

Topic 2: Academies – Considering the Differences and Implications

Before focussing on the differences, governors should be reminded of the things that remain the same:

- Academies are still part of the community. They serve children and families in a particular area and they retain the same responsibilities as any maintained school as part of the learning community. Governors are advised to consider how they ensure their institution is seen as part of the community, whatever decision they make.
- The headteacher still needs to work in partnership with governing body on strategic matters
- Academies are still subject to the law on employment, equality, admissions, special educational needs
- Academies are required to follow the same rules over pupil exclusion as maintained schools
- Academies need to operate a complaints policy in the same way as any maintained school
- Academies are still subject to Ofsted inspection
- Academies are still subject to Freedom of Information

In considering the differences described below, governors are advised to refer to the governing body's vision and values. In considering each of the differences, it is suggested that governors ask themselves the questions listed in the second column. Some of the differences will mean additional income and/or additional costs. Additional staff time may be required for the associated tasks. The fourth column allows governors to set out more clearly the possible or probable financial implications for their own school. Governors should not be expected to make a decision to proceed without the best estimate of financial implications.

Differences	Question	Notes	Indicative costs
Freedom from National Curriculum – although still required to be 'broad and balanced'	Do we currently feel constrained? What would we do differently? How would our children benefit? On balance what do we gain?	Schools already have more freedom from the national curriculum than people realise. Academies must include English, Maths and Science in the curriculum for all students up to the age of 16. It is important to take account of the White Paper Autumn 2010 when considering options.	Neutral
Freedom from the LA	Do we currently feel constrained? What would we do differently? How would our children benefit? On balance what do we gain?	Schools already have considerable autonomy with issues such as finance and staffing. A major part of the school's budget is generated through pupil formula funding. Spending decisions are then delegated to schools. An Academy will need to, for example:	

Differences	Question	Notes	Indicative costs
		<ul style="list-style-type: none"> • Ensure that leadership is secure when key leaders are out of action. • Have robust emergency business continuity plan. • Replace external audits with robust internal systems eg H & S, • Apply for a number of registrations e.g. data controller. • Purchase legal advice on for example complex freedom of information requests and conflict resolution situations. 	<p>?????</p> <p>?????</p>
Governing body does not have to consult LA when considering an exclusion	Do we currently feel constrained?	<p>Governing body is not expected to seek the advice of a local authority officer when considering an exclusion but parents can request LA Officer attendance.</p> <p>Academy will need to organise (or buy in) Independent Appeal Panel for Permanent Exclusions.</p> <p>Academies must comply with all other requirements in national guidance on exclusion.</p>	<p>?????</p>
Ability to set own admissions	<p>Do we currently feel constrained?</p> <p>What would we do differently?</p> <p>How would our children benefit?</p> <p>On balance what do we gain?</p>	<p>VA and Foundation schools already set their own admissions. This will only be different for community and VC schools.</p> <p>All Schools must comply with the National Admissions Code of Practice and participate in Coordinated Admissions organised by the LA.</p> <p>Academies are not allowed to introduce selection but may continue existing selection arrangements.</p> <p>Academy will need to organise (or buy in) Independent Appeal Panel for Admissions.</p>	<p>???????</p>
GB: is Employer of staff	<p>Have we considered the implications?</p> <p>Do we currently feel constrained?</p> <p>What would we do differently?</p> <p>How would our children benefit?</p> <p>Will we need to spend more than we do currently on HR advice?</p> <p>On balance what do we gain?</p>	<p>Only different for community and VC because in VA and Foundation schools the GB is already the employer.</p> <p>Any Redundancy costs must be met from Academy budget.</p> <p>The governing body is the legal respondent in e.g. Employment Tribunal cases.</p>	<p>???????</p>

Differences	Question	Notes	Indicative costs
Ability to set own pay and conditions	Have we considered the implications? Do we currently feel constrained? Do we use current flexibilities? What would we do differently? How would our children benefit? On balance what do we gain?	STPCD is set in law, so maintained schools must work within it – Academies do not have to comply. However, TUPE transfer applies for existing staff so same pay and conditions are likely to apply initially. But can change subsequently following consultation with staff and unions.	?????????????
Ability to change length of terms and school days	Do we currently feel constrained? What would we do differently? How would our children benefit? On balance what do we gain?	Schools already have the power to change the length of the school day, providing they follow the appropriate Regulations. Some schools (specifically foundation and voluntary aided schools) have the ability to change the school term. Need to consider implications for families and school transport.	?????
Governing body has total premises responsibility	Have we considered the implications? Do we currently feel constrained? What will we do differently? How would our children benefit? On balance do we gain?	VA and foundation schools already are responsible for their premises. This will only be different for community and VC schools. Refer to your LA's current schedule of centrally funded repairs and maintenance which would no longer be available to Academies.	??????
Governing Body responsible for Health and Safety	Have we considered the implications? What will we do differently? On balance do we gain?	VA and foundation schools already are responsible for their premises. This will only be only different for community and VC schools. Academies may need to purchase specialist advice and audit in relation to issues such as asbestos management.	??????
Academies will receive a portion of the DSG that the LA has spent on schools' behalf	Do we currently feel constrained? What would we do differently? How would our children benefit? On balance what do we gain?	DfE Ready Reckoner (accuracy uncertain) will give indication of extra funds that can be expected in the first year. INCLUDE WORDING FROM CONSULTATION PROFORMA Note: Funding of Academies is for the academic year – not financial year.	Additional funding may amount to £XXXXXXXX

Differences	Question	Notes	Indicative costs
		<p>Academies will still need to purchase services. They may be able to purchase from LA.</p> <p>Need to have extra staff and governor time to deal with additional decisions. DfE is recommending that a qualified accountant is employed.</p> <p>Responsibility for certain services and functions transfers to the Academy with the transfer of the local authority central spend equivalent grant (LACSEG) (See example in appendix 1)</p>	<p>Additional costs ???????</p> <p>???????</p> <p>???????</p>
Academies will receive money from LA to pay for 'low incidence SEN'		In addition to the individually assigned resources (IAR) for pupils requiring more support, academies will receive funding for SEN pupils. Academies must comply with the 'SEN obligations imposed on governing bodies of maintained schools.	
Surplus or deficits – On becoming an academy, schools carry any surplus forward. Schools with deficits must have a repayment plan in place	What is our current financial situation?	If the school is in deficit, the repayment plan needs to be agreed by the Young People's Learning Agency (YPLA), not the local authority.	
Academies must pay VAT	Will we need to employ qualified accountant to complete VAT returns?	Schools will receive additional funding to take account of needing to pay VAT. Governors should note that VAT needs to be paid on goods and services (not staff salaries) in their cost/benefit calculations.	
Governors need to arrange for annual audit of accounts and submit accounts to Secretary of State and principal regulator by the deadline.	Will we need to employ more/ different staff?	Need to appoint 'secretary to the company' Staff training possibly required	Average pay of company secretary is £58k

Differences	Question	Notes	Indicative costs
<p>Governing Body subject to Trust which will: Register land Appoint governors Have a broad strategic oversight</p>	<p>How helpful will this be? On balance what do we gain?</p>	<p>Governors (also known as directors or trustees) will be appointed to the governing body by the academy trust (made up of members)</p>	<p>???????</p>
<p>Academy Trust is a charitable company subject to company law</p>	<p>Have we considered the implications? What will we do differently? On balance do we gain?</p>	<p>Members of the converting school's governing body will decide, in discussion with the Secretary of State, who will be a member of the academy trust and who will be a governor (it is possible to be both a member and a governor)</p> <p>Need to appoint a 'secretary to the company'</p> <p>Academies are charitable companies limited by guarantee. If the academy was to become bankrupt the members of the Trust body could be held liable to the amount set out in the Articles of Association. The most common level of liability is set out as £10 per trustee.</p>	<p>Potential costs listed above</p>
<p>Academy Trust needs to purchase own indemnity insurance</p>	<p>What are the options?</p>	<p>A governor as trustees/director has a limited liability £10. Governors need liability insurance because anyone acting as a director of a company has unlimited liability for their own defaults. A director is not liable for any debts or liabilities providing s/he acts properly and within the powers and authority delegated to her/him. If s/he acts outside those parameters a director can be liable, without limit, for the loss caused to the company. Liabilities to external parties would ordinarily be those of the academy trust (not</p>	<p>Potential costs listed above</p>

Differences	Question	Notes	Indicative costs
		<p>the governors).</p> <p>Governors of academies need to have indemnity insurance, taken out by the Trust, and are subject to company law. Whereas governing bodies of maintained schools have their own legal identity and corporate responsibility and local authorities normally provide indemnity insurance.</p>	
Governing Body no longer subject to existing statutory governance regulations	<p>Do we feel constrained?</p> <p>What would we do differently?</p> <p>How would our children benefit?</p> <p>On balance what do we gain?</p>	Governing Body has to agree articles of association, with the SoS, which contain operating rules, e.g. proxy voting allowed; variations in quorum, agenda (and papers) sent out 14 days in advance. (See Section 3 on Governing Body Procedures).	
Composition of governing body may be different as outlined in the Articles of Association	<p>Do we feel constrained?</p> <p>What would we do differently?</p> <p>How would our children benefit?</p> <p>On balance what do we gain?</p>	<p>Governing Body/ Trust can retain its current members if it so wishes but would need to agree it in a new article of association agreed with DfE.</p> <p>There should be at least two parent governors.</p> <p>Up to a third of an academy's governing body may be made up of staff governors (including the Principal).</p>	
Principal (Headteacher) is governor ex-officio (no opportunity to opt out)	Will this make any difference?	Will only affect headteachers who have previously decided not to be governors	
Academies accountable to SoS	<p>How do we feel about this?</p> <p>What would we do differently?</p> <p>How would our children benefit?</p> <p>On balance what do we gain?</p>	SIPs employed by DfE will support and challenge academy. SIPs will not support Performance Management of the Headteacher. This is deemed to be the responsibility of the Academy governing body. Academy can purchase external adviser time to support governors in headteacher PM.	???????
Academies are expected to support other schools	<p>Do we already work in partnership?</p> <p>Might we prefer to federate/collaborate?</p> <p>What more can we offer and to which school?</p> <p>What effect would becoming an</p>	<p>Formal contractual arrangement with SoS</p> <p>DfE contact person helps broker the support</p>	???????

Differences	Question	Notes	Indicative costs
	academy have on our local and partner schools?		

Other considerations

	Questions	Notes	Indicative costs
Sustainability – of senior leadership team	<p>Do our current headteacher and senior leadership team have the skills and attitudes to lead a successful academy? When the time comes, how likely are we to be able to appoint a headteacher with the skills to continue academy development? How can we ensure that the leadership is secure when key leaders are out of action? Who will facilitate finding acting headteachers for us to consider?</p>	Academies are tied into a seven year funding agreement. The decision to become an academy cannot be reversed.	
Sustainability of governors and trustees	<p>Do governors have the capacity to be effective trustees as well as governors? How likely is it that the level of skill and commitment can be maintained as governors and trustees retire?</p>	Currently no Guide to the Law for academies, there is the Principle's Handbook for established academies but this is not as detailed. At the moment information is unclear on the new requirements and responsibilities.	
Changing role of clerk and administrative staff	<p>How keen are staff who would have to take on new responsibilities, for example the secretary to the governing body and those dealing with finance. Do they have the appropriate skills? Will they require additional training and more time to complete additional tasks?</p>		

Considering the application process

When you have considered the differences and implications above, you are advised to consider the additional work and costs involved in making an application. The process is outlined below so that you can take this into account in your recommendation.

Note: Schools seeking Academy status will receive a one-off grant of £25k. Governing bodies will need to consider whether the school and governing body have the capacity to complete the application and how might the one-off grant be spent to increase capacity? It will be essential to agree who or what group will be involved in each aspect of the application process.

Prior to application	By whom?	With whom?	Notes including estimated time required	Indicative costs
Consultation	Governing Body	Stakeholders – see above		
Report on responses leading to governing body decision	Governing Body	All governors		
Application task	By whom?	With whom?	Notes including estimated time required	Indicative costs
Seek formal agreement from Trustees/Foundation and the body responsible for appointing foundation governors for example the diocese	Governing body	Trustees/Foundation and the body responsible for appointing foundation governors	Only required if school is Foundation, Voluntary Aided or Voluntary Controlled	
Submit on-line application to convert (to academy) form	Governing body	DfE	DfE will assign a Civil Servant to advise and assist the governing body through the conversion process	
Start TUPE (Transfer of Undertakings Protection of Employment) consultation and negotiation	Governing body	Unions and staff		

Application task	By whom?	With whom?	Notes including estimated time required	Indicative costs
Following Secretary of State approval and Academy Order conversion process will involve:	Secretary of State	Governing body		
<ul style="list-style-type: none"> • Completion of registration form to register the Academy as an independent school 	Governing body	DfE		
<ul style="list-style-type: none"> • Establish Academy Trust – Memorandum and Articles of Association 	Governing body		These documents will need to then be posted on the school's website	
<ul style="list-style-type: none"> • Register the Academy Trust with Companies House 	Governing body	Companies House		
<ul style="list-style-type: none"> • Set up bank account for the newly-formed Academy Trust 	Governing body	Bank		
<ul style="list-style-type: none"> • Agree land and building leasing arrangements with the Foundation/Trust/LA 	Governing body	Foundation/Trust/LA		
<ul style="list-style-type: none"> • Agree asset and property transfer arrangements 	Governing body	Foundation/Trust/LA		
<ul style="list-style-type: none"> • Ensure all required consultation has been undertaken 	Governing body		All consideration and decisions must be recorded in the governing body minutes.	
<ul style="list-style-type: none"> • Complete TUPE process 	Governing body	Unions and staff		
<ul style="list-style-type: none"> • Sign Funding Agreement – legally binding for 7 years 	Academy Trust	Secretary of State	Funding Agreement will state when the Academy will open and the date of conversion. This is the date when the LA will cease to maintain the converting school	

Appendix

Note: Each local authority will have different schemes of delegation. The list below is illustrative of one LA. Colleagues using this with schools in their LA are advised to insert a table which matches the local provision and clarifies the cost.

EXAMPLE ONLY

Services and costs funded from the local authority's Schools Budget	Estimated cost of purchasing
• Special educational needs (SEN) support services (see next section)	
• Behaviour support services	
• 14-16 practical learning options	
• School meals and milk	
• Assessment of free school meals eligibility	
• Repair and maintenance of kitchens	
• Museum and library services	
• Licences and subscriptions	
• Central staff costs (maternity, long term sickness and trade union duties)	
• Costs of certain employment terminations	
Services and costs funded from other local authority sources	
• Costs of a local authority's statutory/regulatory duties	
• Asset management costs	
• School improvement services	
• Monitoring national curriculum assessment	
• Education welfare service	
• Pupils support (e.g. clothing grants)	
• Music services	
• Visual and performing arts services	
• Outdoor education services	
• Certain redundancy and early retirement costs.	
• Admissions appeals	
• Independent exclusion appeals	

