



Education Law

NEWS AND ADVICE FROM BIRKETT LONG

Academies...where to begin?



The decision of whether to convert to an academy remains a hot topic at governors' meetings. Here at Birkett Long, we are certainly seeing a lot of clients who want to convert.

A further consideration in the decision making process is the fact that the Government has still not made up its mind on whether or not conversions should be compulsory! Therefore this issue of our education newsletter will cover academy conversions. We will be mapping out some of the matters you need to consider and how our specialist team can assist.

If you haven't already converted to an academy, the decision is not one to be taken lightly, and much time will be spent considering which option to take from the following:

- join a network of schools already established as a Multi Academy Trust;
- agree with other non-converted schools to join forces and establish a new Multi Academy Trust together;
- go it alone, setting up your own Multi Academy Trust and taking on schools as and when the right opportunities arise

Then there are the additional considerations of whether you would like to take on sponsorship status and help other schools who could benefit from your expertise.

Regardless of what option you choose, you will also need to ensure that:

- you feel comfortable that you can work with the other schools you are considering joining;
- you are of a like-minded nature, or you are confident that your differences will allow you all to thrive; and
- the structure will be designed in a way that is likely to drive the schools forward

If you decide that converting to an academy is right for your school, there are a number of steps that need to be completed prior to the conversion, and we have explained some of these in greater detail over the page.



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Converting to an academy

Once you have made the decision to start along the conversion process, there are certain stages you must complete.

Getting permission to convert

There are a number of consents that you will need to acquire before you start the formal conversion process, namely:

- consent from your governing body (in all cases);
- consent from the Multi Academy Trust (if you are joining a pre-existing trust);
- consent from your trust or foundation (for foundation schools and voluntary schools with a foundation);
- consent from your religious body (for church and faith schools); and
- consent from the Secretary of State for Education (in all cases).

Statutory consultation

You should let various people know about your plans to become an academy, including staff members, parents, pupils, your local authority and any separate special educational needs units or children's centres that your school may have. A formal opportunity must also be provided for anyone who may be interested in the school's conversion to consult with your governing body about the conversion plans. Responses to the conversion proposal

should then be reviewed by the governing body and suitable action decided upon.

TUPE consultation process

You will be required to consult with your employees about the proposed academy conversion. This is because employees are protected under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (also known as TUPE). Informal discussions should initially be made with staff by your local authority (for voluntary- controlled or community schools) or your governing body (for foundation or voluntary-aided schools).

Who to appoint?

You will need to consider who the key players will be in the structure of your academy. You will either need to appoint trustees for the academy (if establishing a new academy trust) or decide upon your school's representation within the Multi Academy Trust. Such representation could include your academy having its own local governing body if you are establishing or joining a Multi Academy Trust.

Land arrangements

Copies of all land registration documents must be obtained and land and title checks must be completed. This will help you to discover if there are any potential problems

Help is at hand

Our team

We have a dedicated team of experts who are fully equipped to deal with your academy conversion, each specialising in a certain part of the conversion process:

Stephen Avila, an associate solicitor, specialises in the company and contractual elements of converting your school to an academy and will deal with the day-to-day running of the conversions. He will:

- provide general advice in relation to the structure of the company and directors duties;
- set up your company and draft your Memorandum and Articles of Association;

- draft your commercial transfer agreement; and
- draft your master funding agreement and any supplemental funding agreements required.

Amanda Timcke and Emma Wraight, both associate solicitors, specialise in the land and property elements of the conversion process, and will:

- discuss and assist with completing the land questionnaire;
- deal with first registrations of land, if necessary;
- draft any leases and sub-leases required;
- transfer land, if required; and

with the land ownership and whether formal arrangements need to be put in place for sharing facilities. Once the land arrangements are understood, leases can then be drafted, or the land transferred, depending on your type of school.

Contracts

You will need to make a list of all the contracts and agreements that your school's governing body and local authority hold. These contracts will later be reviewed in order to decide which should be transferred to your academy trust or re-negotiated.

Banking

You should begin the process of setting up a bank account for your academy, as this can take time. Once your new account has been set up, this will replace your existing school's account, and any surplus money in the old account, as well as the academy support grant for the conversion process (£25,000), should be transferred. You will also need to update the Education Funding Agency with your new bank details.



- investigate any matters that crop up, such as boundary issues and shared access, and ensure these are dealt with prior to completion of the conversion.

Martin Hopkins, a partner, specialises in employment law and will:

- advise on the consultation process relating to TUPE, if required;
- provide general employment advice; and
- provide assistance in respect of pensions.

Reggie Lloyd, an associate solicitor, also assists with all employment law issues.

James Anaxagorou, business development manager at Birkett Long Human Resources (BLHR), can assist you with your post-conversion employment and human resources needs, which may have previously been dealt with by your local authority. James can:

- provide a free presentation on the benefits and value BLHR can bring to your academy; and
- set up a bespoke BLHR package for your academy to ensure that, going forward, you have the help you need with all the employment and HR aspects of your academy.



Amanda Timcke



Stephen Avila



Martin Hopkins



Emma Wraight



Reggie Lloyd



James Anaxagorou



property matters

Dealing with property in an academy conversion

The property aspects of an academy conversion can be more complicated than you may expect. There are a number of reasons for this. No matter whether the property occupied by the school is freehold/leasehold, or registered/unregistered, there needs to be a transfer of the freehold or a lease of the land and buildings. The type of transaction will depend on your type of school and the ownership history of the school land.

Voluntary aided/foundation schools

Land and buildings are always owned by the governing body. Once the academy trust has been set up (incorporated) the freehold title will need to be transferred to the trust, although this will be subject to the Secretary of State giving a direction for the transfer.

Other schools

The local authority will typically grant a 125 year lease to the academy trust on a nominal rent. The Secretary of State has the power to make a scheme for the transfer of the freehold title of the relevant land and buildings to the academy trust. Before it will give its approval for the conversion of the school to an academy, it will require that there is clarity relating to the arrangements for the occupation by the academy of the land and buildings, post conversion.

Investigating title

The title to the land will need to be checked to see:

- who owns it, locating the title deeds to establish who is in occupation of the school property;
- what liabilities apply to the title;
- what rights and liabilities the academy trust is taking on; and
- that the requirements of the Department for Education can be satisfied.

Common problems

- Lack of comprehensive records about ownership of the site;
- Registered ownership does not mirror occupancy;
- Unknown school boundaries; and
- Shared use of facilities and buildings by third parties or neighbouring nurseries/infant/junior schools.

If you are considering converting to an academy, please contact a member of the education team on 01206 217310. We would be glad to meet and talk to your head teacher and governors to help answer your questions and provide clarity.



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Free advice

We offer a free meeting with schools to discuss the conversion process in more detail and how we can help you.

If this is of interest, please contact either:

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