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Changes and challenges: the practicalities of navigating the ONS updates

Monday 20 March 2023

Agenda

- Introduction and virtual housekeeping
- New requirements and regulations for colleges – Shachi Blakemore, Partner, Buzzacott
- Impact on governance – Katharine Patel, Partner, Buzzacott
- Monitoring consequences of college sector reclassification – Chris Patterson, Team leader FE College Financial Frameworks, ESFA
- Q&A

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New requirements and regulations for colleges

Shachi Blakemore, Partner, Buzzacott

Background

- On 29 November 2022 ONS announcement: FE Colleges would be reclassified into the central government sector
- Changes effective immediately

Why?

- The decision is based on the extent to which central government has control over Colleges' operations
- Government now has greater power to intervene in governance of mismanaged Colleges (following the *Skills and Post 16 Education Act 2022*)

What does this mean?

Managing public Money

- Subject to the principles and responsibilities for managing public funds set out by HM Treasury in Managing Public Money (MPM)
- [Managing public money - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/managing-public-money)
- This includes restrictions on borrowing and other areas, such as senior staff pay
- [Bite-size guides to aid colleges in meeting new requirements following reclassification - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/bite-size-guides-to-aid-colleges-in-meeting-new-requirements-following-reclassification)
- Plans for **College Financial Handbook** by August 2024

Financial reporting

- The College sector financial results to be included within the **whole of government accounts**

Financial reporting impact

2022/23 and 2023/24

- Minimal changes expected
- New information request to 31 March 2023 likely

2024/25

- Consolidated FE sector accounts likely to be needed for the first time in 2024-25
- Mechanism for this is unclear, but could follow a similar model to the Academy Sector accounts return

Further ahead?

- Potential change of year end to match government accounts (i.e. 31 March)

Borrowing

- Colleges will **need consent from ESFA** for:
 - Any new borrowing
 - Usage of existing overdraft, revolving credit or borrowing which has been agreed but not yet drawn down
 - Amendments to existing loan facilities

Senior staff pay and severance payments

- ESFA consent is now required:
 - For **staff pay** over £150k, or **performance related pay** over £17,500 p.a.
 - Does not apply to existing personnel (but does apply to new appointments to existing roles)
 - Permission is not required for normal annual pay awards to existing staff (up to 9%)
 - **Compensation/severance payments** over £50k or three months' salary
 - **Severance payments** to staff earning over £150k regardless of amount
 - All **ex-gratia payments** regardless of amount

Write offs and letters of support

- Permission is required for write offs (e.g. bad debts etc) exceeding:
 - Individual amounts over £45k (or 1% of income); or
 - Cumulative amounts over £250k in one year (or 5% of income)
- Permission also required to give guarantees or letters of support where the amount exceeds £45k (this includes trading subsidiaries)

Other issues arising from MPM

Novel, contentious and repercussive transactions

- In addition to the areas covered previously, there is also a catch-all requirement to obtain consent for transactions that could be considered novel, contentious or repercussive

Asset sales

- Allowed to keep money received from asset sales, but the proceeds should be held for capital reinvestment rather than working capital needs or repayment of loans, unless permission is sought from ESFA

Non changes

- ESFA's view is that **VAT** is not related to ONS classification, so there are no plans to make VAT recoverable at the moment
- **Reserves** retained by colleges
- No guarantee for LGPS pension schemes

Practical implications

- Significant change in relation to borrowing arrangements
- Updating policies and procedures for monitoring compliance
- Awareness and knowledge dissemination

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Impact on governance

Katharine Patel, Partner, Buzzacott

Governance frameworks

- Exempt charity status
- Public sector and self-governing statutory corporations
- Governance codes
 - Charity Governance Code
 - Code of Good Governance for English Colleges
 - UK Corporate Governance Code
- DfE guidance: FE and sixth-form college corporations: governance guide (last updated 2 March 2023)
- Insolvency regime

Points to consider under the new regime

- Role of the Accounting Officer
- Role of the Corporation and sub-committees (including finance, pay)
- Subsidiary company boards
- Delegation, approvals and authorisation
- Audit frameworks – external and internal audit
- Regularity
- Financial statements – reporting considerations
- Going concern



Education & Skills
Funding Agency

Continuity and change: monitoring consequences of college sector reclassification

Chris Patterson

Team leader FE College
Financial Frameworks

Continuity

- There is change
- But consider continuities:
 - Statutory corporations
 - Exempt charities
 - Regulated by the SoS through a funding agreement
 - Report in line with FE/HE SORP and UK GAAP
 - Run by boards of governors/trustees
 - Public sector procurement rules
 - Financial health determined by set formula
 - Support and intervention governed through a published framework
 - Independent external audit



Changes

- Borrowing curtailed
- Proceeds of asset disposal ringfenced (watch this space)
- Public sector pay controls on senior staff
- Certain transactions previously taken in college now require DfE/HMT permission
- College subsidiaries now fully part of the regime
- Conclusion:
 - Has the framework changed fundamentally?
 - Focus primarily on regularity: tweaks to existing regularity framework

Guidance and resources

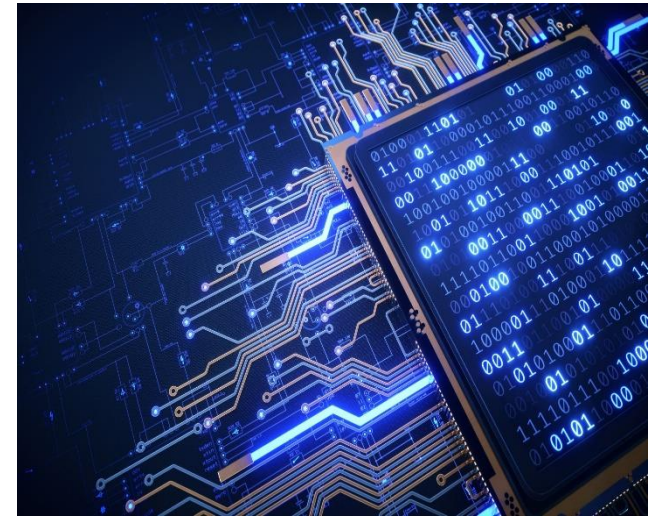
- Delivered
 - DAO letter
 - Bite size guides
 - Permissions process
 - Borrowing consent process
 - Procedure for letters of comfort (at pace)
- To be delivered
 - Another bite size guide
 - College financial handbook (in collaboration with the sector)
 - Light touch review of CAD - focusing on new disclosures
 - Light touch review of P16ACOP – focus on regularity assurance
 - Teach-ins???



Monitoring – short-term

Interim regularity assurance challenge – FE Colleges MPM Return

- Needed for assurance re. ESFA's 2022-23 accounts to
 - Collect summary data on MPM transactions
 - Obtain assurance that colleges have or are establishing systems to identify, record and approve MPM transactions
- One-off transitional requirement, to cover 29/11/2022 to 31/03/2023
- Approved by AO
- Unaudited
- There may be ESFA sample validation checks
- Helps colleges ensure they are MPM compliant
- Supports the AO's regularity compliance statement in 2022/23 ARA
- Helps colleges prepare for external auditors' regularity reviews re. college 2022/23 accounts (covers half 'MPM period')



Monitoring - disclosures

- Prime focus – annual report and accounts
- Changes in borrowing evidenced through balance sheet
- Compliance with senior pay controls evidenced through remuneration disclosures
- New disclosures:
 - Special payments
 - Losses and write offs
 - Letters of comfort, guarantees and indemnities
 - ESFA will set out in CAD – including model disclosures

Monitoring

- Impact of reclassification was immediate
- Consequences for non-compliance – early days
- Compliance is – strictly – a condition of funding
- Support & intervention framework
- Current focus on understanding & support
- Facilitating retrospective permission if required
- New CFH March 2024 – effective August 2024 – time to get more serious?

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Q&As

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Thank you for attending!