schools tend to be good at identifying risks and often have a thorough risk register which they discuss regularly. However, it is the next two steps which can be missed or weakly implemented:

- Identify systems and process in place which help the School mitigate and control the identified risks to an acceptable level
- Monitor and assess these systems and controls to ensure they are operating effectively.

A good risk management process allows Schools to understand the risks the School faces, mitigate these risks by implementing controls, and make good strategic decisions with confidence. Ultimately this will allow the School to achieve their objectives.

## Disaster Recovery Plans

The last few years have taught us to expect the unexpected. No matter how much you analyse the risks facing your organisation there are likely to be events, throughout the life cycle of your School, which can't be predicted. However, you can still prepare your organisation to be ready to react to unforeseen situations by having a Disaster Recovery Plan. The plan will set out the steps which would be taken if a serious incident occurred. This could be a fire, flood, cyber-attack, immediate loss of key funding stream or perhaps a pandemic. Every School will have their own scenarios to model.



The aim of the Disaster Recovery Plan is to provide a step by step action plan to allow the School to resume normal operations after such an incident, in particular focusing on continuing to provide education to pupils. The milestones to return from disaster to normal will be assigned to those with key responsibilities and the plan should be well rehearsed so that if it needed to be put into operation this would be a smooth and calm process. The charity commission guidance CC26 provides details to help your charity develop a suitable plan.

Unfortunately, we know that cyber-crime is increasingly prevalent amongst the not-for-profit sector. Schools should ensure their IT infrastructure has protections in place to prevent a potential attack. However, should a disaster such as a Ransomware demand occur, how would your organisation survive? What data do you hold, what data is vital to the School and how quickly could it be retrieved? Practicing your recovery scenarios will put your organisation in the best possible place to react positively in the face of catastrophe.

When setting your Charity's reserve policy, it would be useful to reference the Disaster Recovery Plan. The step by step actions may have financial consequences and therefore this is one of the many elements which will dictate the retained reserves required to ensure the financial resilience of the School.

For those Schools that have a plan in place, how useful was it during the pandemic? Existing plans need to be reviewed regularly and updated, incorporating what has been learnt over the last few years. Although you hope to never have to refer to your document it is important to have one in place that is current. A plan with named individuals who are no longer with the School or addresses that don't exist will not be much help.

**We are able to help our clients establish or review their Disaster Recovery Plans.**

**Please ask for support with this if it is a key policy you are missing within your organisation or if you need your risk management process reviewed.**





## Cyber risk

Threats to charities and organisations continue to remain in the headlines where high profile charities are significantly affected by cyber attacks in their many forms.

We recommend that training for your staff on cyber risk is frequently undertaken to ensure there is a constant reminder of this risk.

Key to managing these risks can be straightforward and mainly relate to ensuring staff are kept up to date and remain vigilant:

- Passwords are updated regularly and are complex enough (i.e. no recognisable words and different letters, numbers and symbols used).
- Emails with uncertain origin are looked at with scepticism and links are not clicked on.
- Third party verifications are carried out (such as for any requests for payment from senior leaders or changes to supplier's bank account details).
- Software updates are carried out regularly (not pressing the 'later' button).

## Environmental reporting

Net zero is an important topic for the future of our planet and Independent Schools should consider their role in meeting this objective. Schools have an opportunity not only to consider their direct actions in the fight against climate change but also their role in educating future generations to drive behavioural change.

We expect most Independent Schools to be below the thresholds required to report under the Streamlined Energy and Carbon reporting requirements (large companies only). However, the annual board report may still be a useful tool for Schools to explain how they are tackling this issue, what objectives they have set themselves, what actions they have achieved during the year towards meeting these objectives and what their next steps.



The United Nations set 17 sustainable development goals in 2015. It may be useful for your School to consider concentrating on a couple of these goals as part of your Environmental Social and Governance (ESG) programme. Consider which goals align most closely with your School's strategy and this could be a simple way to communicate your focus.



### Annual investment allowance

For those Proprietorial Schools which pay tax, you will be pleased to hear that one of the policies which appears to have remained intact from the September 2022 mini budget is the “permanent” setting of the annual investment allowance at £1m. This means that if you plan to invest in qualifying plant and machinery in 2023, the School will receive 100% tax relief against its profit for the first £1m of expenditure.

### Health and Social Care levy

The government announced that it is cancelling the Health and Social Care Levy – initially introduced via a 1.25 percentage point rise in National Insurance Contributions (NICs) – which took effect in April 2022.

This will be delivered in two parts:

- The government will reduce National Insurance rates from 6 November 2022, in effect removing the temporary 1.25 percentage point increase for the remainder of the 2022-23 tax year.
- The 1.25% Health and Social Care Levy will not come into force as a separate tax from 6 April 2023 as previously planned.

This is welcome news for School’s budgets for the remainder of 22/23 as this reduction applies to employers’ National Insurance contributions as well as for employees.

### VAT considerations

It is important to monitor income to consider whether your School has taxable income exceeding the VAT threshold of £85,000. School fee income, charges for boarding and student catering, do not count towards the limit for compulsory VAT registration. These services are exempt from VAT.

Some examples of income which could be subject to VAT to consider are:

- Staff recharges
- Letting of facilities to wedding parties
- Sales of computer equipment (even if at or below cost)
- Commission from photographers
- Sales of goods from school shops
- Vending machine sales

Services acquired from outside of the UK also count towards the threshold as if they were income. This is called the ‘reverse charge’. As an example, this may arise where there is an overseas agent.

We can offer a VAT health check to help review the position for your School.



## Artificial Intelligence in schools

The integration of Artificial Intelligence in schools is revolutionising education. AI technologies offer personalised learning experiences, intelligent tutoring and data driven decision making. However ethical considerations and challenges must be addressed to ensure responsible implementation.

### Personalised learning

AI may be able to tailor education to each student's unique needs, enhancing engagement and identifying areas that require support. This will impact significantly on staffing structures and IT infrastructure requirements for schools. It could have the advantage of reducing teachers work loads.

### Administrative tasks

AI may be able to automate grading and data management, saving time and reducing errors, whilst simultaneously allowing educators to focus more of their attention on meaningful interactions with students. Schools able to leverage this technology best are likely to be those with larger budgets to explore this new technology.

### Challenges

Due to facilitated accessibility, students are able to abuse the resources in their hands, allowing them to cheat and/or rely on this technology. It will be difficult for teachers to differentiate between work produced by AI technology and work completed personally by students. Students will need to be taught the moral and ethical implications of AI and how to use the tool to their advantage and safely.

By leveraging AI technologies responsibly, schools can empower students with the skills they need to thrive in a rapidly evolving world, fostering a future-ready generation capable of adapting to the opportunities that lie ahead. However, there are many challenges to be overcome in the road ahead as AI enters the world of education.

## Independent Schools roundtable

With a number of challenges and uncertainties facing the Independent School sector this informal breakfast roundtable discussion which will focus on these issues and how to navigate them.

Some of the points that we will be discussing over breakfast include:

- VAT and school fees
- Charitable status
- Interest rates
- Staff shortages
- Inflation

The roundtable discussion will be hosted by Lucy Hammond, a Partner at Kreston Reeves, who will share her knowledge of the charity sector and the current issues it is facing. This will be an opportunity for you to discuss and share your views with bursars and Trustees from other schools.

If you are interested in attending the event or would like more information, please email [events@krestonreeves.com](mailto:events@krestonreeves.com).

**Friday 15 September 2023**

### Agenda

- 8.00 am:** arrival, networking with coffee
- 8.30 am:** roundtable discussion over breakfast
- 10.00 am:** discussion will finish promptly

### Location

**Kreston Reeves Horsham office**

## Charities and Not for Profit team:



**Lucy Hammond**  
Partner



**Sarah Ediss**  
Partner



**Graham Hunt**  
Partner



**Simon Webber**  
Partner



**Susan Robinson**  
Partner, Head of  
Charities



**Sam Rouse**  
Partner, Charities  
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If you have any questions on any of the topics covered in this update please contact us to arrange to speak with one of our specialists in London, Kent and Sussex.

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