Spring 2015

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SCHOOLS BRIEFING

"Charity Expertise Award" and "Overall Service Award" | Top three for eight consecutive years | *Charity Finance* Audit Survey

Letter from the Editor | haysmacintyre Independent Schools' Conference | How and when do we recoup the increase in teachers' pensions contributions? | School fee remissions - are they still sustainable? | Will a school's safeguarding responsibilities trump an agreed reference? | Four key tax updates

LETTER FROM THE EDITOR

Welcome to the spring edition of the haysmacintyre schools briefing.

Since our last briefing it has been a busy time for schools with signing off accounts and challenging the first cut of the budgets. With capital projects on the increase, a nervousness to borrow and the pressures on fee increases and pupil numbers, there is a focus on the impact of the Teachers' Pension Scheme.

We began February with our annual Independent Schools' Conference, now in its 22nd year. The conference was attended by over 150 people who came together to share their thoughts and experiences of the sector. We were delighted with how the day went and the discussion and debate generated. We are always grateful to our speakers who make the day so enjoyable, but more on this from David Sewell.

Pensions are currently a challenging issue for most organisations and generally culminate in a headache and a cost. Richard Weaver looks at how schools may be looking to recoup the increase in pension contributions which will impact schools from September this year.

The Chancellor delivered his last Budget before the General Election in May. As expected, very little was said to affect the school sector. Katharine Arthur and Nick Bustin pick up on a couple of points.

Our legal article has been provided by Sue King of Wrigleys Solicitors and responds to the question 'Will a school's safeguarding responsibilities trump an agreed reference?'

I was delighted to catch up with David Williams at the AGBIS AGM last week. Many of you will know him from Charterhouse School. As a number of schools benchmark their fees and remissions, David gives his thought on whether school fee remissions are still sustainable.

Finally, as we are almost at the end of another busy term, may I wish you a good Easter break and I look forward to seeing you in Newport at the ISBA Annual Conference in May, where you will find the haysmacintyre team on Stand E34. Do come and say hello!

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HAYSMACINTYRE INDEPENDENT SCHOOLS' CONFERENCE

haysmacintyre's 22nd annual independent schools' conference was again held at Drapers' Hall in February and attended by over 150 governors, heads, bursars and representatives from the sector's main associations.

The key note speaker was Barnaby Lenon, chairman of the Independent Schools Council. He gave us an excellent start to the day with a comprehensive summary of the main issues affecting independent schools. He referred to ISC's recently published manifesto, noted the leading role the sector has played over exam reform and drew particular attention to the shortage of graduates entering the teaching profession and the adverse impact that this will have on teacher recruitment. He outlined the schools-based teacher training now being offered in order to attract more into the profession and into independent schools in particular. Barnaby provided us with a most informative overview.

Claire Oulton was our second speaker. Claire was most recently head of Benenden and is involved with a number of projects including leading RSAcademic's study 'Ten Trends 2015'. She used her experience as head of two major schools and a governor of several to address us on: 'Building the top team, the relationship between the Head, Bursar and Governors'. I noted that her previous bursar and chair of finance who were sitting in the row behind me had no cause to be concerned!

The morning sessions provided delegates with much to discuss and share over lunch in the Hall's magnificent surroundings.

In the afternoon, we welcomed back our popular double-act: Professor Joe Nellis, pro-vice-chancellor and director of Cranfield School of Management and Steve Pateman, executive director and head of UK banking at Santander, who presented their outlook for the UK economy and its impact on independent schools. Their differing styles and opinions provided an interesting contrast and unusually Joe, whilst noting the threat of a hung parliament, was the more bullish of the two. Both agreed that low inflation was likely to continue, disposable income was starting to rise and there had never been a better time for a medium to long term fixed rate borrowing. Joe and Steve provided a stimulating session to complete what had been and enjoyable and thought-provoking day.

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FINANCIAL MANAGEMENT

HOW AND WHEN DO WE RECOUP THE INCREASE IN TEACHERS' PENSIONS CONTRIBUTIONS?

Independent schools will soon be finalising their budgetary programme for the 2015/16 academic year and for the first time since 'that' article led to hyperactivity in the press, all schools will be facing the same question all over again – How and when do we recoup the increase in teachers' pensions contributions?

Last time the contributions levels increased, the vast majority of independent schools increased school fees by a comparable percentage. This was at a time when the economy was perhaps more stable than it is today. This time around, TPA rate contributions for employers increase from 14.1% to 16.4% from September 2015, which is a far less significant percentage increase. However, when considered alongside increasing pressure on salary rises more generally, it will be interesting to see whether a similar 'all in one' approach is adopted by the sector.

Having spoken to many clients over the last audit cycle, the general consensus is that it is not as significant a rise as last time around, and it is unlikely to make its way through as a one off hit as it did last time. This is because schools are looking far further ahead and linking the current fee rates with the financial resource requirements in three, four and five years time, particularly capital and cyclical maintenance funding.

Schools have been very resilient despite the economic conditions. The press, and even some commentators from the sector, have pot shot at the independent school fee rises over the past ten years as a comparator to wage inflation generally. Perhaps an inappropriate measure given those earning the average wage are unlikely to represent a significant proportion of those sending children to independent school. We are, nonetheless, seeing high levels of capital spend in the sector and this has to be funded from reserves, or by implication cash generation to enable the repayment of loan facilities.

As a general rule, independent schools tend to budget in the range of 5%-10% of net fee income as an annual surplus target. So how will this most recent increase in pension rates and salaries impact on school fees?

As an example, let us assume a school with 230 children, a net fee income of approx. £3.5m, that's approximately £15k per annum in fees per pupil. Salaries as a percentage of net fee income are 60% and other costs are 35% generating a surplus of 5%, at the lower end of the desired scale.

We have seen from the results of our own Independent Schools Management Survey a very close correlation between teachers' pay rises and the increase in school fee increases, and we would not expect this to change. Let us take a 1% increase in teaching salaries. For every £1m of teachers' salaries, the increase in teachers' pension contributions will be £23,000. Add one percent uplift in salary, and this rises to £23,230. With a 2% rise in pay, these additional contributions increase to £23,460, and this does not take into account teachers moving up the scales.

If we then assume a general 2% inflation on all other costs, the school fees in order to maintain a 5% contribution would need to rise to £15,300, or an increase of 1.89%. On balance, this does not look that bad. But this assumes that the school is content with its 5% margin, out of which it has significant property assets to maintain and improve if it is to keep pace with the competition and demands of parents.

If the same numbers are run with a need to generate closer to a 10% surplus in order to cash-flow property improvements, then the increase in fees leaps to £16,997, or a 13.3% increase.

The moral of the story is clear, any increases in fees will depend where individual schools are in terms of current surplus, and what level of additional working capital or cash-flow they need in order to maintain the school and remain competitive. Whilst the TPA contributions in themselves will be an influence on the fee rates, it will be driven more by the current performance of the school and future capital and maintenance spend.

Unfortunately, the TPA rates are only one instance of additional cost that will impact the sector. You will be aware of the Office of Tax Simplification report and the Finance Bill which aims to bring in further changes to the tax system that may adversely affect some school benefits. There is also the ESOS - Energy efficiency survey, requirements for those over 250 employees, and the yet to be confirmed impact of the Energy Act which could bring with it a need to carry out further spend on boarding accommodation.

These are in addition to the abolition of contracted out rates of national insurance from April 2016, which will impact all TPS members and local authority defined benefit pension members (further details on page 7). This alone will see an increase in school budgets of 3.4% of gross pay for those that are currently contracted out.

We hope this article initiates some advance planning by bursars and encourages consideration not just the fees of the coming year, but to take a longer term view. As a sector we need to be estimating our costs, student numbers and capital needs up to five years ahead, in order for the needs of the school to be the driver for fee increases, rather than annualised external influences which can result in a reactionary influence on fees.

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SCHOOL FEE REMISSIONS – ARE THEY STILL SUSTAINABLE?

It is noticeable that barely a week goes by without an article in the press about the high cost of school fees. For instance a recent editorial in *The Times* argued, under the headline 'Educating Nikita', that the fees at some of the major public schools were now so high that only the global elite could afford them.

So how has this come about and should private schools be making more effort to attract pupils from more modest backgrounds?

In answer to the first part of this question, most school bursars would confirm that an 'arms' race' amongst schools to improve their facilities has placed an unprecedented burden on their finances. This is particularly acute where there are limited endowment funds to draw upon. So on top of the fixed costs (which include salaries, NI and pension contributions, catering costs and estate management expenses) a significant budget surplus is required to meet this demand.

However, this surplus is also increasingly needed to fund supported places because, although many independent schools were established by charitable foundations to educate the poor, over time the lack of good governance and poor fiscal management have meant that the original endowments are no longer adequate.

Therefore, with two significant demands on current fee income, schools are faced with a dichotomy: the global elite bolstered pupil numbers during the last recession and prevented many smaller schools from going under, but they expect increasingly lavish facilities. By raising fee income to supply these, local pupils are priced out of the market unless they are supported through a school fee remissions policy.

The problem is that fee remission schemes are a huge drain on school finances. Most bursars are adept in managing the fixed costs of running a school but schools tend to overlook the impact that remission schemes make. Currently, yearly school fee increases run in the region of 2.5% to 4% (a rise that many parents can only dream of happening to their salaries!). So whilst to some schools this increase generates a healthy surplus, an examination of school accounts published on the Charity Commission website shows that others experience the opposite. If up to 15% of the income is then earmarked for remission schemes, one does begin to wonder whether such schemes are still viable.

There are three types of fee remission schemes: Scholarships, Bursaries and Staff discounts. I believe that all three are ripe for revision and if handled sensitively could prove sustainable. If not, then I fear that, as Isobel Oakeshott, from the Sunday Times, argued eloquently at the Bursar's Conference two years ago, today's professional classes are no longer able to afford independent education for their children although they themselves benefited from it. Remaining endowments are correctly directed towards the very needy but if the professional classes are squeezed out by the high cost of school fees then the pupil demographic of independent schools could become polarised into the rich and the poor. School fee remission schemes, if handled correctly, are therefore particularly vital for the middle sector.

So to explain why I feel remission schemes need attention I will look at each in more detail.

Firstly, Scholarships:

Highly celebrated, these have historically been awarded to pupils for academic or other specific prowess and are not needs blind. Often funded by a benefactor, their value can be increased to full fees with the addition of a bursary. However, they are easily exploited by parents who wish to see their child win a prestigious award, then accept the financial help regardless of their, often very wealthy, financial status. This anomaly was highlighted during debates on Public Benefit and as a result there has been a move by some schools to down-value the financial element of scholarships. Interestingly at least two major public schools are now awarding scholarships in name only. So if this idea was adopted more widely, then it may be possible to divert existing scholarship funds into the more egalitarian bursary pot. This would take off some of the strain on fee income surplus, whilst still supporting the concept of supported places.

Next, Bursaries:

These are means tested and awarded to pupils who fulfil the admission requirements of the school but whose parents cannot afford the full fees. Generally, bursars have a well proven and thorough process of assessing and validating bursary needs. The parents are usually interviewed and their statement of income and assets is examined annually. Property valuations are particularly well scrutinised. Although a bursary could be for up to 100% of the fees, I would not have been prepared to offer one in a situation where the parents' net assets, after provision for school fees, would exceed the cost of an average house in the locality.

Thirdly, Staff Discounts:

These are highly contentious and highly prized by all school staff rooms. Unlike in most commercial organisations, whereby an employee may be eligible for a 10% to 30% discount off goods produced, in schools the figure is reversed and staff pay between 15% and 35% of the published fees. At a mixed school with a junior and a senior department it is theoretically possible to have up to 10% of pupils enjoying a staff discount. School governors have been slow to tackle this issue because it is such a sacred cow. The legal case Pepper v Hart established that the education of the children of staff was a marginal cost and that the payment of 15% of full fees for the arrangement was acceptable for HMRC purposes. However, the system is open to abuse and even postings on Mumsnet have argued the ethics of a prospective employee applying for a role at a school purely to obtain the over generous discounts on the school fees. It would therefore seem appropriate that governors should be encouraged to abandon this system and instead treat each staff child as a bursary candidate.

School fees cannot keep going up, even for the global elite, and schools need to make hard choices about the most effective use of available funds. Nevertheless, if the debilitating effect of remission schemes can be addressed, and appropriate safeguards be put in place to stop abuse, then I believe that school fee remission schemes are sustainable even within tight budgets. After all, they are the asset on which our independent schools were founded.

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WILL A SCHOOL'S SAFEGUARDING RESPONSIBILITIES TRUMP AN AGREED REFERENCE?

Yes – says the High Court in the case of Camurat v Thurrock Borough Council (July 2014).

COMMENT

This case assists schools who have agreed a reference with an ex-employee, but are then called to exercise their statutory duty to provide information for safeguarding purposes to the police and other bodies.

Some practical advice to employers, in particular schools, academies and colleges, is set out below.

FACTS SUMMARY

During Mr Camurat's employment by the Council at the school there had been a number of allegations relating to the inappropriate use of force by him during his dealings with pupils. The Judge stressed that there were no suggestions of sexual connotations or impropriety on Mr Camurat's part.

Following a final written warning in 2008, Mr Camurat agreed to leave the school under a compromise agreement (or settlement agreement as they are now known), which included an agreed reference.

After Mr Camurat had left, the Council referred him to the Independent Safeguarding Authority (the ISA eventually decided he should not be barred from working with children) and provided information to the police confirming the misconduct allegations that had been made during his employment. The police reproduced this information in an Enhanced Criminal Record Check (ECRC) for Mr Camurat. Mr Camurat claimed that the ECRC caused him to lose a new teaching job and continuing losses.

Mr Camurat brought various claims against the Council, including for breach of contract (in relation to a breach of the compromise agreement), negligence, misrepresentation and malicious falsehood.

DECISION

The High Court held that the compromise agreement could not require the Council to 'decline a request by the police or anybody interested in safeguarding issues or to limit itself to a mere repetition of what is in [the compromise agreement]'. The Council, as employer, was under a statutory duty to provide disclosure for safeguarding purposes and it would be neglecting its duty if it restricted itself to the reference in the compromise agreement. Any such restriction would, therefore, be void.

The case may not end here as Mr Camurat has been given permission to appeal to the Court of Appeal.

PRACTICAL ADVICE

We advise employers to consider these drafting points:

- Reserve a right in any settlement agreement that allows the employer to disclose information that they may be obligated to disclose under any statutory duty. As well as safeguarding information, this may also include information legitimately requested by HMRC.
- An obligation of confidentiality (whether as part of a settlement agreement or otherwise) should not be drafted in a way which may limit the employer's ability to defend itself against any claim which may be brought by or involve an ex-employee.
- A confidentiality agreement will not restrict an employee (including a former employee) from whistleblowing, or limit the protection given to such employees by whistleblowing legislation against any detriment.

Sue King of Wrigleys Solicitors specialises in employment law advice to academies, schools and colleges.

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FOUR KEY TAX UPDATES

1 EMPLOYMENT TAX - ACCOMMODATION UPDATE

The Chancellor's Budget Statement did not make reference to any proposed changes in respect of the provision of employer provided living accommodation.

Following the consultation process which was conducted by the Office of Tax Simplification last year, we have been advised that their final report is now with the Treasury for them to consider. Consequently, where a school provides any accommodation which is in the better performance of the employee's duties then that accommodation will continue to be exempt from income tax and National Insurance based upon current legislation.

Similarly, where any accommodation is provided which is exempt under the representative accommodation rules, then you should continue to treat this accommodation as outside the scope to a charge to income tax and National Insurance.

Where you provide any accommodation which does not benefit from any exemptions, then you will need to ensure that any benefit in kind charge is correctly reported on forms P11D which, for the 2014/15 tax year, need to be submitted to HMRC on, or before, 7 July 2015.

Whilst we are expecting changes in the tax treatment of employer provided living accommodation, the message for all schools is that change is not upon us yet!

2 LIFETIME ALLOWANCE FOR PENSION CONTRIBUTIONS

For long-serving, higher paid headmasters and staff, the decrease in the lifetime allowance for pension contributions from £1.25m to £1m, from April 2016, may be of relevance. Affected staff should seek independent financial advice on the likely value of their Teachers' Pension Scheme and other pensions. The Annual Allowance for pension contributions remains at £40,000.

For further details, please see our Budget Summary.

3 ABOLITION TO NATIONAL INSURANCE

The changes following the abolition of the National Insurance contracted-out rates are a direct consequence of the introduction of the single-tier state pension scheme which will come into effect from 6 April 2016. They will impact upon employees who participate in the Teachers' Pension Scheme (TPS) and will result in an increase in the amount of National Insurance due for payment by both the employer and the employee. The increases are as follows:

- Employer's – 3.4% of relevant earnings to 13.8% (earnings above the Lower Earnings Limit)
- Employees – 1.4% of relevant earnings to 12% (between the Lower Earnings and Upper Earnings Limits)

In addition to the changes in the level of National Insurance contributions, schools will also need to bear in mind the increase in the employer's contributions to the TPS from September 2015 from 14.1% to 16.48% (including a 0.08% administration charge).

4 GIFT AID SMALL DONATIONS

The increase to £8,000 of the maximum amount which can be donated under the Gift Aid Small Donations Scheme is welcome, as are the moves to increase the role of intermediaries in administering Gift Aid.

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Future events

P11Ds: Reporting Expenses and Benefits (Webinar)	27 April 2015
VAT & Tax Untangled for Academies	6 May 2015 AM
Academies Governance Seminar	6 May 2015 PM
ISBA Annual Conference *	13-14 May 2015
Finance for the Non-Financial Governor - joint seminar with AGBIS	10 June 2015
Tax Update and Financial Reporting Issues for Independent Schools	15 September 2015

* haysmacintyre will be exhibiting at this event

For further information on any of the events above please visit www.haysmacintyre.com/events

Should you wish to receive an electronic version of our briefing in the future, please email Charlotte Gibbons on cgibbons@haysmacintyre.com

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