

# **Guidance for Schools: Applying to become an Academy**

January 2020

## **1. Introduction**

This document is intended to support Governors in considering the implications of Academy status. Further information is available on the Department for Education's website at

<https://www.gov.uk/government/collections/convert-to-an-academy-documents-for-schools>

<https://www.gov.uk/guidance/convert-to-an-academy-information-for-schools/1-before-you-apply>

### **Thinking of becoming an Academy?**

The DfE recommend that you let staff, parents and pupils know that your Governing Body is considering applying for your school to become an Academy.

If you decide to apply, then before applying the Governing Body has to meet and pass a resolution to convert. If your school is applying to join an existing Multi-Academy Trust, the Trust has to confirm that they are happy for your school to join them.

Your governing body must consult formally about your school's plans to convert to an Academy with anyone who they think will have an interest in your school changing its status. This will include staff members and parents, but you should also involve pupils and the wider local community.

The law doesn't specify how long the consultation should last, but it is important that you can show that interested groups, individuals and organisations have had a reasonable opportunity to respond.

You must complete the formal consultation process before you sign your Academy funding agreement, so the DfE suggest you begin the consultation as soon as possible to allow time for everyone with an interest to respond.

### **Wakefield Council's Academy Conversion Process**

Resources within the Local Authority (LA) are limited and the LA does not receive additional funding to project manage or undertake the duties associated with the conversion process, unlike the funding which is received by schools and Academy Sponsors. As such, Academy Conversion processes have to be managed alongside other key LA priorities.

It is imperative that schools applying to the DfE to convert to Academy status contact the LA prior to agreeing a conversion date, in order that the LA can agree to an achievable deadline, taking into account the statutory timescales associated with particular processes such as TUPE and Legal. In cases where schools have agreed a conversion date directly with the DfE without prior consultation with the LA, it has led to schools working towards a date but which is not achievable for the LA and has, unfortunately, caused a great deal of frustration for schools as well as disappointment for all concerned. However, in line with the DfE's guidance, schools can expect the process for non-sponsored conversions to take four months, although school holidays, LA financial year end etc can impact on this timescale.

The LA does not commence the associated processes until an Academy Order has been received and any delay may result in a change to the conversion date.

In accordance with Article 7 (7.8) of the Constitution the Leader gave delegated authority to the Portfolio Holder, Children and Young People to take any executive decision in relation to School Academy conversions. The Recommendations of the delegated decision are:

- That the Corporate Director, Children and Young People, in consultation with the Portfolio Holder be given delegated powers to negotiate and conclude the terms of the Commercial Transfer Agreement and any ancillary legal agreement between Wakefield Council, the Governing Body and Trust in relation to the transfers of assets, staff, pensions of teaching and support staff, service level agreements with Wakefield Council and third party contracts and to negotiate and conclude the terms of the lease, relating to the land and buildings, and any ancillary legal agreements.
- That the Chief Legal Officer, or any authorised officer within Legal Services with delegated powers, be approved to sign contracts under Legal Services' scheme of delegation to execute and complete the Commercial Transfer Agreement and any ancillary legal agreement for and on behalf of Wakefield Council.

## **2. What is an Academy?**

An Academy is a state-funded independent school, working in partnership with a Multi-Academy Trust (MAT). It differs from a Local Authority (LA) maintained school in the following ways, by:

- receiving funding direct from the Education Funding Agency (EFA);
- directly employing staff and setting pay and conditions in agreement with the Multi-Academy Trust;
- responsibility for land and buildings;
- being required to teach a broad and balanced curriculum including: English, maths, science and RE (not the national curriculum);
- not being linked to the LA and, therefore, having greater statutory responsibilities;
- setting its own admissions policy; and
- having the freedom to change lengths of terms and school days.

## **3. Do Academies carry greater Liabilities?**

An Academy has greater responsibility as noted above. They are directly liable for matters such as insurance, employment liabilities, support staff pensions, health and safety, and property maintenance. As noted above, Academies receive their funding directly from central government to help them meet these additional costs (see section 5 for more details).

## **4. Staffing**

### **As a Local Authority (LA) Maintained School**

Staff are employed by the LA and are part of national and local pay and conditions agreements. The LA is responsible for the administration of provisions e.g. pensions, redundancy, sickness and maternity schemes etc. (Not funding).

### **As a Voluntary Aided/Foundation School**

Staff are employed by the Governing Body but are still part of the national and local pay and conditions agreements akin to the LA.

### **As an Academy**

If the school opts to convert to an Academy, all staff working at the school immediately before the transfer will automatically transfer to the employment of the Academy Trust, unless their contract of employment is due to expire the day before the date of conversion.

Other staff who are employed at the school but who do not work under the direction of the Governing Body for example Catering and Cleaning staff will not transfer unless specified.

Academies are not required to follow national or local pay and conditions agreements and may in future choose, through consultation, to change staff terms and conditions. Governors should note that staff terms and conditions will be protected in law through TUPE regulations on transfer and any imminent changes would need to form part of the Academy conversion consultation. If however, following a TUPE transfer there is a genuine need to make a change then it must fall within the following categories:

- organisational;
- economical; or
- technical

Many schools/Academies choose not to migrate away from the national staff terms and conditions as this could have an impact on the recruitment and retention of staff within a competitive market place for the very best staff.

For maintained schools the Council will be responsible for ensuring the TUPE Regulation is met (as the exporting employer). This will be in collaboration with the converting school and the Multi-Academy Trust involved.

For Voluntary Aided and Foundation schools the Governing Body will be responsible for ensuring the TUPE Regulation is met (as the exporting employer). This can be undertaken by the school or by their HR Service Provider who would undertake this on the Governing Body's behalf dependent on the Service Level Agreement in place.

### **Pensions**

Teachers working within an Academy fall within the scope of the Teachers' Pension Scheme (TPS), just as if they were employed in an LA maintained school. Staff transferring will continue their membership of the Scheme. As the employer, the Trust will be responsible for remitting pension contributions to the TPS and for all other administrative responsibilities that fall to employers who employ teachers who are subject to the Teachers' Pensions Regulations.

Support staff fall within the Local Government Pension Scheme (LGPS). As the employer, the Trust will be responsible for meeting the employer contributions. Staff transferring will continue their membership of the Scheme. Unlike TPS, there are a number of component schemes within LGPS, with the Council acting as pension administrator. The employer contributions rate may be different from that payable by the Council.

On that basis the West Yorkshire Pension Fund (WYPF) will complete an actuarial analysis for the LGPS to determine whether or not the employer contribution needs to alter based on the staffing profile for the new Academy/Multi-Academy Trust. They will also calculate the contribution to the pension deficit which the Academy Trust will need to be responsible for.

WYPF has recently published the '*Local Government Pension Scheme – Arrangements for Academies*' guidance for schools looking at becoming an Academy and their responsibilities as an employer participating in a pension fund etc, which can be found on the West Yorkshire Pension Fund website.

### **Redundancy**

Academies are covered by the 'Redundancy Modification Order' (RMO), therefore, Continuous Local Government Service accrued before transfer will be maintained for existing staff although the liability for redundancy costs transfers to the Academy from the school. This relates to newly appointed staff who join the Academy after conversion and who have accrued Continuous Local Government Service. Such service will also be transferrable to other schools or LA's under the 'RMO', therefore, staff will not be disadvantaged through transfer to or from an Academy.

### **Sickness**

Staff entitlement to occupational sickness pay will transfer for existing staff under TUPE. However, the Academy could choose to implement new terms and conditions for new staff in the same way they can in respect of pay and would need to negotiate this with the staff, the Academy Trust and trade unions as well as to amend policies/procedures to reflect this. This could mean however applying two schemes for the same provision within the Academy.

### **Maternity**

Staff entitlement to occupational maternity pay will transfer for existing staff under TUPE. However, the Academy could choose to implement new terms and conditions for new staff in the same way they can in respect of pay and would need to negotiate this with the staff, the Academy Trust and trade unions as well as to amend policies/procedures to reflect this. This could mean however applying two schemes for the same provision within the Academy.

### **Trade Union Facilities Time**

Rights of trade union recognition do automatically transfer on conversion. The funding for Trade Union Facilities Time transfers from the Local Authority (LA) (when de-delegated) to the Academy following conversion.

The LA offers Academy the opportunity to contribute to the funding of Trade Union facilities time through the LA arrangements to avoid the need for separate agreements and increased funding. Please see the attached brochure.



Trade Union  
Facilities.pdf

## 5. Funding

Detailed below are some of the key issues that should be considered from a financial perspective when deciding whether to apply for an Academy order:

### **Setting of the Dedicated Schools Grant schools block formula funding allocations**

It is the responsibility of the Local Authority (LA) to consult and set the formula funding arrangements for the schools block element of the Dedicated Schools Grant (DSG) for all the schools and Academies within the Wakefield district. Conversion to Academy status does not change this; Academies are issued with consultation papers each year (just like maintained schools), the only difference being that the consultation questions are limited to those that are relevant to Academies.

### **Top-Slicing of School Block**

This is consulted on each year and School Forum ratifies the decision. This is applicable to both maintained schools and Academies **so conversion to Academy status would not impact this** and your school would still have 'top-slicing' applied to their budget (if this is what School Forum agree to).

As at 2019/20, the only top-slice that takes place is to establish a pupil growth contingency fund.

Please see attached illustration of how school and Academy funding is presently calculated and, therefore, how top-slicing, de-delegation and SLA's/contracts change upon conversion to Academy status.

**Please see Appendix-Funding Example attachment at the end of the document.**

### **De-delegation of Schools Block**

Again, this process is consulted on each year and School Forum ratifies the decision. This is only applicable to maintained schools and maintained School Forum members.

De-delegation is currently in place for; Behaviour Support Services (therapeutic intervention), Trade Union staff time, FSM eligibility, School Improvement support and establishment of a maintained school contingency. There is also a contribution towards the general duties that the LA has for maintained schools.

Deductions to maintained school budget allocations is done through application of a formula and by using pre-set rates (for consistency) and does not directly correlate to the level of service and charge that would be levied if an SLA was in place.

Your school can determine how much has been deducted for de-delegation by looking at your school block budget notification statement.

Upon conversion to Academy status, this de-delegation would no longer take place so your Academy would receive this funding as part of your school budget share. However, as a consequence, if your Academy needs any support from these services then you would have to enter into an SLA for this and this would be at a cost to your Academy budget. As advised above, it may be that the level of service needed equates to a value more or less than the amount previously deducted through de-delegation.

### **SLAs and provision of Central Support Services**

Within Wakefield, no top-slicing takes place across any maintained school for the funding of central discretionary services such as Accountancy, HR, Governors, and premises repairs etc.

It is each individual school and governing body's decision what support they wish to procure and then SLAs are subsequently entered into. Your school can identify the cost of SLAs entered into by interrogating account code R7890.

Under a Multi-Academy Trust, it is usually the case that such services will be provided/commissioned by the Trust and as such, budget would be centrally retained for this and not passed on to the individual Academy.

It would be for your school/governing body to assess if the central retention for such services by the MAT would be less/more than what is presently being incurred.

### **Payment of Funding Allocations**

As a maintained school, DSG and other grant funding streams including Pupil Premium, UIFSM, and primary PE and Sport grants are paid to the Local Authority (LA) and the LA then devolves funding to each maintained school.

Upon conversion to Academy status, the ESFA will enter into a funding agreement (with the MAT) and will allocate funding through the General Annual Grant (GAG).

The ESFA would then become responsible for issuing other grants (such as Pupil Premium, UIFSM etc.) directly to the Academy. Other funding allocations such as high needs top-up payments and early years funding would continue to be paid through the LA.

### **Academy Start-Up Grant**

Schools can apply to the ESFA for a one-off none recurrent Academy start-up grant (presently £25,000). This funding is towards meeting the set-up/legal costs of Academy conversion.

### **Determination of a School Balance upon Conversion to Academy Status**

The Local Authority (LA) is permitted four months following the date of conversion to determine the final balance of the maintained school at the date of conversion. Once calculated, the Local Authority notifies the Academy and the Academy has one month in which to review and respond either confirming their agreement with the balance or identifying queries.

## **Financial Accounting and Reporting Arrangements**

The financial year for an Academy is 1<sup>st</sup> September – 31<sup>st</sup> August. Academies are required to comply with both the ESFA funding agreement and Academies Financial Handbook which sets out the financial accounting and reporting requirements Academies must adhere to. It should also be noted that Academy final accounts have to be audited by independent external auditors.

## **Capital Funding**

The Local Authority (LA) receives capital maintenance funding allocations for maintained schools within the district. The Capital Programme Board review and agree how this funding should be utilised. As an Academy, if capital maintenance works are required, the Academy would have to submit a request for capital funding to the Education Funding Agency (ESFA).

In addition, the Authority receives a capital basic need allocation which is to be used by the LA to address pupil place planning issues across the Wakefield district.

Each school receives a Devolved Formula Capital (DFC) allocation which is made up of a set amount of £4,000 plus £11.25 per primary pupil (for example and based on 2019/20 rates). Any unspent DFC monies after conversion to Academy status are transferred to the Academy.

## **6. Admissions**

All schools and/or Academies are bound by the DfE's School Admissions Code and must meet all its mandatory provisions including participating in the LA co-ordinated admissions process and the Fair Access Protocol which is in place in Wakefield.

All schools/Academies must have an over-subscription criterion for each relevant age group and the highest priority must be given, unless otherwise provided in the code, to Looked After Children and to previously Looked After Children.

Relevant age group means the age group at which pupils are or will normally be admitted to the school, for example reception, year 7 or year 12.

### **As a Local Authority (LA) Maintained School:**

The Admissions Authority for all Community/Voluntary Controlled schools is the LA, who set the Admissions Policy for these schools. The LA applies the following criteria for allocating school places:

- a. Children in care (Looked After Children), or a child who was previously looked after under an arrangement made by the LA);
- b. (i) Children who live in the school's catchment area, who have brothers and sisters attending the school at the time of admission;  
(ii) Other children who live in the school's catchment area;
- c. Children who have brothers or sisters in attendance at the school;
- d. Other children, with priority being given to those living nearest to the school.

Within each criterion the tie-breaker is distance from home to school.

For Voluntary Aided/Foundation schools the Admissions Authority is the school's Governing Body. Each Governing Body sets its own admissions policy, which in the case of Voluntary Aided schools is usually set following advice from the appropriate Church Diocese.

**As an Academy:**

For all Academies the Admissions Authority is the Academy Trust. The Trust may decide to adopt the LA's admissions policy or set its own within the framework set out in the School Admissions Code.

The existing admission arrangements will continue to apply in the first year of conversion, following which where an Admission Authority proposes changes to their admission arrangements they must consult on these changes.

## **7. Property**

**As a Local Authority (LA) Maintained School:**

The Governing Body is responsible for the day-to-day upkeep and compliance of the site and buildings and for devolved formula capital budgets. The LA usually owns the land and buildings and these are insured under the Council's block insurance policy. The LA also receives a capital allocation from the Government for the maintenance of its buildings which is utilised on schemes of works based on condition data.

**As an Academy:**

All land and property that is used for the purposes of the school will be transferred from the LA to the Academy at conversion, usually on a 125-year lease at a peppercorn rent based on the model provided by the DfE. The Academy Trust will be responsible for all repairs, compliance and maintenance of the property and for insuring the property. The LA will, therefore, have a landlord role and will require evidence of compliance regarding legionella, asbestos management etc.

A Commercial Transfer Agreement, based on the model provided by the DfE will include a list of the school assets that are to be transferred at conversion from the LA to the Academy Trust.

**Service Tenancy Agreements:**

Where there is a property located on or near the school site and it is occupied by a caretaker under a service tenancy agreement, the LA will usually lease the property under a separate lease to the Academy/Multi-Academy Trusts. The separate lease will be on the same terms as the main Academy lease but will state that the property must only be used as a caretaker's dwelling house (service tenancy) or for educational purposes. If the Academy Trust no longer requires the property for any of those uses stated then there will be provision that the property may be transferred back to the LA.

## **8. Governance**

**As a Local Authority (LA) Maintained School:**

The governing body provides non-executive leadership. Its role is to operate as a board akin to the board of Trustees of a charity, or the board of directors of a company. Governors are responsible for ensuring clarity of vision, ethos and strategic direction; in all matters, the 'board of governors' should operate at a strategic level, leaving the Headteacher and senior school leaders responsible and accountable to it for the operational day-to-day running of the school.

The governing body must not be smaller than seven members, and must include:

- at least two parent governors;
- the Headteacher (unless the Headteacher resigns as a governor);
- one staff governor; and
- one Local Authority (LA) governor.

Depending on the education setting of the school, the governing board may also include:

- co-opted Governors (appointed by the Governing Body); and
- foundation Governors (voluntary controlled and voluntary aided schools only) – either appointed by the Diocese of take the role by virtue of an office that they hold.

### **Academy Structures**

Academies are publicly-funded schools, independent of the LA, and held accountable through a legally binding funding agreement with the Department for Education (DfE). Staff are employed by the Academy Trust. Academies have more control over curriculum design and staff pay and conditions. There are three different routes to becoming an Academy:

1. Sponsored Academies: Underperforming maintained schools taken out of LA oversight and given to an Academy sponsor to provide support in improving pupil achievement and attainment. The first Academies were all sponsored Academies. Examples of sponsors include other schools, universities, businesses, individuals, charities and faith communities. While early sponsors were initially asked to provide schools with financial support, the role is now primarily based on providing school improvement support.
2. Converter Academies: These are schools deemed by the DfE as performing sufficiently well that they can choose to opt out of LA oversight and become an Academy (usually now as part of a MAT, as Single Academy Trusts are now discouraged).
3. Free Schools: Free Schools are essentially new Academies, and this is now the only way in which new schools can be created. Free schools can be set up by groups such as charities (including MATs), universities, community and faith groups, parents or businesses. Sometimes these groups are invited to tender to set up a new school by a LA as a way of meeting the need for more school places in their area.

### **Multi-Academy Trust (MAT):**

Academies can operate as standalone schools (known as single Academy Trusts or SATs), or as part of a group of Academies within a MAT. In either case, the Academy Trust is a charitable company (of a particular type, known as an 'exempt charity' as they are not registered by the Charities Commission), which enters into a legally binding agreement (called a funding agreement) with the DfE to run the school(s).

It is important to recognise that, although a MAT is responsible for more than one school, it is a single organisation. Being part of a MAT, therefore, brings an intrinsic change to the accountability structure of its individual schools which, despite retaining their own DfE number, no longer exist as an individual legal entity. Academies are accountable to their Trust board, which is in turn accountable to the Secretary of State for Education. This oversight is exercised through the National Schools Commissioner and eight Regional Schools Commissioners (RSCs).

As charitable companies, Academy Trusts, whether SATs or MATs, are required to agree and abide by memorandum and articles of association based on a model prepared by the DfE. These are legal documents that set out the governance composition and procedures for the Trust.

Academy Trusts are required to have at least two groups of people to govern the Trust (Members and Trustees) and an executive leader. Some also choose to create additional committees to focus on specific issues or schools.

- Members – are the signatories to the memorandum as the first members of the Trust (usually there will be between three and five members). The role of members is significant, as they act as the guardians of the governance of the Trust. They are responsible for agreeing the Trust's first [Articles of Association](#) and approving any future changes. They are usually able to appoint and remove Trustees and will monitor the work of the Trust (employees of the Trust must not be appointed as Members);
- Trustees/Directors (including the Chief Executive/Executive Principal) – manage the business of the Academy Trust and may exercise all the powers of the Academy Trust. The Trust Board should focus strongly on the three core functions of governance and ensure compliance with the Trust's charitable objects, with company and charity law, and with their funding agreement. The board may delegate functions to committees. Each committee of the board (other than those in a MAT constituted under the articles as a LGB) must contain a majority of Trustees, but may also include other people the board chooses to appoint;
- Local Governing Bodies – it is the decision of the Trustees about which, if any, governance functions they delegate to LGBs or other committees. LGBs with no delegated governance functions are wholly advisory. MATs may delegate responsibilities in proportion to the strength of individual Academies and the skills and expertise of the people on their LGBs. Boards of single schools considering joining an existing MAT should ensure they understand the range of governance functions, if any, that would be delegated to them as an LGB by the MAT board; and understand that the board will have full control over the membership and delegated authority of the LGB that they become.

The Articles of Association will set out the constitution. The Trust Board is accountable for all Academies in the group.

There is a limit of 19.9% of the Governing Board that can be Local Authority Associated Persons (LAAP).

Further information and governance guidance is available via the [Governance Handbook](#) and [Academies Financial Handbook](#).

**For queries on this Guide please contact:**

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**This Guide does not replace guidance or advice provided by the Department for Education (DfE).**

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*Appendix: Funding Example (updated January 2020)*



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