

Additional Guidance for Church of England Schools moving to Academy Status in the Diocese of Hereford

This guidance has been developed by the Diocesan Board of Education to support Church of England schools moving to academy status and for Multi Academy Trusts (MATs) bringing Church of England school into their Trust.

This should be read in conjunction with:

- Hereford DBE Policy on the Academisation of Church of England Schools
- Application for Conditional Consent to Convert to a Multi Academy Trust
- Application for Conditional Consent to form a new Church of England Multi Academy Trust

It aims to set out the process church schools should follow if they wish to become an academy in the Hereford Diocese and provides essential information and guidance to Church of England school Governing Bodies considering academy status (and for Multi Academy Trusts considering bringing a Church of England school into its organisation). As such it focuses on those aspects of academy conversion and consents that are specific to Church of England schools within the Diocese of Hereford.

Background

The Church of England has been a provider of education for many centuries and has adapted to the numerous structural changes that have taken place over that time. The current academy model of State school provision is another change in that long history and one in which Church of England schools will engage with, adapt to and thrive. Although organisational models and structures in education are developed and reinvented over the years it is essential that underlying Christian principles and the distinctively Christian education at Church of England schools remains constant and is recognised and supported during these changes. The ability of the Church of England to consistently deliver this Christian education has been made possible through a series of established legal and organisational structures and in particular the governance and asset ownership of its schools, and it is essential that these important aspects, which will enable the continuation of Christian education in perpetuity, are not compromised at this point in history when a Church of England school moves to academy status.

The Role of the Hereford Diocesan Board of Education (HDBE) and the Diocese of Hereford Educational Trust (DHET)

The HDBE is a statutory body with responsibilities for church schools in each diocese, and for the RE and collective worship.

The role and place of church schools in the overall mission of the Church of England is of prime importance. The Hereford Diocesan Board of Education (HDBE) is committed to working with a Governing Body of a church school and the Directors of an existing academy or MAT to enable the school's successful move to academy status in a model which upholds and supports its Church of England Foundation and Christian distinctiveness. The Academy conversion process for Voluntary Aided and Voluntary Controlled schools is without doubt more complex than is the case for Community

schools and therefore it is essential that schools and MATs appreciate that this additional complexity inevitably takes more time and requires additional consideration and process than a similar academy conversion at a Community school. Early engagement with the Diocesan Board of Education is essential as soon as a church school is considering academy status or if a church academy is considering joining a Multi Academy Trust. The initial engagement can be through the Diocesan Director of Education or Deputy Director.

Diocese of Hereford Educational Trust (DHET)

The Diocese of Hereford established the Diocese of Hereford Educational Trust to discharge many of the functions of the Church of England academies.

DHET is required, in part, due to the unincorporated nature of the Hereford Diocesan Board of Education (HDBE). Although HDBE is a statutory body, formed under the Diocesan Board of Education Measure 1991 legislation, it is not a company in its own right and it functions as part of the Hereford Diocesan Board of Finance Ltd, which has a much larger role.

In order to identify the DBE function from the wider HDBF function in matters pertaining to academies, DHET was developed as the 'vehicle' to enable this corporate separation. DHET is a corporate member on each Academy Trust and it is DHET who appoints (and can remove) the Directors on that particular Academy Trust Board or MAT Board (alongside other Foundation Members as set out in the company's Articles).

All members will be required to attend training and received briefings to support their particular role in representing the Diocese in the life of the Church of England academy at Member level.

The Diocesan Trustee owners of the land and buildings will appoint Lee Bolton Monier Williams solicitors to address Diocesan Trustee property legal matters together with the development and/or checking of the *Church Supplemental Agreement* and all relevant legal documentation and their professional fees are to be met by the school/MAT. HDBE has received from the school/MAT:

- Copies of the consent given by the Trustees, and any other body entitled to appoint Foundation Governors.
- All land transfers, leases and other land and property issues are completed to the satisfaction of the Diocesan Education Team.
- HDBE is reasonably satisfied that the church school has undertaken the necessary due diligence exercise so as to ensure a smooth conversion from school to church academy (and/or in the move into a Multi Academy Trust) and has a sustainable future.
- The Academy Trust provides evidence that insurances in the joint names of the Academy Trust/MAT and Foundation Trustee owners of the site and buildings are in place immediately prior to conversion (as required by the Church Supplemental Agreement) or that the Academy Trust is part of the ESFA's Risk Protection Agreement (Church Academy option) and the church school has been duly registered in the scheme.

- That HDBE and the Trustees have formally confirmed satisfaction with all academy legal documentation. *Note: It is a condition that a Church Supplemental Agreement is prepared for all church school academy conversions (irrespective of the land/building and/or trusteeship arrangements) HDBE will be obtaining legal advice regarding the academy conversion in addition to any legal advice obtained by the Trustee owners of the land and buildings. This is to protect the long-term interests of the HDBE and the founding site trustees.*

DHET as corporate Member, the named Foundation Directors and the named LGB Foundation Governors (where applicable) are formally appointed prior to conversion, working with the Diocesan Education Team.

The church school/academy/MAT provides a full copy of all the academy legal documentation (at no charge) to the Hereford Diocesan Board of Education within 3 months of conversion. The final signature of the legal academy conversion documentation can only take place once the consent conditions identified by HDBE have been fully signed off by the relevant Diocesan Officers. currently HDBE will charge a contribution of £1800.00 plus VAT for schools converting into the Diocesan of Hereford Multi Academy Trust (DHMAT) or another Church of England established MAT, and £2500 plus VAT for schools converting into a new academy trust or non-church MAT which will be required to cover the change of articles to meet the Church of England requirements as set out in the Memorandum of Understanding between the National Society and the Department for Education. These are one-off charges, and both can be met from the academy conversion grant of £25,000 paid available to converting school by the DfE. The Board of the HDBE have agreed to make an additional charge towards the costs of time spent by officers during the process of academy conversion in addition to the Trustees Solicitors engaged on the "checking of documentation". This reduces the cost by not having two independent solicitors acting for each side (Trustees and Academy). This will be in a form of a contribution to costs incurred by the Diocese (Hereford Diocesan Board of Education) and by the Trustees and their legal advisers in the consideration of and conversion of the church school to academy status (and/or in a move to a MAT) will be settled in full by the school/Academy/MAT within 21 days of receipt of invoice.

Church Foundation and Academy Status

Foundation Trusts and the Need for Foundation Trustee Consent.

All Church of England schools have a Foundation Trust which establishes the school as a Church of England school. The Trust Deed stipulates the principles and legal conditions under which the institution was established and should be run. The Trustees also hold (own) the land and buildings for the purpose of the Trust. Over the passage of time the original Trust Deeds at a number of church schools have been mislaid or accidentally destroyed and they will need to be reinstated and approved by the Charity Commission. The Trustees at a significant amount of church schools in the Diocese of Hereford are the Hereford Diocesan Board of Finance Ltd (HDBF), but there are also a significant number of church schools that have the local Vicar and Churchwardens as Trustees and there is also a smaller number that have one or more named individual historic trusts. In a very small number of cases individual Trustees were named and have since died and the trusteeship has not been clearly passed on down through the ages and they will require reconstituting. Although the move to Academy status does not alter the Foundation Trust of a Church of England school – it still remains a Church of England school, held on Trust for the purpose of the Trust and administered by the Trustees – the move of voluntary

schools to academy status does require the Trustees' consent. Therefore, if historic Trustee matters need regularising prior to academy conversion taking place, then it will inevitably have implications on the conversion programme and legal costs.

Early engagement with the Diocesan officers to undertake an initial assessment of possible Trusteeship issues is essential when any church school is first considering academy status, and this will also assist in the early discussion with the Trustees in preparation for the consent process. The Trustees in a Church of England academy need to be more active in fulfilling their duties than would have been the case when the school was a voluntary school as part of the maintained education system. The Academy Trust needs to seek permission from the Foundation Trustees for any works to the land and buildings (as this is owned by the Foundation Trustees). They are required to consider any legal changes that may impact on the Trust Deed requirements, and they need to ensure that the Academy Trust adequately safeguards (insures) the property and any third-party liability. They may also become a Member of the Academy Trust Company, with the associated responsibilities that brings.

Property Matters

The land and buildings at a Church of England School are owned and controlled by the Foundation Trustees and are unaffected by the school's move from maintained school to academy status. There is no lease between the Foundation Trustees and the Academy Trust or Secretary of State but there is a Church Supplemental Agreement which seeks to capture some of the principles of the arrangement and which is signed by all three parties. The Foundation Trustees allow the Academy Trust to operate from the land and buildings whilst they fulfil the purpose of the Trust for which the land is owned, as a Church of England school. Should the Academy Trust not operate the school as a Church of England School (in action as well as name) or though their actions or inactions place the Trustees at risk, then the Trustees can give notice to require the Academy Trust to leave the property. The ownership and control of the physical assets by the Foundation Trustees has been the basis of enabling and ensuring Christian education over many centuries. The ownership and control of the physical assets is the ultimate means by which the Christian Foundation can be secured through past and future political change in the education system. Current legislation enables existing voluntary schools land and buildings (excepting playing fields) to be held by the Foundation Trustees and requires Local Authorities to transfer such land to the Foundation Trustees. Over many years voluntary schools have grown, remodelled or relocated and in the past some of these changes have not been captured in land transfers. The move to academy status requires all historic land holding issues to be regularised prior to conversion. This is particularly important for the Foundation Trustees as the statutory requirement for land transfers applicable to voluntary school is not also provided for academies. Early engagement with the Diocese is therefore essential when a school is first exploring academy status so as to enable the Diocesan Education Team and Foundation Trustees' solicitors to assess any land transfer issues ahead of academy conversion. Such transfers can have a significant impact on the planned academy conversion programme.

Land and Buildings Foundation Trustees Consents

The Foundation Trustees hold the land and property on trust and as such they have responsibilities under charity law to ensure that the purpose of the Trust is being fulfilled, that assets of the Trust are being used for the purpose of the Trust, that the condition and value of the asset is being maintained and that the asset is adequately insured or otherwise protected.