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# FE & HE Digest

## Winter 2023

Latest news from the Further and Higher education sectors

**Now, for tomorrow**

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# Welcome to the winter edition of our Further and Higher Education Digest

**As we start to draw a close to 2023 many of us will be in need of a well earned break as this year has proved to be yet another turbulent year which has seen the cost of living crisis, staggering increases in utility costs and a whole new regime for the further education sector resulting from reclassification. At this point we would normally try and provide words of comfort that 2024 is going to be plain sailing, however this may not be the case.**

In the Further Education world the prospect of a change of financial year end looms, we also have changes to UK accounting standards that will be published (albeit with effective periods beginning on or after 1 December 2025) however modelling as to how this will affect financial health scores and banking covenants will need to begin in advance. The FE sector will also be given its new Financial Handbook which will lay out the detailed requirements of Managing Public Money, so in this issue of our digest we try and give our readers a little advanced information as to what is coming which should dispel any myths of more draconian rules being handed down – which is not the case!

This issue also contains a number of other articles which we hope you find useful including a breakdown of the Charity Commission's latest guidance on investments (CC14) which many should find interesting as higher bank interest rates mean greater opportunities to invest your institutions reserves.

As ever if there are any issues you would like to discuss further please do contact any member of our FE/HE team.

Best Wishes,
Further & Higher Education sector teams

# ESFA Financial Handbook – What to expect

**In due course we expect the ESFA to release the new Financial Handbook. The Handbook will set out the Department for Education's (DfE's) financial governance, management and control requirements for further education and sixth-form college corporations.**

The Handbook will apply equally to institutions designated under Section 28 of the Higher and Further Education Act as being in the further education sector. The requirements of the Handbook will also apply to any subsidiary forming part of the parent college group.

The Handbook is set to comprise short topics explaining requirements that colleges must follow, as well as elements of good practice that colleges should follow, unless an alternative approach works better.

The Handbook has been developed by a working party that consists of financial professionals within the sector, auditors, governance professionals, umbrella associations and the ESFA; it is intended that the Handbook will be effective from 1 August 2024 and will remain in force until updated or replaced.

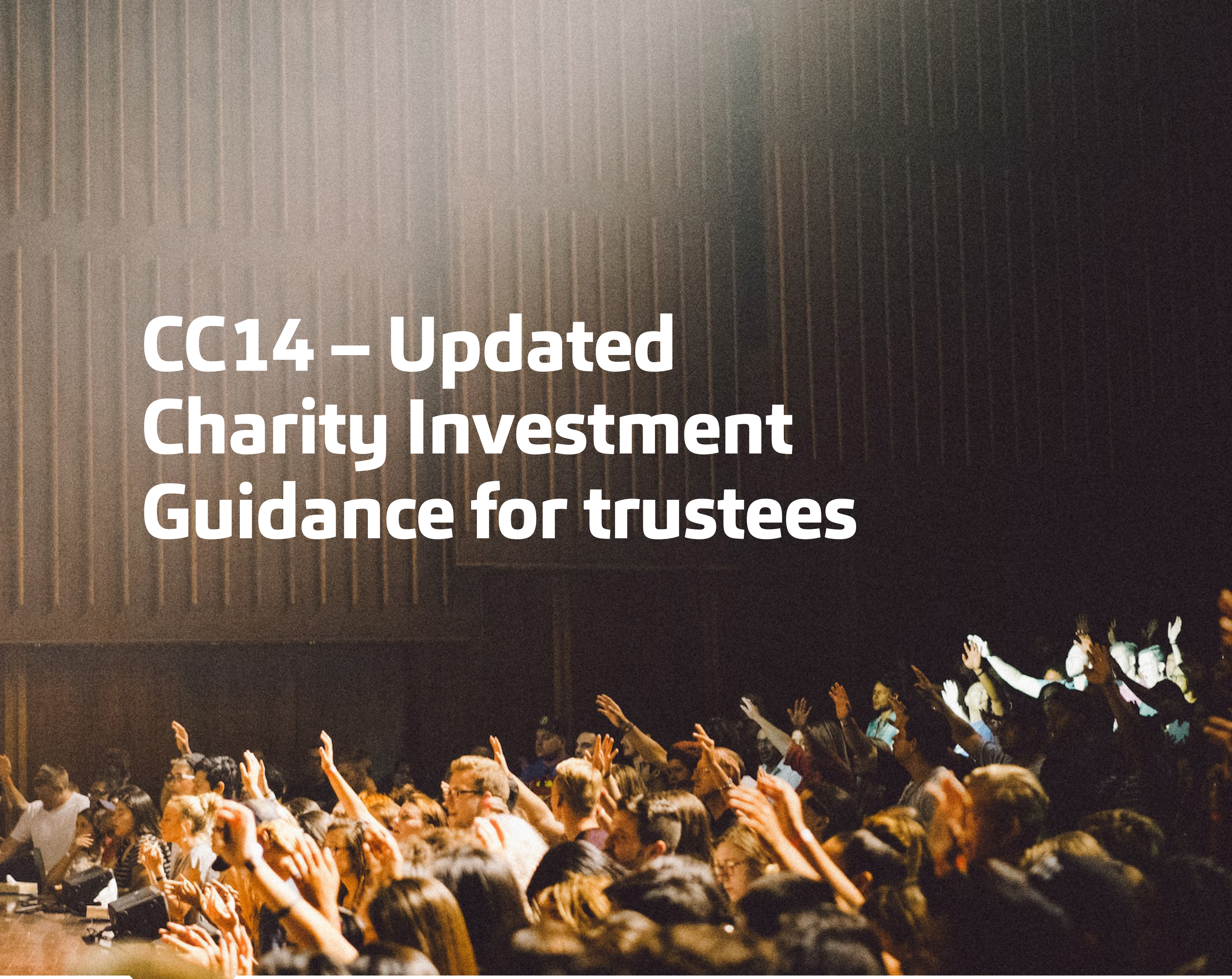
### What we expect the Handbook to cover

We are expecting the Handbook to:

- Describe the financial responsibilities of colleges, reflecting their status as charitable corporations acting in the public interest classified as central government bodies for the purposes of national accounts.
- Explain when colleges must obtain approval in advance for certain financial transactions. Colleges must ensure they are familiar with these requirements.
- Balance the need for effective financial management with the freedoms that colleges need over their day-to-day business.
- Reflect **the 7 principles of public life** (selflessness, integrity, objectivity, accountability, openness, honesty and leadership) to which public office holders must adhere.
- Cover further education colleges, sixth form college corporations, designated institutions, and the subsidiaries of any of these bodies.
- Be complied with as a requirement of colleges' accountability agreements with the Secretary of State for Education.
- Set out that the DfE may take action, in accordance with the framework for **college oversight: support and intervention**, where there are concerns about a college's compliance with financial management requirements.

The good news is that the ESFA have confirmed that this Handbook does not contain any new rules that have not already been highlighted within the Dear Accounting Officer letter and Bite-Size Guides that have been released on reclassification matters.

We are expecting the Handbook draft to be released in November/December 2023 upon which 'comment' may be given from the sector to address any significant issues that might arise from its implementation. We expect the final version of the Handbook to be released in March 2024.



# CC14 – Updated Charity Investment Guidance for trustees

**After several years of consultation, a court case and various delays, the Charity Commission for England and Wales have recently published updated investment guidance: Investing charity money: a guide for trustees.**

This new guidance feels timely as the increase in Bank of England interest rates has meant that education institutions are looking to ensure they are maximising their financial returns and holding reserves in the most appropriate manner. As ever, colleges and universities will be looking to balance risk with maximising financial returns and in doing so need to ensure that they can demonstrate they are acting in the best interests of the institution. For some of you this may bring back memories of Icelandic Banks, and so managing this risk is key. Investment managers Cazenove, who hosted round tables with the Charity Commission and reviewed draft guidance during the consultation period, have highlighted below seven of the key changes featured in the revised guidance which is very helpful for educational institutions.

### 1 More accessible and practical guidance

The new guidance is more accessible for trustees, and clearly sets out trustee/governor duties when investing charity assets. The Commission say the guidance aims to offer "greater clarity and to give trustees confidence to make investment decisions that are right for their charity". It emphasises "that trustees have discretion to choose what is best in their circumstances and have a range of investment options open to them – provided they ultimately further the charity's purposes."

### 2 Removing the reference to "ethical investment"

The Commission has removed reference to "ethical" investment, as well as "mixed-motive" and "programme-related" investment. It has opted instead for "financial investment" and "social investment" – where the former seeks financial returns and can take into account non-financial factors such as sustainability and impact characteristics. The latter specifically relates to achieving the institutions purpose directly through the investment (while making a financial return).

### 3 Permissive approach to responsible investment

The guidance is permissive towards the inclusion of "non-financial factors" being included in financial investments, explaining that it is up to trustees/governors to determine what is in the best interests of their institution. It highlights that this might include investment approaches that avoid certain assets, seek out specific investments for their environmental or social performance and use influence to create change. The recent Butler-Sloss case is now the "leading case in relation to the law on investment decision-making by trustees". It has been helpful to clarify that investments conflicting with the institution's purpose or harm its reputation can be excluded, even if it there are anticipated financial implications, as long as the decision is in the best interests of the institution.

Despite this permissive framing, Cazenove fed back throughout the consultation their belief that responsible and sustainable investment is under-represented in the guidance, given public benefit requirements, the fact that 83% of long term charity investors already have responsible investment policies, and the action that many charities are taking to respond to broader social and environmental shifts like climate change.

### 4 Investment policy guidelines

A more significant section of the guidance is dedicated to helping trustees/governors set investment policy, thinking about returns, risk, time horizon and liquidity. It is clear that "the Commission expects all charities that invest to have a written policy". This is a welcome change to the guidance, and Cazenove also recommend that a investment policy contains a statement on responsible investment approach, and how the investment policy aligns with the institution's values and aims.

### 5 An expectation that all investing charities take professional advice

A new section of the guidance concentrates on taking advice and makes it clear that the Commission expects all investing institutions to take professional advice when making and reviewing investments.

This advice could be given by an investment adviser or manager (like Cazenove), or by a trustee with relevant experience. It is worth noting that if a trustee/governor is relied on for advice they are held responsible for the quality of that advice. Not all investment managers give regulated investment advice (Cazenove do), so it is important for trustees/governors to consider how they are meeting this expectation.

### 6 Working with investment managers

The guidance sets out how institutions might delegate to an investment manager, the types of things that trustees/governors should consider when selecting a manager, the need to have a contract and the requirement to 'regularly review' the service that you are getting. The guidance is clear that this regular review can be done by trustees/governors, and should consider performance, alignment with investment policy and ongoing suitability.

### 7 Empowering those charged with governance

Trustees/governors should feel empowered by this new investment guidance. It is written to be permissive and flexible for individual charity circumstances. It even says "the Commission is unlikely to have concerns about your investment decisions or policy if you can show that you have: complied with your trustee duties and your governing document; considered and balanced relevant factors, taken advice and reached a reasonable decision."

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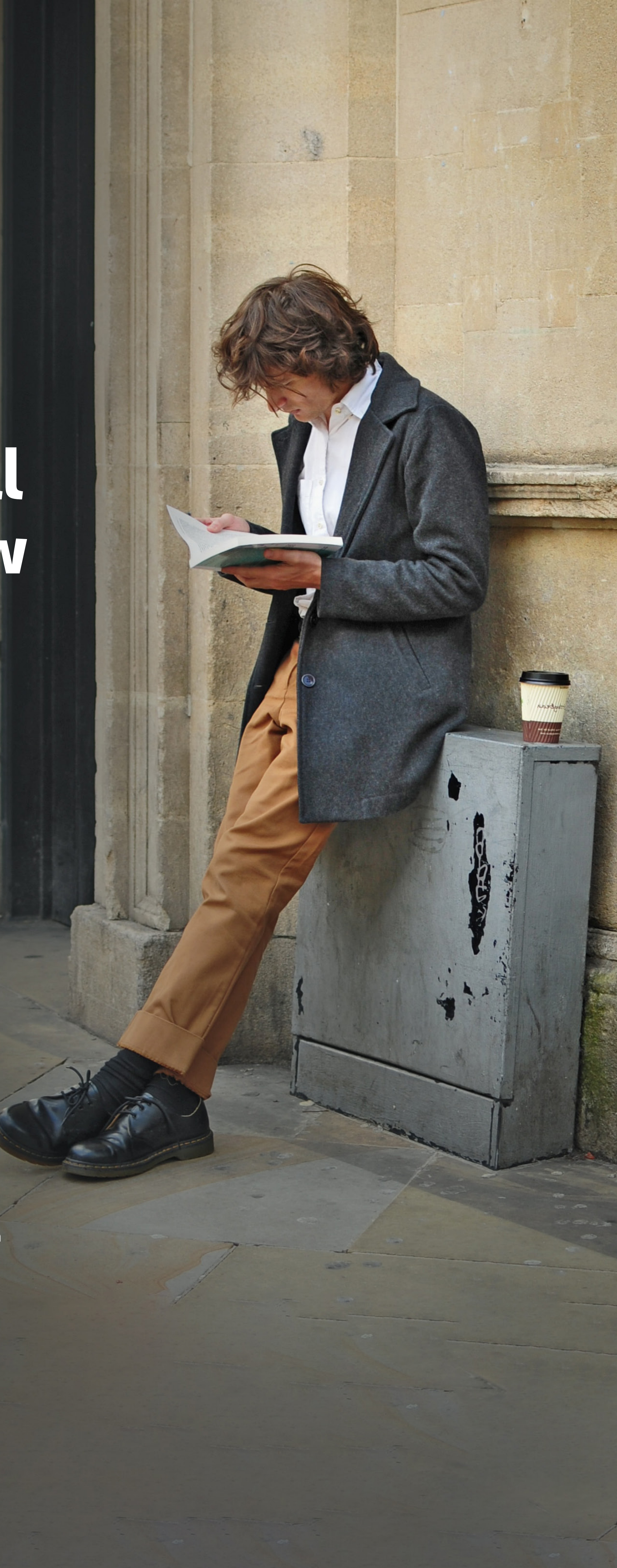
Cazenove have produced a series of **checklists** for Trustees/Governors to consider with regards to Trustee duties, developing an investment policy, selecting an investment manager, and preparing an annual report.

In light of the changes to the Charity Commission guidance, HMRC have updated the terminology they use in their '**Charities: detailed guidance notes on how the tax system** operates' documents to ensure consistency.

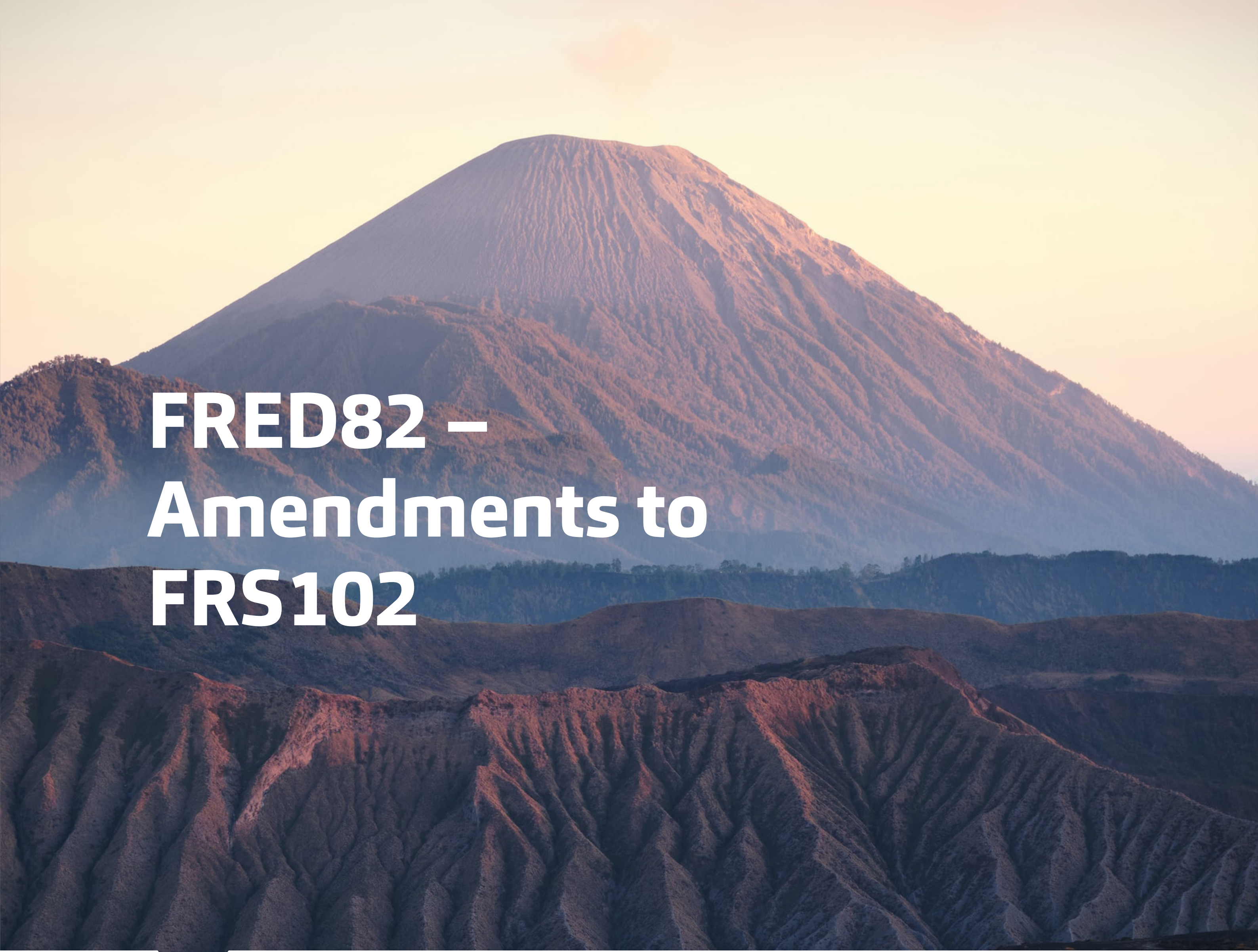
# Lifelong Learning Bill becomes law



**From 2025, the Lifelong Learning Bill will give adults loans that are worth up to £37,000 which will allow them to pay for full-time courses such as university degrees or Higher Technical Qualifications (HTQs).**

Ahead of this, the Department for Education has launched the Modular Acceleration Program (MAP) where £5 million of funding over 2 years will be offered to those OfS-registered providers of HTQs. HTQs sit between A-levels/T-levels and degrees; they provide the learner with the skills that employers are looking for and are currently available in subjects such as Construction, and Health and Science, with more being introduced in the future.

The Lifelong Learning Act 2023 will mean that there will be a new method of calculating the maximum level of tuition fees so that the pricing of courses is at a fair level, with the intention that access to higher education will be a lot easier for those who need it.



# FRED82 – Amendments to FRS102

**Our beloved underlying accounting standard FRS102 is part way through its triennial review and a Financial Reporting Exposure Draft (FRED) number 82 has been released and consulted upon.**

The consultation on FRED82 closed in April 2023 and the Financial Reporting Council  is expected to issue a revised FRS102 no later than 1 January 2024.

The proposed effective date for these amendments is accounting periods beginning on or after 1 January 2025. So for FE Colleges this will be in force for July 2026 year ends. However be aware that implementation will mean the comparative figures will be restated and so this will affect the year ending July 2025 (the first day of that accounting period being August 2024). So these changes are not that far away.

FRED82 had a large number of suggested amendments but there are two which stand out:

1. Revenue recognition
2. Lease accounting

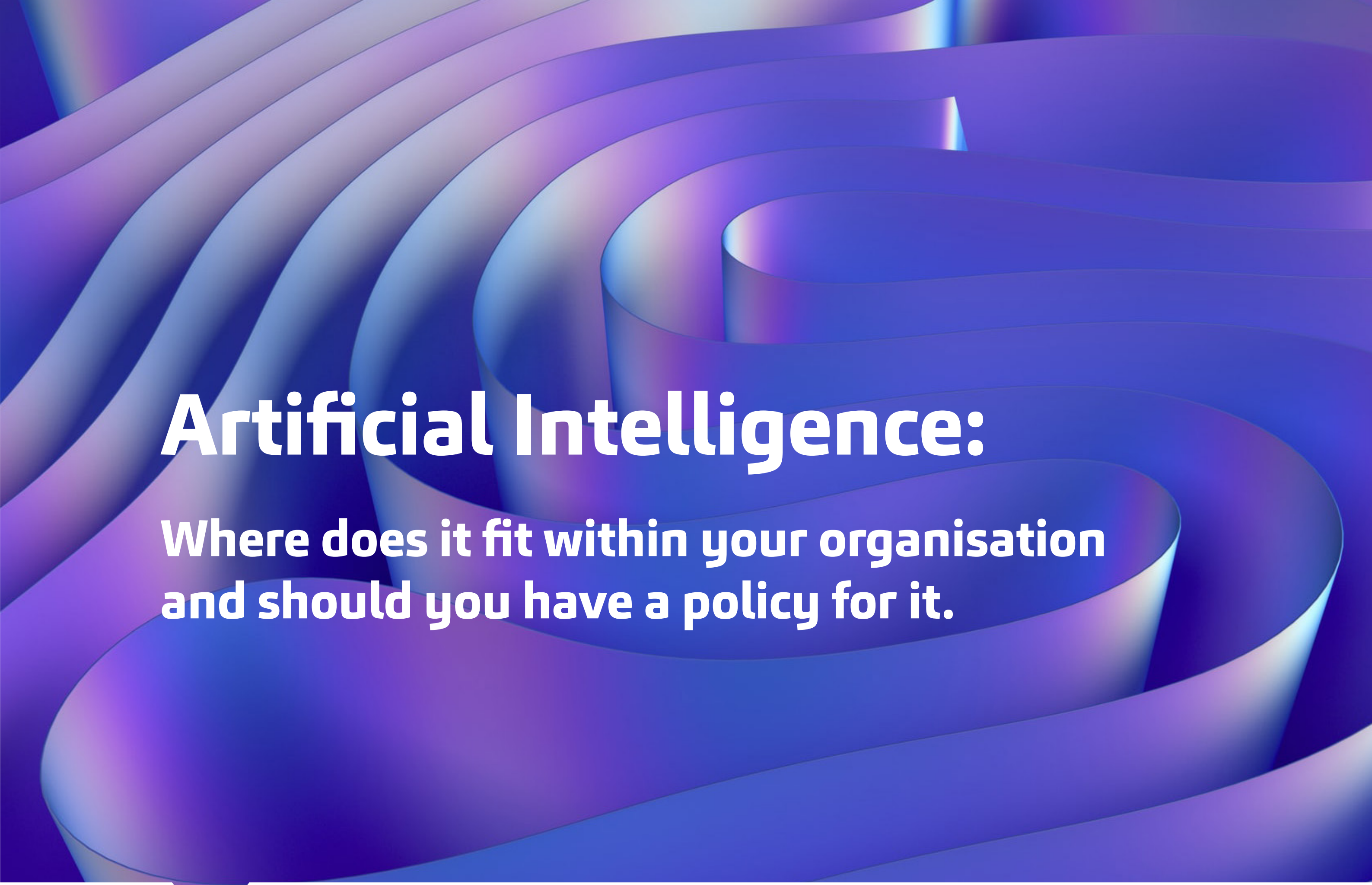
In short, it is expected that a new revenue recognition model will be adopted which includes a 5 step process to recognising income which lends itself more to a performance basis and further away from accrual models.

The second major change is expected to affect operating leases. This will see operating leases which are over 12 months in length come onto the balance sheet with the present value of the lease payments being recognised as an asset and liability.

This change is particularly significant for those watching their financial health scores (current ratio) and banking covenants.

FRED82 also has various other incremental improvements and clarifications such as going concern and dividend disclosures.

Once the draft of FRS102 is released in the new year we will report back in greater detail.



# Artificial Intelligence:

## Where does it fit within your organisation and should you have a policy for it.

**If you work outside of the tech industry, you may not be aware of the extent to which artificial intelligence (AI) is already integrated into our day-to-day experience. For example, when your bank calls an account owner in regard to fraud, it is likely that AI is responsible for detecting the fraud in the first place.**

Over recent years AI has increasingly been used within organisations to help streamline recruitment, analyse onboarding data as well as take over repetitive tasks which don't require creative or critical thinking. Naturally this could lead to concern for job safety and the impact of AI on UK employment and the demand for skills.

In 2021 PWC completed a report for the Department for Business, Energy and Industrial Strategy looking at the potential impact on UK employment and skills demand of AI and related technologies. Their findings estimated that "around 7% of existing UK jobs could face a high (over 70%) probability of automation over the following 5 years, rising to around 18% after 10 years and just under 30% after 20 years"(1*). The report also noted that AI will also create many jobs as a result of the boost that it would give productivity and economic growth. "Whilst some of these extra jobs will be in areas linked directly to AI and related technologies … most of the additional employment will not be in high tech areas. Instead, these additional jobs created will mostly be in providing relatively hard-to-automate services (e.g., health and personal care) that are in greater demand due to the additional real incomes and spending arising from higher productivity generated by AI".

### What does this mean for the labour market and business in general?

Most businesses are a long way away from implementing technologies with autonomous sophistication. Rather the most commonly used are technologies such as Chat GPT and WalkMe Digital Adoption Platform (DAP).

ChatGPT is likely the most used technology in recent months as it is a free conversational chat bot that produces plausible human-like response text form from user inputs. The introduction of ChatGPT may reduce the time and effort for many written tasks, such as summarising documents, generating social media post ideas, interview guides and drafting job descriptions but this could have an impact on jobs built around those activities. The use of various AI can cause some concern for employers, but it can also offer significant benefits. Adopting AI can mean the creation of jobs in which people skills such as empathy, collaboration, teamwork and listening are integral to the role.

It is essential for employers using AI such as ChatGPT to understand the limitations and to ensure that functions using the tools have established safeguards, standards and guidelines on appropriate use. Key boundaries to consider include ensuring that no sensitive data is used in conversations with ChatGPT as this data will not remain private. It is likely that existing policies around the Data Protection Regulations and Privacy Notices will need to be updated to include usage and the protection of sensitive personal data.

Given its increasing prevalence it is our view that all organisations develop an AI policy. If you are thinking of introducing an AI policy, it is essential that in the first instance you have identified which AI tools may be helpful to your business. Once you have weighed up any pros and cons you will be able to decide whether you will permit workers to use AI for work purposes. Equally if you chose not to permit the use of AI then this should be specified in writing within your existing policies.

An AI specific policy for chatbot usage, like any employment policy, can be advantageous in setting out clear guidelines and standards to ensure that systems are used in an appropriate and consistent manner minimising any risks of ethical concerns.

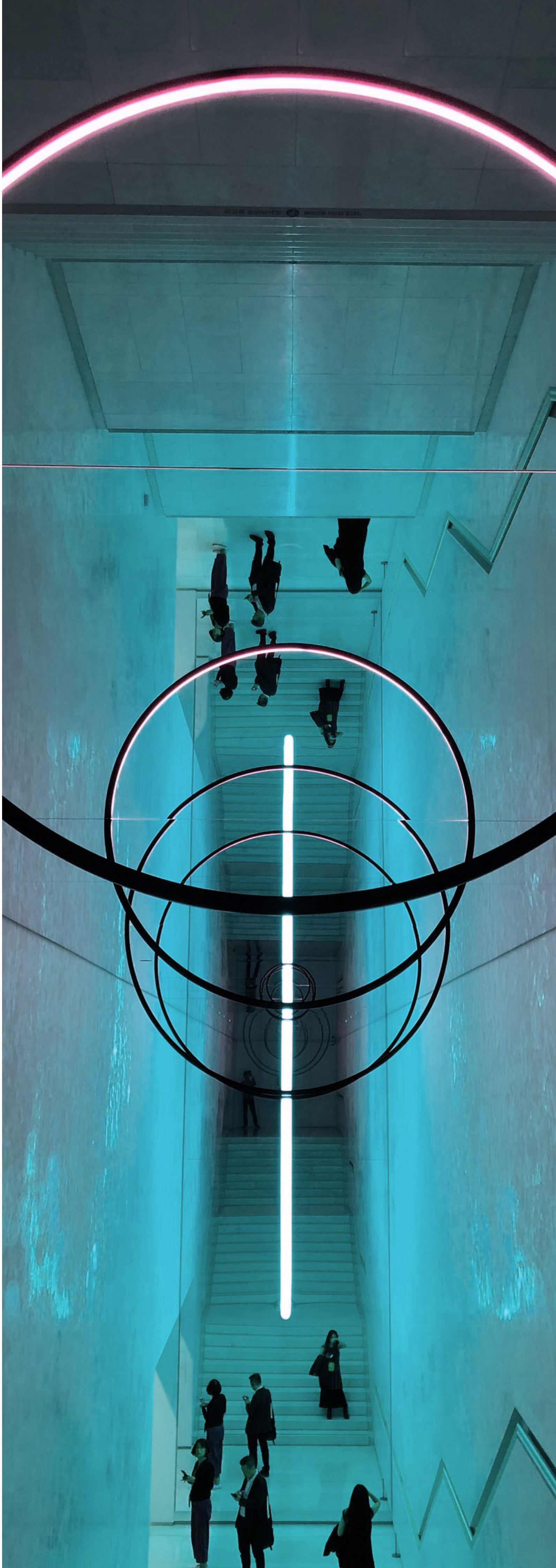
Be sure to include sections within your policy such as;

1. Transparency and accountability, including what AI applications are permitted and that any worker or employee remains responsible for the content created.
2. Employee training and education
3. Acceptable use of chatbots for work related activities
4. The right to monitor the usage of AI.
5. Prohibited use
6. What happens if the policy is breached

Given the dynamic growth in AI development and its increasing integration into workplaces, establishing an AI policy is a vital step in defining explicit guidelines for employees regarding the acceptable and unacceptable use of AI within your organisation.

Crafting a comprehensive and unambiguous policy not only safeguards your business against potential risks such as intellectual property or confidential information breaches and professionally embarrassing errors, but also enables you to harness the efficiencies and advantages that AI offers.

HR Solutions at MHA can discuss with you your requirements for an AI policy and draft any amendments to existing policies documentation as required. We can also advise you on how best to implement a new policy.



# Meet our Further & Higher Education sector experts

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