



Department  
for Education

**The  
National  
Society** | for  
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education

CHURCH OF ENGLAND & CHURCH IN WALES

# Memorandum of understanding between the National Society and DfE

September 2023

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## Purpose of this document

This document sets out the key principles and working arrangements agreed between the National Society and the Secretary of State for Education. It applies to all Church of England schools that already have, and those that are taking on, academy status, setting out the relationship with the Diocesan Board of Education and regarding any statutory action to support, challenge or intervene in any underperforming Church of England local authority maintained school or academy (including 16 to 19 academies).

This document reflects the existing role of the Church in the wider education system and the continuing contribution the Church can play as the system evolves towards a fully academy trust led system.

This document should be read alongside relevant legislation, regulations and guidance<sup>1</sup>, as they apply to Church of England schools. It replaces the previous MoU agreed with the National Society in 2016.

## Who should read this document?

Regional Directors (RDs) and their teams, Advisory Board members, Diocesan Directors of Education, Diocesan Boards of Education (DBEs) and their officers, National Society officers, those involved in the governance and leadership of Church of England schools and academy trusts and their respective legal advisers as well as relevant Department for Education and ESFA officials.

## Definitions

“Church School” includes both academies and local authority maintained schools with a designated Church of England religious character.

“Church MAT” refers to any Multi Academy Trust with Church of England Articles of Association which are based on the agreed model.

“Diocesan Strategy” means the published academisation strategy of the relevant diocese.

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<sup>1</sup> including but not limited to the School’s Causing Concern Guidance and Commissioning High-Quality Trusts

“Trust Development Statements” mean statements published in April 2023 setting out the Department for Education’s priorities for developing a system led by high-quality trusts in each area.

This MoU uses the wording ‘Department for Education’ (“DfE”) and ‘Secretary of State’ interchangeably. The Regional Director acts on behalf of these bodies.

## Key Principles

1. The Secretary of State values and is committed to sustaining the formal and statutory partnership between the Church of England and the State in education. Children and young people across the country continue to benefit from the combination of inclusive, high quality education provided by Church Schools in line with the Church of England Vision for Education: Deeply Christian, serving the common good.

2. The Church of England is committed to the flourishing of children and adults through its schools and to the development of the school system in a way that makes that both possible and sustainable<sup>2</sup>. The Secretary of State remains committed to securing the religious character of every Church School and to preserving diocesan families of schools. The Secretary of State recognises the responsibility of DBEs to all the Church Schools within their diocese and the children in those schools whether these are local authority maintained schools or academies. The Secretary of State also acknowledges and accepts that it is for DBEs to plan strategically for the exercise of this responsibility, adhering to the Diocesan Strategy of the diocese and working closely with the RDs including in relation to school improvement. The National Society, and the DBEs and their officers, are jointly committed to ensuring every pupil attending a Church School flourishes and receives the best education possible, and to ensuring swift and decisive action is taken in response to any concerns about the current or future performance of a Church School. The Secretary of State recognises that this may mean the DBE involving the charitable trustees of the school site (the Site Trustees) and other partners and stakeholders. The Secretary of State also recognises that Site Trustees have a duty to maintain the purposes and character of the educational endowment for the site. Working with DBEs and DfE officials, the Secretary of State will act with sensitivity to the context of Church School sites.

3. RDs are now responsible for making the majority of decisions relating to academy conversion and intervention in each region, on behalf of the Secretary of State. RDs will use evidence including but not limited to DfE's Trust Quality Descriptions to inform their commissioning decisions and will engage DBEs to secure qualitative evidence where required<sup>3</sup>. In exercising their responsibilities, the RDs are acting on behalf of the Secretary of State and thus subject to the commitments given by the Secretary of State in this memorandum and elsewhere.

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<sup>2</sup> including ensuring that statutory freedoms and protections that apply to Church of England local authority maintained schools translate across to academies with a religious character.

<sup>3</sup> Working with the relevant Advisory Board as applicable.

4. The relationship between RDs and DBEs relies on both parties' ongoing commitment to consistency and transparency during the decision making process. This memorandum is intended to guide and support RDs and DBEs in fulfilling that commitment. Both parties will be expected to act in accordance with the principles and protocols described in this memorandum. In particular, it is agreed that RDs and their staff, Advisory Board members, DfE officials and academy representatives will not enter into detailed discussions with a Church School about conversion, concerns over standards, movement into a MAT or movement from one MAT to another without there having been prior discussion with the DBE, referencing and engaging with the Diocesan Strategy and ensuring diocesan engagement in any consequent process.

5. This includes an expectation that RDs and DBEs will seek to develop a shared understanding of the Diocesan Strategy and Trust Development Statements, and to work constructively together. RDs and DBEs will also be expected to seek to share information about Church Schools at the earliest opportunity, in particular where there are any concerns about standards, governance or religious character. In line with the Church Supplemental Agreement, RDs and DBEs agree to maintain an open and frank dialogue so that any matters that, in the reasonable opinion of the parties, may have a significant effect on the running of a Church academy shall be discussed in an appropriate manner recognising each party's viewpoint<sup>4</sup>.

6. It is recognised by the DfE that any judgements as to the religious character of Church Schools and the sufficiency of any protection of that character are solely for the DBE as the religious authority and may be informed by SIAMS<sup>5</sup> inspection.

7. The model documentation (Articles of Association, the Church Supplemental Agreement and special clauses for the Master Funding Agreement and Supplemental Funding Agreement) agreed between the National Society and the DfE will be used<sup>6</sup>. In very limited circumstances, where the DfE determines a variation to the model would be justified, this would be led by the DfE and RD team in consultation with the DBE and the National Society.

8. The RD will identify a senior lead point of contact from within the Regional Group team for each diocese and RDs will meet with DBEs sufficiently often or at

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<sup>4</sup> 12(B) of the model Church Supplemental Agreement

<sup>5</sup> Statutory Inspection of Anglican and Methodist Schools (SIAMS)

<sup>6</sup> To support this, the Model Articles of Association include flexibility to allow for differing governance arrangements as set out within the Diocesan Strategy

least once per academic year, to establish and maintain a good working relationship.

9. It is the expectation of the Secretary of State and the National Society that RDs and their staff, DfE officials, ESFA officers and DBEs and their staff (in their capacities as the religious body and Members of academy trusts, and in a manner consistent with their charitable objects and statutory duties) will comply fully with the terms of this memorandum.

# Protocols guiding RDs' and DBEs' engagement with Church Schools

## Schools converting to academy status

### 1. Local authority maintained Church of England schools converting to become academies in existing Church MATs

- a) The DfE respects the statutory right and requirement for the consent of various diocesan bodies to allow a local authority maintained Church of England school to become an academy or a Church of England college to become a 16-19 academy.
- b) Our shared expectation is that Church MATs are formed with majority governance structures - an academy trust company with a majority of Diocesan appointed Members and Directors. Where required, the Model Articles of Association contain flexibility to adapt those governance requirements in accordance with the Diocesan Strategy to allow for the local context. A Church MAT will therefore normally be formed on the basis of Diocesan appointed majority governance provisions and may be formed with equity governance or minority governance with a minimum of 25% representation where that is the agreed strategy of the DBE.
- c) There is a strong expectation for voluntary aided (VA) schools to convert and join a Church MAT with majority governance provisions in order to best safeguard the religious character of former VA Church of England schools.
- d) Subject to (b) above, our shared expectation is that consent will only be withheld by the DBE in exceptional circumstances, for example, where both the DBE and RD agree that there is no suitable Church MAT available at that time; or should the DBE have serious concerns about the school's capacity or intention to sustain its religious character<sup>7</sup>.
- e) In all other cases, and subject to, (i) the satisfaction of any conditions that may be required by the DBE in the letter of conditional consent<sup>8</sup>, including those relating to land and the completion of statutory transfers where required, and ensuring that the religious character and ethos of

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<sup>7</sup> For example, the Diocesan Strategy may specify no dilution of the level of Church governance at local level as established in the predecessor setting immediately prior to conversion.

<sup>8</sup> Subject to provisions in section 3(4) of the Academies Act 2010 which require the consent of the Site Trustees of the school and those that appoint the foundation governors to apply for an Academy Order.



the school is maintained; and (ii) consistency with the Diocesan Strategy, we expect the DBE's final consent to be prompt.

- f) The DBE's and the RD's expectations are that the governing body of any local authority maintained Church of England school wishing to become an academy will approach the DBE as early as possible to discuss their options for conversion, the due diligence to be undertaken by them and to agree the process for securing the consent of the DBE.

## **2. Church MATs sponsoring underperforming schools.**

- a) The availability of strong MATs is central to driving up performance in an academy trust led system. Every strong academy trust benefits from freedom to innovate and to find efficiencies across the group of academies they manage. They are expected in return to embrace their responsibility by supporting the implementation of the Diocesan Strategy and helping those underperforming academies that join their trusts to support their improvement.<sup>9</sup>
- b) The Secretary of State recognises the need for DBEs to sustain the diocesan family of schools through the outworking of the Diocesan Strategy. This includes maintaining proper oversight of the diocesan family of schools and ensuring capacity within the academy trust regarding any further underperforming schools (either religious or non-religious) that are taken on by their MATs.
- c) Where Regions Group has issued a maintained school with an academy order, the process will identify the most suitable academy trust to sponsor that school, meetings between the academy trust and the DfE will always include diocesan representation. Regions Group will refer to the relevant diocesan strategy to ensure any decision meets the needs and priorities identified by the dioceses. When making commissioning decisions, Regions Group will discuss its decision with representatives of the diocese before communicating directly with the academy trust. Similarly, where Regions Group has exercised its intervention powers to transfer an underperforming school out of one academy trust to another, the process will determine which trust is best placed to sponsor the school to deliver rapid and sustained improvement.

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<sup>9</sup> Including support for those settings at which an Academy Order made under Section 4(A1) of the Academies Act 2010 as inserted by the Education and Adoption Act 2016 is issued (see below at section 3) or where the Secretary of State determines an Academy Order is made in respect of a local authority maintained church school that is not making necessary improvements.

- d) Regions Group will follow the steps outlined in the Commissioning High-Quality Trusts Guidance to narrow down the longlist and decide the best trust to support each underperforming school. Regions Group are, however, removing the need for trusts to obtain designated sponsor status from the decision-making process, have withdrawn the application process for trusts to apply for designated sponsor status and from September 2023 trusts will no longer hold such status. Although designated sponsorship will no longer be a formal part of the commissioning approach, Regions Group will continue to use the term 'sponsor', to refer to the process by which trusts take on an underperforming school following departmental intervention. This change will not affect the status of sponsors named in academy trusts' articles of association.

## **Sponsored and other underperforming academies**

This section should be read in conjunction with Schools Causing Concern statutory guidance for local authorities and regional directors.

### **3. Intervention in local authority maintained Church of England schools that are Inadequate or not making necessary improvements**

- a) The Secretary of State agrees that on receipt of an inadequate judgement relating to a local authority maintained church school, the RD will engage with the Diocesan Strategy and the DBE at the earliest opportunity to discuss next steps.
- b) In the case of a local authority maintained church school that receives a second (or further) Ofsted judgement of below Good the RD will engage with the Diocesan Strategy and the DBE at the earliest opportunity to discuss an appropriate solution.

Where the Secretary of State is under a duty to issue an Academy Order in respect of a local authority maintained church school that has been judged Inadequate by Ofsted or where the Secretary of State determines that an Academy Order is made because a local authority maintained church school is not making necessary improvements:

- a) The Secretary of State and the National Society both expect adherence to the Diocesan Strategy. The RD will consider the Diocesan Strategy to identify opportunities, ensuring that, in all circumstances, the potential solution best safeguards the

religious character of the church school. This may include, for example,

- i a Church MAT that is not geographically local to the church school (which may include establishing a Hub model),
  - ii an existing MAT which may require cross diocesan support.
- b) These arrangements may require additional protections in the Articles of Association and ancillary agreements including local governance provisions.

#### **4. Transfer of underperforming church academies and/or those where the religious character is at risk**

- a) Where a church academy is underperforming, either because it is Inadequate or has received two or more consecutive judgements below Good the RD will engage with the DBE at the earliest opportunity and must consider its representations in line with the Schools Causing Concern guidance.
- b) As set out in section 3 above, for local authority maintained church schools the Diocesan Strategy will identify a diocesan or strong Church MAT and may identify any opportunity for cross diocesan working.
- c) Where a church academy is failing to maintain and develop its religious character and ethos to the satisfaction of the DBE or there is a serious breakdown in the way the church academy is managed or governed<sup>10</sup> and, in the view of the DBE, requires further remedial action that it does not itself have the powers or the capacity to provide, the DBE will engage with the RD at the earliest opportunity. The RD will respond promptly to the DBE's concerns. Consequent actions may include (if the DBE and Secretary of State both agree) the transfer of the church academy into a different Church MAT. In such circumstances, the provisions of Protocol 4 will apply insofar as they are relevant.

It is expected that the DBE and RD will work together to enable the church academy to transfer to a High-Quality Church MAT.

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<sup>10</sup> See clause 12(A) of the model Church Supplemental Agreement

## **5. Issuing of a performance standards and safety warning notice to a local authority maintained church school**

Where the RD issues a performance standards and safety warning notice to the governing body of a local authority maintained church school (in accordance with the process set out in the statutory Schools Causing Concern guidance), the RD will, at the same time, give a copy to the DBE.

## **6. Issuing of a termination warning notice**

In line with the Schools Causing Concern guidance, where a Church Supplemental Agreement is in place alongside the academy's Funding Agreement, the RD will copy in the DBE to all letters sent to the academy trust regarding a church academy that is not making necessary improvements. The RD will also extend all invitations to make representations in relation to a church academy that is not making necessary improvements to the DBE.

Where the RD is minded to issue a termination warning notice to an academy trust in relation to a church academy (in accordance with the process set out in the academy's Funding Agreement with the Secretary of State and as set out in any Church Supplemental Agreement) the RD will notify the DBE of their intention to act, and their reasons for doing so. The RD will then allow the DBE a reasonable opportunity to make representations, including describing any actions the DBE intends to take to remedy any failing of the church academy, to which the RD will have due regard before finally taking any action.

## **7. Interim Executive Boards appointed to local authority maintained church schools**

- a) All obligations on the governing body of a local authority maintained church school in relation to maintaining the religious ethos of the school also apply to an Interim Executive Board (IEB).
- b) The RD will contact the DBE at the earliest possible opportunity when consideration is being given to the establishment of an IEB in any church school.
- c) Before an RD can exercise their power to establish an IEB to a church school, they must involve and consult the DBE<sup>11</sup>. We would expect that

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<sup>11</sup> An IEB may also form part of intervention pending securing sponsored arrangements as required, see also section 2 above.

consultation to provide an opportunity for the DBE to nominate sufficient IEB members (and in any event no lesser representation than may at the date of this document represent current working practice) and for RDs to accept that nomination, providing they agree with the DBE's assessment that the nominated person(s) has the capacity and relevant skills required to fulfil their role on the IEB. In the event that the RD does not agree with the DBE's recommendations, the DBE will be given the opportunity to make further nominations so as to at all times retain representation as above. These same principles would apply where the RSC is exercising any powers of intervention in relation to an IEB established by a local authority.

- d) Where any IEB – established by either the local authority or the RD - is established for a church school and the RD has concerns about an IEB member nominated by the DBE and removes them, the DBE will be asked if it wishes to nominate a replacement IEB member. Again, RDs will be expected to accept such a nomination, providing they agree with the DBE's assessment that the individual has the capacity and relevant skills required to fulfil their role on the IEB.

## **8. DBE requests for RD intervention**

- a) The DfE is committed to assisting DBEs and Church Schools in acting swiftly to address any risk of underperformance or concerns, including in respect of the proper conduct of an academy trust. Where a DBE has concerns about performance in a Church School, and considers that the Church School, the academy trust and/or the local authority lacks capacity or intent to act, the DBE will inform the RD.
- b) The actions an RD may take may differ, depending on whether the Church School is a church academy or local authority maintained church school. The actions RDs can take are described in the relevant chapters of the Schools Causing Concern guidance.
- c) RDs will always act promptly and accordingly on such concerns and will take full account of the views of the DBE on what action is required to ensure the school's performance improves. This includes ensuring that, where applicable, the academy trust is conducted in accordance with both its Articles of Association and contractual obligations.

## **9. Governance arrangements for MATs**

- a) The Secretary of State expects multi-academy trusts to be the principal collaborative model used by all academies, though the DfE continues to respect the right for MATs to establish their own collaborative

arrangements. The accountability and responsibility for key decisions related to the running of an academy trust and its schools sits with the academy trust board, as does the relationship with the DfE.

- b) The DfE will respect such committee, hub or similar structures that Church MATs may use for the purpose of facilitating, supporting and monitoring regional or other sub-groupings of academies within the MAT.
- c) Where any merger of MATs that include church academies is proposed, the governance and form of the MAT resulting from that merger will be formulated in accordance with the Diocesan Strategy and relevant DfE policy leads<sup>12</sup>.
- d) It is expected the local governance will be secured within a church academy to strengthen and protect the local relationship between the diocese and church academy within the family of diocesan schools as reflected in the relevant Diocesan Strategy.
- e) Church academy governance structures should reflect the Diocesan Strategy, which establishes what is required to provide the best possible safeguard for church academies and to preserve the ability of the diocese to discharge its function under charity and company law. The Model Articles of Association allow for flexibility in the governance structures (see point 1(b) above) to allow for local strategy and context, including equity or minority structures (minimum 25% representation), and to ensure a home for every category of church academy within a Church MAT structure.
- f) In accordance with the Church Supplemental Agreement<sup>13</sup>:
  - a) The DBE has the right to be notified before the Secretary of State acts on RD concerns as to the suitability of any director or member of a church academy trust.
  - b) There is an obligation on the RD to meet with the DBE to discuss concerns.
  - c) The DBE has the right to receive information on concerns raised and be consulted on any proposed remedial action.

The DBE has the right to act before the Secretary of State exercises its own powers.

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<sup>12</sup> This reflects the requirement for consent from the DBE and Site Trustees as established under the Church Supplemental Agreement.

<sup>13</sup> See s20A – F of the model Church Supplemental Agreement

## **10. Closure of Church of England local authority maintained schools and academies**

The RD and the DBE will discuss and share views at an early stage regarding the closure of a Church School as the only viable outcome. If this is the case, the RD and DBE will work together to agree a process for closure, reflecting any relevant legal and contractual requirements or departmental guidance.

## **11. New Schools**

Where there is a need for a new Church of England academy, the RD will work with the DBE to establish if, in accordance with the Diocesan Strategy alongside wider strategic plans, it will be possible to establish a Church of England free school<sup>14</sup>.

## **12. Mediation and Review**

There may be instances where an RD and a DBE are unable to agree a way forward.

Where this is the case, the RD and DBE will be expected to contact the National Society, who will use their best endeavours to facilitate further discussions to find a solution.

The Secretary of State and National Society agree to review this document when requested by the other to ensure that it is still fit for purpose and reflects legislation and practice between DBEs and RDs. This review process will take place as close as possible to the start of the financial year with the revised document coming into force at the start of the following school year e.g. revised document agreed in April comes into force in September.

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<sup>14</sup> In line with published guidance on establishing new free schools.



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