

**Academies Annual Update: Managing and maintaining your regulatory compliance and governance procedures through COVID-19 – Q&A responses**

For more information on any of the answers provided, please contact the partner quoted using the information below:

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**Question**

**Answer**

Do you feel that employers should be implementing health questionnaires for staff, e.g. are you unwell, have you been unwell, is anyone in your family unwell? What about students? If so, who would be best placed in an organisation to do this given the nature of the information contained within? And, should this be carried out with a degree of regularity or the responsibility placed on the employee to notify the employer if anything contained within changes.

One needs to be very careful when considering health questionnaires given the sensitive data the answers are likely to contain and consideration would need to be given whether such a step was necessary, how the data would be processed and stored. There would also need to be consideration for the administrative burden of undertaking such a process, and the challenge of determining whether or not staff would give honest answers. My view is that a better approach would be to have a policy, following the government guidance, as to COVID-19 symptoms and self-isolating, repeating the government guidance and encouraging staff to (a) follow that guidance and (b) keep you informed. A similar approach could be adopted for pupils and their families.

Harriet Broughton, Stone King

Do written resolutions require 100% agreement by Trustees?

This will depend on your Articles of Association, but the model Articles of Association for Academies require 100% agreement from trustees for the passing of a written board resolution.

Steven Ravenscroft, Stone King

When reviewing surplus funds against exceptional costs claimed, will DfE look at Aug 19 stat accounts? Any guidance on criteria or methods they might use?

"The guidance provided by ESFA does not provide clarity on how they will test eligibility for the grant funding. The guidance states that:

""Funding will be available to schools that are unable to meet such additional costs from their existing resources, or which they could only meet by drawing down on reserves and undermining their long-term financial sustainability.

While we are not asking schools to draw on existing reserves to meet these costs, we do not expect schools to make a claim against this funding if they are anticipating that they will be able to add to their reserves in the 2020 to 2021 financial year.""

It is not clear whether they will perform eligibility checks prior to awarding the grant or retrospectively and therefore create a risk of clawback. If they carry out eligibility checks, then it would be logical that they use submitted financial data including the statutory financial statements (to check reserves) and the budget forecasts (to assess the likelihood of a surplus in 2020 to 2021). "

Hugh Swainson, Buzzacott

What impact will COVID-19 have on the going concern statement?

COVID-19 will not impact the requirements around going concern, but will impact the context of the going concern assessment. Therefore, the trustees will still be required to make an assessment of the trust's future finances for a period of at least one year from approval of the financial statements (i.e. to December 2021, assuming a 31 December filing deadline). This assessment will need to take into account any key financial assumptions and uncertainties and COVID-19 might impact these assumptions or create uncertainties. It would be good practice to ensure that the reserves policy is up to date and that the trustees are monitoring the level of reserves against this policy.

Hugh Swainson, Buzzacott

<p>We have suspended all of our sub-committees including our finance, audit and risk committee and are solely being governed by our board. Is this compliant with the AFH?</p>	<p>The AFH requires that there must be an audit committee. For Trusts with income in excess of £50m, it must be a dedicated audit committee, and for smaller Trusts the functions of the audit committee may be subsumed into a different committee (e.g. a finance committee), but there must still be an audit function which is delegated out of the main board. Other committees could be temporarily suspended.</p> <p>Steven Ravenscroft, Stone King</p>
<p>What if staff are "vulnerable" and not able to attend work, and I therefore need to buy in agency staff to cover this. Can I furlough them?</p>	<p>If the vulnerable staff are publicly funded then no, you should not furlough them. It may be that further guidance is given by the government in the coming days.</p> <p>Harriet Broughton, Stone King</p>
<p>Can we ask our 52 week staff to use some of their annual leave allowance? I have had a mix of different advice about this.</p>	<p>My view is that yes, you can require 52 week staff to take annual leave allowance, as long as you comply with the working time regulation notice requirements. You will need to think carefully how annual leave for staff is managed, particularly to avoid a large number of staff accruing annual leave and seeking to take it at one time in the future.</p> <p>Harriet Broughton, Stone King</p>
<p>Re: Training in contracts; Are you saying induction type training (safeguarding, prevent, manual handling, etc.) does not need including? Only above and beyond training paid for by organisation? Thank you</p>	<p>Although there is little guidance, my view is that all training should be referred to in the employment contract. In the example of induction training, it may be appropriate to say simply that induction training will be provided and further detail will be provided on their first working day.</p> <p>Harriet Broughton, Stone King</p>
<p>The point on suspending committees - does this also apply to Local GBs?</p>	<p>In theory, yes, but much will depend on the drafting of your Master Funding Agreement. Various versions over the years have contained differing requirements for the functioning and structure of local governance, so we would recommend</p>

	<p>checking your Funding Agreement before taking any action to suspend a local governing body.</p> <p>Steven Ravenscroft, Stone King</p>
<p>Is there any written guidance in relation to the payment of agency suppliers and the 80% assumption mentioned in Harriet's presentation?</p>	<p>The guidance can be found here:  <a href="https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19">https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19</a></p> <p>The 80% is a figure that our commercial lawyers have been advising, based on assumptions around profit level. As the guidance notes, suppliers should be operating on an open book basis and therefore you can ask them to confirm what element of their normal charge is profit and consequently should not be paid in these circumstances.</p> <p>Harriet Broughton, Stone King</p>
<p>Are LGBs/Trusts required to fill any vacancies for parent governors at this time?</p>	<p>We would suggest that any election process is likely to be difficult at the moment and it may be sensible to hold over any election processes until the next academic year unless there are particularly pressing reasons in terms of numbers as to why additional parent governors are essential at this stage.</p> <p>Steven Ravenscroft, Stone King</p>