

Schools
North East



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Housekeeping



IR35

Graham Vials, Partner, Ward Hadaway



Recap on employment status

- Employee
- Worker
- Self-employed



Employment status

- Whether the worker would be regarded as employed by the school - is a **key question** in the legislation.
- The answer to the above question determines whether or not IR35 applies.
- Status is only strictly relevant under IR35 for tax purposes – but employees have more extensive statutory rights than workers.

Employment status

- Factors taken into account to establish status include:
 - Personal service
 - Mutuality of obligation
 - Right of control
 - Financial risk
 - Provision of equipment
 - Right of substitution and benefits.

What is IR35?

- Off-payroll working rules - designed to combat tax avoidance
- Targeted at individuals who are providing services through their own limited companies or partnerships and who may not be paying the tax that they should be – workers considered in the eyes of HMRC to be “disguised employees”
- Contractors working via limited companies are not liable to pay NICs on income taken as dividends, resulting in far less tax to the Treasury
- IR35 exists to ensure that those working in this manner pay the tax they should



When does the legislation apply?

- Is an arrangement caught by IR35? (“inside” / “outside”)
- The legislation applies when the following three conditions are met:
 - (1) a person individually performs services for a client (or is obliged to do so);
 - (2) those services are provided under arrangements involving an ‘intermediary’; and
 - (3) the circumstances are such that if the arrangements had been made directly between the individual and the client, the individual would be regarded as employed by the client for NIC and income tax purposes.

Consequences if the regulations apply

- If IR35 applies, the sums received by the intermediary are, in effect, treated as employment payments by the intermediary to the worker for tax and NICs purposes and will therefore be subject to PAYE.
- In other words, if IR35 applies, the relevant tax and NICs consequences fall on “you” as the intermediary, not on the client.



Public sector: off-payroll working

- “New rules” been in existence since 6 April 2017
- Responsibility for determining the IR35 status of a contract shifted from the contractor to the public sector client (i.e. you).
- If a contract is considered “inside” (caught by) IR35, the party paying the worker’s company will have to deduct PAYE and NI before making payment to the PSC.
- The contractor will be left with the net payment in their PSC.
- Dramatic increase in tax and NI yield for HMRC.

Private sector reform

- At present, in the private sector, it is the responsibility of the contractor to ensure compliance with the legislation.
- 6 April 2020
- Extension of the public sector off-payroll regime to the private sector in order to remove the disparity between the public and private sectors

Example

- Academy Trust sub-contracts advice on HR to Jane's HR Service Limited.
 - Note – no legal professional privilege.....
- Jane is the owner, director and sole employee of Jane's HR Service Limited and provides the HR service to the Academy Trust herself.
- If the IR35 legislation applies, despite the fact that Jane (the worker) is providing his services to the Academy Trust (the client) through Jane's HR Service Limited (the limited company), the Academy Trust would be liable for income tax and national insurance contributions on the payments made to the limited company.

IR35 tax ruling

- Lorraine Kelly - TV presenter
- Personal service company, Albatel Limited
- HMRC claimed there was direct contract between her and ITV Breakfast
- Tax tribunal ruled in Lorraine's favour



IR35 tax ruling (2)

- Christa Ackroyd - BBC Look North
- Operated through her own company CAM Limited
- Tax tribunal ruling - inside IR35
- Right of control over the work



What do you need to do?

- Audit
 - Identify potentially affected contractors across your Academy Trust
 - Determine the status of off-payroll workers
 - HMRC employment status checker for tax purposes
- Communication – liaise with contractors / Academies within your Trust



What do you need to do? (2)

- Assess the financial impact of IR35
- Spring clean contracts
- Consider employment status
- Seek support

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Private sector

From April 2020

- Business to determine IR35 status not the contractor.
- If determine IR35 applies – deduct PAYE/NIC from payments.
- Only applies to medium and large businesses i.e. not small.
- If currently small but subsequently exceed the limits – apply rules from start of the tax year following the accounting filing period in which the company ceased to be small.
- Watch two-year rule if transitioning either way.
- If unincorporated – Reform applies to entities with turnover > £10.2m

Companies Act definition of “qualifying as small”

The qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements —

<i>1 Annual Turnover</i>	<i>Not more than £10.2 million</i>
<i>2 Balance sheet total</i>	<i>Not more than £5.1 million</i>
<i>3 Number of employees</i>	<i>Not more than 50</i>

Groups and associated companies

Groups

- Parent not small and subsidiary small – still apply new rules.
- Parent is small but large group – still apply new rules.

Associated/controlled/connected/JV companies

- Anti avoidance measures to be introduced to avoid off-payroll workers being routed to smaller companies.

Commercial issues

- Check status of all consultants / subcontractors – URGENT – HMRC CEST Tool?
- Blanket approach – taking reasonable care?
- Statutory disagreement process - Advise correct or withdraw.
- “Backlash” from contractors - some public sector contractors walked out / may find roles with “small” businesses.
- Workers to increase rates to counter additional taxes?

Commercial issues

- Employers NIC – 13.8% increase – acceptable? Who bears the cost? Reduce rates?
- Apprentice Levy – 0.5%
- Get agreement in place – required for all engagements.
- Legal challenge for employee benefits – holidays, pension etc.
- Residency issues to consider?

Non-compliance

- Penalties likely – up to 100% of additional tax collected.
- Alternative suggestions – deny a tax deduction for the labour costs not checked.
- Naming and shaming (ala NMW).
- Criminal Finances Act.

IR35 cases – HMRC are losing cases

Christa Ackroyd – Look North newsreader

- Lost appeal

Lorraine Kelly

- Not IR35

Kaye Adams

- Not IR35

Paul Hawksbee

- Not IR35

Canal Productions – Helen Fospero

- No guarantee of work. No obligation to accept work.

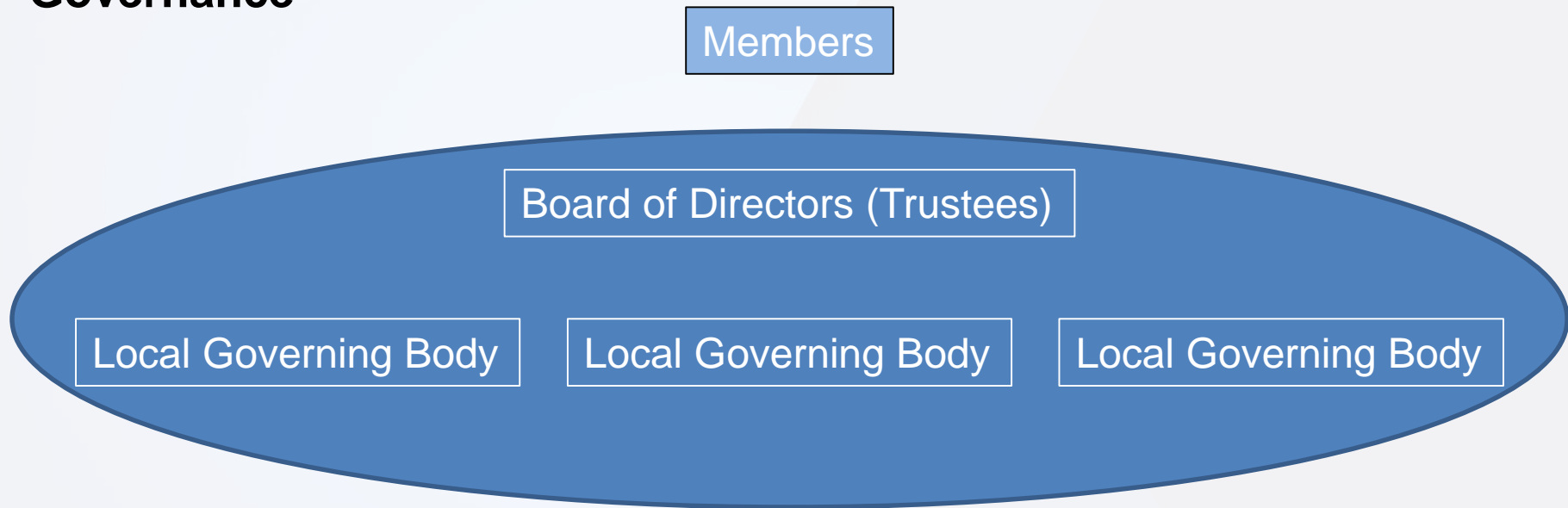
Richard Alcock

- Not IR35 – no expectation to be given work every day. One project cut short. HMRC considering appeal

Roles and Responsibilities of Academy Governors

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Governance



Members

- Unlike in maintained schools (where there is one tier of governance - the governing body), as an academy there is an additional tier of governance in the form of Members.
- The role and rights of members is analogous to that of shareholders.
- In reality the members will be responsible only for fundamental decisions such as changing the constitution of the academy trust and it is the governing body which remains the body responsible for making strategic decisions about the day to day running of the academy.

Governors / Directors / Trustees

- As a governor of an academy trust you are a school governor, a company director and a charity trustee.
- Can be confusing. Some academies have got the position confused and call their members “trustees”, where in fact it is the governing body that is the board of trustees.
- Governors will be familiar with their duties as a governor of a school.
- However, many governors will be less familiar with their duties as company directors and charity trustees.

Governors / Directors / Trustees

- As an academy governor you will continue to act as the critical friend of the headteacher and senior leadership team, and provide support and challenge.
- The key responsibilities of the governing body include:
 - ensuring the quality of educational provision;
 - challenging and monitoring the performance of the academy;
 - ensuring good financial health and probity;
 - supporting the SLT in management of staff.

Governors / Directors / Trustees

- In fulfilling these responsibilities governors will:
 - help the school to set high standards with targets for school improvement.
 - keep the pressure up on school improvement;
 - be a critical friend to the school, offering support and advice;
 - help the school respond to the needs of parents and the community;
 - make the school accountable to the public for what it does;
 - work with the school on planning, developing policies and keeping these under review;
 - exercise its responsibilities and powers in partnership with the headteacher and staff;
 - not intervene in the day-to-day management of the school unless there are weaknesses in the school, when it then has a duty to take action.

Responsibilities as charitable trustee

- Duty of Compliance;
- Duty of Prudence; and
- Duty of Care.

Responsibility as directors

- Duty to act within powers;
- Duty to promote success of the company;
- Duty to exercise independent judgement;
- Duty to exercise reasonable care, skill and diligence;
- Duty to avoid conflicts of interest;
- Duty not to accept benefits from third parties; and
- Duty to declare an interest in a proposed transaction or arrangement...

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Related Party Transactions

- History
- Definition of RPT's
- Examples of RPT's
- What must include in F/S disclosures
- Other AAD considerations
- At cost
- Useful document

Related Party Transactions

- Negative PR for the sector.
- November 2014 - ESFA reviewed transactions
 - < 1% irregular
 - Primary issue - procedures not followed.
 - Second issue - conflicts not managed properly.

Related Party Transactions - History

- 2013/14 - At cost rules introduced.
- 2014/15 - De-minimis introduced of £2,500.
- April 2019 - Portal / on-line form.
 - New contracts.
 - All suppliers informed.
 - Suppliers > £20k in financial year approval required.
 - Don't need to disclose income
 - Payments under Contracts of Employment (though trusts payroll) not in scope.

Related Parties - ESFA

- Definition in AFH - BUT
- Need to read Charities SORP (Section 9.15 and Appendix 1)
 - A Charity Trustee.
 - B Donor of any land to the charity.
 - C1 A child, parent, grandchild, grandparent, brother or sister of A or B.
 - C2 An officer, agent or key management.
 - C3 Spouse or civil partner of above.
 - C4 Carry on business with any of the above.
 - C5 A person or close member who has significant influence over reporting charity.

Related Parties – ESFA – Continued...

Close Member

- A Children or spouse.
- B Children, stepchildren or illegitimate children of spouse.
- C Dependents.
- D Domestic partner.

It also states

- ‘A charity is not necessarily related to another charity simply because a particular person happens to be a trustee of both.’
- Think about control.

Following are related parties (examples)

- Entities in the same group.
- Joint venture.
- Controlled by one or more 'common' individuals.
- Power over 50% + of votes.
- Power to govern financial and operating policies.
- Power to appoint/remove majority of the Board.

Relates Parties - AAD

Must disclose:

- Income and expenditure separately.
- Name of related party.
- Description of relationship.
- Amount involved.
- Amount due to/from related party at year end.
- Details of any provision against.
- Details of guarantees given/received.
- Terms and conditions eg secured.
- Anything else to understand transaction.
- Conducted in accordance with AFH.
- Conducted in accordance with procurement procedures.
- If > £2,500 confirmation that element above £2,500 at cost.

Other things to consider in the AAD

- 6.6.3 Can't take advantage of exemption not to disclose transactions between charity and subsidiaries.
- 6.6.7 ESFA not a related party.
- 6.6.14 Must state in F/S if no RPT's.

At Cost (AFH 5.48)

Must not include an element of profit BUT can include:

- Directly attributable materials and labour; and
- Proportion of fixed and variable O/H's.

Applies to:

- Members or trustees of the Academy Trust.
- Individuals or organisations related to a member or trustee. Include:
 - Relative of. Includes, but not limited to child, parent, spouse or civil partner.
 - Individual or organisation carrying on business in partnership with member, trustee, or relative of either.
 - Company held more than 20% of voting rights.
 - Organisation controlled by member, trustee or relative of either.
- An organisation or individual that can appoint members; or
- A sponsor as recognised by Secretary of State.

Useful Documents

- AAD
- AFH
- Charity SORP (FRS102)
- Institute of School Business Leadership (ISBL)
 - Guide about at cost principles

Kreston Benchmarking Report 2020

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2020 Benchmarking

- Launched today.
- Includes: 360 Trusts
 - Nearly 1,500 Academies
- Health warning - our clients.

Agenda

- Average surplus/deficit position.
- Reserves and financial planning.
- MATs and financially challenging Academies.

Average Surplus/Deficit

	2017	2018	2019
Primary	(155,765)	(17,544)	11,531
Secondary	(252,982)	(145,889)	13,011
MAT	(505,836)	(144,600)	195,867

- However, number of trusts with cumulative deficit increasing.
- Above represents surplus/deficit for the year with add back for depreciation and pension service charge and deduction for non-recurring capital income.

Reserves and Financial Planning

	2016			2017			2018			2019		
	Cash	Free	Ratio	Cash	Free	Ratio	Cash	Free	Ratio	Cash	Free	Ratio
Primary	323	234	1.4:1	380	246	1.5:1	360	248	1.5:1	322	264	1.2:1
Secondary	937	644	1.5:1	857	562	1.5:1	787	500	1.6:1	824	530	1.6:1
MAT	1,777	1,076	1.7:1	1,728	1,093	1.6:1	1,835	973	1.9:1	2048	1171	1.7:1

Issues for the sector:

- One-off grants
 - Little extras
 - Teachers pay
 - Teachers pension

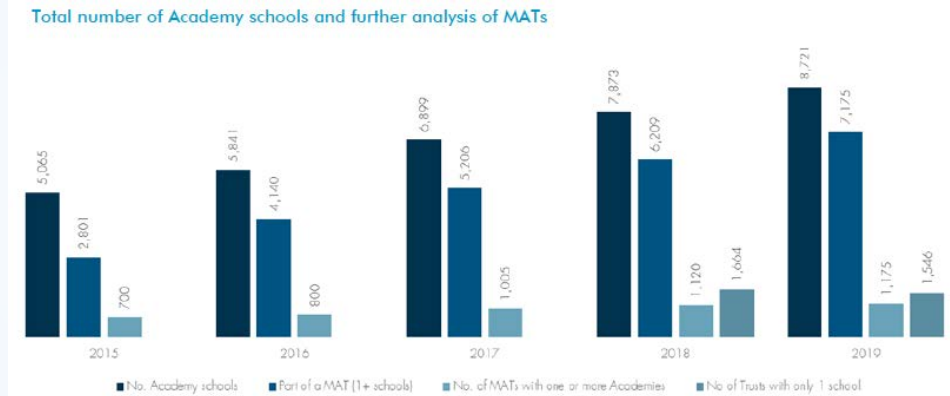
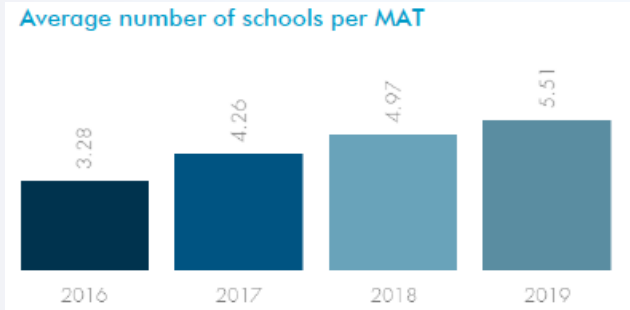
Future funding?

Starting salary increase to £30k

Lottery that is CIF.

MATs and Financial Challenges

Increasing in size:



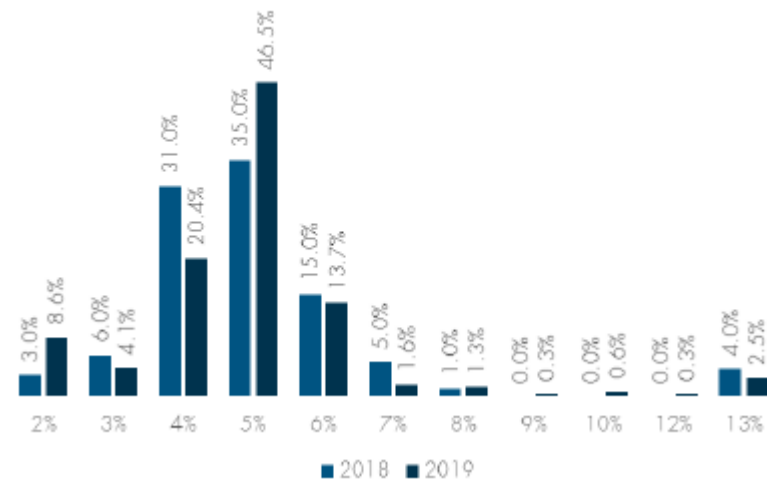
- 44% have one or more academies in deficit.
- GAG pooling.
- Spend on staffing - 73.3% (Primaries 72.9%, Secondary 69.8%).

Central Services

- Centralised?
- What services?
- How charge fo?

Basis used for central services recharge	2017	2018	2019
Amount per pupil	20%	13%	12%
Flat charge	2%	2%	0%
Percentage of income	59%	70%	77%
Time apportioned	7%	3%	2%
Other	11%	13%	9%

Top slice percentage



Download

www.cliveowen.com/benchmark-report-2020

Forthcoming Event

- Income generation seminar
 - Benchmarking
 - Marketing
 - Other income
 - Maximising interest earned
- Date: 12th February 2020
- Venue: The Fountain Room, Ramside Hall, Carrville, England, DH1 1TD
- To apply: <https://www.cliveowen.com/events/funding-the-future-generating-income-raising-funds-for-schools/>

questions and answers