

KEEPING ON TOP OF YOUR RESPONSIBILITIES AS AN EMPLOYER

- STAYING AHEAD OF THE CHANGES ON PROBATION AND WORKING WITH UNIONS
- RESPONDING TO REQUESTS FOR FLEXIBLE WORKING WHILE MANAGING THE RISKS
- HOW TO RETAIN TALENTED STAFF AND STRENGTHEN WELLBEING



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A business of Marsh McLennan

Welcome to the Autumn issue

...from ISBA's chief executive, David Woodgate.

New school year, new pupils and new challenges. It's a never-ending cycle, but this term in particular focuses the mind and prompts new and improved ways of working. Finances are tight, and new regulations even tighter: this issue of your magazine identifies key priorities for bursars and helps you plan ahead.

Many of the articles in this issue link to bursars' responsibilities around risk. We look at strategic risk – including risk assurance, as well as the opportunity presented by preliminary due diligence, and at tactical risk – including fire risk assessments, and managing the life-threatening challenges posed by food allergies. There's also an article on the importance of not just having, but also rehearsing your crisis management plans (see page 92).

Starting on page 26, our special employment themed section (identified by the pages with coloured edges) responds to the increasingly complex risks schools face as employers in an ever more highly-regulated context. Change is on the (very close) horizon as the Employment Rights Bill is set to introduce major reforms to workers' rights at a time when independent schools are grappling with rising employment costs and other external pressures. For bursars, this means navigating more than just legal compliance – you will need to anticipate risk, protect budgets and sustain staff morale in a complex economic landscape. Workplaces are changing and employers have new and evolving responsibilities including contracting appropriately with self-employed staff, protecting employees from harassment and managing the occupation of school properties. From new arrangements for probation to the changing obligations around flexible working requests, understanding union engagement and supporting staff wellbeing, this special section explores what schools should be focusing on now, how to plan and when to seek expert input.

As ever, we have specialist insights from expert contributors: Drawing on significant experience of the inspection process and quoting extensively from published inspection reports, Durell Barnes offers helpful insights on the importance of self-evaluation as a key part of your preparation for ISI inspection on page 62, and on page 66 Simon Holden challenges schools about how their filtering and monitoring processes work in practice. If other sources of income are on your mind, I recommend the article on page 90 which highlights lessons from the IDPE's latest report, including tips for bursars new to fundraising.

Finally, if you only have time to read one article right now, turn to page 86, where we lay out the benefits you have available to you as members of ISBA. We suggest ways that ISBA can lighten your day-to-day workload with the full range of services that we offer to help school business teams stay connected, informed and prepared.

If you need our assistance please get in touch with the team at: advicet@ISBA@theisba.org.uk or by phone: **01256 330369**. We're here to help and we look forward to speaking with you.



David Woodgate
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TOP TIPS

Out of all the articles in this issue of the Bursar's Review, we have flagged up some of the most critical topics for you to think about:

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Keeping on top of your responsibilities as an employer means understanding and preparing for the new obligations coming your way. Our themed section addresses a series of wide-ranging topics across the spectrum of employment law and associated developments to help you do just that.



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Keep in touch

The UK GDPR will continue to apply to all personal data processed

The Act introduces changes that make it easier to **market to a much wider base of contacts** using the 'soft opt-in'

When responding to data subject access requests, independent schools will now only be required to conduct a **'reasonable and proportionate search'** for the personal data and information required

How the Data (Use and Access) Act 2025 is changing data protection and email marketing for schools

The Data (Use and Access) Act 2025 (the 'Act') has now been formally enacted, making some small but important changes to data protection law for independent schools that *Nick Dunn* at Wrigleys Solicitors LLP sets out here.

There are wider changes of which all independent schools will need to take note, but the most significant changes for charitable independent schools are those relating to the regulations governing email marketing campaigns.

The Act is being implemented in phases and while we are still waiting for most of the Act's provisions to come into effect, there are steps charitable independent schools can (and should) be taking now to make full use of the opportunities provided by the changes to email marketing regulations.

A brief history – email marketing under PECR

PECR, as it is understandably known (rather than the tongue-twisting Privacy (Electronic Communications) (EC Directive) Regulations 2003), sets out specific requirements organisations must follow before undertaking 'electronic' marketing – broadly meaning marketing by telephone, email, text or, in a sign of how dated the legislation is, fax.

PECR has a broad remit and applies to 'unsolicited' donation requests, newsletters and offers, as well as more traditional 'marketing' of school educational offerings and services.

When sending unsolicited email and text marketing to individuals, PECR requires that organisations must have the consent of the individual to the sending of such communications, i.e. they must have 'opted-in' to receive such communications. It is important to note that the PECR requirements are in addition to the requirements of the UK GDPR on establishing a lawful basis for processing personal data (more on this below).

Historically, there has been an exemption to PECR for businesses selling similar products and services (think of all the junk emails received from online retailers saying that, because you bought a toaster, they think you would like to buy a fridge), known as the 'soft opt-in'. However, this exemption has not been available to charities seeking donations from individuals who have already donated to them.

What is changing for charitable independent schools

The Act opens up this 'soft opt-in' to charitable independent schools, provided:

- the communication is being sent via text or email to further the school's charitable purposes;
- the school obtained the contact information of the recipient

because they expressed support or an interest in the school's charitable purposes; and

- the school gave the individual the opportunity to opt-out of receiving marketing at the time of collection and in all future marketing correspondence.

The key requirement above is that in order to rely upon the soft opt-in, individuals must have been given the opportunity to opt out of communications **at the time of collection** of their contact details. This means that charitable schools will be unable to rely upon the soft opt-in for existing mailing lists. However, going forward, provided schools update their data collection methods (further detail on the steps charitable independent schools can take to take advantage of the soft opt-in is below), then they will be able to take advantage of this new flexibility.

This opens up the possibility of charitable independent schools marketing to a much wider base of contacts.

What about GDPR?

The UK GDPR (the UK's post-Brexit version of GDPR) will continue to apply to all personal data processed, which is likely to include email addresses ➡

▲ In order to use personal data to send marketing communications via email, schools will need to demonstrate compliance with both PECR and a lawful basis for processing the personal data under the UK GDPR



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and other information stored about potential recipients.

In order to use this personal data to send marketing communications via email, schools will need to demonstrate compliance with both PECR and a lawful basis for processing the personal data under the UK GDPR. Failure to do so could result in regulatory action by the Information Commissioner's Office as well as (potentially more significant) reputational damage to the school in sending marketing inappropriately.

If relying upon the new soft opt-in, consent is not going to be an appropriate lawful basis to use for sending email marketing. Instead, charitable independent schools might wish to rely upon their 'legitimate interest' in sending the email marketing. In order to rely upon the 'legitimate interest' lawful basis, schools will need to carry out a legitimate interest assessment to consider:

1. What the legitimate interest is that is being pursued?

This is likely to be along the lines that there is a legitimate interest of the school in promoting its activities and seeking donations.

2. Is the processing necessary to pursue the legitimate interest identified?

Given that it is harder to sign up individuals relying on the traditional 'consent' model than the soft opt-in model, it is likely to be necessary to carry out the marketing under the soft opt-in regime to reach as wide a target audience as possible with marketing campaigns, increasing the chance of a successful campaign.

3. How are the individuals' rights balanced against the legitimate interest being pursued?

The normal way of doing this is to take steps to ensure that the individual has the right to opt out of communications at the point of collection and in all subsequent communications, and that privacy notices reflect that information may be used to send marketing communications.

Steps to take in anticipation of the change to the soft opt-in

While it will not be possible to utilise the soft opt-in until the provisions are brought into force, charitable

independent schools should be updating their information collection forms now so that they allow for use of the soft opt-in as soon as the legislation takes effect. In particular, schools should start to include an 'opt out' box in all forms.

As identified in the legitimate interest assessment, schools should also look to update their privacy notices to inform individuals that they may send marketing communications on the basis of the school's legitimate interest (and identify the legitimate interest in the privacy notice).

Other changes

There are some wider changes within the Act for both charitable and non-charitable independent schools to note:

- **Complaints process for data protection complaints** – all independent schools will be required to ensure that they have a complaints process for dealing with data protection complaints. Practically, this has been expected by the regulator for many years, but it will be important to update complaints policies specifically to reference how data protection complaints will be handled.
- **Proportionality in Data Subject Access Requests** – when responding to data subject access requests, independent schools will now only be required to conduct a 'reasonable and proportionate search' for the personal data and information required. Whilst this merely confirms the principles set out in guidance previously issued by the Information Commissioner, it is helpful confirmation that limitation on the extent of searches being requested is applicable.
- **Information Commission** – the Information Commissioner's Office will be restructured and renamed the Information Commission. This change will not significantly impact interactions with the regulator, but may need schools to update privacy notices and other externally facing documents that refer to the regulator.
- **EU-UK Data Sharing** – the Act aims to ensure the UK's data protection legislation is in place before the

EU reviews its adequacy decision for the UK, which is due to expire in December 2025. The European Commission has proposed a six-year extension to the current adequacy decision, meaning that it will adjudge the UK's data protection regime as 'essentially equivalent' to the EU's GDPR, allowing for much smoother transfers of personal data between the UK and the EU. While this may not be a day-to-day concern for independent schools, it will ensure that existing contracts with suppliers who may have European operations can continue uninterrupted.

- **Automated decision making** – the Act introduces changes that make it easier to use 'automated decision making' (i.e. decisions made without human involvement), provided certain safeguards are put in place to inform the individual of the automated decision making and the right to request a human review of any such decision. The true impact of these changes is likely to take some time to come to light as technology develops in this area.

When these changes take effect

The Information Commissioner's Office expects that all changes will be in force by no later than June 2026, but keep an eye open for the exact date when the changes outlined above will come into effect – the Government has a central website which sets out its planned implementation phases, and this will be updated as and when various sections of the Act come into force: <https://www.gov.uk/guidance/data-use-and-access-act-2025-plans-for-commencement>. ◀

The information in this article is necessarily of a general nature. The law stated is correct at the date this article was first published.



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Appoint a *designated allergy lead*

Download the *Schools Allergy Code*

Enrol *all your staff* on allergy training

Making schools 'allergy safe', a new priority from the Department for Education

Allergic disease is the most common chronic medical condition among school-aged children and having a robust and well managed allergy policy in your school could save lives. It is too dangerous not to have one as *Sarah Knight*, CEO and founder of The Allergy Team, makes clear.

If you have ever responded to an allergic reaction incident at your school, there was probably some soul-searching afterwards. Did we manage it correctly? Do staff need more training? How can we stop something like this happening again? Learning from mistakes is vital, but I am urging you not to wait until something happens to act. Schools must be proactive about allergy safety because tightening up procedures after an allergic reaction is too late.

It was too late for Benedict Blythe. Benedict was just five years old when he died in December 2021 after experiencing anaphylaxis at school. Earlier this year the jury at the inquest into his death determined that mistakes had been made at his primary school which meant that

► Benedict Blythe died in December 2021 after experiencing anaphylaxis at school





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he was exposed to cow's milk which was one of his allergens. The jury found the symptoms of anaphylaxis were not identified quickly enough, there was a delay in giving Benedict adrenaline and opportunities to learn from a previous allergic reaction at school were missed. His mother, Helen Blythe, describes a 'cascade of failures' contributing to her son's death.

During the inquest, the Department for Education committed to reviewing statutory and non-statutory guidance relating to allergy management in schools. This was positive news for campaigners such as the National Allergy Strategy Group and Benedict Blythe Foundation who have long called for legislation to make schools safer for the 680,000 pupils in England with an allergy. We have been involved in some of the consultations about these issues and can see changes coming, so now is the time to get ahead and interrogate your school's allergy safety.

Is your school 'allergy safe'?

Just before the summer break, the Department for Education told all

▼ The Department for Education's sector email issued last term said that being 'allergy safe' should be a priority for September 2025

Anaphylaxis is unpredictable and can happen at lightning speed, so everyone needs to know how to reduce risk and how to respond.

schools to assess just that. In the sector email it said that being 'allergy safe' should be a priority for September 2025. As senior leaders you may be wondering what this means for your school.

In my experience working with schools, the phrase *allergy safe* means ensuring everyone is doing everything they can to protect pupils with allergies.

This includes:

- really understanding allergy;
- actively working to reduce the risk of someone being exposed to their allergen; and
- knowing how to recognise and respond to allergic reactions.

Because responsibility for allergy management often straddles departments and job roles (e.g. medical, catering, educational visit co-ordinators (EVCs) etc.), this must be a whole school endeavour, driven by focused leadership. For that reason, we recommend that all schools appoint a designated allergy lead.

Why you need a designated allergy lead

Just as your DSL oversees safeguarding and your EVC oversees educational visits, your designated allergy lead will have overarching responsibility for allergy. This person should be a senior leader with the authority to drive change, oversee training, develop policies and ensure departments work together to reduce risk. Inevitably the designated allergy lead will delegate tasks such as managing medication and gathering pupil information, but they will be responsible for ensuring everyone understands their role in allergy safety and will create the policies and procedures to underpin this.

When we run designated allergy lead training for senior leaders, they often express the sentiment that because allergy feels like a specialist area 'you don't know what you don't know'. That's one of the reasons why it's so important to have someone to who builds this knowledge, champions allergy safety and shares learning and new developments throughout the school.

Practical allergy safety steps for schools

As well as appointing a trained designated allergy lead, there are other practical steps you can take now to strengthen your allergy safety, including:

1. **Download the Schools Allergy Code** – The Allergy Team worked with ISBA and the Benedict Blythe Foundation to create the Schools Allergy Code. This framework for best practice is recommended as part of the Department for Education's Allergy Guidance for Schools and is a great place to start if you are looking to strengthen allergy safety at your school. The Code is a practical, step-by-step guide to what good looks like and comes with a checklist to help you identify what you are already doing well and where you might have gaps. This is a free, open-source document which you can download from the members' area of the ISBA website (www.theisba.org.uk).
2. **Ensure your allergy and anaphylaxis policy is fit for purpose** – your policy should be a dynamic document that gives everyone the blueprint for how allergies are managed at your



A group of five students, three girls and two boys, are posed in two rows. The front row has two students, a girl on the left and a boy on the right, both wearing dark blue blazers with red piping and a crest. The back row has three students, a boy on the left, a girl in the middle, and a boy on the right, wearing blue and red sports kits. They are all looking towards the camera against a dark, textured background.

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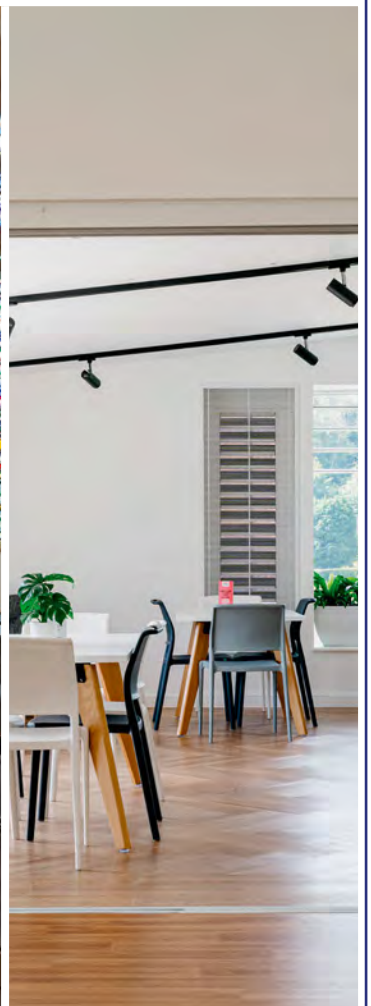
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If in doubt, give adrenaline.

school. ISBA has a template which you can adapt to your setting at www.theisba.org.uk. We strongly recommend that you ask staff to confirm that they have read and understood your allergy policy.

3. **Enrol all your staff on allergy training** – your allergy training must be up-to-date, accurate and comprehensive. It should cover understanding allergy, how to reduce risk for pupils with allergies and how to recognise and respond to allergic reactions.
4. **Make sure all staff know which pupils have allergies** and are familiar with their care plans.
5. **Carry out an anaphylaxis drill** – rehearsing what should happen in an allergy emergency will help flush out gaps in allergy safety.
6. **Join the Schools Allergy Register** – devised in partnership with ISBA, the Schools Allergy Register is a list of schools who have demonstrated their commitment to best practice in allergy management and earned a trust mark. The register is a valuable resource for parents and carers looking for a setting which meets their child's needs and inclusion reminds staff, families and pupils that allergy safety is a priority.

Act now to protect your school

Fatal anaphylaxis is rare, but allergy is not. Allergic disease is the most common chronic medical condition among school-aged children, and every classroom is likely to have at least one or two children with a food allergy.

- Up to 20 percent of anaphylaxis cases occur within school grounds and of these, one in four occurs in pupils not previously deemed at risk¹.
- 58 percent of parents of a child with an allergy report their child has experienced an allergic reaction or a near-miss at school².
- Children miss half a million days of education because of allergy every year³.

Despite these statistics, 40 percent of teachers don't feel confident or prepared to manage an allergic reaction⁴. This leaves schools and pupils vulnerable. Even if you have a school nurse, they won't join all your educational visits or travel to sports fixtures and some allergic reactions require a response within minutes. Anaphylaxis is unpredictable and can happen at lightning speed, so everyone needs to know how to reduce risk and how to respond.

Even a minor allergic reaction or near-miss can have shattering consequences. The family involved might lose trust in your school, they might move their child to a different setting and investigating the incident and managing any reputational fallout will be time-consuming and stressful for school leaders.

By adopting a proactive, whole-school approach, you can create an environment where pupils with allergies feel safe and included and where staff feel supported and confident.

A changing landscape

We have already discussed expected updates to allergy guidance, but schools should be aware of some developments have already taken place.

Firstly, the new Early Years Foundation Stage (EYFS) framework which came into effect on 1 September 2025 includes a new 'Safer Eating' section. It covers how information about children's allergies should be gathered and shared, strengthens

allergy training requirements for all staff and requires enhanced supervision during eating.

Secondly, you may start to see pupils with allergies carrying a new alternative to adrenaline pens. These devices, called Neffy, have recently been approved for use in the UK and use a nasal spray rather than a needle to deliver adrenaline. As Neffy becomes prescribed more widely, schools will need to monitor guidance, adapt plans and train staff accordingly.

These developments have already been reflected in the ISBA template allergy policy which was updated in September 2025.

As the mother of two children with allergies, I welcome this momentum around allergy safety in schools. I don't underestimate the effort and commitment it will take to implement, but I do know that it will be worthwhile. 



Author

Sarah Knight

CEO and founder of The Allergy Team

 www.theallergyteam.com/schools

1. Anaphylaxis in schools: results of the EPIPEN4SCHOOLS survey combined analysis and Increase in anaphylaxis-related hospitalisations but no increase in fatalities: an analysis of United Kingdom national anaphylaxis data, 1992-2012

2. The Allergy Team parent survey 2024

3. The Allergy Team parent survey 2024. 48 percent of respondents said their child had missed at least one day of school due to their allergies. 28 (10 percent) said their child had missed more than six days of school due to their allergies, 59 (21 percent) had missed three or more days. Calculated based on 680,000 children having an allergy

4. Allergies in Schools Teachers' Survey 2023, Benedict Blythe Foundation