

## **ACADEMIES PACK: DOCUMENT 3**

### **Becoming an Academy: Advice for Schools in Salisbury Diocese on the Process**

#### **1. Church Schools which Convert Must Keep Their Religious Designation**

A Church School which converts to an academy will automatically maintain its religious designation. An Academy Company formed under the Academies Act 2010 is an Exempt Charity under the Charities Act 1993. This does not affect in any way the charitable status of any existing trustees who own the site – land and buildings - in law nor does it replace them. Usually in a VA school the trustees are the Board of Education, sometimes the trustees are the churchwardens of a parish. The existing trustees will still have a duty to maintain the purposes of their Trust under charity law and a duty to ensure, so far as they can, the continuation into perpetuity of any religious character and ethos of the school. This is set out in the original (often Victorian) trust deed. The latest guidance now assumes that the original trustees continue to hold in trust the land and buildings, as in the current VA setup, which avoids the need for the significant legal costs relating to the lease arrangements originally proposed. The academy has full daily control over the use of the buildings and playing fields, and a duty to maintain them properly, but the academy will need to share their plans with the DBE for renovations and new buildings. Your appointed Diocesan surveyor will provide the headteacher and governors with the professional advice and support needed and the DBE will support you by bidding for government money for major projects on your behalf.

#### **2. The Academy Secures its Christian Character by Using the Model Documentation**

It is essential that the academy continues to maintain and develop its Christian foundation and there are several important safeguards written into the Memorandum and Articles of the Academy Company and the funding agreement entered into with the DfE, both of which make explicit reference to the church school foundation. There are two model forms of the legal documentation, one for former VA (majority foundation) governance and one for former VC (minority foundation) governance.

Each model version of the Memorandum and Articles has been agreed by the Church of England's National Society and the DfE, and therefore schools are expected to adopt them. We would only agree to very minor amendments to those models where there are particular circumstances in an individual school. Each Memorandum has an "Object" which sets out the purpose of the Academy Company and includes clear reference to its Christian character. The Objects are identical in both models, with the VA model being simpler due to the majority governance arrangements. Salisbury Diocese Board of Education prefers that VC schools move to VA category before converting to an Academy, and will guide you through this process. Converting to academy status as a VA school is simpler and we believe it better replicates the intention of those who founded our schools in the first place, before the 1944 Education Act created the categories of VA and VC. The VC model does have extra safeguards built in so as to secure the Christian character of the school, but several VC schools have asked to transfer to VA status whilst converting and this is now relatively straightforward.

The Memorandum sets out the name of the Academy Company and identifies at least three Members who will form the Academy Company under the Companies Act 2006. The Articles of Association prescribe

for the internal management, decision making and running of the academy trust and its liability. The Memorandum and Articles of Association will be annexed to the funding agreement for each academy. The Academy will then be formerly incorporated and registered with a unique Company Number at Companies House. It is possible to change the name after incorporation, subject to certain formalities.

### **3. Church Schools Must Secure the Permission of the DBE to Convert to Academy Status**

Church schools who wish to obtain academy status will therefore need to fulfill the following:

- Schools must present a very clear rationale to the DBE for changing their status which will benefit the student population, improve educational outcomes and be supportive of the wider community, whilst maintaining the Christian foundation. Safeguarding the well-being of children, must be at the forefront of any decision-making process, and there must be 'value added' for them, their parents and the community.
- The existing governing body of the school will need to work with DBE officers to plan and establish the Academy Company. The new Diocese of Salisbury Education Trust (DSET) will be a corporate member of each Academy Company in the Diocese. Membership arrangements should follow the guidelines in Section 8 of this document.
- Academies are independent schools and are therefore not required to follow the National Curriculum. However, as an Academy with religious designation the institution will still have a SIAS inspection which will judge the Christian distinctiveness of the school, the quality of teaching and learning in RE, the impact of collective worship, and the leadership and governance. The Academy Funding Agreement and Memorandum and Articles of the Academy Company, will therefore make explicit reference to:
  - a) an ethos statement for the school springing from the Christian foundation of the school
  - b) the provision for denominational religious education
  - c) worship in accordance with the relevant trust deed and Anglican practices
- The Academy Company will sign up to the standard documentation for the use of the land and buildings as an Academy which include terms and conditions associated with the occupation, use, repair and maintenance of the buildings and land. As the original church school trust legally remains in place, there will be a requirement that extensions and/or alterations to the buildings cannot go ahead without written consent of the foundation trustees and the DBE (if the DBE is not the trustee itself). The DBE, as, 'responsible body', will be involved in bidding for capital funding across the local area for specific projects within each Academy, and your appointed Diocesan surveyor will support with architectural plans, material specifications, space requirements for rooms and corridors and educational facilities, as well as helping procure a contractor and monitor and sign off the build. Many Academies are asking for help with routine building services inspection and repairs, and the DBE is consulting with our Diocesan surveyors to establish a way to help.

- Statutory consultation processes are required which must demonstrate widespread support for the proposal, including support from any other body which appoints governors.
- All costs incurred by the DBE in relation to a school converting to an Academy must be met in full by the Academy.

#### **4. The Consultation Process**

There are three different consultations that need to be undertaken.

First, all schools need to conduct a general consultation. It is the existing governing body who will determine the exact nature of this consultation maybe following DfE guidance. This consultation gives no one the power to prevent the change in status. We advise that a wide consultation should be the norm and that a short 'brochure' should be produced setting out the facts that the governing body wishes to convert the school into an academy and giving the reasons why. This or any another appropriate documentation should be copied to the DBE.

The second consultation should be commenced with the staff in respect of their prospective change of employer, as the Academy Company will employ the staff after conversion. DBE officers can advise how to carry out this consultation, but a governing body may wish to take legal advice as to the appropriate way to conduct this. Consultation with staff normally consists of both an informal stage and a formal process once the governing body has decided to submit an application (see the paragraph specifically relating to TUPE in section 7).

The third consultation is with any Trustees or with all those bodies who appoint foundation governors. Consultation with any relevant religious authority (consulting the DBE for church schools) is essential. Schools should note that the agreement of each of these bodies separately and independently is required. The Trustees and the appointing bodies each have an absolute independent power to prevent the school converting if they feel that it would not be right for it to do so - it is not a majority decision. If more than one body appoints foundation governors the governing body must consult with all parties.

#### **5. Admissions Arrangements and Working with Other Schools**

Any school converting to an academy must continue to develop collegially and collaboratively with the wider family of Church schools. Schools should be able to demonstrate their commitment to collaborative working, particularly with the wider school family. This includes a requirement from the DfE that all outstanding and good schools that become academies will support a named school currently with some weaknesses. Church schools should consult with the DBE to find a suitable partner school.

In addition, there is a legal expectation that schools will continue to work with the DBE, in particular with key appointments, such as the Headteacher.

Becoming an academy is not intended to have any effect on a school's admissions arrangements. Religious criteria can therefore still be used for admissions if they have been in the past. The admissions policy,

present and future, must be legal, appropriate, acceptable, inclusive and in accordance with Diocesan guidance. Please note that recent case law in the admissions field has shown that “having regard for” the advice given by the relevant religious authority means accepting what the DBE policy advises unless you can demonstrate good reason not to. All admissions arrangements will be incorporated into the Funding Agreement which cannot be changed without the agreement of the Secretary of State. It is essential that schools examine these issues with the greatest of care to ensure that they, the DfE and any trustees or religious authority are all clear and happy with the admissions position after conversion.

## **6. Financial Considerations**

There must be a viable business plan and a due diligence exercise should be carried out and all risks arising mitigated. (Note that the governors of an Academy are in effect Directors of the Academy Company and have duties and responsibilities of directors under company law – hence reference in the funding agreement to an academy trust obtaining directors liability insurance for its directors/governors.)

Schools must develop and evaluate this operational and strategic business plan (covering both recurrent and capital costs) which demonstrates continuing viability and growth. This business case must recognise the consequences on resources and capacity associated with the extra portfolio of duties governors will take on. Schools should obtain a very clear statement from the Local Authority about the extra money they will receive, the services they will forfeit and the cost of buying in quality replacement services.

The trading subsidiaries of the DBE, working with partner schools and academies may be able to provide additional subscription services, which could include human resources and payroll, legal advice, facilities management and school effectiveness services, as well as any other services which schools may require.

The application and all that ensues must not lead to the DBE incurring extra costs. Any costs in establishing the academy must be borne by the school, using its own funds and the £25k set up grant available from DfE. Though all the documents required for the process of conversion are in standard form and not open to any material negotiation, it is still necessary for solicitors to be appointed to personalise the documents and deal with the creation of each Academy Company.

We are negotiating an arrangement with the DBE’s lawyers to ensure costs are kept to an absolute minimum, by using one set of lawyers who act for both parties, where there is no conflict of interest. We expect this to be the case in the vast majority of academy conversions. In this case, the proposed Academy Company will be the solicitors’ client, not the DBE.

## **7. The Academy Company becomes the Employer after Conversion**

The Academy Company becomes the employer of all staff, who transfer to it from the employment of the Local Authority or the governing body as the case may be. The law relating to the mandatory transfer of employment and accrued rights known as TUPE [Transfer of Undertakings (Protection of Employment)] applies and the TUPE consultation procedures must be followed as noted above. It is expected that all academies will comply with the minimum standards of the national pay and conditions for staff, but

governors will wish to consider whether there are opportunities to provide the leadership of the Academy with greater flexibility in staff contracts and conditions of service. The DBE has experience of setting up several old and new style academies and can advise on these matters, and any significant change will, of course, need to be negotiated with the teacher and non-teaching unions. Church Academies retain the power to use religious criteria in the employment of a minority of reserved staff where the power existed in the predecessor school. The terms and conditions of existing staff will of course be protected under TUPE and the effect of this should be carefully noted.

## **8. The Role of the Academy Company Members and Governing Body**

The role of the governing body in an academy is to manage the business of the Academy Company and they are accountable to the Members. Members of the Academy Company appoint all the governors, with the exception of the ex-officio governors (e.g. the Headteacher) and the parent governors who are elected. The Members ensure that each governor is willing to sign up to the Objects. [The Objects are stated in the Memorandum and Articles of Association.]

The Members are accountable to the Secretary of State for the way in which the Company carries out its duties. The agreement with the Secretary of State is a legal contract between both parties and carries obligations on both sides. Members, both individual and corporate, of the Academy Company must assure themselves of the extent of their obligations and of their capacity to meet them. This is not a contract to be entered into lightly. The penalty for failure in its effect is to have the academy taken away from you either temporarily or permanently.

Members need to take very careful account of this in determining the appointment of governors and in deciding whether or not to be governors themselves. Corporate Members may appoint an individual to act both as governor and as attending member on their behalf. The governors are in effect the company directors and Members will want to ensure there are sound selection methods before appointment. The DBE will advise how this might be arranged so as to secure the purposes of the academy into the future (see section 8.1 and 8.2 for further details.). The Members must not put the purposes of the Trust and the character of the institution at risk by inappropriate arrangements for immediate or future governor appointments.

There must be at least three governors (so if all the other governors have resigned the last three will not be able to!) and should be as many as are felt reasonable, but our experience is that it is possible to operate with a much smaller governing body than is currently common in schools. The complex requirements for committees which form part of maintained school law and practice do not apply to academies, but academies may decide to adopt a similar structure but perhaps on a more modest scale.

All governors (except parent governors) may be removed by the “person or persons who appointed him.” This includes the staff governors, who may be removed by the Members. However, there are no complex regulations about removal as is the case in maintained schools, though no doubt fairness of purpose and process should be observed. DSET will be your formal link back to the DBE, but you may well wish to access some of our wider services as part of the SLA (Service Level Agreement) established with our trading subsidiaries.

Governors' normal period of service and other such details are contained in the Company Articles.

### **8.1 Membership of the Academy Company (VA convertors):**

We expect that a former VA school converting under Model 1 will have between 3 and 5 Members, usually 4, comprising:

1. Diocese of Salisbury Education Trust (DSET)
2. The Archdeacon
3. The Parochial Church Council (PCC)
4. The Chair of Governors

This means that whoever is elected by the governing body of the new Academy to be its Chair will, by virtue of the office, become a Member. That individual ceases to be a Member immediately on termination of their term of office as Chair, and the next Chair of Governors becomes a Member in his or her stead. All these Members are Corporate Members, not individuals; this will bring stability to the new Academy as it should minimise the need to elect new Members. It also ensures that the Christian character of the Academy is secure through the fact that the majority of Members are Christian. Combined with the Members' ability to elect the majority of governors, this ensures the continuance of governance arrangements in line with that of the VA predecessor school.

We require that the Members will then appoint the majority of governors to the governing body, in the same way that the DBE currently does in a VA school. The PCC could continue to nominate governors as under current arrangements, but the Members would then appoint them as governors, not the DBE.

In general then we would expect to see a governing body of maximum 12 people, 7 of whom are appointed directly by the Members; 2 are elected by the parents, one nominated by the staff via an election (this nomination is then ratified by the Members) and one as the headteacher by virtue of his/her office (ex-officio). The twelfth can either be appointed by the Members (identically to the other 7 above) or it could be designated as an ex-officio post for the local Incumbent if desired. The Members' appointees should mostly be practising Christians in a mainstream Church (defined as a Church which is a member of Churches Together in Britain and Ireland.) They need not all be practising Anglicans, but at least 5 should be. At their discretion, Members may decide to appoint one non-Christian, should the skill set of a particular person be of value to the governing body.

The predecessor school may well have a much larger governing body than this, and it is quite usual for a newly established Academy to have a transitional governing body which is larger in the short term than this model, so no governor ends up without a role once the school has converted. Additional governors can be co-opted with full voting rights onto the Academy governing body until their terms of office expire, when they are not then replaced.

The minimum number of people on the governing body of a Church Academy is eight, to keep the Church appointed governors in the majority by two, and thus the governing body in line with its predecessor school. Should the Academy Company wish to consider a governing body as small as 8, we would expect to

see 5 governors appointed by the Members, 2 parent governors and the Head, but care should be exercised in any such plans not to have an additional elected staff governor written into the Articles.

## **8.2 Membership of the Academy Company (VC convertors):**

It is the preferred model of Salisbury Diocese that VC schools convert to VA category before converting to an Academy. They can then proceed on the model described in 8.1 above. These two processes both require consultations but these can be undertaken in near parallel so need not slow up the process of conversion by more than about two weeks. Any community school wishing to become a Church Academy also needs to undertake this dual consultation.

Any VC school for whom this is not appropriate may alternatively convert on the DfE Model 2, and then subsequently alter the Academy Company Membership to reflect its commitment to developing a majority Church school governance structure.

For a VC convertor we expect the Academy Company still to comprise between 3 and 5 Members, one of whom would be DSET and the other (probably) 3 would be other academy partners. We strongly recommend appointing corporate bodies to the Academy Company not individuals. Members do not have a term of office, unlike governors.

We require that the Members will then appoint the majority of governors to the governing body, as in model 1 described in 8.1 and would still expect to see a governing body of maximum 12 people, 8 of whom are appointed by the Members, 2 elected by the parents, one nominated by the staff and one as the headteacher by virtue of his/her office (ex-officio). The number of Christian governors appointed by the Members shall not be less than 2, and would normally replicate the number of foundation governors in the predecessor school. The Christian governors should be practising Christians in a mainstream Church (defined as a Church which is a member of Churches Together in Britain and Ireland.) and would normally all be practising Anglicans. They will no longer be nominated by the PCC and appointed by DBE, as they are appointed by the Members directly.

As in 8.1, if the predecessor school had a much larger governing body than 12, the Academy may choose to have a transitional governing body which is larger in the short term than this model. This is achieved by co-opting additional governors with full voting rights onto the Academy governing body until their terms of office expire.

## **9. Steps to Academy Conversion**

Before making an application for Academy status, school governing bodies and Headteachers should thoroughly consider a number of issues and be prepared to discuss these in detail with relevant parties, including the DBE (this may include a number of preliminary meetings with the Diocese).

1. It is for the Governing Body of the existing school (and it alone) to decide that it wants to explore the possibility of conversion into an academy. The decision to do this should be taken at a properly called meeting with this item explicitly on the agenda.
2. It would be advisable to allow sufficient time before the meeting for your school Trustees and any other especially interested parties (such as the Diocese, if it not also the Trustee) to be made aware by you that the subject will be raised. This is because as a process moves forward you will need the agreement of your Trustees and others, so it is wise to brief them with care even at a very early stage.
3. In order to ensure good and effective communication and support from the DBE, the school should notify the Director of their intention to consider academy status. It is important that the DBE and school governors discuss this important step before any formal application is made. As Academy conversion becomes more routine we believe that it is will not be necessary for the governors and the DBE to take their own independent legal advice, but this may be needed in some cases.
4. In a school with a religious character, it may be that more than one body appoints foundation governors. All appointing bodies must be consulted and all must take their own independent decision whether to agree (with or without conditions) or oppose academy conversion. It is important to remember that bodies appointing the foundation governors include those who appoint any ex-officio governors. All church schools must therefore seek the consent of the DBE before submitting an application to become an academy. It is not sufficient for the actual foundation governors of the school to give their approval. The application will only be processed with the consent of the DBE and any other foundation trust bodies.
5. Having taken a decision to explore the possibility of conversion, the governing body should discuss the matter in detail with any Trustees the school may have, as trustees have a responsibility to act so as to preserve their trust and its purpose. The agreement of the Trustees is required before a formal 'application to convert' can be made. It is important to note that Trustees of any Church of England school must also separately consult the DBE if the Trustees are not the DBE itself. Should the Trustees not be the DBE, (e.g. local Incumbent/PCC/Churchwardens) we will assist in working to transfer the Trusteeship to the DBE before conversion, should this be acceptable to the existing Trustees, as this is simpler in the long run.
6. Each appointing body and the Trustees should provide the school with written confirmation if they agree to the academy conversion. If foundation governors are appointed by any other body in addition to the DBE, each separate body who appoints foundation governors must provide its own letter indicating agreement, with or without conditions, or dissent. Please note that the Secretary of State should not allow the governing body to proceed without these documents and would be breaking the law if he did.

7. If a school decides to progress to a formal application, the DBE will examine each potential application for academy status with care and in relation to the principles set out above.
8. The DBE will act as a neutral critical friend in the process, seeking to ensure that a good decision is made by and with the school. However, thinking at Diocesan level will also be driven by the wider vision of maintaining and developing the family of Church of England Schools.
9. The Members of DSET meet several times a year and can consider the formal application for academy status on those occasions. Dates of upcoming meetings can be obtained from [sandi.hammer@salisbury.anglican.org](mailto:sandi.hammer@salisbury.anglican.org). Schools must submit their application to the Director of Education at least 14 days prior to the meeting. The DBE will notify the Chair of Governors, Headteacher and DfE project lead of the outcome within 5 working days of the meeting. We would expect this to be in consequence of considerable prior discussion between us, and this should never be the first contact with us! Applications for conversion which use the Model 1 Memorandum and Articles in full without amendment, and employ the Membership and governance structure outlined in 8.1 above can be agreed outside this meeting structure using the delegated powers of the Diocesan Director of Education.
10. If provisional consent is granted, Diocesan Officers will work with the school to ensure that all conditions find expression in the draft Funding Agreement and the Memorandum and Articles. As noted above these are already available in standard form. Key documents will only be signed by the DBE when the Board is content that all conditions have been met, and Officers will then establish mutually agreed monitoring arrangements via DSET.

## ACADEMIES PACK: DOCUMENT 4

### Glossary

**Academy:** An academy in the education system in England is a type of school which is independent of Local Education Authority control but is publicly funded

**Academy Company:** The Company regulated by the Articles of Association and registered at Companies House, whose Members sign the Funding Agreement with the Secretary of State for the Academy and which is therefore the accountable body. It is comprised of between 3 and 5 members. Each stand alone Academy has an Academy Company. In multi-academy trusts there is one Academy Company serving all the member schools.

**Corporate Members:** Those Members of an Academy Company which hold the membership as a corporate body, rather than as a named individual. Any incorporated charity, business or organisation can be a Corporate Member of an Academy Company. Corporate Members then appoint an individual to serve for them as the Member – such individuals act for the Corporate Member, not for themselves. The Corporate Member can replace the individual acting for them at any time – this does not constitute a change of Membership.

**DBE:** the Diocesan Board of Education, as constituted under the Diocesan Board of Education Measure 1991.

**DSET:** The Diocese of Salisbury Education Trust, set up in 2011 to act as an Umbrella Trust Company for Diocesan schools and Academies.

**Governor:** in a single Academy, the governors are effectively Company directors, largely appointed by the Company Members and accountable to them. In a multi-academy trust, the governors are appointed by the MAT Company Members, and need not necessarily be Directors.

**Incumbent:** the clergyperson holding the office or position of vicar, rector etc of the parish in which the Academy is situated. Should the post be vacant or the post holder be unwilling to act, the relevant Archdeacon may appoint someone to act in their stead.

**Members:** those individuals or corporate bodies who form the membership of the Academy Company (or other company limited by guarantee such as DSET) and who are bound by the limited liability (not exceeding £10) laid out in the Articles of Association

**SIAS:** The Statutory Inspection of Anglican Schools – the process under Section 48 of the Education Act 2005 which grants dioceses the right to inspect church schools.

**Trust/Trustee:** A relationship created at the direction of an individual (the settlor), in which one or more persons hold the individual's property subject to certain duties to use and protect it for the benefit of others. The person who holds the property for another's benefit is the trustee. In the context of Academies, the trustees are those who hold the land and buildings in trust from the time the original school was founded.

**Umbrella Trust:** a charitable company set up by a Board of Education to establish and maintain academies, to support academies to fulfill their responsibilities under the Academies Act 2010, to advance and maintain the education of people who work in or for Academies and to promote the efficient and effective application of resources among academies and schools. In Salisbury Diocese this is DSET.

**ACADEMIES PACK: DOCUMENT 5**

**Relationship Diagram**

