



the Maximilian

Monthly Newsletter for Governors from the Education Commission

Edition 71
May 2019

Welcome... *The Maximilian* is a monthly newsletter from the Education Commission to all categories of governors in our schools, highlighting changes in legislation and other news which will be of help to governing bodies.

Reflection

The Catholic school should be able to offer young people the means to acquire the knowledge they need in order to find a place in a society which is strongly characterized by technical and scientific skill. But at the same time, it should be able, above all to impart a solid Christian formation.

The Catholic School on the Threshold of the Third Millennium, 8

Foundation Governor Meetings

Consultation with foundation governors about the 10 year strategic plan

5th June- St Anslems, Canterbury, CT1 3EN

19th June - CCF, Tooting, SW17 8BS

20th June- Education Commission, Orpington, BR5 2SR

Please [click here](#) to view the agenda

Arrival time is 6pm for a 6.30pm start and will finish at 8pm. Refreshments will be provided. There is no charge for this meeting.

Please [click here](#) to book your place.

Living Wage

Why is the Living Wage a Catholic concern?

£9.00 across the UK and £10.55 in London

The Living Wage embodies the mission of the Church to the poor and encompasses a range of Catholic Social Teaching themes of Solidarity, Subsidiarity and the importance of Human Dignity. This invitation from the Bishops of England and Wales for Catholic organisations to consider the Living Wage is both part of the Church's mission to the poor and also a way for all Catholics to put their faith into action.

Academy Updates

New National Schools Commissioner

Following his eight-month stint as Interim National Schools Commissioner, the DfE has confirmed that Dominic Herrington will become the National Schools Commissioner permanently. Dominic's replacement as the Regional Schools Commissioner for the South East and South London Region has yet to be appointed.

Related Party Transactions

Trustees are reminded that new rules governing how Related Party Transactions (RPTs) are reported came into force from the 1 April 2019. All Trusts must:

- Report all transactions with related parties to the ESFA in advance of the transaction taking place, using the ESFA's on-line form. This requirement applies to transactions made on or after the 1 April 2019.
- Obtain the ESFA's approval for transactions with related parties that are novel, contentious and/or repercussive.
- The ESFA's prior approval, using its on-line form, for contracts for the supply of goods or services to the Trust by a related party, agreed on or after the 1 st April 2019, where any of the following limits arise:
 - a contract exceeding £20,000;
 - a contract of any value that would take the total value of contracts with the related party beyond £20,000 in the same financial year;
 - a contract of any value if there have been contracts exceeding £20,000 individually or cumulatively with the related party in the same financial year.
- For the purposes of reporting to and approval by the ESFA, transactions with related parties do not include salaries and other payments made by the Trust to a person under a contract of employment through the trust's payroll.

These reporting requirements are in addition to the rules already in place governing RPT's, as disclosed in the Academies Financial Handbook 2018.

Academy Trust Financial Management Good Practice Guides

The ESFA has recently published six good practice guides aimed at supporting Trustees, Accounting Officers and Chief Financial Officers to develop good financial management practice at their Academy Trust. Whilst these guides do not replace or modify any of the requirements set out in the Academies Financial Handbook and the Academies Accounts Direction (AAD), their aim is to set out suggestions and examples of good practice. The six guides cover:

- Operating an academy trust as a going concern;
- Choosing an external auditor for an academy trust;
- Academy trust deficit recovery;
- Academy trust risk management
 - What is risk management?
 - The key steps to consider when developing a risk management framework
 - The identification of risks
 - Measurement
 - Management control of key risks
 - The monitoring of risks
 - The reporting of risks through a risk register
- The common pitfalls of risk management, including the reporting of too many risks, ignoring known risks and over complexity within the risk register;

- Leasing guidance for academy trusts; and
- Academy trust management accounting
 - Key regulatory obligations
 - The steps the finance team should take when producing monthly management information
 - The format of the monthly accounts
 - How often monthly management information should be reviewed by the Trustees and the Finance Committee

The six good practice guides can be accessed in full [here](#).

Fraud Risk Management

In light of the “significant increase” in incidents of cybercrime against Academy Trusts in the past year, with some Trusts already being subject to incidents of fraud, the ESFA are reminding all Academy Trusts of the ESFA’s guide for Trusts for help reduce the risk of financial irregularities (which can be accessed in full [here](#))

The guide looks at:

- What constitutes fraud and the different types of fraud;
- Cybercrime and cyber security
 - A cyber security checklist is provided for Academy Trusts
- A fraud risk management strategy
 - The key components of an effective risk management strategy
 - An anti-fraud checklist for Academy Trusts
- The key components of a fraud response plan;
- Reporting fraud to the ESFA; and
- Other resources available for Academy Trusts to consider.

ESFA’s Assurance Work

March 2019 saw the ESFA publish a briefing paper on the common themes arising from the assurance work it carried out on Academy Trusts during 2017 and 2018. Whilst the briefing paper can be accessed in full [here](#)

- 94% of financial statements were submitted to the ESFA by the 31st December, in line with regulatory requirements;
- 1.8% of financial statements (consistent with the previous period) were qualified, although there was a significant increase in auditors providing an “emphasis of matter” opinion, which in turn was largely driven about the Trust’s ability to continue as a going concern;
- The ESFA identified the same top three reasons as the previous period for auditors providing modified reports on the Trust’s regulatory and compliance practice:
 - non-compliant procurement practises including Trusts being unable to demonstrate goods and services procured ‘at cost’ as well as non-compliance with their own procurement procedures;
 - weak internal control arrangements including the Board not maintaining an appropriate scheme of delegation of financial powers to ensure robust internal control and insufficient segregation of duties when making payments; and
 - Inadequate financial management and reporting arrangements including the Board not receiving sufficient information about financial performance and Trusts not preparing monthly budget monitoring reports.
- The ESFA’s work identified that new Academy Trusts and those joining existing trusts were making good progress towards compliance with the Academies Financial Handbook. Areas for further development included:
 - ensuring an appropriate committee of the board agrees a programme of work to address internal control risks;
 - audit committees not being fully embedded within the Board structure;
 - further work is required to embed the independent checking of financial controls; and

- further work is required to develop contingency and business continuity plans as well as Trusts publishing the pecuniary interests of its Trustees and governing structure on their websites.

ESFA Independent Appeal Panel complaints

The ESFA has reminded academies that they must instruct clerks who run their admission appeals to include a link to the “Academy Independent Admission Appeal Complaints Factsheet” in the panel’s decision letter. Panels are reminded that they must follow the statutory requirements in both the School Admission Appeals Code and the School Admissions Code when organising admission appeals. To limit the number of complaints made about independent appeal panels, and to ensure any complaints are dealt with as effectively as possible, Academy Trusts and clerks are reminded that:

- the Panel must decide if the academy’s admission arrangements complied with the requirements set out in the School Admissions Code and Part 3 of the School Standards and Framework Act 1998; and
- the Panel must then decide whether the academy’s admission arrangements were correctly and impartially applied to the case in question.

To ensure complaints about the Panel can be administered quickly and efficiently, academies are required to ensure their clerks keep an accurate and legible record of the appeal proceedings, including how the panel reached their decision.

Reminder of the financial returns Trusts needs to make to the ESFA in 2019 Information is in a table.

| Return | Launch Date | Submission Deadline |
|--|-----------------|---------------------|
| Related Party Transactions | 1 April 2019 | Ongoing |
| Budget Forecast Return: Outturn | 9 April 2019 | 21 May 2019 |
| Budget Forecast Return | 18 June 2019 | 30 July 2019 |
| Land Buildings Collection Tool | 1 October 2019 | 4 November 2019 |
| Financial Statements/Auditor’ Managment Letter | 15 October 2019 | 31 December 2019 |
| Accounts Return | 4 November 2019 | 20 January 2020 |

Safeguarding

Knife Crime

Ofsted has recently published its report on “Safeguarding children and young people in education from knife crime”. Research was carried out in 29 schools, colleges and pupil referral units (PRUs) in London. The report looks specifically at school leaders’ experiences of knife crime in London, as well as the views of children and some parents of both victims and perpetrators.

The research considered three broad questions:

1. What are schools, colleges and PRUs in London doing to safeguard children and learners from knife crime while on school premises?
2. How are schools, colleges and PRUs in London giving children the knowledge and skills to stay safer in their local communities?
3. How are exclusions being used when children bring knives to school?

Ofsted's research report identified five policy and practice areas that it feels need further consideration by policy leaders and school leaders to help to create an environment in which they can work as effectively as possible to keep children safe. The report in full can be accessed [here](#) but the recommendations have been summarised below:

Improving partnership working and strategic planning

- Local community safety partnerships should fully involve schools, colleges and PRUs in developing and implementing local strategies that aim to address knife crime and serious youth violence.

Exclusions and managed moves

- All schools and academies in London should ensure that their exclusion policy reflects the practice set out in the DfE's statutory guidance. Local authorities should have a strategic response to permanent exclusions. They should also, in conjunction with regional schools' commissioners, challenge schools and MATs if exclusions do not appear to be in line with statutory guidance.
- The DfE should collect data from schools about managed moves in the same way in which it collects information on permanent and fixed-term exclusions.

Early help and prevention

- Safeguarding partners should involve school leaders at a strategic level in assessing the needs of children and young people in their area, and in planning and delivering early help services in response to those needs. Schools need to participate actively in local arrangements as required under 'Keeping children safe in education' statutory guidance.
- Local safeguarding partnerships should facilitate all agencies including schools and colleges in challenging each other's practice if they believe any agency is failing to contribute to the local strategy to protect pupils from knife crime.

Improving information-sharing

- Schools and colleges should share full information with one another when pupils and learners move schools, PRUs or alternative provision or move to further education, to safeguard them and other pupils and learners.
- Pan-London safeguarding partners should provide challenge to schools and colleges and, when necessary, drive improvement in how well schools and colleges share information with others to promote children's safety when those children move schools or begin further education, including via a managed move or when they are permanently excluded.
- The Metropolitan Police Service needs to establish a clear and consistent protocol and memorandums of understanding with schools that ensure that it and schools routinely share information about children for the purposes of safeguarding.

Teaching the curriculum

- School leaders should consider how their personal, social, health and economic education (PHSE) curriculum reflects local safeguarding issues and trends, including knife crime.
- Pan-London bodies should consider ways in which they can support schools in ensuring that external organisations that are delivering anti-knife crime and gang affiliation sessions can provide a high-quality and impactful contribution to the school PHSE curriculum.
- Safeguarding partnerships and school leaders should raise awareness of the dangers of grooming and criminal exploitation among both parents and children.

Governance Handbook

The end of the Spring term saw the DfE publish an updated version of the Governance Handbook, which highlights the key statutory responsibilities of those involved in school governance. The Handbook continues to be structured in line with the six key competencies of effective governance, as per the Governance Competency Framework: strategic leadership, accountability, people, structures, compliance and Board evaluation.

The document starts with a list of the changes that have been made to the previous version of the Handbook, which include:

- Greater emphasis on parental engagement - Boards should be able to demonstrate the methods used to seek the views of parents, carers and the local community. They should also be able to show how those views have influenced their decision making and how they have fed back to parents, carers and the local community.
- Further clarity on the Board's responsibilities under safeguarding, including DBS checks and s128 prohibition.
- Schools' fire safety responsibilities.
- Clarification on what a maintained school must publish in relation to the curriculum.
- Updated signposting to DfE resources such as the workload reduction toolkit and the Analyse School Performance service.
- A new sub-section on Executive pay
 - The Board must ensure its decisions about levels of executive pay follow a robust evidence-based process and are reflective of the individual's role and responsibilities. No individual can be involved in deciding his or her remuneration.
 - The Academies Financial Handbook is used to signpost Boards to further advice and guidance on executive pay.
 - Under the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 organisations are required to publish information on its website about the gender pay gap in their organisation.

The updated Handbook can viewed [here](#).

Admissions Appeals

March 2019 saw the DfE publish guidance on Admission Appeals for school places, with separate guidance for Admission Authorities, the Clerk and members of the Appeals Panel as well as guidance for the parents.

Whilst the published guidance can be accessed in full here, the Appeals guidance for Admissions Authorities looks at:

- Informing parents of their right to appeal.
- Making arrangements for the organisation and hearing of appeals.
- Setting up the independent appeal panel.
 - Admissions Authorities ("AA") must appoint a clerk to the appeal panel, who is independent of the school and the education functions of the Local Authority.
 - The AA must also appoint an independent appeal panel, which must consist of a Chair and at least 2 other panel members,
 - The AA should ensure that panel members are selected on the basis that they can make fair and objective decisions. It's important that panel members are independent and retain their independence at all times. For schools with a religious designation, the AA should not select panel members solely based on their faith.
- Training
 - The AA must ensure that both the clerk and the panel members have the appropriate and up to date training before taking part in any part of the appeals process.

- Indemnity.
- Appeals timetable.
- The hearing itself and further appeals
 - Presenting the AA's case to the appeal panel (Presenting Officer).
 - The production of evidence.
 - Demonstrating prejudice
 - The factors that will be considered by the panel.
- Notes and records of proceedings
 - It is the AA's responsibility to ensure that the notes and records of appeal proceedings are held securely for a minimum of 2 years.
- Infant class size appeals.

Queries about admissions appeals should be directed to keithburleton@rcaos.org.uk

Recent Cases

Mrs V Scott v Chigwell School - 3201941/2018

Court: East London Employment Tribunal

Decision: In her work as a visiting music teacher, the claimant was a worker within the meaning of S. 230(3)(b) of the Employment Rights Act 1996.

In this case the employee was a visiting music teacher and a preliminary hearing was held in the employment tribunal in order to determine her legal status as this would determine what, if any, of her claims could proceed to a full hearing. The tribunal concluded that Mrs Scott should be granted worker status because she had some level of control over how she worked and she was also integrated to some extent within the school which meant that she could be distinguished from a self-employed tutor. When an individual has been granted worker status this means that they are undertaking to perform work personally for another party but that the other party is not a client or customer of the worker. Worker status provides an employee with enhanced rights including holiday pay and an entitlement to be paid the national minimum wage. Unlike employees however, workers do not have unfair dismissal rights.

Comment: This case follows a long line of cases where self-employed status has been challenged. It may open the door to many other peripatetic teachers and each one will need to be assessed on a case by case basis.

Former NHS manager fined by the Information Commissioner's Office for sending personal data to her email account

A former GP practice manager has been fined for sending personal data to her own email account without authorisation, following an investigation by the Information Commissioner's office. The individual forwarded an email from her work email address to her personal email address which contained 13 application forms which had been submitted several months earlier for a vacancy at the surgery. The application forms contained information such as names, addresses, personal email addresses, national insurance numbers and personal details for referees.

Comment: This case highlights the importance of ensuring that all members of staff receive appropriate data protection training. It is also important to ensure that application forms are not circulated by email and are accessed via a separate secure online folder, such as Google Drive.

You can read more by [clicking here](#).