

Academies and trust schools: where do universities fit in?



This series of Management guidance published by Universities UK provides best practice guidelines and codes of recommended practice.

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2	Foreword
3	Summary
1	
4	Introduction
2	
5	Academies and trusts: the legal context
3	
7	Options for universities
4	
13	Setting up academies and trusts
5	
16	The benefits for universities
6	
17	The challenges
7	
19	Conclusions and next steps
20	Checklist for universities
22	Glossary
24	Further information

This report outlines the opportunities and challenges that universities may meet if they engage with two relatively new types of state-maintained school – academies and trust schools. The Government has given increased priority to improving the performance of state-maintained schools and partnerships with universities are viewed as an important element in achieving this objective.

Our member institutions are already widely engaged with state-maintained schools in a great variety of ways and there is evidence of much commitment in the sector to working with academies and trusts. This report aims to provide practical information about these partnerships rather than promoting universities' engagement with academies and trusts. There is no single legal definition of 'engagement'. There are lots of ways in which a university can become involved with an academy or trust school. The extent of the commitment involved varies from being the lead sponsor of an academy to appointing a member of staff to become a trustee of a trust school.

The experience of institutions that have already become involved, in particular with academies, is that some important issues need to be resolved. We hope that this report will complement Government publications in helping member institutions to face such challenges and to develop appropriate and innovative approaches to their relationships with schools if they decide that formal participation with an academy or trust is not for them.

This report provides clarification on some of the legal issues surrounding universities becoming involved in academies and trusts as well as a useful checklist to support an assessment of the benefits and costs, and opportunities and risks, for the institution.

We hope that this report will be of interest to all member institutions, but especially to those that have yet to decide on their participation in academies and trusts.

This report has been produced by Nick Saunders of Eversheds and we are grateful to the author for analysing the issues so clearly. We would also like to thank all those universities that have supplied case studies and provided feedback on drafts of the report.

Professor Rick Trainor

President, Universities UK



Academies and trust schools are two of the main tools of the Government's policies for improving the performance of publicly maintained schools in England.

This report outlines the opportunities and challenges that universities may meet if they engage with two relatively new types of state-maintained school – academies and trust schools. Although we appreciate that there are different schools of thought on the educational effectiveness of academies and on the desirability or otherwise in policy terms of both academies and trust schools, this report does not seek to comment on these debates. Its focus is on the benefits and challenges of engagement drawing on the experiences of universities and colleges that have linked up with these types of schools.

The Department for Children, Schools and Families (DCSF) defines academies as 'state-funded all-ability schools established by sponsors from the education, business, faith or voluntary sectors, working with partners from the local community'. Trust schools it defines as 'foundation schools with a charitable trust that forges a long-term sustainable relationship with external partners to create a new source of dynamism and to help raise standards'. (Department for Children, Schools and Families, 2007b).

Universities may choose to engage with academies and trust schools as lead sponsors, co-sponsors or partners, and in other less formal ways. Both types of sponsorship give the university a chance to shape teaching, learning, curriculum and organisation. It may help with student recruitment, give access to new funding sources and offer teaching opportunities within the university. Institutions not wishing to make this commitment or incur the liabilities of sponsorship of academies can choose to be education partners.

Universities may also decide to make links with trust schools. Because such schools are constituted differently from academies, the role of universities will be slightly different. They may partner a single school, or play a partner role in a consortium of schools forming a trust. The link may be less formal, perhaps involving a member of the university acting as a school governor, with the university and school(s) having a memorandum of understanding about the respective institutions' relationship and shared aspirations.

The process of establishing academies or trusts is complex; the report briefly describes the stages that need to be worked through and the implications that these may have for management time and so on. Academy and trust school proposals can be locally controversial and require meticulous consultation and skilful relationship management in order to win support from staff and the local community.

The overall goal is to change the culture of under-performing schools and raise children's aspirations and educational standards. Universities that wish to explore this opportunity can get in touch with colleagues who have already had some experience of engaging with academies and trust schools.



1 Introduction

This report outlines the opportunities and challenges that universities may meet if they engage with two relatively new types of state-maintained school – academies and trust schools.

In a speech in June 2007, Gordon Brown said that he would like every secondary school to have a higher education partner. Chancellor of the Exchequer Alistair Darling confirmed, in his 2008 budget speech, that the Government's drive to improve the performance of state-maintained schools was to be accelerated, with additional resources being targeted at academies, trust schools and federations of schools.

In 2008, a Universities UK survey confirmed that member institutions were already widely engaged with state-maintained schools in a great variety of ways and that there was a strong commitment in the sector to working with academies and trusts. We hope that this report will be of interest to all member institutions, but especially to those that have yet to decide on their participation in academies and trusts. Confusion about the differences between academies and trust schools and about other types of maintained schools has hampered discussion about the advantages and disadvantages of universities' partnerships with schools. We hope that this report will help to clarify some of the differences.

To encourage universities and others considering sponsorship of academies and involvement in trusts, the Department for Children, Schools and Families (DCSF) has produced several publications (listed in the bibliography). Our report aims to provide practical information rather than promoting universities' engagement with academies and trusts. The experience of institutions that have already become involved, in particular with academies, is that some difficult issues can crop up. We hope that this report will complement the DCSF publications in helping member institutions to face such challenges and to develop appropriate and innovative approaches to their relationships with schools if they decide that formal participation with an academy or trust is not for them.

There is no single legal definition of 'engagement'. There are lots of ways in which a university can become involved with an academy or trust school. The extent of the commitment involved varies from being the lead sponsor of an academy to merely appointing a member of staff to become a trustee of a trust school.

The main options available to institutions are outlined in Section 3 below. To these should be added the option of simply including academies and trust schools in the list of organisations with which a university wishes to have a relationship. Some universities may feel that, given the importance to them of establishing links with a wide range of schools, forging particularly close links with one or a small group of institutions will not be appropriate.



Defining academies and trust schools

The DCSF prospectus on academies, trusts and higher education, published in 2007, distinguishes between academies and trusts:

Academies are state-funded all-ability schools established by sponsors from the education, business, faith or voluntary sectors, working with partners from the local community. Trust schools are foundation schools with a charitable trust that forges a long-term sustainable relationship with external partners to create a new source of dynamism and to help raise standards. (Department for Children, Schools and Families 2007b)

Both types of school are therefore publicly funded although academies are not local authority-maintained schools. However, academies' funding agreements do require them to be at the heart of their communities and they can only be opened with local authority approval. Here are some further significant differences between academies and trust schools.

Academies

Academies are governed by Section 482 of the Education Act 1996, as amended by the Education Act 2002. In brief, academies are independent schools that receive direct funding from the Secretary of State, rather than from a local authority. In return they must enter into an agreement with the Secretary of State. This agreement contains all the formal information that is necessary for the opening and funding of a new academy – and constitutes a contract between the Secretary of State and the academy for it to open on a specified date.

The financial provisions for academies are covered in Section 483 of the 1996 Act as amended. Those individuals and organisations that have agreed to sponsor an academy must enter into a funding agreement with the Secretary of State. The usual requirement is that the sponsors provide an endowment of £2 million in total for the academy, payable over a five-year period.

Educational institutions wishing to sponsor an academy do not have to provide the £2 million funding because DCSF wishes to tap into such institutions' educational expertise. DCSF will normally require that an endowment fund is set up for every academy project; educational sponsors and partners are welcome to contribute to this but they are not required to do so.

The 1996 Act also provides for the Secretary of State to arrange for the transfer of land from local authorities for use by an academy – for example, land that was previously the site of a local authority school – and for its transfer back to the local authority if the land is no longer needed for this purpose.

Academies are normally established as companies limited by guarantee. They are not statutory corporations as are maintained schools (whose powers are limited by the School Standards and Framework Act 1998). Because academies are publicly funded and perform public functions, their decisions are subject to judicial review. Academies have charitable status and are required to register with the Charity Commission (unlike maintained schools and universities). They therefore have more freedom of manoeuvre than maintained schools, but they are very different both in law and practice from fee-charging independent schools.

An academy employs those staff whose contracts of employment are transferred from the local authority under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), where an academy replaces a former local authority-maintained school. However, the move to academy status may also entail a restructuring of the staffing arrangements in order to strengthen management capacity and refocus the curriculum. The ownership of land and buildings is normally subject to a 125-year lease from the local authority to the academy.

Trust schools

Trust schools were made possible by the Education and Inspections Act 2006. A trust school is a foundation school that has acquired a foundation other than under the provisions of the School Standards and Framework Act 1998. The foundation or 'trust', as they are generally referred to, is a legally separate entity from the school governing body and will normally be established as a company limited by guarantee. Accordingly one trust may support a number of schools. The trust will be charitable and in some circumstances will need to be registered with the Charity Commission.

A trust school receives funding from the local authority rather than central government. It remains accountable to its local authority and is subject to local authority intervention in the same way as other maintained schools. Unlike an academy, the partners in the trust which one or more schools acquire will not be expected to make any financial contribution. They may of course choose to do so, but that is entirely voluntary.

A trust school's governing body employs the staff whose contracts of employment are transferred from the local authority. The ownership of land and buildings is transferred from the local authority to the trust permanently unless the land is no longer needed for the trust school.



Academies

Lead sponsorship

There are many ways in which universities can engage with an academy, including becoming a lead sponsor or a co-sponsor. As a lead sponsor, a university would take the full responsibility for setting up the new academy. The DIUS *Academies, trusts and higher education: prospectus* (2007b) describes this as having responsibility for the key decisions about the strategic direction of the new school.

Sponsors of the early academies were required to provide 10 per cent of the capital costs of a new building, capped at a maximum figure of £2 million. These sponsorship funds were not payable 'up-front', but over the lifetime of a building project.

In July 2006 the endowment model of sponsorship was announced. Sponsors establish an endowment fund worth £2 million (or, for sponsors of multiple academies, £1.5 million for the fourth or subsequent academy), with a minimum of £500,000 payable in the first year. Payment of the endowment will normally be over five years. Academy trusts use the revenue generated from the endowment to counteract the impact of deprivation on the communities they serve.

In July 2007 the Government announced that institutions such as universities no longer need to provide financial sponsorship in order to become involved with academies. However, they are expected to make a similar commitment of professional expertise.

Universities that wish to sponsor an academy are well placed to shape its vision and strategy. The DCSF wants universities to apply their professional expertise in matters of teaching, learning, curriculum enrichment and organisation in support of the school that they sponsor and thus help to shape its ethos and underpin its performance.

Where beneficial, the Government will help university lead sponsors to find potential co-sponsors (see section on co-sponsorship).

Despite the financial exemption, only one university has so far committed itself to sole lead sponsorship of an academy. University College London has announced that it is intending to sponsor a new academy that will open in Camden, London in 2011.

Universities may also wish to consider the experience of a further education college, Barnfield College, which is acting as sole sponsor to two academies that opened in Luton in September 2007.

Case study: Barnfield College

Barnfield College has invested £4 million in two academies, providing the £2 million sponsorship per academy required before the July 2007 financial exemption was introduced for education institutions wanting to sponsor. The Barnfield College governing body and senior management felt that the college had a moral obligation to give something back to the community that had helped it to be so successful. Barnfield is the UK's first Beacon college (Beacon status provides public recognition of the excellence and innovation which exists within the further education sector) and its most recent Ofsted inspection described it as outstanding. The college's leaders also believed that they had the capacity and culture that would enable them to turn around two failing local schools.

Barnfield's principal, Pete Birkett, says: 'Sponsoring the academies was not only or mainly about recruiting more students. It was about doing the right thing and following the college's mission to widen participation in education'. The benefits and challenges that Barnfield College has experienced as lead sponsor are considered further below.

Co-sponsorship

Universities choosing to engage with academies are increasingly choosing to support an academy through some form of co-sponsorship rather than leading its development. (The University of the West of England is one of the co-sponsors of the City Academy, Bristol, and is actively involved in the academy's direction and governance but the academy is co-sponsored by local businessman John Laycock who put up a significant cash endowment.)

Currently the DCSF's list of schemes indicates that 48 universities are committed to being lead sponsors, co-sponsors or educational partners of academy schools. Further examples include:

- Two university co-sponsored academies (the University of the West of England sponsoring the City Academy, Bristol and the University of Liverpool sponsoring North Liverpool Academy) which are already open.
- Two additional schemes (Nottingham University Samworth Academy and Red House Academy/Leighton Group with the University of Sunderland) are at the implementation stage.

Co-sponsorship can be an effective way of bringing together different types of expertise as well as sharing the considerable burden of work, both in setting up an academy and in ensuring its continuing success. It is a visible demonstration that the academy is not a vehicle for a particular individual or organisation but represents a true partnership between independent organisations. However, as with any collaboration, co-sponsorship presents challenges such as maintaining communication between all the parties concerned and securing agreement on difficult issues. It will be important for the respective roles of the co-sponsors to be clearly agreed and documented and there is usually a lead sponsor although this is not inevitably the case, as can be seen with the University of Nottingham and David Samworth which are joint and equal sponsors of Nottingham University Samworth Academy.

All sponsors will be members of the academy trust and will have rights to make appointments to the academy's governing body. Any sponsor would have to seek the agreement of other trust members if they wished to cease to be involved with the project. Co-sponsors will be expected to play a significant role in managing the academy, and not just to give educational advice. In addition, the lead sponsor will be expected to be responsible for setting up and then leading the academy's governance arrangements. Of course, co-sponsors may wish to describe their relationship with other organisations involved in the establishment of the academy as one of partnership, but a co-sponsor's role is more extensive than that of non-sponsor partners.

Case study: University of Sunderland

In the city of Sunderland's tertiary education system the City of Sunderland College provides 16–19 education together with three faith-based schools and a private school. In 2000 only 24 per cent of 18–19 year olds progressed to higher education compared with more than 30 per cent nationally and there is no evidence that this gap has reduced since then.

The University of Sunderland has for years had a long-term programme of engagement with both primary and secondary schools in the city, in order to address the underlying culture within the North East of young people not progressing into higher education but going into employment at the earliest opportunity.

The city is now constructing three 11–16 academies, one jointly sponsored by the university and with the university involved in the governance of the other two. The university has also been invited to participate in the governance of an 11–19 trust school which is being created in nearby County Durham.

The City of Sunderland College has recently opened one of its four sixth-form academies on the university's riverside campus. The university has expressed a willingness to be involved in the governance of the sixth-form academies and this has been welcomed by the college.

Professor Peter Fidler, the University of Sunderland's Vice-Chancellor, says: 'The university strongly believes that by working in partnership with schools, the college and the city, and being involved at both operational and governance levels, it is possible to create a virtuous circle and improve progression to higher education'.

Case study: City University, London

City University is a co-sponsor of the City of London Academy, Islington, along with the City of London Corporation. The university and the corporation are each contributing £1 million, the university having raised additional funds specifically for this purpose. The university is already playing a leading role in the academy through membership of the new academy trust. It has been actively engaged in supporting the project from the initial stages to its successful launch in September 2008.

Following the launch, City University continues to offer expertise in key areas and to use its reputation to influence the development of a programme of enterprise education and further draw upon its existing links with business and the professions. The academy's specialism will be business and enterprise with a particular focus on leadership, critical thinking and creativity. This fits closely with the university's strengths.

Professor Malcolm Gillies, Vice-Chancellor of City University, says: 'We see our work with the academy as an extension of our community work and it is, for us, a natural fit – providing an excellent education and raising aspirations is why we exist. We think we have much to learn from the staff and students of the academy. The link will be very much a two-way partnership and this initiative will help us to refresh and further develop our offer and connections with the local community and beyond'.

City University's work with the academy will be focused on:

- input into curriculum development;
- support for the continuing professional development of the teaching and professional staff of the academy – particularly in the areas of business, enterprise and organisation and management;
- a programme of engagement with academy students by university staff and students: university students will work as student mentors and the university's widening participation team plans to offer workshops, master classes, visits and taster days for pupils, helping them to find out about higher education and various career pathways;
- offering places for academy students on its programmes of study (many of which are over-subscribed) – where they meet the entry requirements;
- governance and oversight of the further development of the academy.

Partnership: short of sponsorship

All sponsors, including co-sponsors, will be expected by DCSF to become members of the academy trust in the academies that they have sponsored. Sponsors normally have a majority on the trust board. Institutions will therefore have a formal and public link with the academy, which will be disclosed, for example in the academy company's documentation held at Companies House. The university (and other sponsoring organisations) will be protected from any liability for the acts or omissions of the academy because the academy company has its own legal existence, and the liability of company members will be limited to the amount guaranteed (normally a nominal amount of £10).

On the other hand, the legal responsibilities of those members of the university (or other sponsoring organisation) who are appointed directors of the academy company are considerable, and have been increased by the Companies Act 2006. Academy companies will normally obtain directors' and officers' liability insurance and will indemnify directors who receive any claims (other than those relating to criminal or other wrongdoing).

Nevertheless, university staff may not wish to undertake the responsibilities of directorships. Universities may also be concerned that any close involvement with academy companies could result in the institution and members of its governing body or senior management team becoming in law 'shadow directors' of the academy, and liable as if they were actual directors. This need not be a worry because the academy company's board will be responsible for deciding the academy's strategic direction, albeit with input from the university.

Education partner

In the circumstances, some universities may not want the levels of responsibility that come with sponsorship, but still want some sort of publicly acknowledged link with an academy. Such universities may find the role of education partner more appropriate. Education partners are not legally recognised in the academy's constitutional documents. They are not members of the academy trust, and are free to end their involvement at any time. The extent of such partners' involvement will vary, with some simply providing educational advice and others being prepared to be appointed by sponsors to the academy's governing body.

A university might prefer to be a partner, rather than co-sponsor of an academy, because it wants to partner several academies in its area and wishes to avoid any suggestion that it is favouring any one school to the possible disadvantage of others. This approach may be combined with a more substantial engagement such as co-sponsorship of one academy where the university sees a particular reason for doing so. Examples are the University of Sunderland, featured above, and the University of Wolverhampton.

Case study: University of Wolverhampton

The University of Wolverhampton is currently involved in the development of three academies, two in Sandwell and one in Telford and Wrekin, and is proposed as the joint sponsor of an academy in Wolverhampton. The levels of engagement vary but at its most intensive the university has been the lead educational partner responsible for all of the input on curriculum, pedagogy, teaching and learning. Engagement in these areas of academy development has placed the university at the centre of the discussions about the focus of the innovative schools. The meshing of the compulsory school curriculum at pre-GCSE with a range of diploma pathways and A- and AS-level qualifications linked to further education and higher education opportunities is central to the thinking. A programme of higher education modules in schools has been developed and these modules lead to credits being awarded towards foundation degrees. The modules are part of the curriculum within the academies and other partner schools.

The University of Wolverhampton Vice-Chancellor, Professor Caroline Gipps, says: 'The university has a close working relationship with its regional educational partners on a range of activities. This includes the recently announced £25 million Black Country challenge programme which is seeking to raise standards in compulsory education. The development of academies in the region is occurring within the context of this strategic positioning and their development is being supported by the university only where it is part of the overall pattern of locally endorsed provision'.

Trust schools

Membership of the trust

The most formal way of recognising a university's desire to engage with a trust school would be by the university itself becoming a member of the trust company. Such membership publicly demonstrates the university's desire to take on an educational leadership role but does not involve any financial commitment (apart from the liability to contribute the guaranteed amount, normally a nominal sum, in the event of any claim being successfully made against the company; guidance on the role and responsibilities of trustees has been produced by the Charity Commission).

Trust members invest staff time and expertise, and possibly make institutional facilities available to the trust school or schools. As of October 2008 there were 216 trust schools involving 75 university partners. In some cases, schools have come together in a consortium to acquire a trust. An example of this is the Halesowen Consortium in which the University of Wolverhampton is a partner.

Case study: University of Wolverhampton

The Halesowen Education Trust, which comprises three secondary schools and Halesowen College, was one of the first of the new style trusts to emerge nationally. The university chairs the trust and is a strategic partner working alongside the head teachers, college principal and business partners to facilitate the implementation of the trust's objectives. Central to these are issues of progression to further education and higher education as well as opportunities for employment and training. Engagement with two further trusts is also underway and others are planned.

Staff members as trustees

As with academies, a university may wish not to become a member of a school trust itself, but to encourage or allow a member of the institution to become a trustee. For example, an institution may be reluctant to establish institutional links with one school in case it harms its development of a wider range of less formal links with other schools, but feel that there is still value to the school and to the member of staff in allowing a personal link to be established. Similar considerations apply here as in relation to an individual becoming a director of an academy trust company. In both cases, the university may be able to give the individual support and assistance through the provision of training on the duties of company directors and the requirements of charity law. This option may be particularly appropriate where the individual has expertise that will be of particular value to the trust and where that expertise is closely related to their work for the university.

Partnership but no formal involvement

Some universities may feel that it would be undesirable to identify any particular school with which to have a formal involvement; rather they will prefer to engage with a wide range of schools and colleges – although, as explained above, it is possible for a number of schools to work together under a single shared trust. Nevertheless, it may be difficult for universities to develop effective working relationships with large numbers of schools, particularly if they are not very close by.

Some universities may take the opposite view and feel that there are advantages in establishing closer lines of communication with a particular school, for a wide variety of reasons. These include bringing different perspectives, experience and skills to support school improvement; or, for example, the school is using innovative teaching and learning techniques, which might be transferable to the university or which the university might wish to research; or the school is part of a wider collaboration with partners, one or more of which the university already works with or would like to work with.

A number of these factors appears to have influenced the Open University in developing its partnership with Monkseaton Community High School, Whitley Bay, Northumberland. A member of the Open University staff is a governor of the school in a personal capacity but is not a trustee.

Case study: The Open University

The Open University has a long-term collaboration with Monkseaton Community High School which is reflected in a memorandum of understanding. Both organisations have shared interests in:

- open and equal access to education;
- developing replicable potentially scaleable innovations in education which draw on the key competences of each organisation;
- working together to share successful innovations developed within their existing collaboration;
- adopting a non-partisan approach to policy development in school education.

Both organisations are clear that the Open University is not part of the Monkseaton Community High School Innovation Trust but works with it in meeting the aims listed above. Dr Paul Kelley, head teacher, is an honorary graduate of the Open University and a driving force in a range of collaborations between the university and the school.

Monkseaton has shown how, with appropriate support, pupils at the school can be offered jobs (for example in IT support roles) which help them to take higher education courses while they are still at school. Discussions are in hand to extend this to apprenticeships for locally employed young people who could benefit from higher education courses provided with support from the school.



4 Setting up academies and trusts

Academies

There are several stages involved in establishing an academy; much depends on whether a new building or major refurbishment of existing buildings is involved. At least a year should be allowed to plan an academy if no major building work is required, and two to three years if building or refurbishment is to be done.

Universities involved in sponsoring or co-sponsoring academies will, together with the relevant local authority, take the project through the following stages:

Stage 1

The first stage is brokerage under the auspices of the Office of the Schools Commissioner (OSC) within DCSF. The OSC supports a partnership between the sponsors and the local authority to enable them and DCSF to assess whether a new academy is the right solution, leading to the publication of a statement of intent.

Stage 2

Sponsors and local authority work together to prepare a formal expression of interest for ministerial consideration at DCSF. The expression of interest must demonstrate the need for a new academy and provide details, for example the proposed age range and pupil numbers. Once the Secretary of State agrees support for the project, the next stage – feasibility – can go ahead.

Stage 3

At the feasibility stage the OSC will channel support, which will include funding for the employment of consultants to act as external project managers and lawyers to undertake the legal work. The project team will prepare detailed plans and an outline building design, where applicable, and will formally consult with the local community. Core documents, including the memorandum and articles for the academy company, are submitted to DCSF for approval and the Secretary of State consults the local authority.

Stage 4

The funding agreement is signed; this includes annexes dealing with admissions criteria (these must be consistent with the statutory admissions code), arrangements for the admission of pupils with special educational needs and disabilities and policies on behaviour and exclusions. All three areas of academies' activity have been the focus of debate in recent times and robust arrangements are essential. On the signing of the agreement by the academy company and the Secretary of State, a contract for the academy to open on a specified date is created.

Stage 5

Implementation:

- the academy company is registered at Companies House and with the Charity Commission;
- the academy is registered with Ofsted as an independent school;
- the Secretary of State makes the order for the closure of the existing school immediately before the academy opens;
- school land and buildings are transferred directly to the academy company by the local authority if the school is a community school. Where the school is a foundation or voluntary maintained or controlled school, the foundation or school will normally transfer the land initially to the local authority which will then transfer it to the academy company;

- staff are transferred to the academy company from the local authority in accordance with the TUPE regulations in the case of a community school, or from a foundation or voluntary controlled or maintained school. DCSF expects transfers to be made on the same terms and conditions as those at the closing school. The transfer can only take place after the statutory consultation process with staff has been completed.

Stage 6

While most academy projects involve the refurbishment of existing premises or construction of new buildings, in some cases in order to maintain the momentum for improving standards which may be generated by an academy project it may be desirable to open the academy without delay and before any new building is available. The procurement and building process is subject to the academy building guidelines published by DCSF in the light of the new endowment sponsorship model and new procurement model.

Trusts

Becoming a trust school

There are five stages that each school and its governing body must complete in order to become a trust school. In parallel, the trust, which must be in place by the implementation date of the trust school, is set up by the relevant trust partner or partners working with the school.

- Stage 1: the school and its partner(s) agree to work together;
- Stage 2: consult with parents and local stakeholders;
- Stage 3: publish statutory proposals and invite representations;
- Stage 4: the governing body considers representations and decides whether to acquire the trust; and
- Stage 5: implementation.

Where more than one school decides to work together in a shared trust, each school must separately go through the statutory procedures to acquire the trust. However, there is scope for governing bodies to issue a joint consultation if they are publishing proposals for the acquisition of the same trust. Each governing body would need to consider any comments or views expressed before deciding whether to go ahead and publish proposals.

Statutory processes

Some schools may need to change category by becoming a foundation school in order to be a trust school. Both processes – including the required consultation – can be undertaken at the same time but the schools must comply with the statutory guidance. Schools may undertake the changes in two stages but this will take more time and will require, for example, two separate consultation exercises.

Community and voluntary schools should consult *Changing school category to foundation – a guide for governing bodies*, issued by DCSF, and must comply with the statutory guidance set out in that document (see the bibliography).

Voluntary schools will need to include a statement in their statutory proposals to become trust schools confirming that the consent of the trustees and the people by whom foundation governors are appointed has been obtained. For more information for voluntary schools exploring trust school status governing bodies should consult *Trust school proposals: a guide for local authorities and governing bodies* and must observe the statutory guidance found within that document (see the bibliography).

DCSF has produced a toolkit to guide schools through each stage of the process. This contains most of the documents and background information that governing bodies and head teachers will need. Schools may wish to employ consultants and also lawyers to advise in relation to the transfer of staff, land and buildings. The university simply needs to be aware of the obligations it is taking on if it becomes a member of the trust company.

The Charities Act 2006

Once the relevant provisions of the Charities Act 2006 come into force it will be possible to consider establishing the trust as a charitable incorporated organisation. In the meantime the most appropriate structure is normally a company limited by guarantee. The company will require a memorandum and articles of association and will need to be registered with Companies House. In addition, it may be necessary for the trust company to be registered with the Charity Commission, particularly if the trust is to own any property over and above the sites of the schools. The requirements of the Charity Commission will need to be taken into account when the memorandum and articles of association are drafted.

When the trust school has been established, school staff employment contracts will be transferred from the local authority to the governing body. The conditions of service will normally be preserved. The local authority will need to undertake a consultation with the staff.

The ownership of school land and buildings will also be transferred by the local authority to the trust. This is brought about by the regulations made under the 2006 act. If the title to the school site is registered at the Land Registry a formal transfer document will need to be drafted and signed by the local authority and the transfer registered.



5 The benefits for universities

Academies

Pete Birkett, the principal of Barnfield College, summarises the main benefits of involvement with academies:

- greater muscle in the marketplace for goods and services arising from increased purchasing power;
- the chance to pool resources in areas such as marketing, human resources and grounds maintenance;
- opportunities to share organisational excellence and spread good practice;
- increase in the range of funding open to the group of institutions;
- enhancement of the college's reputation both locally and nationally;
- strengthening of the college's ability to respond to government initiatives such as 14–19 diplomas and the extension of compulsory education and training to the age of 18;
- increased progression of students from the academy into further and higher education generally, and to the sponsoring institutions in particular. Engagement with an academy can therefore be an important part of a university's 'widening participation' strategy.

Professor Di Birch, University of Nottingham, states that close involvement can also provide opportunities for research about the effect of the academy movement, including research in partnership with academy staff that may be of wider benefit to other schools facing similar challenges. This in turn can provide the college/university with an opportunity to inform government policy.

Trusts

Benefits identified by participating universities include:

- involvement in what institutions feel is leading educational development;
- an opportunity to encourage those leaving the school to apply to them;
- involvement in the trust and the governing body may be a useful opportunity for college and university staff to develop themselves and acquire insights into the process of setting and monitoring institutional strategy;
- the trust school concept presents an opportunity for colleges and universities to partner schools and other bodies including businesses, charities and local authorities, without the significant investment of management time and (in some cases) money that is required when linking up with academies.



6 The challenges for higher education

Academies

It is possible for an academy project to be widely supported by the schools concerned, the local authority and the staff of the sponsoring educational body. However, even those committed to sponsoring academies will agree that such projects are demanding. Key challenges may include:

- A substantial amount of management time will need to be dedicated to setting up the academy and contributing to its governance thereafter: there is no provision by the Higher Education Funding Council for England (HEFCE) or other public sources to meet these costs. There is DCSF funding for the consultancy and legal costs of setting up an academy, the construction of a new or refurbished building where appropriate and for the academy's operating costs. The Office for Fair Access (OFFA) has said that it will recognise the resource costs of academy sponsorship as a legitimate contribution to a university's overall outreach effort within its OFFA agreement.
- in some cases, however, academy proposals are controversial. The real challenge then is the effective engagement with a whole range of stakeholders, including the local authority, the closing schools, parents, DCSF, any co-sponsors, trades unions and the individual employees who will transfer to the academy. There will be detractors both locally and from organisations such as the Anti-Academies Alliance. The consultation process requires a large input of resources, by the lead sponsor in particular.
- local authorities are key players. Their role in different schemes has varied although all academies are established in close consultation and agreement with the local authority concerned. The whole process of transition planning requires skilful relationship management. An obvious example is the fact that any staff appointment by the closing school during the transition is effectively an appointment to the academy. The academy needs to be involved in the recruitment process but this can only be achieved by influence and cooperation.
- a number of practical issues have to be addressed: institutions' constitutional documents need to be checked to ensure that they have the powers to engage with academies and that there is sufficient benefit to the university itself to justify investment of its resources, given its status as a charity. Generally, so long as there is sufficient connection between the proposed academy and the activities of the university there will be no difficulty in this respect.
- other key tasks include translating an educational vision into a fit-for-purpose building, restructuring staffing to cope with school mergers, reviewing terms and conditions of employment, undertaking a TUPE consultation and deciding whether to merge closing schools or set up separate academies for each.
- consideration needs to be given to the relationship between the university and the academy once it has been established. For example, where a university appoints the majority of the academy's governing body, is the university's governing body aware of the need to avoid seeking to influence the strategic direction of the academy in such a way as to make it possible to argue that the university's governors are shadow directors of the academy company?

Case study: Barnfield College

Before getting involved as sponsors, the Barnfield College principal, Pete Birkett, and his team had to secure the support of the two school boards as well as the college board. He also had to do a good deal of work with the staff in the college and schools to win their backing for a fresh start for the children in those schools. Their commitment to the project by the expression of interest stage was essential. Whilst it would have been possible for them to withdraw later, that would not have been advisable given the time and money spent on the project by the institutions concerned and by DCSF.

Having led the project for two years while also running the college, Birkett strongly recommends identifying at an early stage the key staff who will work on the project with the consultants and other external professionals. He suggests a comprehensive project plan should be created with a risk register and a log of all academy activity. Funding to cover unforeseen circumstances and external advice should be allocated.

Above all, to change the culture of the schools, the project leaders need:

- a shared vision;
- effective leadership;
- innovative delivery and assessment methods;
- appropriate facilities;
- robust partnerships; and
- the freedom to make decisions that are right for the institutions involved.

Birkett concludes that 'creating and running a successful academy is not easy but, if an institution has got the intellectual DNA that could be transferred into a failing school and change the lives of young people, the end results are well worth the effort'.

Trusts

Involvement in a trust school presents fewer issues for a university than an academy project does, but several challenges may arise:

- some local authorities may be ambivalent in their support for trust schools, although many have now become more positive in light of the concessions made by the Government as the trust proposals went through Parliament;
- the schools involved in a trust proposal may be educationally weak;
- there may be a hope, if not an expectation, that partners will make an investment in cash and/or kind to strengthen the school's resources;
- the process by which schools 'acquire' a trust involves a statutory consultation process with the local authority and local community which must be scrupulously observed if the proposal is not to be referred to the adjudicator. This is the responsibility of the school or schools proposing to acquire a trust but a higher education institution would not wish to be associated with a proposal which was the subject of challenge on the grounds of failure to comply with the statutory procedures;
- staff at the school may have concerns, even though their conditions of service should remain at the current level as a result of the transfer of employment;
- lawyers will be needed to establish the trust and the land transfer; DCSF is making a payment of £10,000 per trust towards meeting such costs. However, the complexities are substantially less than those involved in establishing an academy.



7 Conclusions and next steps

We appreciate that there are different schools of thought on the educational effectiveness of academies and on the desirability or otherwise in policy terms of both academies and trust schools. This report does not attempt to enter these debates, although the bibliography contains some references to key reports on the effectiveness of academies. The trust school concept is too new for there to be much evaluating material available.

We hope that this report has set out some of the key points that universities would wish to consider when engaging with potential academies and schools seeking to establish a trust.

Universities may find it helpful to speak to colleagues who have already started to engage with academies and trusts. Details of individuals who have agreed to be available for this purpose are given in the final section of this report and in the DCSF prospectus.



It is clear that there is a number of factors which require consideration when assessing the merits of engaging with an academy or trust. To facilitate this process the Institute of Education has developed some principles of engagement. In considering any proposals for institutional involvement in the governance of a school, they must meet two overarching principles:

- make a positive contribution to furthering the institute's mission; and
- be complementary to, and not jeopardise, the institute's relationship with other schools in the London region.

Outlined below are some of the areas higher education institutions may wish to consider when evaluating a proposal.

Strategic fit

Does the proposed method of involvement fit with your institution's strategies, including those for widening participation and community engagement?

Will your institution's involvement benefit the academy or trust? Is an academy or trust the most appropriate approach to addressing the issues facing the school in light of the social, economic and other factors in play in the locality?

Has the institution undertaken an internal risk assessment? Has a thorough consideration been given to the school and the circumstances surrounding it? If relevant, is it known why the predecessor school may have experienced difficulties?

Are there other higher education or comparable partners which would provide a better fit for the circumstances of the academy or trust? Has consideration been given to the suitability of the co-partners in terms of their ethos and business interests?

Geographical proximity and fit

Are the school(s) located in an area which will facilitate appropriate levels of engagement between the institution and the school(s)?

External stakeholders' views

Have you consulted key external stakeholders and have they indicated likely support? Relevant stakeholders may include your institution's partners in Aim Higher and Local Learning partnerships.

Internal stakeholders' views

Has your institution's governing body confirmed its support? Has there been consultation with your institution's staff, including those staff involved in outreach and widening participation activities, and trades unions? Are such staff broadly supportive of the planned participation?

Resource implications

Has there been an adequate analysis of the likely costs to your institution, both initial and ongoing, and including a realistic estimate of the cost of staff time as well as any investment of money and facilities? Similarly, has an adequate analysis of the likely benefits to the institution, for example in additional applications, been undertaken?

Implementation issues

Staffing

What, if any, liabilities will be carried over from the outgoing school to the new school? To what extent will the Secretary of State (in the case of an academy) or the local authority (in the case of a trust school) provide funding to meet them? DCSF provides recurrent funding for academies through their funding agreements. This funding is comparable to that given to existing similar schools.

Will there be any changes that will affect employees (whether contractual or non-contractual)? If so, can staff (and DCSF) be reassured that such changes will not be to their detriment?

To what extent will there be changes in staff pension arrangements? If so, will Government or local authority funding be available to pay for alternative pension provision?

Will affected employees have union representation with whom any consultations can be conducted or will they have to elect workplace representatives for this purpose?

Land and buildings

Does the local authority have a good title to all the land used by the school; are there any restrictions on the land which might prevent the transfer without the consent of a third party?

Will the local authority still own land next to the school's site? If so, will it be necessary to have discussions about any rights to be reserved by the authority for that adjoining land?

Will the local authority seek to share in the proceeds of sale by the trust of any part of the land in the future?



Building Schools for the Future: DCSF programme for refurbishment of the state schools estate. Increasingly local authorities with proposals under this programme are being encouraged by DCSF to convert the schools concerned to academies.

Company limited by guarantee: company registered at Companies House; the liability of **members** (ie those persons or organisations that agree to sign the company's memorandum and articles of association) is limited to the amount (normally a nominal figure) they have agreed to pay if the company is wound up. Contrast with **share companies** where members' liability is limited to the amount of the face value of the shares for which they have subscribed. The Charity Commission will normally expect that a charitable company will be limited by guarantee. The members of the company will appoint the **directors** to deal with everyday running of the company, and to be accountable to them at general meetings.

Endowment: funding provided by sponsors or other donors which must be held in trust for the purposes of the school.

(State) maintained school: a school whose recurrent funding is provided through a local authority (or in the case of an **academy** or **city academy** or **city technology college**, by DCSF). This is in contrast to independent schools where most of the funding comes from fees or other non-state sources. Technically academies are independent schools, but they possess few of the legal or practical characteristics of the independent education sector.

The main types of school maintained by local authorities are:

community: whose assets are owned by the local authority which is also the employer of staff and the admissions authority.

foundation: whose governing body employs the staff and is the admissions authority. A foundation school may, but need not, also have a foundation that owns the school's land and premises. Such a foundation may be of long standing or be more recently acquired under the Education and Inspections Act 2006 (in which case it may be referred to as a **trust school**). Foundations allow external stakeholders to play a role in supporting one or more schools.

voluntary: most have a religious character and a long-established foundation. They may be either **voluntary controlled** with the foundation owning the land and buildings but the local authority employing the staff and (unless delegated) being the admissions authority; or **voluntary aided** with the foundation owning the land and buildings, employing the staff and acting as admissions authority.

trust: in law the relationship formed when one or more legal persons (trustees) agree to hold assets on behalf of identifiable other(s) (beneficiaries) or for persons generally for some purpose which the law recognises as charitable (such as education). The Education and Inspections Act 2006 puts in place the statutory framework for schools to become trust schools.

Trust schools are not a new or different category of school, but are foundation schools supported by a charitable foundation or trust.

A trust school is defined as a foundation school with a foundation. Foundations are defined in Section 21 of the School Standards and Framework Act 1998. The statutory purpose of a foundation is to hold land on trust for one or more schools. It may also appoint foundation governors to those schools where the school's instrument of government so provides.

For a more detailed description of the types of state school see the glossary in *Academies and trusts for higher education: prospectus* (2007), issued by DCSF, <http://www.dius.gov.uk/publications/prospectus.pdf>

Statutory purpose of trusts

Legislation makes several requirements as to the form and function of trusts and foundations. Trusts must be incorporated either as: a company registered under the Companies Act 1985 as a company limited by shares or by guarantee; or a body incorporated by Royal Charter.

All trusts must be charitable; have exclusively charitable objects, including the particular charitable object of advancing the education of all pupils at the school(s) for which the trust acts as the foundation; have aims which are, demonstrably, for the public benefit; and promote community cohesion.

Certain categories of persons are disqualified from being trustees under the School Organisation (Requirements as to Foundations) (England) Regulations. This includes a person who has not obtained a criminal records certificate under Section 113A of the Police Act 1997 – this certificate may be obtained only from the Criminal Records Bureau.

The Secretary of State for Children, Schools and Families has the power to remove and replace individual trustees in certain prescribed circumstances.



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Sutton Trust (2008) *The academies programme: progress, problems and possibilities*. A report by Andre Curtis, Sonia Exley, Amanda Sasia, Sarah Tough and Geoff Whitty. Institute of Education, University of London. <http://www.suttontrust.com/reports/AcademiesReportFinal2.pdf>

Websites

Trust and Foundation schools website
<http://www.trustandfoundationschools.org.uk/default.aspx>

http://www.trustandfoundationschools.org.uk/schools/resource_and_publications.aspx
– link to the trust schools toolkit which outlines the process that schools need to go through to acquire a trust; this guidance can be download as a pdf or Word document.

Department for Children, Schools and Families: Standards Site
www.standards.dfes.gov.uk/academies

Partnerships for Schools website
www.partnershipsforschools.org.uk/

Contacts

The following people working in higher education institutions and involved in academies and/or trust schools have confirmed that they are willing to have discussions with institutions in relation to these matters:

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