



Department
for Education



THE CHURCH
OF ENGLAND
EDUCATION OFFICE

Memorandum of understanding between the National Society and the Department for Education

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Purpose of this document

This document sets out the key principles and working arrangements agreed between the National Society and the Secretary of State for Education. It applies to all Church of England schools taking on academy status and to any statutory action to support, challenge or intervene in any underperforming Church of England maintained school or academy.

It is relevant to all the ways in which Church of England Schools may become academies and, in particular, through conversion and sponsorship. It reflects the existing role of the Church in the wider education system and the continuing contribution the Church can play as the system evolves towards greater academisation.

This document should be read alongside relevant legislation, regulations and guidance, as they apply to Church of England schools. It replaces the previous MoU agreed with the National Society.

Who should read this document?

Regional Schools Commissioners (RSCs) and their teams, Head Teacher Board members, Diocesan Directors of Education, Diocesan Boards of Education (DBEs) and their officers, National Society officers and the governors and leaders of Church schools and their respective legal advisers as well as relevant DfE and EFA officials.

Key Principles

1. The Secretary of State values and is committed to sustaining the formal and statutory partnership between the Church of England and the state in education, through which young people across the country continue to benefit from the combination of high quality education, religious ethos and character development provided by Church of England schools.
2. While the education system continues to evolve, the Secretary of State remains committed to securing the religious character of every church school and to preserving diocesan families of schools (subject to agreements between one DBE and another). The Secretary of State recognises the responsibility of DBEs to all the church schools within their diocese and the children in those schools whether these are maintained schools or academies (whether in ATs or MATs) The Secretary of State also acknowledges and accepts that it is for DBEs to plan strategically for the exercise of this responsibility, including in relation to school improvement and to work closely with the RSCs in doing so.
3. The Church of England and its officers are committed to ensuring every pupil attending a church school receives the best education possible, and to ensuring swift and decisive action is taken (in response to any concerns about the current or future performance of a church school). The Secretary of State recognises that this will mean the DBE involving the owners of the school sites (the site trustees) and other partners and stakeholders. The Secretary of State also recognises that site trustees have a duty to maintain the purposes and character of their trusts. Working through DBEs and DfE officials and subject to trustees acting reasonably, the Secretary of State will act in accordance with this recognition.
4. RSCs are now responsible for making the majority of decisions relating to academy conversion, intervention and sponsorship in each region, on behalf of the Secretary of State. In exercising these responsibilities they are acting directly on behalf of the Secretary of State and thus subject to the commitments given by the Secretary of State in this memorandum and elsewhere.
5. The relationship between RSCs and DBEs relies on both parties' ongoing commitment to consistency and transparency in its decision making. This memorandum is intended to guide and support RSCs and DBEs in fulfilling that commitment. Both parties will be expected to act in accordance with the principles and protocols described in this memorandum and in particular it is agreed that RSCs and their staff, Head Teacher Board members, DfE officials and academy brokers will not enter into discussions with a Church of England school or academy about conversions, concerns over standards, movement into a MAT or movement from one MAT to another without there having been prior discussion with the DBE and their continuing engagement in any consequent process.

6. This includes an expectation that RSCs and DBEs will seek to develop a shared understanding of each other's approach and ways of working with schools, and, to work constructively together at all times. RSCs and DBEs will also be expected to seek to share information about church schools and academies at the earliest opportunity, in particular where there are any concerns about standards, governance or religious character.

7. It is recognised by the department that any judgements as to the religious character of church schools and the sufficiency of any protection of that character are solely for the DBE.

8. The expectation is that model documentation (articles of association, the church supplemental agreement and special clauses for the funding agreement and supplemental funding agreement) agreed between the National Society and the department will be used. Where the DBE and RSC agree at their joint discretion that bespoke documentation is required, this will be formulated with the involvement of the National Society and relevant DfE policy leads.

9. RSCs and their staff, in assessing the capacity of the DBE and its agencies will recognise the contribution of the DBE to the performance of all schools in the diocese and take into account the capability and willingness of church and other schools (including those in neighbouring dioceses) to support the DBE's role in school improvement.

10. It is the expectation of the Secretary of State and the National Society that RSCs and their staff, DfE officials, EFA officers, DBEs and their staff (in their capacities as religious authority and members of academy trust companies directly or by proxy and in a manner consistent with their charitable objects and statutory duties) will comply fully with the terms of this memorandum.

Protocols guiding RSCs' and DBEs' engagement with church schools

Schools converting to academy status

1. Local authority maintained Church of England schools wishing to become academies either in stand-alone Academy Trusts, Church MATs or in MATs involving non-Church schools

- a) The department respects the statutory right and requirement for the consent of various diocesan bodies to allow a church school to become an academy.
- b) Our shared expectation is that, in the vast majority of cases, church schools that wish to convert will do so as part of a MAT with governance arrangements that reflect, at member and director level, no dilution of the level of church governance and involvement as it was immediately prior to conversion.
- c) Subject to (b) above our shared expectation is that consent will only be withheld in exceptional circumstances, for example where both the DBE and RSC agree that the relevant church school lacks capacity to operate as a stand-alone academy and there is at the time no suitable multi-academy trust available; or should the DBE have serious concerns about the school's capacity or intention to sustain its religious character.
- d) In all other cases, and subject to, (i) the satisfaction of any conditions that may be required by the DBE in the letter of conditional consent, including those that relate to ensuring that the religious character and ethos of the school is maintained; and (ii) consistency with the DBE's strategy for development of MATs and academies, we expect the DBE's final consent to be quickly forthcoming.
- e) The DBE's and the RSC's expectation is that the governing body of any maintained Church of England school wishing to become an academy will approach the DBE as early as possible to discuss their options for conversion and agree the process for securing the consent of the DBE.

2. Church schools wishing to convert and join an existing MAT without appropriate Church governance ¹

A DBE may in a small minority of circumstances support church schools joining an existing MAT without appropriate Church governance (see footnote 1). The department, recognising the importance of the diocesan family of schools, will only approve an application for a church school to join an existing MAT without appropriate church governance (see footnote 1) where that application is supported by the DBE. In those circumstances, the RSC will also take steps to ensure that the arrangements such a MAT enters into will, in the opinion of the DBE, safeguard the religious character and ethos of the school.

3. Church VA schools wishing to convert and join an existing or newly established church minority MAT

The Secretary of State accepts that DBEs will not usually expect to see a Church of England VA school joining an existing or new Church minority MAT and consequently this will only be available with the prior agreement of the DBE and where very exceptional circumstances can be shown to exist. Apart from normal clauses required in the associated Supplemental Funding Agreement the Secretary of State recognises that special changes to the articles including a reference to schemes of delegation to local governing bodies or equivalent and a Members' Agreement in models agreed with the National Society will be required.

4. Church schools wishing to convert and become sponsors

- a) The availability of strong academy sponsors is central to driving up performance in a school-led system. Schools that become sponsors benefit from freedom to innovate and find efficiencies across the group of academies they manage. They are expected in return to embrace their responsibility as sponsors, by helping those underperforming academies they sponsor to improve.
- b) The department is keen to welcome good and outstanding church schools into the family of academy sponsors, while recognising the need for DBEs to sustain the diocesan family of schools and to retain proper oversight of these schools or any further church schools that are taken on by the new sponsor.

¹ This will include MATs that currently have no Church schools but will need to amend their articles of association to reflect appropriate Church representation in the governance of the MAT.

- c) Where good or outstanding church schools express an interest in becoming a sponsor the RSC will require the school to seek and secure the support of their DBE before applying, and for the application to confirm:
 - i. the school's commitment to taking on and helping underperforming schools to improve;
 - ii. that the MAT will be set up in accordance with the Church of England minority or majority model articles as appropriate and will be conducted in accordance with a Members' Agreement in the model agreed between the Secretary of State and the National Society.
- d) Where an application provides the requisite assurances and is consistent with the DBE's strategy for MATs and academies in the diocese, the RSC will expect the DBE to endorse the application in the form of a consent which is conditional on the fulfilling of those assurances and those in the letter of conditional consent.
- e) Where a Church of England academy wishes to become a sponsor the expectation is that the process at 4 (c) and (d) above will be followed to ensure that the diocese is aware.

Sponsored and other underperforming academies

5. Intervention in inadequate local authority maintained church schools

- a) The Secretary of State agrees that on receipt of an inadequate judgement relating to a local authority maintained church school, the RSC will contact the DBE at the earliest opportunity and prior to any discussions with possible sponsors, seek to discuss with the DBE who should sponsor the school, once it becomes an academy.
- b) The Secretary of State and the National Society both expect a diocesan or strong church school-led MAT will be the outcome in the vast majority of cases.
- c) Where a DBE and any local church school sponsors (or those from neighbouring dioceses) lack sufficient capacity to sponsor that school at the time it needs support then, with the involvement of the DBE, the RSC may look to an existing MAT that does not have appropriate Church governance to take on the role of sponsor. In that situation, the RSC will ensure that the arrangements the sponsor enters into will, in the opinion of the DBE, safeguard the religious character of the school.
- d) These arrangements will include but not be limited to additional protections in the articles, and for funding agreements and a Members' Agreement confirming the sponsor, members and directors' various responsibilities for protecting the church school's character, and clarifying the role, and

responsibilities and powers assigned to the DBE through the Members' Agreement and the MAT's governance structures.

6. Re-brokerage of underperforming church academies and/or those where the religious character is at risk

- a) Where a church academy is underperforming and, in the view of the RSC, requires urgent remedial action, the RSC will engage with the DBE at the earliest opportunity.
- b) As set out in 4 above for local authority maintained church schools, we would expect to look first to any other diocesan or strong church school-led MATs with sufficient capacity to take on a re-brokered church school and that, in the vast majority of cases, the new sponsor will be a diocesan or strong church school-led MAT.
- c) Should the RSC determine that neither the DBE nor any local church school-led MAT/sponsor or one from a neighbouring diocese has sufficient capacity to take on and quickly improve the underperforming church academy, then, with the involvement of the DBE, the RSC may look to a sponsor of non-Church schools. In that situation, the RSC would ensure that the arrangements the sponsor enters into will, in the opinion of the DBE safeguard the religious character and ethos of the school. In those circumstances the provisions of Protocol 5 above will apply.
- d) Where a church academy is failing to maintain and develop its religious character and ethos to the satisfaction of the DBE and, in the view of the DBE, requires further remedial action that it does not itself have the powers or the capacity to provide, the DBE will engage with the RSC at the earliest opportunity and the RSC will respond promptly to the DBE's concerns. Consequent actions may include (if the DBE and Secretary of State both agree) the re-brokering of the academy into a different MAT. In such circumstances the provisions of Protocol 4 will apply insofar as they are relevant.
- e) If the steps detailed in 6a-d above fail it is expected that the Diocese and RSC will work together to enable the academy to be re-brokered to a diocesan or strong church school-led MAT.

7. Coasting schools

- a) If a school's results indicate that a church school is coasting the RSC will notify the DBE and the site trustees alongside the school.
- b) Having considered the school's plan for improvement and any strategy or plan that the DBE may have, the RSC may determine that one of the plans is sufficient and no further intervention will be needed.

- c) Should the RSC determine neither plan to be sufficient the RSC will contact the DBE to discuss the most appropriate school improvement solution. The RSC will ensure that any intervention implemented will, in the opinion of the DBE secure and develop the religious character and ethos of the school.
- d) In a situation where the most appropriate option for school improvement solution is for the school to become an academy, the same principles and statutory requirements will apply as for inadequate church schools as set out in protocol 5 above, including on consultation and sponsorship.

8. Issuing of a Performance, Standards and Safety warning notice to a local authority maintained church school

Where the RSC issues a performance, standards and safety warning notice to the governing body of a maintained church school (in accordance with the process set out in the statutory Schools Causing Concern guidance), the RSC will, at the same time, give a copy to the DBE.

9. Issuing of a termination warning notice to a church academy

Where the RSC issues a termination notice, or a termination warning notice to a church academy (in accordance with the process set out in the academy's funding agreement with the Secretary of State and as set out in any Church Supplemental Agreement) the RSC will notify the DBE of their intention to act, and their reasons for doing so. The RSC will then allow the DBE a reasonable opportunity to make representations, including describing any actions the DBE intends to take to remedy any failing of the academy, to which the RSC will have due regard before finally taking any action.

10. Interim Executive Boards appointed to local authority maintained church schools

- a) All obligations on the governing body in relation to maintaining the religious ethos of a school also apply to an IEB.
- b) Before an RSC can exercise their power to establish an IEB to a church school, they must consult the DBE. We would expect that consultation to provide an opportunity for the DBE to nominate an IEB member(s) (and in any event no lesser representation than may at the date of this document represent current working practice) and for RSCs to accept that nomination, providing they agree with the DBE's assessment that the nominated person(s) has the capacity and relevant skills required to fulfil their role on the IEB.
- c) Where any IEB – established by either the local authority or the RSC - is established for a church school and the RSC has concerns about an IEB

member nominated by the DBE and removes them, the DBE will be asked if it wishes to nominate a replacement IEB member. Again, RSCs will be expected to accept such a nomination, providing they agree with the DBE's assessment that the individual has the capacity and relevant skills required to fulfil their role on the IEB.

11. DBE requests for RSC intervention

- a) The department is committed to assisting DBEs and church schools in acting swiftly to address any risk of underperformance or concerns in respect of the proper conduct of the academy trust. Where a DBE has concerns about performance in a church school, and believes that the school and/or the local authority lacks capacity or intent to act, the DBE will inform the RSC.
- b) RSCs will always take seriously and act quickly on such concerns and will take full account of the views of the DBE on what action is required to ensure the school's performance improves and that the academy trust is conducted in accordance with both its articles and contractual obligations.

12. Governance arrangements

- a) The Secretary of State expects multi-academy trusts to be the principal collaborative model used by all academies, including church academies. However she respects the right for any single or multi-academy trust to establish their own collaborative arrangements, but the Secretary of State's relationship and accountability will continue to be through the academy trust, which, subject to the provisions of its articles of association, will remain responsible for key decisions relating to the running of the academy trust and its schools, including but not limited to governance, finance, staffing and curriculum.
- b) The department will respect such committee, hub or similar structure that Diocesan MATs may use for the purpose of facilitating, supporting and monitoring regional or other sub-groupings of academies within the MAT.
- c) Where any merger of MATs that include church schools is proposed the governance and form of the MAT resulting from that merger will be formulated with the involvement of the National Society and relevant DfE policy leads.

13. Closure of Church of England maintained schools and academies

There may be circumstances where the RSC or the DBE regard the closure of a maintained school or an academy as the only viable outcome. If this is the case the RSC and DBE will work together to agree a process for closure, reflecting any relevant legal and contractual requirements or departmental guidance.

14. New Schools

Where there is a need for a new Church of England school the RSC will work with the diocese to establish whether working together, and alongside wider strategic plans, it will be possible to establish a Church of England free school.

15. Mediation and Review

There may be instances where an RSC and a DBE are unable to agree a way forward. Where this is the case, the RSC and DBE will be expected to contact the National Society, who will use their best endeavours to facilitate further discussions to find a solution.

The Secretary of State and National Society agree to review this MOU on an annual basis to ensure that it is still fit for purpose and reflects legislation and practice between DBEs and RSCs. This review process will take place as close as possible to the start of the financial year with the revised MOU coming into force at the start of the following school year e.g. revised MOU agreed in April 2017 comes into force in September 2017.



Department
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