

---

# Academy conversion process & latest guidance on funding agreements

Ealing schools

# Agenda

- The national picture
- Conversion process
- Consultation
- Governance
- Funding
- Employment and pension
- Property
- Common myths
- Latest changes to funding agreements

# The national picture (1)

- by Feb 2016
  - 3566 academies open (17.8%)
  - Additional 1567 sponsored academies (7.8%)
  - Total of 25.6% of all schools are academies
  - Or 74.4% are not!
- by October 2015
  - Over 400 Catholic academies

# The national picture (2)

- But...Education and Adoption Act
    - Ofsted “inadequate” - Academy Order must be made
    - No consultation with community, staff, parents etc.
    - GB and LA must cooperate
    - Diocese must be consulted on who sponsor will be
  - ...White Paper “Educational Excellence Everywhere”
    - All schools to convert by 2022
    - Quicker progress in some LA areas
-

# Group sessions

- Do the recent changes affect your school?
- What has your GB done to date to address the issues?
- What more will your GB need to do?
- What info does your GB need to make a decision?
- Where will you get that info from?

# Conversion process

- Initial GB meeting to investigate academy status
- Apply for consent from Diocese/Foundation and academy order from DfE
- Consultation
- Legal fact finding process:-
  - governance/business
  - property
  - employment
- Final GB meeting
- Convert

# Diocesan consent and academy order

- AA10 requires VA schools to obtain consent from:-
  - the Bishop; and
  - any foundation/religious order which holds land used by the school
- Apply to DfE for academy order:-
  - need to supply consent;
  - £25,000 grant plus Primary Chains Development Grant if 2+ primaries joining a multi-academy trust

# Consultation

- Section 5 - “the school’s governing body must consult such persons as they think appropriate.....on the question of whether the school should be converted into an Academy”.
- If in doubt, consult them!
- 4-6 weeks during term time
- Some schools being asked to produce “consultation reports” for DfE
- Non-prescriptive - low level consultation.



# Governance (1) - VA school

- One level of governance - GB
- Majority appointed by Bishop
- Employs staff, enters into contracts, obligations under education acts etc.
- May delegate to committees or SLT but ultimately GB responsible
- Charitable so obligations under charity law
- Personal liability for Governors

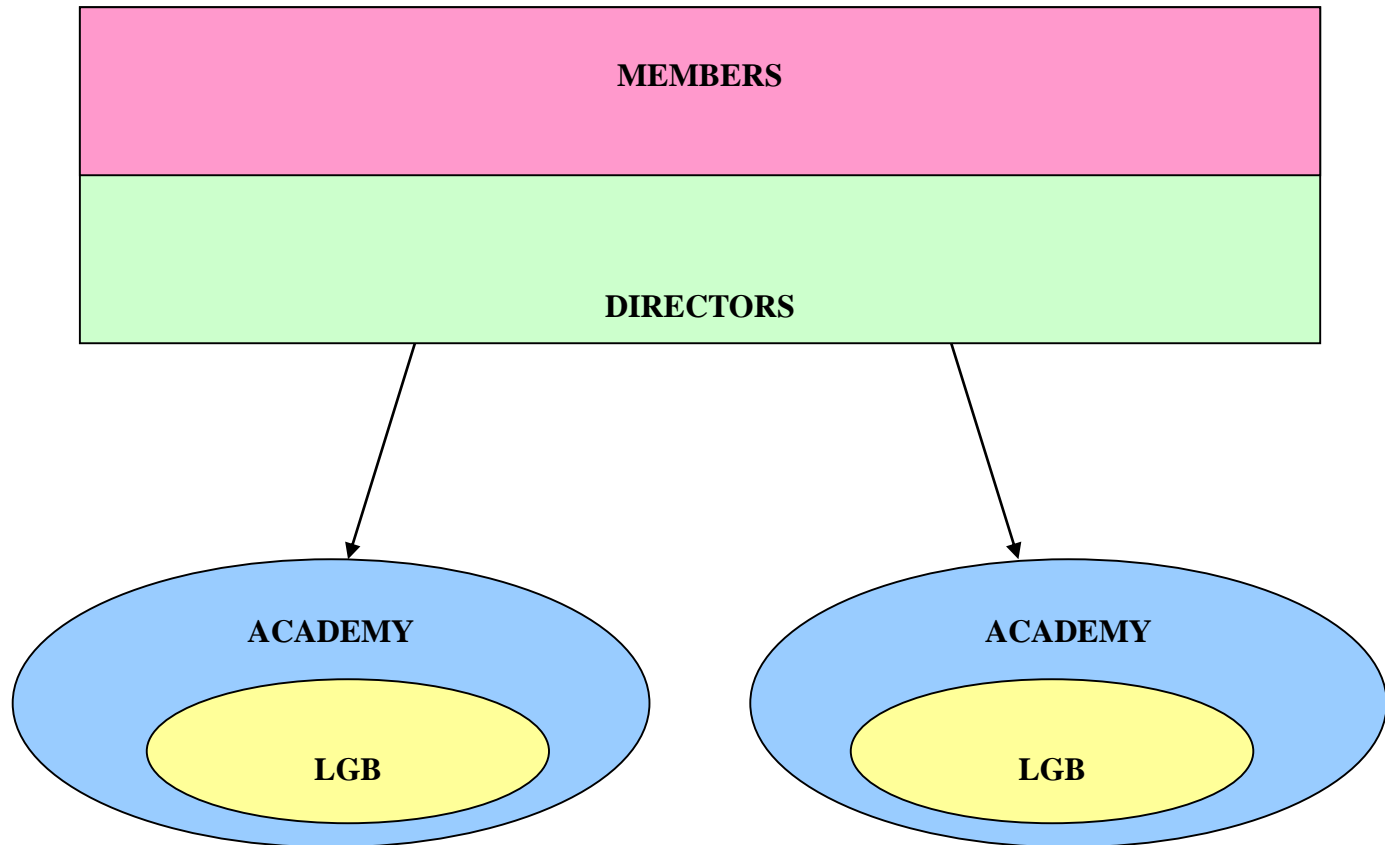
# Governance (2) - Academy Trust

- A company limited by guarantee
- Two levels of governance:-
  - Members
  - Directors
- Registered at Companies House
- New legal entity that enters into Funding Agreement with the SoS, employs staff etc.
- Articles of Association - covers the company's internal management of affairs.
- Objects - advancement of education

# Governance (3) - multi-academy trust

- Three levels of governance:
  - Members;
  - Directors; and
  - Local Governing Body
- Directors accountable for running the Academies, LGBs on have such power as is delegated to them
- Directors always accountable even if delegate!

# Governance (4)- multi-academy trust



# Governance (5) - Charitable Status

- Academy Trusts are exempt charities.
- Department for Education is the Principal Regulator.
- Registration with Charity Commission not required or possible.
- Exemption from filing with Charity Commission annual accounts, annual reports and annual return.
- However, Charity Commission retains powers in relation to the charity, including power to review any proposed changes to objects.

# Group session

- How would governance change at your school?
- What would stay the same?
- What concerns you about the change of governance?
- What opportunities could the change bring?
- What skills will the directors need?

# Funding - agreement (1)

- A contractual agreement between the Academy Trust and the SoS.
- SoS agrees to make payments to the other party in consideration for undertaking to establish and maintain a Catholic independent school in England.
- Open ended contract with a seven year notice period
- Tailored for Catholic academies re daily act of worship, recruitment of Catholic staff, admissions etc.

# Funding - agreement (2)

- Multi-Academy Trust
  - One Master Funding Agreement between SoS and Multi Trust for generic issues; and
  - Supplemental Funding Agreement for each Academy for specific issues.



# Funding - admissions (1)

- MAT will take control of:
  - Setting its own admissions arrangements, including PAN
  - Determining individual applications
  - Organising its own appeals
- No change for voluntary aided schools.
- Admissions and Admissions Appeals Codes of Practice and Fair Access Protocols take effect via the Funding Agreement.
- LA still responsible for co-ordinated admissions arrangements.

# Funding - admissions (2)

- Requirement to honour offers of places made by predecessor school.
- Not possible to change admission arrangements until September 2017.
- Individual academies required to make request to SoS to expand pupil numbers or age range.
- Will require local consultation and views of LA will be considered.

# Funding - SEN and Exclusions

- As with maintained schools, must comply with SEN law
  - Must admit child with school named on their statement
  - Usual right of appeal to SoS
- 
- As with maintained schools, must comply with exclusions law
  - Must participate in Fair Access Protocol
  - Usual right of appeal to SoS

# Funding - Asset Transfers

- Asset Transfer Agreement between the LA, the governing body and the Multi Academy Trust.
- Transfers all assets (including contracts) other than land other than anything specifically excluded.
- Council currently owns all your assets if they were bought with delegated budget.
- Biggest single task of whole academy conversion process, falls heavily on office team at school and MAT

# Group session

- What would change?
  - Admissions
  - Exclusions
  - Funding
- How could we benefit from MAT status?
  - Economies of scale
  - Group policies
  - Sharing funding

# Employment - TUPE (1)

- Staff would transfer from being employed by Governing Body to being employed by multi-academy trust
- Although academies are not required to follow the national Teachers' Pay and Conditions Agreement, Bishop's consent requires you to:
  - Use relevant CES contract (where one exists);
  - Follow local and nationally agreed terms;
  - Not effect changes on conversion.
- TUPE will apply to transfer of current staff so that they continue to be employed under their existing terms and conditions.

# Employment - TUPE (2)

- As no changes proposed, no consultation required. Informative process only.
- Obligation to provide written information about transfer to employee representatives and staff.
- Tribunal can award up to 13 weeks' pay in compensation.

# Employment - pension

- Teaching staff must be offered TPS
- Non-teaching staff must be offered LGPS
- Govt guarantees TPS
- LGPS deficit transfers from Council to MAT so you must find out what the deficit is and your repayment rate will be before conversion



# Group session

- What would change for our staff?
- Could we answer their concerns?
- What benefits could MAT status bring?
  - Single employer
  - Retention of key personnel
  - Development of senior leaders
  - New staff (educational psych, finance team)

# Property (1)

- Potentially complex part of process and the most common cause of delays.
- Clear agreement on land issues required before can open as academy.
- Footprint plus buildings owned by Diocese/religious order, playing fields by Council
  - 125 year lease of playing fields
  - Supplemental Agreement from Diocese/religious order
- Often need to rectify land situation during conversion

# Property (2) - Supplemental Agreement

- Entered into by Diocese, AT and Secretary of State
- Reflects current position re use of Diocesan land
  - Use land and building during school hours
  - Diocese can hire out facilities at other times
  - 2 yrs notice to AT if Diocese wants academy to stop using land
  - Obligation on AT to repair and maintain land and buildings
  - Choice about who insures (but AT always pays)

# Group session

- Do we know who owns our site?
- Who uses our site?
- What agreements do we have in place to manage their use of our site?
- Do we have any outstanding issues?
  - Construction/BSF/PFI
  - Flooding/trees
  - Dilapidated temporary buildings

# Common myths

- There are more legal duties on Governors of an academy - FALSE
  - There are more legal duties on Directors of a MAT - TRUE
  - The funding agreement is only for seven years - FALSE
  - We will lose our faith status on conversion - FALSE
  - We won't be able to give priority to Catholic children - FALSE
  - Staff must be given x days TUPE consultation - FALSE
  - We can keep everything the same if we join a MAT - FALSE
  - We will have more money if we convert - FALSE
  - We can ring-fence our budget - FALSE
-

# Recent changes to Funding Agreements (1)

- Changes depend on when you converted originally
- One size now fits all - UTCs, 16-19 provision, special, converters etc.
- No specific cap on carry forward - see Academies Financial Handbook for yearly limit
- Governors/directors now called “charity trustees”
- Cannot change governance section of Articles without SoS consent

# Recent changes to Funding Agreements (2)

- Diocese must get consent from SoS to change Members
- Teaching:-
  - “The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.”
  - Academy actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs
- “Coasting” can trigger termination warning notice

# Recent changes to Funding Agreement (3)

- Do we have to swap?
- No, but:
  - Taking on a new academy, may be required to use new docs for that academy
  - Easier for everyone to be on same funding docs?
  - Altering existing Funding Agreement, may be required to add new clauses too



# Any questions?

Vicki Hair, Solicitor

0115 9766197

[vicki.hair@brownejacobson.com](mailto:vicki.hair@brownejacobson.com)

---

**brownejacobson**  
*law, less ordinary*