



Setting up an Academy Trust

Free Schools applications

Private & Confidential

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Introduction

The following resource is a guide to setting up an academy trust by establishing a Company Limited by Guarantee. It is intended to help free school applicants to prepare to open their new school. This document should not be used as a substitute for legal advice in the event of any issues.

Create: Schools highly recommends that applicants read this document in conjunction with our guidance on academy trust governance, for a full overview of the roles and responsibilities of members and directors, as well as the operational functions of academy trusts.

What is an academy trust?

An academy trust is a charitable company that is responsible for running either a singular academy or a group of academies. These are known as single-academy trusts (or “SATs”) and multi-academy trusts (or “MATs”). The academy trust is the legal entity that enters into a funding agreement with the Secretary of State. Academy trusts cannot be run for profit and any surplus must be reinvested into the trust to support the education of its pupils.

Academy trusts are exempt charities, which means they are regulated by the Secretary of State for Education, rather than by the Charity Commission. As a result of their charitable status, academy trusts must adopt a set of charitable objects, as set out in their Articles of Association. All academy trusts are required to “advance, for the public benefit, education in the United Kingdom”, as part of their charitable objects.

Academy trusts are responsible for employing staff and are governed by a board of trustees. Because academy trusts are governed by both company and charity law, their trustees are both charitable trustees and company directors. More information on academy trust governance can be found [here](#).

How are academy trusts regulated?

All academy trusts are overseen by a Regional Schools Commissioner that has a responsibility to intervene when academies in a trust are underperforming, or where an academy trust has breached its funding agreement. Academy trusts are also held financially accountable by the Education Skills and Funding Agency (ESFA) which is responsible for ensuring that public money is being properly spent. Although academy trusts themselves are not inspected by Ofsted, academies within trusts are individually inspected.

Do I need to set one up before I apply to open a free school?

Yes. New proposers are required to establish an academy trust before they apply.

Applicants that run one or more existing local authority-maintained schools are expected to convert their school(s) to an academy and form a MAT with the new free school. Although the DfE does not expect local authority-maintained schools to have converted prior to submitting a free school application, applicants will need to outline plans for conversion in their free school proposal.

1. How do I set up an academy trust?

1.1 Company Limited by Guarantee

To set up an academy trust, you must first establish a Company Limited by Guarantee (CLG). The CLG is the legal entity that will enter into a funding agreement with the Secretary of State on approval of your proposal.

CLGs are an alternative type of corporation, primarily used for not-for-profit organisations. In a CLG, any profit or surplus is distributed back into the company, not to its members.

A CLG does not have share capital or shareholders. Instead, a CLG (in this case the academy trust) has members who act as guarantors, who agree to pay a set amount of money towards company debts (usually £10). All academy trusts are founded by members, whose role it is to safeguard the academy trust's governance and to appoint an academy trust board that is the trust's strategic decision-making body. Members are not involved in the day-to-day business of the academy trust and will not assume the powers of the academy trust board.

1.2 Setting up a Company Limited by Guarantee

Applicants looking to set up a CLG must first register with Companies House. At its inception, an academy trust CLG must have at least three members, although it is the DfE's preference for academy trusts to have at least five members, so it is a good idea to identify these individuals at an early stage.

On approval of your free school application, the academy trust will begin to appoint a full board of directors, known as trustees or governors. Further guidance on the roles of members and directors, can be found [here](#).

At its formation, an academy trust should appoint a clerk, or governance professional, to undertake the tasks such as filing the annual return, annual accounts, resolutions and forms and updating the company books. More advice on appointing a clerk can be found in the DfE's [Academy Trust Handbook](#).

To register your CLG, go to the [Companies House website](#) and follow the steps provided to set up a private limited company. These include, choosing a name, choosing your directors and electing your guarantors (members). You will also need to complete your Articles of Association, a framework for

trusts to ensure they act within company and charity law. You can download the DfE's model Articles of Association for academy trusts [here](#).

The relevant documents, once completed, will need to be sent to Companies House with the applicable fee.

2. Guidance for local authorities

The recent [Schools White Paper](#) introduced plans by the DfE to allow local authorities (LAs) to set up new multi-academy trusts in areas where too few strong trusts exist. Initially, this policy is to be implemented on a test and learn basis, with a small number of projects to be selected to trial the format.

As well as allowing LAs to form MATs by converting existing LA-maintained schools to academies, the government has also signalled its intention to allow LA-led MATs the opportunity to open new free schools. The following guidance sets out how this process works for LAs. For specific advice on identifying and converting schools to form the MAT, please see the [DfE's guidance document for LA-established MATs](#).

2.1 What is an LA-run multi-academy trust?

The key distinctions between an LA-led MAT and any other MAT proposal, lie in its membership. As with all MATs, it is the board of trustees who will be accountable for the strategic direction of the academy trust, while the CEO will be responsible for day-to-day management of the academy trust and its schools. However, unlike other MATs, LA-led MATs will be permitted through their Articles of Association to fill more than 19.9% of their member roles with Local Authority Associated Persons (LAAP), so long as at least one member is independent of any LA. This same freedom is *not* to be permitted to the board of trustees in an LA-led MAT, which must still comply with the 19.9% cap on LAAPs.

LA-led MATs will be expected to operate in the same way as any other MATs and will be held accountable via the same systems and structures as other trusts.

2.2 How to apply to set up an LA-run multi-academy trust

Prior to developing a free school proposal or approaching any schools to form a MAT, LAs interested in setting up new MATs should speak to their DfE Regional Office about the need for a new MAT in the area and discuss how it would fit within the DfE's strategy outlined in the Schools White Paper. Following this discussion, LAs will need to submit a Registration of Interest; a ~2500-word document that answers a set of questions around vision for the MAT, governance, leadership, finance and the MAT's proposed school improvement strategy. Registration of Interest forms should be submitted by **31st July 2022**.

Applications will also need to demonstrate how the new MAT will meet the definition of a strong trust outlined in [Opportunity for all: Strong schools with great teachers for your child](#).

Once the Registration of Interest is submitted, LAs will receive feedback from the DfE Regional Office which is used to make any necessary adjustments to the proposal. LAs are encouraged at this stage to check if they are eligible for support through the [Trust Capacity Fund](#), to develop plans on how the new MAT will collaborate with other trusts in the area and to consider their strategy for managing any potential conflicts of interest. The final step before submitting an official application is to consult with the community on your proposal – get in touch with Create: Schools for more guidance on this.

When the above steps have been completed, LAs should submit their proposal to the DfE Regional Directorate Office. Please note, at the time of drafting the application form and timelines for assessment had not been publicised.

If approved, LAs are advised to follow the steps in this resource for setting up an academy trust, including registering with Companies House and completing a Memorandum of Understanding and Articles of Association before submitting them to the DfE Regional Office. These steps should be completed *before* submitting a proposal to open a new free school as part of an LA-led MAT, but can be completed alongside the development of a free school proposal.

For more information on where the DfE is approving new LA-led MATs, the support available for prospective LA-led MATs and how proposals will be assessed, please see the [DfE's guidance document for LA-established MATs](#).

3. Further reading

We highly recommend reading this resource on [Academy Trust Governance – structures and role descriptors](#) for a full overview of the roles and responsibilities of members and directors, as well as the operational functions of academy trusts. In addition, applicants are advised to familiarise themselves and ensure compliance with these key documents:

[Model Articles of Association](#)

[Governance Handbook](#)

[Academy Trust Handbook](#)

[Competency Framework for Governance](#)

If you would like further support regarding setting up an academy trust, please get in touch with one of our advisors at Create: Schools.