

Subject: Guidance on the Membership and Formation of Church of England Multi-Academy Trusts

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For: School Leaders and Governing Boards

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GUIDANCE ON THE MEMBERSHIP AND FORMATION OF CHURCH OF ENGLAND MULTI-ACADEMY TRUSTS

Updated October 2020

This paper provides contextual and technical guidance to church schools considering

- a) converting to academy status and becoming part of an existing Church of England Multi-Academy Trust (MAT)
- b) converting to academy status and/or forming a new locally led Church of England Multi-Academy Trust.

The Board of Education's policy may change at short notice to reflect local or national circumstances and, as such, this guidance is not binding on the Board. As a result, it is recommended that the Diocesan Board of Education is contacted at the earliest possible stage.

A. THE CONTEXT

I. Diocesan and national background

Since 2010 the Diocesan Board of Education (DBE) has consistently held a neutral position on academisation, supporting schools wishing to remain maintained schools and those wishing to convert to academy status. The outcome of this has been the creation of a vibrant, high-achieving, mixed economy of maintained schools, stand-alone academies and an emerging number of small Church of England Multi-Academy Trusts with, in September 2020, approximately 18% of church schools designated as academies overall. Standards across the system remain high and have consistently exceeded national averages.

Current national policy encourages schools to consider becoming academies and join an existing Multi-Academy Trust or, where sufficient pupils are involved, form a new Trust. Schools graded inadequate by Ofsted are subject to a Directive Academy Order (DAO)

and are obliged to become an academy, usually within 12 months of the order being issued.

Within the Church of England sector, land occupied by church schools is usually held in trust for the provision of a church school to serve families in the local community, especially the poor and marginalised. As a result, additional conditions are required to be met by church schools wishing to convert to academy status, and the explicit consent of the site trustee and DBE - as the appropriate religious authority - is required in all cases. The guidance below is designed to help governing bodies navigate the seen and unseen complexities involved when considering academy conversion.

2. A shared Vision for Education

The Diocesan Board of Education has expressed its vision for education as follows:

***'Living God's Love in Education:
Enabling Life in all its Fullness'***

Recognising the historic foundation of its schools which were created to provide an education for children within the local community, the DBE is committed to allowing them to maintain their individuality and local character whilst remaining part of the diocesan family of schools.

The DBE sees the Christian vision of church schools and the Christian values they promote as an integral part of school life. For example, a church school's Christian vision should impact on the curriculum and the way it is taught, on relationships across the school, on procurement, staffing and behaviour management, and should be worked out in relationships with the local community, diocese and local authority. The vision promotes a culture where all can flourish as children of God. It is the Board's expectation that the Christian vision of any Church of England Multi-Academy Trust within the diocese would mirror this understanding.

In considering proposals from schools, the DBE would expect to see a wholehearted commitment to maintaining and developing their Christian vision as they transition to a new form of governance.

B. THE POLICY

The current DBE policy regarding the conversion of Church of England schools and the membership of Multi-Academy Trusts is as follows:

Where maintained schools wish to, or are required to, convert to academy status and join a Multi-Academy Trust, it is the expectation of the St Albans Diocesan Board of Education for all Church of England schools in the diocese to be part of Church of England majority multi-academy provision.

C. THE OPTIONS

1. **Converting to academy status and joining the Diocese of St Albans Multi-Academy Trust (DSAMAT)**

This is an option for all Church of England schools in the diocese. Applications from Good or Outstanding Schools are encouraged. Schools that are deemed to be inadequate will join DSAMAT unless a local, school-led, C of E majority MAT is available to sponsor the school.

2. **Joining an existing Church of England Multi-Academy Trust**

This is an option for schools wishing to join an existing and successful Church of England MAT. In addition to DSAMAT, there are currently three trusts operating within the diocese: The Chess Valley Primary Learning Trust (South-West area); the Ridgeway Learning Partnership (West area) and the Poppy Multi-Academy Trust (South area).

Contextual guidance can be found in Annex I and legal guidance in Annex III.

3. **Forming a new Church of England Multi-Academy Trust**

This option has become available for Good or Outstanding schools with the desire and the capacity to form their own locally led Church of England majority-governed MAT with other schools in their vicinity.

In two identified areas within the diocese (Buntingford and Baldock) where there are clusters of VC schools, the Board will consider allowing the formation and subsequent membership of a Multi-Academy Trust consisting of VC and community schools, using the latest version of the Church of England minority articles.

Contextual guidance can be found in Annex II and legal guidance in Annex III.

4. **Schools in receipt of a Directive Academy Order (DAO)**

Under its current policy, as set out in section B, the only time the Board will consider placing a church school in a non-Church of England trust will be if the school enters special measures and all avenues have been exhausted to find a Church of England solution.

In order of priority, these avenues will include considering admittance to:

- a) The Diocese of St Albans Multi-Academy Trust (DSAMAT)
- b) A Church of England majority Trust located in the diocese¹
- c) A Church of England minority trust located in the diocese, where there is a cluster of VC schools in the same geographical area
- d) A Church of England Academy Trust external to the Diocese of St Albans
- e) A national Christian Multi-Academy Trust
- f) A local or national non-Church of England Trust

¹Currently a) Ridgeway Learning Partnership (Tring) b) Chess Valley Primary Learning Trust (Chorleywood) c) Unity Multi-Academy-Trust (Great Barford)

D. THE PROCESS

I. Submitting an application to the Board of Education

In considering a proposal from a school to join an existing Church of England MAT or to create a new Trust, the Board of Education will expect the process below to be followed. Schools that do not follow this process may find their proposal cannot be considered.

Please note that the diocese's and the DfE's application processes are distinct.

a) Informal consultation

i. Meeting with the Diocesan Director of Education or Deputy Directors of Education

The purpose of this meeting is to explore the viability of any proposal, provide support, advice and identify any potential problems. This meeting is strictly confidential and does not commit a school or group of schools to a course of action. Subsequent meetings can be held if required.

ii. Submission of outline proposal to the DBE

An outline proposal is submitted to the DBE for consideration. This may lead to a request for a full business case to be submitted to the Board or may lead to the proposal being returned with further questions or request for clarification. ***An application form for use at this stage is attached to this briefing.***

b) Formal application

Submission of a full business case and supporting documentation

A full business case is submitted to the DBE and, if required, representatives from schools may be invited to make a short presentation and answer questions. After due consideration, the Board will approve conversion and MAT formation/membership if it deems that the proposal will uphold the historic trust deeds of the schools concerned, that it is in the interests of local children and that it does not negatively impact other existing educational provision in the area? ***An application form for use at this stage is attached to this briefing.***

2. Timing of applications to the Diocesan Board of Education

Applications will be considered by the Diocesan Board of Education and/or the Diocese of St Albans Educational Trust (DSAET) acting on its behalf. Proposals can be submitted for consideration at 9 meetings annually, in January, February, March, May, June, July, September, October and November.

A schedule of DBE and DSAET meetings can be obtained by contacting the Schools Team on 01727 818170 or by emailing schools@stalbans.anglican.org

Any proposals submitted must be received 14 days in advance of the date of the relevant meeting.

The Diocesan Board of Education is aware of the complexities and considerable amount of time required to enable schools to become academies. As indicated in the legal guidance that

accompanies this document, conversion to academy status is not straightforward, and it is recommended that a suitable amount of time is planned for between the initial proposal and completion. The DfE's timescales need to be taken into account in the school or the MAT's overall planning.

It is the Board's hope that this paper will provide governing bodies with a useful framework to support their decision-making process.

October 2020

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ANNEX I

Joining an Existing Church of England MAT – Guiding Principles

‘Where maintained Church of England schools wish to convert to academy status and join a Multi-Academy Trust, it is the expectation of the St Albans Diocesan Board of Education for all Church of England schools in the diocese to be part of Church of England majority multi-academy provision.’ (St Albans DBE policy on the membership and formation of Multi-Academy Trusts)

This is an option for schools wishing to join an existing and successful Church of England MAT. In addition to the Diocese of St Albans Multi-Academy Trust, there are currently three trusts operating within the diocese: The Chess Valley Primary Learning Trust (South-West area); the Ridgeway Learning Partnership (West area) and the Poppy Multi-Academy Trust (South area).

The Diocesan Board of Education will use the following guiding principles when considering applications from Good or Outstanding maintained schools* wishing to **join** an existing Church of England Multi-Academy Trust:

- a) The Board of Education must be consulted at the earliest stage that a school is considering conversion to academy status and membership of a MAT.
- b) The Board recognises that church schools are both educational and charitable organisations. In considering applications for conversion to academy status and membership/formation of MATs, the Board has a responsibility to ensure that a school continues to meet the requirements of its trust deed and retains its unique Christian vision for education.
- c) Where requested, the Board of Education will actively support schools wishing to convert to academy status and join an existing Church of England majority Multi-Academy Trust. The Board acknowledges this process may take up to 18 months from first conversation to completion.
- d) The Board of Education will not support the inclusion of a church school within a non-Church of England Multi-Academy Trust.
- e) Any attempt by an existing academy to put pressure on a church school to join an existing MAT will be referred by the DBE to the Regional Schools Commissioner and DfE.

** Stand-alone Church of England academies wishing to join an existing MAT should contact the Diocesan Director of Education at the earliest opportunity.*

ANNEX II

Forming a new Church of England MAT – Guiding Principles

This option has become available for Good or Outstanding schools with the desire and the capacity to form their own locally led Church of England majority-governed MAT with other schools in their vicinity.

The Diocesan Board of Education will use the following guiding principles when considering applications from Good or Outstanding schools wishing to **form** a Church of England Multi-Academy Trust:

- a) The Board of Education must be consulted at the earliest stage that a school or group of schools is considering converting to academy status and/or forming a MAT.
- b) The Board recognises that church schools are both educational and charitable organisations. In considering applications for the formation of MATs, the Board has a responsibility to ensure that Church of England schools continue to meet the requirements of their trust deeds and retain their unique Christian vision for education.
- c) Where it is considered of benefit to its work and to local communities, the Board of Education will actively support schools wishing to form a Church of England majority Multi-Academy Trust. The Board acknowledges this process may take up to 18 months from first conversation to completion
- d) The Board of Education will not support the inclusion of a church school within a non-Church of England Multi-Academy Trust.
- e) Any attempt by an existing academy to put pressure on a church school to join an existing MAT will be referred by the DBE to the Regional Schools Commissioner and DfE.
- f) Where a new Church of England MAT is proposed, it must be established using the latest form of Church of England majority model articles agreed between the National Society and the DfE.
- g) Any newly formed Church of England Multi-Academy Trust will have representation at Member level in the form of the Diocese of St Albans Educational Trust (the ‘Umbrella’ Trust) acting as the Diocesan Corporate Member.
- h) Where there is a geographical cluster of VC schools, the Board would be willing to consider allowing the formation of a Multi-Academy Trust consisting of VC and community schools, using the latest version of the Church of England minority articles published on the DfE website. There are only two geographical areas that the Board has identified where this is likely to be possible. In these cases, significant conditions would apply to ensure Church of England schools retained their Christian character.
- i) The DBE welcomes the inclusion of non-church schools within Church of England MATs and would expect their community status to be upheld and valued.
- j) When Church of England schools form a local, school-led MAT, the Board would expect to see an organisational structure that utilises the skills of a Chief Executive Officer. The Board recognises that in certain situations, however, local circumstances will dictate that other organisational structures are adopted.

- k) The Board of Education is committed to a Christian expression of community and to the 'family' of church schools in the Diocese of St Albans. Its expectation is that where possible and practicable, church schools, stand-alone academies and MATs should work together, nurture each other and offer support and practical aid to those schools experiencing difficulty.
- l) Newly formed Church of England MATs will agree to subscribe to the Diocesan Service Level Agreement (SLA) for a period of three years following establishment. This is to ensure the maintenance of the schools' individual Christian character across the transition period.

ANNEX III

Academy Conversion: Summary Legal Guidance

Legal guidance on conversion

(supplied by Lee Bolton Monier-Williams (LBMW) Solicitors, June 2019)

- (a) The conversion process is legally quite complex, since in various degrees the Charities Act, the Companies Act and the Education Acts (especially the Academies Act 2010) all apply.
- (b) A maintained school governing body is created by statute (i.e. by the provisions of the Education Acts) while an academy trust company is created under the Companies Act. Both the governing body of a voluntary or foundation school and the directors of an academy trust are also exempt charities. That is they are subject to some but not all provisions of the Charities Act and have the ESFA acting on behalf of the Secretary of State as their Principal Regulator.
- (c) The result of the different legislative basis is that much of the detail that, for a maintained school, is contained in the Education Acts, has, for an academy, to be included within its company articles or within the various other contractual documents that set up the academy trust. These comprise the Funding Agreement (and Supplemental Funding Agreement), the Church Supplemental Agreement and in some cases a separate Members Agreement.
- (d) The details of the articles (and indeed of the other documents) vary, depending both on whether the predecessor school was community, foundation (with or without a foundation), voluntary controlled or voluntary aided and also on whether or not the school was designated as having a religious character. Separate models also used to be available for single academies (ATs) and for multi-academy trusts (MATs).
- (e) Currently however there are only two models designed to include Church of England schools, the "Church of England Majority model" and the "Church of England Minority model". These titles refer to the composition of members and directors of the company (like VA and VC schools) and not to the number of church schools in the MAT. No other options are available where Church of England schools are included. In particular, the non-church model articles should never be used for academy trusts that include Church of England schools.
- (f) The governance model for academies is normally expected to be the same after conversion as before. This used to be called "as is" by the DfE. Note, however, that a church majority MAT may include VC converters as well as VA ones and that when that happens the church majority governance at MAT level is not changed. The VC characteristics in such situations are set out at the level of the Local Governing Body and incorporated in the Supplemental Funding Agreement. A VC Church of England school that is required to convert with a sponsor should convert with all the VA characteristics and powers except for admissions. This must be made clear in the pre-conversion consultation. If a change to admissions is desired then it must be consulted on separately following the process set out in *Making Significant Changes to an open Academy*.
- (g) If a non-church school joins an academy trust formed using the Church of England Models then its detailed characteristics are likewise protected at the level of the Local Governing Body and set out in the Supplemental Funding Agreement.

- (h) If such a non-church school, wishes to change to become a Church of England academy then this also requires a separate process as in *Making Changes* but it is normally possible to undertake the consultation process in parallel with the academy conversion process with the final decision being taken by the MAT directors after conversion.
- (i) Church of England VA schools are not expected to be placed within Church of England Minority model MATs except in very exceptional circumstances and with the explicit consent of the Diocesan Board of Education. Extra church Members and Directors of the MAT would normally be agreed in such circumstances and the model articles allow for this.
- (j) If a Church of England school is agreed (again with the explicit consent of the DBE) to be placed within a non-church MAT then very detailed discussions are required and normally the MAT concerned would need to adopt at least the Church Minority model articles.
- (k) In consequence the Church Minority model articles are normally used only when a MAT is going to include only church VC and community schools.
- (l) The articles set up the company and give it its charitable objects and its powers.
- (m) To run an academy, however, requires a contract with the Secretary of State. This contract is the Funding Agreement. While there is only one model Funding Agreement, there are various choices of clauses at crucial points (e.g. for RE, worship and employment) that must be selected to match the articles.
- (n) A Multi-Academy Trust has one Master Funding Agreement and one set of articles covering a range of possible academies. There is then a Supplemental Funding Agreement (SFA) for each individual academy and it is the SFA that is adapted to match the circumstances of the individual academy.
- (o) In the case of a Church of England academy, there will also be a Church Supplemental Agreement (CSA). This is a contract between the site trustees, the Diocesan Board of Education, the academy trust company and the Secretary of State, under which the trustees' land is made available for use by the academy. We do not advise that there should be a lease over the trustees' land. The CSA should always be referred to in Version 3 of the Land clauses in the Funding Agreement and never included in any of the other versions.
- (p) The CSA has recently been revised. It now allows for the use of the Risk Protection Arrangement (RPA) for insurance. It also includes a number of matters agreed between the churches and the Secretary of State for Education and which would find no place in a lease.
- (q) The conversion process is set out in the Education Funding Agency (EFA) guidance but we stress:
 - (i) that a governing body of a Church of England school may not request an academy order from the Secretary of State without the written agreement of the site trustees and the bodies that appoint foundation governors. Since the DBE is normally one of these, it is the DBE that tends to co-ordinate these agreements but the separate consent of each is required. These are normally provided subject to conditions and a model letter of conditional consent can be found on the Education and Skills Funding Agency (ESFA) website; (<https://www.gov.uk/government/publications/church-academies-model-documents>);
 - (ii) if a school is being required to convert, the consent of the site trustees is still required and the DBE will be heavily involved in negotiating the detailed outcome;

- (iii) early and open discussion between a school, its trustees and the diocese is essential;
- (iv) research into the history and ownership of the school site should be undertaken immediately as this is often complex and there may be outstanding parts of the school site that need to be transferred to the trustees before conversion can take place. The site trustees are subject to the requirements of the Charities Act in these matters and must act so as to protect the assets and purposes of their trust;
- (v) the result of the combination of all the above factors is that conversion may take much longer than you think. This is the inevitable consequence of the complex interlocking legal transactions that the government has decided are required. Give yourselves ample time and be prepared for frustrating delays;
- (vi) anticipate a lengthy process particularly if you have a publicly funded Private Finance Initiative (PFI) scheme in operation, other major building works, or are about to move site or have moved site (sometimes many years ago) but the required land transfers have not been made;
- (vii) it is perfectly possible for the same legal advisers to act for the school, the trustees and the DBE if they are all of one mind, but in practice the parties may sometimes each need their own advisers;
- (viii) The school will be responsible for all costs of the DBE and of the site trustees. This is one of the conditions contained in the letter of conditional consent.

(r) It is the norm now for schools to convert as part of MATs rather than setting up a company of their own. While a school may have its own preference for the MAT it wants to join, it must remember that it cannot do so without the consents noted above. Early discussion with the diocese is therefore essential to avoid later difficulties.

(s) Available MATs may be:

- (i) MAT set up by the diocese or by a group of mainly church schools using the church majority model articles. These can include VA, VC and community converters with the characteristics of each protected. This model is usually quite straightforward;
- (ii) a MAT set up by the diocese or a group of mainly church schools using the church minority model articles. This is strictly suitable only for VC and community schools;
- (iii) a MAT set up by a group of mainly community schools. This will normally have to change to use the church minority model articles and needs considerable early discussion if an existing non-church MAT is to be adapted to receive a church school.

Both of these last two models lead to quite major difficulties if it is desired to include a church VA school within them, as 'as is' and the characteristics of a VA school require majority church governance. There is no substitute for open and careful early discussion with the diocese in such circumstances. It is also crucial for the diocese to have a well-considered policy on the inclusion of VA schools in church minority governance MATs. The nature of that policy is likely to vary from diocese to diocese, depending on local circumstances.

(t) In addition to all of the above, conversion may in fact be being driven not by the school itself but by the Regional Schools Commissioner (RSC) and the ESFA as a consequence of a school being in an Ofsted category. This will result in the ESFA Project Lead and the RSC seeking to influence or determine the MAT that is to receive the school. In these situations, the requirements for consents may not apply except that the willing consent of the site trustees

will always be required and they will be constrained by the Charities Act requirement that they act in the best interests of their trust.

- (u) The *Memorandum of Understanding* signed between the Secretary of State and the Church of England sets out the policy background to these matters and should be read with care by all involved in the conversion of Church of England schools. The receiving MAT must be both willing and competent to sustain the religious character of the school.
- (v) So, in summary, conversion is complex both legally and in terms of the discussion and consultation process. This is inevitable given the legislation. The change from a world in which the vast bulk of schools were maintained schools with characteristics governed by statute to one where a substantial number are academies and governed in the main by contract is absolutely fundamental and rarely appreciated. In becoming an academy, you step into a different world.