

GOVERNORS' UPDATE JANUARY 2021



Durell Barnes, Head of Governance and Compliance, RSAcademics

GOVERNING SCHOOLS THROUGH THE PANDEMIC AND BEYOND

Our last two updates addressed issues relating to the closure and then the re-opening of schools. Last term schools were largely focusing on maintaining some sense of normalcy and for many Governors the emphasis was on monitoring and oversight of operational matters and managing risk.

I will begin this update by considering immediate issues in relation to your monitoring and oversight role, some of which arise from the pandemic and others which do not but are of equal importance. At the end, I have included some thoughts about longer-term strategic matters. Colleagues at RSAcademics are available to assist with many of the issues raised below and we look forward to hearing from you should you wish to discuss any of the points raised.

MONITORING AND OVERSIGHT: ISSUES RELATING TO THE PANDEMIC

How to triage and share all the advice and updates

There continues to be a plethora of duplicated information and guidance available both for Governors and school leaders. Of itself, this can be problematic for Heads as they wade through updates on overlapping issues from their own association (GSA, HMC, IAPS, ISA or The Society of Heads), from yours (AGBIS), from the Bursars' (ISBA), from the boarding schools' (BSA) and from the umbrella body (ISC—who do an excellent job condensing it all), not least because the government directives all are advising about are subject to continuous change. Excellent advice is also available from the major legal firms including VWV, Farrers and Moore Barlow. This can be challenging for Governors trying to keep up with what schools are facing.

I recommend that, with your Clerks, you seek to streamline the guidance available to you, making sure that some (perhaps from ISC) is shared with all colleagues, while more specialist information (perhaps from AGBIS, ISBA, BSA and legal advisers or inspectorates) is shared with relevant committee Chairs. It's also helpful to have a brief item early in meetings for the Clerk, the Chair or a designated member of the executive to summarise recent legal and regulatory developments.

Monitoring priorities for Governors

The National Governance Association published helpful guidance on urgent monitoring priorities <https://www.nga.org.uk/Home.aspx> highlighting:

- risk management and safeguarding
- wellbeing across the school community
- providing remote education
- maintaining the curriculum
- support to reduce the impact of lockdown on disadvantaged pupils
- resource allocation and management
- asymptomatic COVID-19 testing for all pupils and staff.



Setting fee levels – anti-competition law

For many Boards in the independent sector, the unexpected first order of business of the term was to make decisions about fees and any reduction. In any decisions about this it is important that Trustees recall the earlier guidance about the parameters against which charities may make such decisions. This has been re-issued by AGBIS {<https://www.agbis.org.uk/>} and ISBA {<https://www.theisba.org.uk/>} alongside a useful note from Farrers reminding them that anti-competition law precludes discussion between schools of fee levels, salary structures etc.

Parental contracts

Many schools are taking this opportunity to review parental contracts in the light of the unprecedented fee issues, some using the revised ISBA model contract (October 2020) which includes language about remote learning, force majeure, immigration and data protection. Make sure communications on the issue are sensitive and would not embarrass the school if they appeared on the internet—and be sure to give appropriate notice of changes.

Furloughing staff

It is not for Governors to make decisions about individual staff arising from COVID-19, but they will need to authorise decisions in principle and therefore need to be aware of changes in government support available, including the furloughing scheme and staff attendance. ISC provides answers to FAQs on this and other related issues with helpful links for those who wish to know more {<https://www.isc.co.uk/>}.

Remote learning

Government directives on remote learning do not apply to independent schools although it is well known that our sector has adapted exceptionally well to this. Government expectations are more explicit now, however, see {<https://www.gov.uk/government/publications/review-your-remote-education-provision>}. Governors will want to take an interest in what their school is providing and a useful source for comparison is available from Ofsted {<https://www.gov.uk/government/publications/whats-working-well-in-remote-education/whats-working-well-in-remote-education>}. It's salutary to note that synchronous learning (live lessons) is regarded as only one of the useful tools, and pupils are encouraged to chat in virtual classrooms. Amendments made to safeguarding policies (usually in addenda or appendices to the main policy) should once more be in place and Governors will want to assure themselves that staff are entirely familiar with their provisions.

Public exams

Press coverage would tend to imply that there will be no public examinations in the summer. The headlines about this are somewhat misleading and you will want to ascertain how many candidates your schools have for examinations under the aegis of international and examination boards whose schedules may go ahead, albeit with certain alterations, e.g. the Independent Schools Examinations Board (ISEB) {<https://www.iseb.co.uk/News/ISEB-Update-on-Examinations-and-Assessments>}, the International Baccalaureate Organisation (IBO) {<https://ibo.org/news/news-about-the-ib/covid-19-coronavirus-updates/>}, Pearson {<https://qualifications.pearson.com/en/campaigns/pearson-covid-19.html>} and Cambridge International {<https://www.cambridgeinternational.org/news/news-details/view/statement-following-uk-government-announcement-on-june-2021-exams-20210105/>}. Even for UK-only



examinations boards there are indications that examinations taken in school are likely to form part of centre assessment grades.

Governors will want to enquire as to how schools are keeping records of learning loss, data to justify grades awarded, moderation and awarding processes and the records kept of those, with a view to any future complaints or subject access requests. You may find helpful in your own understanding to consult ISC Chair Barnaby Lenon's blog on differential learning loss on the website of the University of Buckingham where he is Dean of Education <https://educationblog.buckingham.ac.uk/2020/11/18/differential-learning-loss-by-barnaby-lenon/>. Governors of prep schools with EYFS should be aware of the suspension of the requirement to complete the EYFS Profile <https://schoolsweek.co.uk/schools-dont-have-to-complete-early-years-foundation-stage-profile-in-2021/>.

MONITORING AND OVERSIGHT: OTHER ISSUES

Money laundering – new report

ISC and ISBA have been working with the National Crime Agency on money laundering risks faced by independent schools, and finance committees may wish to see the resultant report <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/486-necc-bribery-corruption-risks-to-uk-independent-schools-alert/file> and question Bursars as to how they act where the source of fees or the identity of the payee are not clear.

Tax Changes

Important tax changes are coming into place in April 2021 in relation to the provision of school accommodation for staff and off payroll working (deferred from April 2020).

New terminology for 'Tier 4'

Arrangements have changed for international students coming into independent schools and what used to be referred to as Tier 4 is now (in an unexpectedly timely manner) called child student visas. More information can be found at <https://www.gov.uk/child-study-visa>.

Changes to safeguarding rules and guidance

Safeguarding Governors will want to satisfy themselves that staff are aware of relevant changes in December to *Working Together to Safeguard Children*. The key issues relate to clarification about information sharing (specifically that data protection legislation does not prevent the sharing of information to keep a child safe and that consent is not required when sharing information for safeguarding and protecting the welfare of a child), the updating of the definition of safeguarding to include mental health and the strengthening of the wording about domestic abuse to include coercive control. A useful summary can be found here <https://thecpsu.org.uk/news/2020-12-18-amendments-to-working-together-guidance-2018-dec-2020/>—a new source for some.

There have also been changes to *Safer Recruitment* in relation to cautions to under 18s, the multiple conviction rule and advice to be given to applicants on which cautions and convictions to disclose. The delayed consultation on *Keeping Children Safe in Education* has been launched and schools are encouraged to respond. Key issues include changes to ensure that safeguarding and child protection are at the forefront of all aspects of policy development; new guidance about on-

line safety and about recruitment processes; and clarity over safeguarding concerns which do not meet the 'harm' threshold and enquiries to be made prior to contacting the LADO (Local Authority Designated Officer).

Some issues in relation to guardianship and recruitment checks look set to be quite onerous. ISI has published a summary here <https://thecpsu.org.uk/news/2020-12-18-amendments-to-working-together-guidance-2018-dec-2020/>.

National Minimum Standards for Boarding Schools

Similarly, there is a (more urgent) consultation on the National Minimum Standards for Boarding Schools. Key points include: changes to structure and vocabulary (references to quality rather than appropriateness etc); raising expectations in certain areas; new standards about preventing bullying, promoting good relationships and key life skills; clear bans on access to staff accommodation and on favouritism; new requirements about guardianship. ISI's summary is here <https://www.isi.net/news/nms-for-boarding-%E2%80%93-dfe-consultation-closes-23-february-2021>.

News about inspections and ISI

ISI has undergone another re-structure and decided to revert to the leadership of a combined Chief Inspector/CEO with the appointment of Vanessa Ward, an experienced educational consultant and former Head of The Tiffin Girls' School.

Information about ISI's (eventual) resumption of inspections can be found here <https://www.isi.net/news/inspections-in-the-spring-term-2021>. Essentially, routine inspection activity has been suspended, probably until September 2021, although where DfE requires additional or progress monitoring visits these are taking place generally in the form of remote reviews.

It is not yet clear whether the existing cycle will recommence with a year's delay, or if the cycle will be re-scheduled according to risk and whether or not any part of the process will continue to be on-line. As yet, there has been no suggestion that parents dissatisfied with independent schools' on-line provision should contact the inspectorate (the Secretary of State did suggest that such concerns in the maintained sector should be raised with Ofsted). However, Governors should be aware that parents with concerns about safeguarding or other issues are able to contact ISI and if there is any possibility that the complaint may highlight a regulatory non-compliance, ISI would refer this to DfE. DfE guidance on how to review remote provision can be found here <https://www.gov.uk/government/publications/review-your-remote-education-provision>.



Inspection and diversity and inclusion

On a separate but related note, an amendment has been made to the ISI *Commentary on the Regulatory Requirements* on how issues around racism and diversity are currently considered. It includes

'Greater detail in relation to how racism is covered by the Independent School Standards Regulations, for example by standard 3(j) which requires that teaching does not discriminate against pupils contrary to Part 6 of the Equality Act 2010, standard 10 (bullying) and 34 (leadership and management). Note in particular the expectation that schools should be alert to practices, behaviours and interactions which may create or allow a hostile environment for pupils with protected characteristics and should intervene through appropriate action with a view to creating a positive and inclusive culture in which every pupil can feel valued and flourish.'

MONITORING AND OVERSIGHT: WELLBEING

Mental Health Week – 1st February

As I write, schools are planning for Mental Health Week beginning on 1st February. There are many organisations making suggestions about how to mark this, but I reproduce the relevant paragraph from the latest mailout from the Anna Freud Centre here to give you a flavour.

Children's Mental Health Week is coming up on 1st February, and the theme this year is 'express yourself'.

By talking openly about mental health from a young age, children can learn to better understand their emotions, break down stigma, and feel safe enough to reach out for help when it's needed. Talking about mental health and expressing our feelings can be difficult, no matter our age.

In this toolkit, we've rounded up lots of great resources to help children, staff and parents start the mental health conversation.

Download here: <https://mentallyhealthyschools.org.uk/resources/express-yourself-children-s-mental-health-week-toolkit/>

The mental health of staff and senior leaders

Most Boards are now familiar with reports on mental health issues about students but it is important to engage in discussions about the mental health of staff. Some Boards have insight into this from Governors who have been nominated by the staff, others (less usually) through staff observers or even Staff Governors. A valuable way forward is to identify a Governor with particular interest in mental health issues, with the same status as the Link Governor for safeguarding, and to ensure that the brief includes staff wellbeing.

The wellbeing of senior leaders is of prime importance for Governors and reports indicate that resilience on their part has been outstanding. It cannot, however, be infinite. While it remains the



case that most Heads and Deputies have managed to adapt adeptly to changing government requirements relating to school closure, opening, social distancing, remote learning, testing, examinations and all the other things which have been affected by the pandemic, some patterns are emerging as to where difficulties arise.

Many have been overwhelmed by the administrative burden underpinning the strategies and decisions about these things, and Governors should be prepared to invest in administrative support here and in safeguarding. Another area has been the huge pressure imposed by record keeping and by investigations where disciplinary and serious safeguarding issues arise. As a result, some schools are considering innovative ways of dealing with this, in terms of administrative support but also identifying case officers to support the handling of complaints. The burden on senior staff of complaints and appeals, both in terms of time and stress, cannot be under-estimated.

Performance reviews of staff, leaders and Governors

Governors have received messages from AGBIS and elsewhere about ensuring that unnecessary demands are not made of senior leaders, but avoid the temptation to allow performance management mechanisms to go into abeyance. By all means, dispense with some of the paperwork but it is important to ensure that staff have the opportunity to reflect on their performance, their achievements and their needs, for these to be reported to and acknowledged by Governors, and for senior leaders to have the same opportunity. It is more, not less important at a time when both achievements and needs are likely to be greater than ever.

Similarly, this is not the time to dispense with self-evaluation by the board itself as arguably the effectiveness of governance is currently being tested as never before at a time when it is essential.

STRATEGIC ISSUES ON OR JUST OVER THE HORIZON

Here we take a look at some of the key topics and pressures that should already be on the agenda for most governing bodies. They may not affect what happens next week, but unless you are discussing them next week, your school could well find itself in avoidable difficulties in the coming months or years.

Teachers' Pension Scheme (TPS)

One of the key issues on Governors' agendas is the future of the Teachers' Pension Scheme. Some schools have taken the decision that now is not the time to embark on consultation on this issue, others that the economic landscape makes it essential. Extensive advice is available from ISC and ISBA but the following are points all boards will wish to bear in mind.

- It is unlikely there will be a time when the business case for withdrawal is more obvious.
- 24 ISC schools and 20 other independent schools have closed recently.
- Over 200 independent schools have now left the scheme.
- Some schools remaining in the scheme have negotiated pay cuts to offset higher contributions.
- Consultation is essential in all circumstances where leaving the scheme is being considered, including where the possibility of dismissal and re-appointment of staff is on the agenda.
- The government has published its response to the consultation on phased withdrawal, whereby existing staff remain in the scheme, but new appointees have other arrangements. See here <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment>



[_data/file/934388/TPS_independent_schools_phased_withdrawal_consultation_response.pdf](#).

- Phased withdrawal is not the 'silver bullet' some had hoped for as it can take many years to have an impact and the rate at which it does so depends on staff turnover.
- Any consultation process must be transparent, phased and include genuine engagement and openness to alternative suggestions.
- Governors should be aware of the conflict of interest on this issue for senior leaders who are enrolled in the TPS.

Mitigation of other financial risks and pressures

It is essential to keep current financial risk factors under review and school associations and law firms have been providing advice as to how to deal with common short term factors e.g.

- Brexit related issues in terms of supply and access
- falls in non-fee income streams
- breaches of bank covenants
- proving going concern
- such factors influencing access to conventional lending
- end of government support schemes
- inflated expectations on fee remission
- additional running costs arising from COVID-19
- reduced ability of parents to pay fees
- diminished appetite for overseas education
- low interest rates impacting school investment
- higher tax rates impacting ability to pay fees
- other government actions impacting income, like loss of business rates relief or the imposition of VAT on fees

For most of us, the combination is unimaginable, but Governors should take an interest in what planning and modelling is being undertaken by Bursars and finance departments about different elements.

Equality, diversity and inclusion

Issues relating to equality, diversity and inclusion were high on agendas in the summer and this is the time to ensure that momentum has been maintained. Governors will want to ascertain:

- what approach the nominations (or another) committee is taking in terms of governance
- what training for Governors and staff has been planned or undertaken
- how HR is acting in terms of recruitment
- what action has been taken in terms of the curriculum and other aspects of school life in the light of feedback from past pupils and current members of the school community.

In addition to the excellent work with schools being undertaken by All-In Education <https://www.allineducation.co.uk/> and others, ISC is taking a welcome lead in this area as you can see on their webpage <https://www.isc.co.uk/sector-info/useful-resources/> which links to helpful organisations and resources. In terms of inclusivity amongst Governors, NGA is promoting the involvement of more young people as well as people from a range of backgrounds and with a range of personalities and viewpoints — areas which are difficult to measure and evaluate <https://www.nga.org.uk/News/Blog/January-2020/Championing-diversity-in-school-governance.aspx>.



Philanthropy for your school: Development and Fundraising,

Some schools have been wrestling with different challenges in terms of development and philanthropy. In some cases, there has been a need for new “hardship” funds, in others a willingness of parents offered a fee reduction to pay the full fee and for the surplus to be put toward such provision. Elsewhere, schools have felt it politic to cease fundraising activity but in different places they have found a considerable appetite for giving. Governors will want to enquire as to where their development function feels it sits on this spectrum and hear plans as to how it might move from one place to another, and on the basis of what evidence.

Changing the exams students sit

Some schools have already announced intentions to make significant changes in their approach to the curriculum. In prep schools there has long been a range of approaches, including ISEB’s CE specifications which have been updated to provide a better foundation for learning in senior schools, and the Prep School Baccalaureate and other portfolio qualifications.

In senior schools there has in recent years tended to be a dual approach in the sixth form between International Baccalaureate (IB) and A-level (and/or Pre-U) approaches. Increasing numbers of senior schools are offering vocational qualifications eg BTECs.

At Key Stage 4 there are a few schools which do not follow the GCSE programme. The cancellation of A-level and GCSE examinations for the second consecutive year may have an impact here but the debate on the appropriateness of GCSEs is now well established. ASCL published the results of a survey on this in January 2020 which provides a handy aide-memoire to members of education committees {<https://www.ascl.org.uk/ASCL/media/ASCL/News/Press%20releases/The-future-of-GCSEs-survey-responses-March-2020.pdf>} and an article in The Guardian gives some context of independent sector approaches here (as well as the views of Lord Baker, the ‘architect’ of GCSEs) {<https://www.theguardian.com/education/2020/sep/20/private-and-state-schools-bid-to-kill-off-gcse>}. A movement has been founded with significant involvement by independent schools as well as multi-academy trusts to campaign for change ({<https://rethinkingassessment.com/rethinking-assessment-home/>}) and Governors may wish to know how academic leaders in schools view this.

The curriculum and how it prepares children for the future

Whether or not schools intend to make changes to the examinations their pupils sit, they cannot stand outside the debate about how to ensure that young people are prepared for the challenges of the twenty-first century. Here there is consensus on the part of universities, employers and mental health experts that much needs to be done.

An article in Independent Schools Magazine gives some insight into this in their review of the work of Ivy House (*Time to Change What We Teach and How We Teach It?*) {<http://independentschoolsmagazine.co.uk/issues/2021-jan/>}. Ivy House proposes in their ‘white paper’ *It’s Time* {<https://www.ivyhouse.co.uk/its-time/>} to:

1. Look at what human development is, why it matters and how we put this at the heart of education.
2. Provide an insight into how to effectively deliver a curriculum that supports both academic and personal growth.



3. Offer inspiration for your own strategy, exploring how this can impact your school culture, teacher training and student support.

Governors occasionally express frustration that curriculum discussions rather pass them by, but this agenda allows them to make a real contribution not least with their perspectives as employers, people in employment, entrepreneurs and parents as schools work out how best to approach these challenges.

Sustainability and environmental matters

Another issue emerging as a long term strategic aspiration for schools is sustainability, and projects in this area have the potential to encourage (in most schools) unusual co-operation and communication between Boards and pupils. Bursars will be familiar with the challenges of zero emissions targets but there are numerous other campaigns and organisations, familiarity with which would allow governors to reach out to pupils. These initiatives include:

BSA's Boarding Orchard (recently endorsed by HRH The Prince of Wales)
{<https://www.boarding.org.uk/440/national-boarding-week/boarding-orchard>}

Sustainability and Environmental Education {<https://se-ed.co.uk/edu/>}

National Association for Environmental Education {<https://naee.org.uk/>}

Eco Schools {<https://www.eco-schools.org.uk/>}

Challenging your operating model and thinking long-term

Planning for future viability may not be an urgent matter now but it will be a long term focus. After the pandemic there will be a need to review how standards of learning and teaching and provision for personal development can be maintained at affordable fees. It will be hard to review some of the aspects of school life which must be in scope:

- what does 'class size' mean post-COVID?
- what does staff:pupil ratio mean when lessons can take place on-line?
- how can collaborative on-line education support the continuation of subjects with small take up?
- how can AI help with marking and assessment?
- what other elements of a teacher's work can be done by others?
- what is a 'full-time timetable' in the world of hybrid learning?
- how is it appropriate to progress teachers through incremental pay scales?
- how do you fairly reward different activities undertaken by teachers including research, teaching, assessment, administration, contact with parents, meetings, pastoral care, boarding duties, extra-curricular activities, professional development, etc., etc.?

Governors and executives need to begin the process of addressing these and related issues as part of their ongoing strategic planning.

Longer term planning must take account of a potentially hostile environment and a lack of any significant political support. The challenges were starkly outlined in an article last year in The Guardian by Lee Eliot-Major and Stephen Machin {<https://www.theguardian.com/commentisfree/2020/oct/07/radical-reform-britain-social-mobility-coronavirus>}. There is no more important time for schools to consider how to embed their partnerships with schools in the maintained sector, many of which have been crucial in recent months and should not be 'flashes in the pan'. As Governors, you will want to know how your

school's projects are featured on the ISC Schools Together website <https://www.schoolstogether.org/> and how they are reflected in reporting to the Charity Commission.

FREE WORKSHOPS WHICH MAY INTEREST YOU...

Making the numbers add up – a workshop in partnership with Grant Thornton

This workshop, designed for Bursars and Governors as well as School Heads, will demonstrate how robust financial management and funding strategies, imaginative and bold cost control and measures to improve student recruitment and retention can all help ensure your school remains a healthy business in the years ahead.

The workshops will take place on Wednesday 10th February at 2pm and 5pm and Friday 12th March at 10am (UK time - GMT). To find out more and to register for a place, [click here](#).

Please note: Due to the popularity of these workshops, we have increased the number of spaces available at each session and added the March date.

What Governors can do and must do now for successful fundraising. 10 questions to ask and things to do.

Governors have fiduciary responsibilities when it comes to fundraising, which are set by the Charities Commission. They also hold a position from which they can greatly improve the success of their school's fundraising and development. This workshop will explore what Governors must do and what they can do to ensure their school benefits from philanthropy, whatever its age-range, history or culture.

The workshops will take place on Wednesday 3rd March at 15.00 and Thursday 4th March at 18.00 (UK time - GMT). To register your interest please email josietomkins@rsacademics.com

ABOUT THE AUTHOR



Durell joined RSAcademics in 2016 and throughout his career he has worked with school leadership teams to support them with all aspects of governance and compliance. He was formerly Deputy Director and Head of Communications at the Independent Schools Inspectorate and before that taught in HMC schools, latterly as a Deputy Head. At ISI, Durell was responsible for liaising with Ofsted, the DfE, ISC, school associations, schools, parents and other interested parties on matters relating to safeguarding and quality assurance. He was closely involved in the development and implementation

of the revised frameworks for inspection introduced successively in 2006, 2010, 2012 and 2015-6. A governor of both maintained and independent schools, Durell has hands-on experience of the challenges faced by busy and highly committed Governors endeavouring to exercise their responsibilities within time constraints. In September 2018, Durell was appointed Chairman of the Independent Schools Examinations Board (ISEB), alongside his role at RSAcademics.

If you'd like to discuss anything in this update please contact Durell directly:
durellbarnes@rsacademics.com. **Durell Barnes, Head of Governance and Compliance**

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 - Perception and attitude research among stakeholders using various methodologies, including our flagship "SchoolPulse" suite of online, benchmarked surveys
 - Advising on strategic planning and assessing specific business initiatives and opportunities, working with Boards and Senior Teams as facilitator and guide
 - To improve student recruitment and retention, we conduct transformational Marketing & Admissions Audits and put together effective marketing plans
- **Equality, diversity and inclusion**
 - Working with our expert and experienced partners at All-in Education, we support schools as they seek to embrace and promote diversity and inclusion. We provide stakeholder research, while our partners provide the training and consultancy.
- **Operational improvement**
 - Usually wide-ranging reviews of a school's operation, from financial management and health and safety through to governance and leadership structures, almost always with a major focus on the educational provision itself.
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 - Reviews of governance as well as training for Governing Boards

- Coaching, appraisals and developmental reviews of Heads and other senior staff working in partnership with Clarissa Farr Consulting Ltd
- **Philanthropy**
 - A full suite of services, ranging from those aimed at “start-up” Development Offices, through to more advanced and specialised support

We also publish influential reports including several relating to school leadership in the COVID-19 Pandemic, the ground-breaking Ten Trends series, The Art of Headship and The Art of International School Headship and much more (please visit “Publications” on our website).

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- To help our clients to thrive - always putting them first and acting in their best interest
- To use our time and money voluntarily to support children’s education and development

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Or contact Russell Speirs, CEO – russellspeirs@rsacademics.com or mobile: +44 7879 607078

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