

Oxfordshire Academies Programme

Shared Use Agreements in relation to the Academies Programme

Background

A variety of documentation is required to support the 'as is' position as it affects schools and other users on one site where one or more of those other users are not converting to academy status. An example would be a site with two schools one of which is converting to academy status and the other remaining under local authority control.

With any academy conversion the county council will need to be a party to two key documents: the Commercial Transfer Agreement (CTA) and the Land Transfer documentation which are required by DfE to be completed before a conversion date and without which conversion cannot take place. These are formal legally binding documents which set out the basis on which the academy occupies land and buildings and all significant contractual matters, for example, transfer of assets and additional provisions supplementing the TUPE regime relating to the transfer of staff to the academy.

Where a converting school is located on the same site as another school which remains local authority controlled it is essential to maintain the rights of that school for operation of its business. Some of this will be contained within the formal documentation referred to above, some may require a less formal approach but nevertheless need to be considered and recorded for the avoidance of doubt and the smooth running of both establishments.

Types of Shared Use Agreement

Examples of the types of joint arrangements which need to be considered are set out below followed by a table of activities to be completed with the parties so that all agreements are completed appropriately.

1. Rights of access to or over land
Dedicated rights over access to reach another part of site, formal rights to use a playing field or building at particular times.
2. Services provided by either school to the other
Is it required for one party to function properly and through which that party would suffer losses if not performed? An example would be the provision of school meals from a shared kitchen transferring to the academy. It would not necessarily make sense to have equal rights to employ catering staff in the kitchen but the loss of those meals to the school not converting would represent potential loss of facilities and cost of ensuring alternative provision. This should be documented in a legally binding agreement prior to academy conversion.

3. Assets provided to another party or shared
For example is there a particular year group class space where joint teaching is encouraged and where each establishment has separately bought items of large equipment. In this instance an inventory of assets should ideally be set out in the formal commercial transfer agreement (CTA) completed as part of the conversion process. Use should then be set out in a further shared use agreement in either binding or non-binding form dependent on consequence of that use ceasing.
4. Other co-operation, e.g. joint teaching
In effect this is something that is desirable at the point of conversion but if either or both parties decide in the future that this co-operation is no longer required or compatible with the overall aims of the individual establishment there is no 'real consequence' to discontinuance as it is possible for each party to deliver its education offer separately. This should be set out in a non-legally binding agreement which covers the spirit of the arrangement and the operational management of issues such as responsibility for pupils away from their host establishment.

Legally binding documentation must be complete prior to conversion and a specific legal format must be used. Non-binding documentation should also be completed prior to conversion if possible. This can be drafted and will cover such standard terms as set out below tailored to reflect specific circumstances.

- a) Status of agreement
- b) Status and description of parties, including their representatives
- c) Principles of working together
- d) Term
- e) Details of roles and responsibilities (e.g. staff and use of facilities, quality assurance, safeguarding, health & safety)
- f) Any payments/funding
- g) Variations
- h) Termination
- i) Review/Liaison meetings

Whether the council will lead on the production of such agreements or whether this is left to be completed by the parties to the agreement direct will be decided on a case by case basis. The need and arrangements for such an agreement should be considered as part of the formal academy conversion process at the point of first main review of documentation required. This would usually take place shortly after a formal site inspection by the council's property surveyor (on average 6 weeks after issue of academy order but this can vary).

Some basic questions to inform discussions with staff from affected establishments are set out below.

Each party needs to consider the following questions in relation to any operational use of the site (s). The answer will indicate the type of agreement that may be required and officers will generally be guided by users on how 'business critical' operational arrangements are. The responsible persons for completing required documents are set out below.

<u>Type of Use Required</u>	<u>Formal mechanism for documentation</u>	<u>By whom</u>	<u>Examples</u>
Is agreement required for user of land in relation to land?	Formal land transfer documentation as part of conversion process.	Solicitors for county and converting school.	Rights of access to or over land e.g. only way to access buildings or playing field.
Is it required for one party to function properly and which would cause it to suffer losses if not performed?	Binding legal contract required prior to conversion completion.	County solicitor on instruction from Directorate	Likely to be where one school provides significant assets or services for the other. For example, provision of school meals for non-converter with no kitchen facilities from shared kitchen. Also where essential resources provided by one school are available for the use of both.
Is it 'nice to have' but no significant consequence – i.e. could revert to operating separately	Non - binding agreement to be drawn up and clarify each party's expectation of the other.	Officers with legal input if required from County Solicitor.	Joint teaching, social inclusion activities.

Academies Team
July 2014, version 1