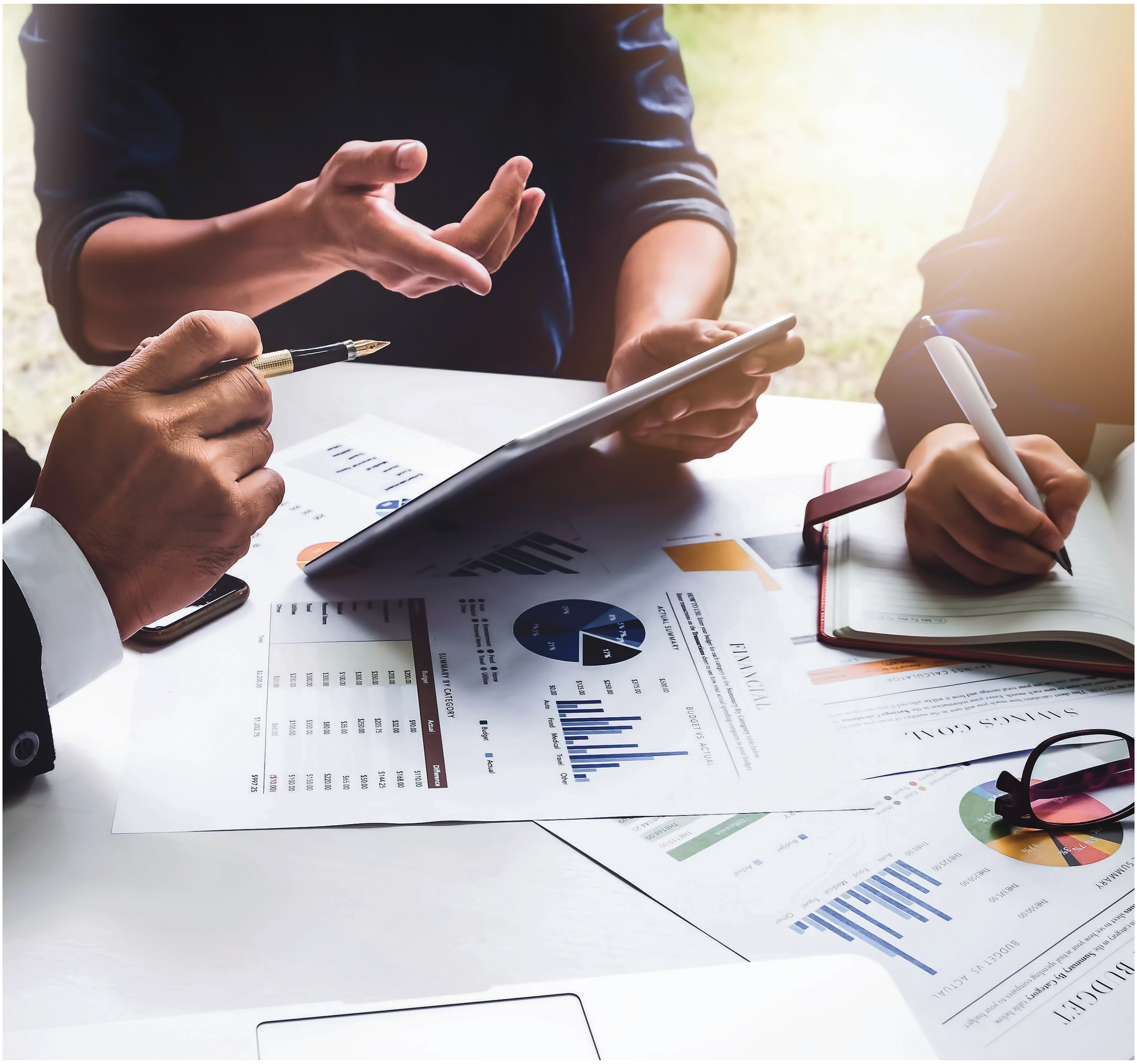
PREVENTING FINANCIAL FAILURE

Academy trusts' financial circumstances are becoming increasingly challenging, with a growing number in financial distress. Ciara Campfield, Education Partner at Stone King, discusses the importance of understanding the law and seeking expert advice early on if you have concerns about financial viability.

Ciara Campfield



Practical tips for trustees

1. **Finances:** monthly cash flow is as important as the year-end position. Trustees should request this information from their SLT – don't forget to stress-test your budget.
2. **Engage with the Education and Skills Funding Agency:** do this early on if your trust has financial concerns because options may be reduced if they are approached too late in the day.
3. **Consider accessing the school resource management self-assessment tool:** this will show how the trust's data compares against a range of performance measures.
4. **Employment:** consider your staffing ratio and options to reduce expenditure.
5. **Procurement:** are you getting value for money and are your contracts proportionate to the risk? Can you collaborate with other academy trusts to save time and money?
6. **Income:** are there any additional ways in which the trust can bring an income stream?
7. **Demographics and competition** – knowledge is key to financial planning.
8. **Policy:** keep abreast of policy developments, for example the new trust capacity growth fund.
9. **Training:** provide ongoing governance and financial training to the board – and don't forget training for new trustees.

10. **Keep accurate financial records:** it is important that decisions and challenges are recorded because they may be called upon later.
11. **Board assurance:** make sure the risk register is up to date and that risk is being measured and monitored and appropriate controls are in place.
12. **Estate:** develop an estates' strategy over 5 to 10 years. Plan and budget for future needs and the 'what-ifs'.
13. **Call in the experts:** engage a professional adviser to gain their advice and support at the earliest possible stage if there are concerns about financial viability.

There has been a marked increase in the reported number of academies running at a deficit, and it is more important than ever that trustees are aware of the tipping points, the implications of insolvency, and when to seek appropriate professional advice. Academy trusts are, of course, companies, and, as such, trustees are also directors and therefore subject to duties and responsibilities under both the Companies Act (CA) 2006 and in relation to financial distress and insolvency regimes under the Insolvency Act 1986.

With growing concerns about the tightening of the public purse and an increase in costs, most notably staffing, trustees should always be watchful of their CA duties and the implications of insolvency law, which applies to academy trusts. It is critical for trustees to receive timely, well-presented financial information from the senior leadership team, to provide the appropriate level of challenge, and to be mindful of the risks associated with relying on academy reserves to stay afloat.

It is clear that the Department for Education (DfE) is growing increasingly concerned about the financial health of the sector. Last year, it published a guide on deficit recovery, and in January of this year, it published a new guide entitled 'Preventing financial failure in schools and academies'. It is providing more information on how to prevent financial distress, but with a stark warning:

"...in academy trusts, where there is no LA acting as 'banker of last resort', no ability to borrow and where budgets acutely reflect financial and operational viability, successive deficits will consume cash, and ultimately could lead to insolvency."

Insolvency law applies to academy trusts, and, given the collective responsibility of the board of trustees, it is important that all trustees are aware of the insolvency regime and what it means for them. The Insolvency Act 1986 defines the circumstances in which an academy trust will be deemed insolvent. Broadly, an academy trust shall be deemed insolvent if it is unable to pay its debts as they fall due (Cash Flow Test) or where the value of the academy trust's assets is less than its liabilities (Balance Sheet Test). Both tests, along with other similar indicators, should be kept under review by the trustees. The board should also have sufficient governance and financial training to enable them to provide appropriate challenge to the school leadership team (SLT) and to be aware of the warning signs.

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Trustees should also be aware of their duties under company, insolvency and charity law. Although rare owing to their unpaid role and commitment, a trustee could be at risk of a claim for wrongful trading and potential director disqualification if, prior to the academy trust's insolvency, a trustee knew or ought to have realised that there was no reasonable prospect of avoiding the insolvency and continued to trade. This highlights the importance of seeking expert advice early on and asking for timely, well-presented financial information from the SLT and providing the appropriate level of challenge. ■