

Briefing Paper for Master and Supplemental Funding Agreements

Executive Summary

The Master and Supplemental Funding Agreements are model form documents issued by the Department for Education (DfE). The Agreements set out the obligations that a Multi Academy Trust and the Academies within its group must comply with and cover matters such as funding, admissions and special educational needs.

In this report we have highlighted the key provisions that the governing body should be aware of in the Agreements.

Background

Before a Multi Academy Trust can operate to establish and manage Academies, the Multi Academy Trust must enter into a Master Funding Agreement with the Secretary of State for Education (SSE) and each individual Academy must enter into a Supplemental Funding Agreement with the SSE. The Agreements provide the framework within which each Academy must operate. The ongoing funding of an Academy is contingent upon the charity trustees meeting the conditions set out in the Agreements.

Master Funding Agreement

Introduction

Clause 1.1 of the Master Funding Agreement requires the name of the Academy to be inserted. Clause 1.2 requires the Multi Academy Trust's company number to be inserted after it has been established and registered at Companies House.

Obligations

Clause 1.13 is an important provision that sets out the purpose of this Agreement. In consideration of the Multi Academy Trust establishing, maintaining and carrying on a number of schools, the SSE agrees to make payments to the Multi Academy Trust.

Clause 1.14 provides that the Multi Academy Trust must ensure that each Academy shares facilities with other schools and the wider community.

Clause 1.15 requires that the Multi Academy Trust acts in accordance with the Articles of Association, Independent School Standards legislation and the Academies Financial Handbook.

Governance

Clause 1.21 provides that the Multi Academy Trust will be governed by a board of charity trustees.

The Multi Academy Trust must provide to the SSE the names of all new or replacement members within 14 days of appointment (Clause 1.24).

The Multi Academy Trust must not amend the provisions in its Articles relating to the appointment, election, resignation or removal of members or charity trustees (governance articles) without the SSE's consent (Clause 1.27). Before any change to the governance articles is proposed, the Multi Academy Trust must give notice to the SSE of the proposal and the reason for it. If the SSE consents, the Multi Academy Trust shall approve any changes to the Articles and provide the SSE with a copy of the amended Articles and the resolution approving them (1.29).

Running of the Academies

Clause 2.1 provides that the length of the school day and year will be the responsibility of the Multi Academy Trust.

Clause 2.2 requires the Multi Academy Trust to have enhanced disclosure and barring service certificates for staff, members and charity trustees.

Teachers levels of pay and conditions of service will be the responsibility of the Multi Academy Trust (Clause 2.5).

Clause 2.6 sets out a requirement on the Multi Academy Trust to ensure that teachers have access to the Teacher's Pension Scheme. Clause 2.7 ensures that other members of staff have access to the Local Government Pension Scheme.

Clause 2.13 provides for the Multi Academy Trust to publish the impact on educational attainment resulting from its expenditure of the pupil premium at each Academy. Clause 2.14 requires the same in relation to the literacy and numeracy catch up premium funding.

There will be no charge for admission to the schools and pupils can only be charged where the law allows maintained schools to charge (Clause 2.16).

Curriculum

Clause 2.22 sets out that the Multi Academy Trust must provide a broad and balanced curriculum for pupils up to the age of 16.

Clause 2.23 requires the Multi Academy Trust to publish information in relation to its current curriculum provision at each Academy.

Clause 2.25 requires the Multi Academy Trust to provide for the teaching of evolution as a evidenced theory.

The Multi Academy Trust must ensure each Academy actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs (Clause 2.26).

Clause 2.30 requires the Multi Academy Trust to publish its most recent Key Stage 2 or Key Stage 4 results on the website for each Academy. Information about where to find the most recent Ofsted reports and how to access the School Performance Tables for each Academy must also be published.

Grant Funding

Recurrent Expenditure

Clause 3.1 provides that the SSE shall pay grants towards recurrent expenditure and may pay grants towards capital expenditure at each Academy. Recurrent expenditure is money spent on the administration and maintenance of an Academy that is not capital expenditure. The SSE shall pay General Annual Grant (GAG) and may pay Earmarked Annual Grant (EAG) (Clause 3.3).

Capital Grant

The SSE may pay a grant to the Academy Trust for items of capital expenditure. Clause 3.6 sets out that capital expenditure includes:

- The acquisition of land and buildings;
- The erection, improvement or demolition of any building;
- The purchase of vehicles;
- The equipping of premises with furnishings and equipment, including computers; and
- Any major repairs that are specified as capital expenditure.

General Annual Grant

Clause 3.12 provides for GAG to be paid by the SSE to the Multi Academy Trust in order to cover the normal running costs of each Academy. These will include:

- Teachers salaries and non-teaching staff salaries;
- Purchase of teaching materials;
- Repairs, servicing and maintenance of buildings and grounds, including utilities bills and rent; and
- Insurance.

Clause 3.13 provides that GAG for each Academy financial year will include:

- Formula funding equivalent to funding that would be provided to a maintained school that had similar characteristics, including number of pupils; and
- Funding in respect of functions which would be carried out by the local authority if each Academy was a maintained school.

Clause 3.14 provides that the Multi Academy Trust must use GAG only for maintaining the Academies except where the SSE has given consent to use GAG for another charitable purpose.

The Multi Academy Trust must not use GAG for nursery provision for which parents are charged a fee; nursery provision to children outside of the Academy's age range; or for children's centres.

Earmarked Annual Grant

Clause 3.16 allows for EAG to be paid by the SSE to the Multi Academy Trust in respect of expenditure for specific purposes as may be agreed with the SSE. The Multi Academy Trust needs to submit a letter to the SSE outlining its proposals and the reasons for its request.

Financial and Accounting Requirements

Clause 4.3 requires the Multi Academy Trust to appoint an Accounting Officer. Clause 4.6 provides that the Multi Academy Trust must have regard to guidance in the Academies Financial Handbook.

Clause 4.9 provides that the Multi Academy Trust must balance its budget.

Clause 4.12 requires that the formal budget plan must be approved each financial year by the charity trustees.

Clause 4.14 provides that the Multi Academy Trust may carry forward unspent GAG for any Academy from previous financial years up to such percentage specified in the Academies Financial Handbook or by the SSE.

Clause 4.20 requires the Multi Academy Trust's accounts to be independently audited annually.

Clause 4.23 requires the Multi Academy Trust to publish on its website its annual reports and accounts; Memorandum, Articles and Funding Agreement; and the names of members and charity trustees.

The Multi Academy Trust must not, in relation to assets or property that have been funded in whole or part by the SSE, without prior written consent:

- Write off any debts or liabilities owed nor make any staff severance payments above a value for the time being specified in the Academies Financial Handbook; or
- Make any sale or purchase of freehold or leasehold property except as specified in the Academies Financial Handbook.

Clause 4.33 requires the Multi Academy Trust to notify the SSE of any loss from suspected theft or fraud in accordance with the Academies Financial Handbook.

The Multi Academy Trust shall not borrow against property or assets funded in whole or part by the SSE without specific approval of the SSE except as permitted in the Academies Financial Handbook (Clause 4.34).

Termination

Clause 6.1 provides that the Master Funding Agreement will continue until all the Supplemental Funding Agreements are terminated.

Clause 6.2 sets out a list of events for which the SSE may serve a Termination Notice. These include where the Academy has passed a resolution for its winding up.

Clause 6.4 provides that if the SSE determines that any charity trustee or member is unsuitable, the SSE may direct the Multi Academy Trust to remove them or serve a Termination Notice. The definition of unsuitable covers not only a charity trustee or member convicted of a criminal offence but also one who has engaged in relevant conduct which is aimed at undermining British values; or found to be in breach of professional standards; or so inappropriate that in the opinion of the SSE it makes them unsuitable to take part in the management of any of the academies.

Clause 6.7 provides that the SSE may terminate the Agreement where there is a change in control of the Multi Academy Trust (ie a change in the identity of the organisation entitled to appoint the majority of the governing body, such as a sponsor).

Access by the SSE

Clause 7.3 requires the Multi Academy Trust to allow DfE officials to enter its Academies at any reasonable time. Two DfE officials may attend and speak at any meetings of the board of charity trustees or of each local governing body.

Supplemental Funding Agreement

A Supplemental Funding Agreement must be entered in to for every Academy in the Multi Academy Trust.

Academy

Clause 1.G provides that the Multi Academy Trust will establish and maintain an Academy.

Teachers

The Multi Academy Trust may employ anyone it believes is suitably qualified to teach pupils (Clause 2.A).

Pupils

Clause 2.B sets out the planned capacity of the Academy and the age range which both need to be inserted in the Agreement.

Admissions

The Multi Academy Trust will be expected to act in accordance with the School Admissions Code and the School Admissions Appeal Code (Clause 2.F). The Academy must participate in the local authority's co-ordinated admission arrangements (Clause 2.H).

The Multi Academy Trust may give priority to children who receive the pupil premium (Clause 2.I) and may request appropriate financial information from parents.

By Clause 2.L the SSE may:

- Direct the Academy to admit a named pupil to the Academy on an application from the local authority;
- Direct the Academy to admit a named pupil to the Academy if the Academy has failed to comply with admissions law;
- Direct the Academy to amend its admission arrangements where they fail to comply with admissions law or the Codes of Practice.

Clause 2.P ensures that parents will have a right of appeal to an Independent Appeal Panel if they are dissatisfied with an admissions decision of the Academy.

Clause 2.S provides that the Academy must make it clear when determining its admission arrangements that any objections should be submitted to the Office of the School's Adjudicator.

Curriculum

The Multi Academy Trust must provide for the teaching of religious education and for a daily act of collective worship (Clause 2.U).

Clause 2.Z sets out that the Multi Academy Trust shall have regard to any guidance issued by the Secretary of State on sex and relationship education.

Clause 2.AA provides that the Multi Academy Trust must prevent political indoctrination.

Grant Funding

The SSE will calculate GAG based on pupil count at the Academy on the same basis used by the relevant local authority for the first financial year (Clause 3.E). The basis for determining GAG in subsequent years will be for pupils in Year 11 and below, the School Census (Clause 3.F).

Land

There are clauses which must be inserted to cover the Multi Academy Trust's obligations in respect of the Academy site and these will vary depending on how the land is held. Obligations may include keeping the land clean and tidy.

A new provision has been inserted which provides that where the SSE identifies basic or parental need for additional places in the area and the SSE considers that not all the land is needed for the Academy, the SSE may seek to agree with the Multi Academy Trust whether part of the land could be transferred to another Academy. This is subject to the Multi Academy Trust's agreement and the consent of any third party land owner.

Termination

Clause 5.A provides that either the SSE or the Academy may give not less than 7 academy financial years' written notice to terminate the Supplemental Funding Agreement. Such termination would take effect on the 31st August in the relevant year.

Clause 5.B provides that the SSE may serve a Termination Warning Notice if he is of the opinion that the Multi Academy Trust has breached the Master or Supplemental Funding Agreement; or the standards of performance of pupils are unacceptably low; or there has been a serious breakdown in management; or the safety of pupils or staff is threatened.

Any such notice must specify the measures needed to remedy the situation and specify a date by which these measures are to be implemented (Clause 5.C). If the SSE is not satisfied with the response he may serve a Termination Notice (Clause 5.E).

The SSE may serve a Termination Warning Notice if the Chief Inspector gives notice stating that special measures are required to be taken or the Academy requires significant improvement. If the SSE remains unsatisfied that any action proposed to be taken by the Academy is sufficient, he may serve a Termination Notice (Clause 5.H).

Clause 5.J provides that if a determination has been made that the Academy shall be struck off the Register of Independent Schools the SSE may serve a Termination Notice.

Clause 5.S provides that if the Multi Academy Trust is of the opinion that the cost of running the Academy would cause it to become insolvent, it may give written notice to the SSE of its intention to terminate the Supplemental Agreement. Both parties must try to agree a practical solution but if no agreement can be reached it should be referred to an independent expert. If the expert determines that the Multi Academy Trust would become insolvent and the SSE does

not agree additional funding, the Multi Academy Trust will be entitled to terminate this Agreement (Clause 5.Y).

Effect of Termination

Clause 5.Z provides that if the Supplemental Funding Agreement is terminated the school shall cease to be an Academy.

Clause 5.DD provides that on the termination of the Supplemental Funding Agreement, the Multi Academy Trust must in respect of its capital assets wholly or partly publically funded:

- Transfer a proportion of the assets to any persons nominated by the SSE to be used for educational purposes; or
- Repay to the SSE a sum equivalent to the percentage of the value of the assets.

Clause 5.EE provides that the SSE may waive the repayment if the Multi Academy Trust obtains his consent to invest the sale proceeds for charitable purposes; or he may direct the Multi Academy Trust to pay the sale proceeds to the relevant local authority.

Annexes

Clause 7.A provides that if the Multi Academy Trust considers that the local authority should not have named the Academy in an Education Health and Care Plan, it may ask the SSE to determine if the local authority has acted reasonably and to make an order directing the local authority to reconsider. The SSE's determination will be final subject to any right of appeal which a parent may have to a First Tier Tribunal or Upper Tribunal.

Clause 8.A requires the Academy to admit all pupils with a statement naming the Academy subject to its right of appeal to the SSE. Where a local authority proposes to name the Academy in a statement it must give the Multi Academy Trust written notice. The Multi Academy Trust can decide not to consent if it considers that admitting the child would be incompatible with the provision of efficient education or the efficient use of resources and must inform the local authority within 15 days. If the local authority does not agree with the Multi Academy Trust's position and names the Academy then the Academy must admit the child to the school (Clause 8.D). The Multi Academy Trust may ask the SSE to determine that the local authority has acted unreasonably in naming the Academy and to make an order directing it to reconsider (Clause 8.E). Where it has been finally determined that the Academy be named, the child must be admitted to the Academy (Clause 8.G).

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