

## Merging Academy Trusts

### Introduction

In December 2016 the Department for Education (DfE) launched its good practice guidance for multi academy trusts (MATs). The guidance sets out a number of “design principles” for developing an effective MAT, acknowledging there are a number of successful models in operation. It would appear that the Department’s primary focus is to develop capacity for school improvement and to empower school leadership to reach beyond traditional confines. In the words of Sir David Carter, the National Schools Commissioner:

*“We want to encourage, support and challenge the best leaders to take responsibility for more schools and to bring their expertise in school improvement to benefit more children.”*

### Multi Academy Trusts

The benefits of being a MAT are clearly articulated in the guidance and can be summarised as follows:

- a. creating the right environment for transferring skills and sharing resources;
- b. focussing resources on shared needs and delivering efficiencies;
- c. strengthening voice and reinforcing vision as well as any unique characteristics;
- d. promoting consistency and the development of good practice;
- e. providing better career opportunities for staff;
- f. delivering a more holistic education which meets the needs of pupils and the community;
- g. reducing corporate and administrative costs;
- h. mitigating risk and building robustness by working together for the common good.

Whilst it is interesting that the guidance has acknowledged the continuing popularity of single academy trusts, this is only where such trusts are “successful and sustainable”.

It goes without saying that the benefits of collaboration can be secured in a number of ways, including through federations, teaching school alliances, with the support of a foundation, as a learning partnership or at the instigation of the local authority. But the use of a MAT is certainly considered to be one of the simplest and probably preferred options as far as the DfE is concerned.

### Merging Single Academy Trusts

Where schools wishing to come together as a MAT are already academies, then the legal steps for creating the MAT need to take into account the additional complexities involved in transferring academies from one trust to another and potentially the winding up of any redundant trust.

A merger of single academy trusts (SATs) can be done in one of two ways:

1. one of the SATs becomes a MAT and the other academy transfers to it;
2. a new MAT is established and both academies transfer to it.

The transfer process is akin to that undertaken when a maintained school converts to academy, though more care needs to be taken regarding due diligence given the freedoms an academy may have utilised since becoming an academy.

### Key Points to Note

- TUPE will apply to all staff transferring to the MAT
- A contract review is recommended to assess the impact of duplicate or overlapping contracts
- There will be little value in indemnities provided by a transferring trust which is intended to be wound up after the transfer
- A review of governance is likely to be needed so that it is clear what responsibilities governors (and/or trustees) will have in the new MAT
- Some roles may be affected, particularly leadership roles and that of the “accounting officer”
- Currently no grants are available for academy trust mergers unless this is part of a wider growth strategy
- Approvals will be need to be obtained from the Regional Schools Commissioner, the Education Funding Agency and any Diocese or foundation or sponsor body
- Whilst the decision to merge will naturally be one for the Trustees, the impact on the Members means it would be important to obtain their authority also

### Typical Steps

A merger is likely to take 3 – 4 months, once the appropriate consents are in place, and will involve the following steps:

1. Due Diligence
2. Consultation (as with academy conversion the emphasis should be on the long term educational benefits and implications for staff)
3. Establish the MAT and review governance
4. Review land arrangements and report to the EFA (a Form A is needed to obtain EFA consent to transfer academy land)
5. Where necessary obtain the approval of the LA or any site trustees to the transfer of land or assignment of a lease
6. Draft and obtain clearance to new funding agreements
7. Carry out an operational review, assessing the impact on contracts, banking and insurance arrangements
8. Agree process for the transfer of assets and contracts (including cash in the bank and debtors), assessing the need for warranties and indemnities
9. Complete transfer and sign new funding agreements
10. Wind up any redundant trust

We have advised a number of academy trusts on mergers and the transfer of academies to new trusts. For further information, please contact:

Andrea Squires, Partner on 020-7593-5039 or email [asquires@wslaw.co.uk](mailto:asquires@wslaw.co.uk)

or for more general advice to schools and academies, please speak to a member of our School Support Service team on 0345-070-7437 or send an email to [schoolsupport@wslaw.co.uk](mailto:schoolsupport@wslaw.co.uk).